

# UTLAW

WINTER 2005

THE  
MAGAZINE  
OF THE  
UNIVERSITY  
OF TEXAS  
SCHOOL OF  
LAW

## MANAGING A Tale of Two "Mergers" That Yielded Four Big Success Stories PARTNERS

*Locke Liddell &  
Sapp LLP managing  
partner Bryan  
Goolsby, '77, and  
Michelle Parsons  
Goolsby, '83, EVP  
and general counsel,  
Dean Foods Company*

**PLUS**  
UT Law's Actual  
Innocence Clinic: Digging  
Deep to Uncover Injustice



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# WINTER 2005



*John and Laura Beckworth, two longtime UT Law supporters, at Houston's Hobby Center for the Performing Arts, which Laura helped to build.*

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Photograph this page by Rocky Kneten

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**UTLAW**  
VOLUME 3 • ISSUE 2

*I am a graduate of the June 1931 UT Law Class and have wondered if you have any records showing approximately how many of us are still alive.* ALLEN C. STEERE, '31

# LETTERS

## THE CLASS OF '31

I AM A GRADUATE OF THE JUNE 1931 UT Law Class and have wondered if you have any records showing approximately how many of us are still alive. I attended the 50th and 60th reunions of the class in Houston and the 59th reunion in Dallas. But we seem to have gone silent since that time.

After practicing three years in my hometown of Fort Worth, I entered

the law department of the Lincoln National Life Insurance Company here in Fort Wayne and retired in 1973 as a senior officer and member of the board of directors.

My wife, Lomarae, died in January 2003. We had been married 65 years. She was a Texas girl. I turned 96 in August.

I have very much enjoyed reading *UTLAW* and have many pleasant memories of my days at the University. I was a DKE and the drum major of the Longhorn Band, 1926-31.

Allen C. Steere, '31  
Fort Wayne, Indiana

*Editor's note:* This fall we counted 79 Class of 1931 members in our records.

# UTLAW

## UT SCHOOL OF LAW

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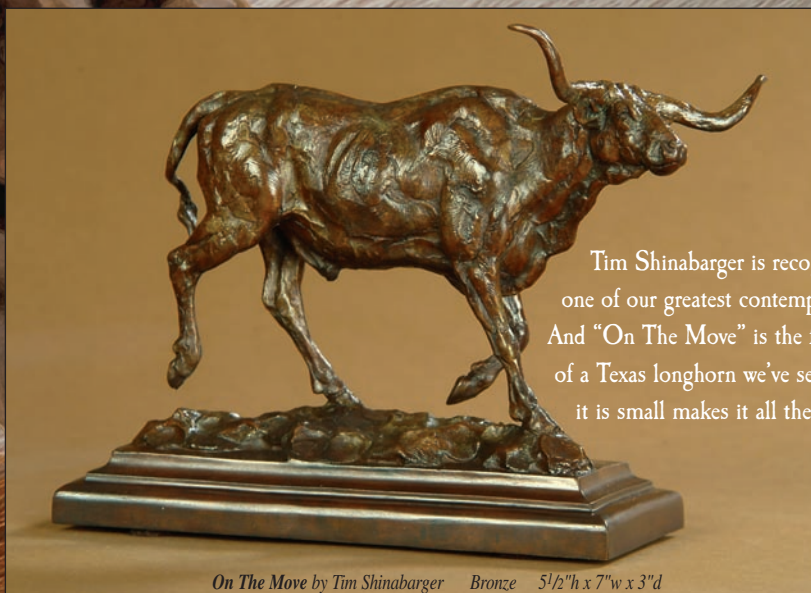
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## CELEBRATE YOUR ORANGENESS



Tim Shinabarger is recognized as one of our greatest contemporary sculptors. And "On The Move" is the finest example of a Texas longhorn we've seen. The fact that it is small makes it all the better.

*On The Move by Tim Shinabarger Bronze 5 1/2" h x 7" w x 3" d*

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15 Highland Park Village Dallas, Texas 75205 214-521-7880 800-521-2403 [www.collectorscovey.com](http://www.collectorscovey.com)

### WORKSHOPS

The center hosts a cutting-edge workshop series on innovation, with guests this fall from the Harvard Business School, the economics departments at MIT and Berkeley, and the law schools at Michigan and Chicago.

### WORKING PAPER SERIES

The center collects and disseminates a working paper series, which advertises the wide range of sophisticated analytical work that the center's faculty are doing at the intersection of law, economics, and business.

### TRANSACTIONAL PRACTICE

The center has commenced a major initiative to make Texas a leader in educating students who want to be transactional lawyers. The program involves the development of new transactional courses (like "Software Licensing" and "Venture Capital" Deals), as well as a series of lunch panels on important topics about the distinct challenges of the business of law practice.

#### FOR MORE INFORMATION ABOUT CLBE, CONTACT:

Professor Ronald Mann, Codirector  
PHONE: (512) 232-1301 E-MAIL: [clbe@law.utexas.edu](mailto:clbe@law.utexas.edu)  
CENTER WEB SITE: <http://www.utexas.edu/law/academics/centers/clbe/index.php>



Law, Business & Economics  
AT THE UT SCHOOL OF LAW





## SENATOR KAY BAILEY HUTCHISON

This year the Law School successfully raised more than \$1.4 million to endow the Kay Bailey Hutchison Chair in Latin American Law. The proceeds from the endowment will help fund a professorship and scholarly research that focuses on that region of the world. "This chair is a fitting and lasting tribute to a senator who has devoted considerable effort to strengthening our nation's and Texas' ties to a region of commercial, social, and political importance," said David J. Beck, president of the Law School Foundation. "I'd like to thank the many donors who helped make our fundraising effort such a great success."

PHOTOGRAPH BY JAMES KEGLEY

# IN CAMERA







## LEGAL TIMES

This year the New York Times Company hired another UT Law graduate, making UT Law the most represented school on its corporate staff. From left, Johanne Picard, '96, who works on tax matters, Alison Zoellner, '90, senior counsel, and Diane Brayton, '96, who serves as counsel.

UT Law's John Schwartz, '84, also works for the *Times*, as a reporter (see page 18).

PHOTOGRAPH  
BY ERIN PATRICE  
O'BRIEN





# IN CAMERA







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gift of  
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a UT Law  
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Becoming a MENTOR is an excellent way to make a contribution to the Law School. Whether you are in-house, at a firm, at a court, in government or public interest, or pursuing an alternative career, UT Law students can benefit from your knowledge and guidance. Please consider making a gift of your time and experience to students so they may continue UT's legacy of excellence.

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Mitchell Kam, Associate Director  
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[www.utexas.edu/law/career](http://www.utexas.edu/law/career)



A close-up portrait of Wallace B. Jefferson, a man with a receding hairline and a serious expression, wearing a black judicial robe over a light blue shirt and a patterned tie. The background is a blurred outdoor setting with architectural details.

# IN CAMERA

## HAIL TO THE CHIEF

The Honorable Wallace B. Jefferson, '88, was named chief justice of the Texas Supreme Court this fall. The UT Law grad is the first African American to serve as chief justice. "Justice Jefferson is an outstanding judge and will be an excellent chief justice," said UT Law dean Bill Powers. His appointment is subject to confirmation by the Texas Senate.

PHOTOGRAPH BY WYATT MCSADDEN



# President's Message

*Supporting a worthy mission.*

**D**EAR FELLOW UT LAW ALUMNI: I have the great honor and privilege of serving as president of the UT Law Alumni Association for 2004–05, and I am very excited about the coming year.

On these pages, you will read about the accomplishments of our alumni, our faculty, and our students. You will also learn of upcoming events of interest to all of us as alumni. The work being done at our alma mater is truly remarkable and is cause for great pride among all members of the UT Law School community. I hope it also inspires you to support the Law School—our law school.

Of course, there are many ways alumni can, and do, support the Law School. Our gifts of time and experience as adjunct professors, volunteer recruiters, mentors and advisors to students, peer fundraising coordinators at our respective law firms or places of business, and/or our attendance at Law School events are important and valuable to building a great institution.

Likewise, our friendships—forged during our years together as classmates—and our professional relationships with each other bring strength to our Law School and its reputation as one of the nation's premier centers of legal scholarship and education. To be known as a law school that views and treats all its various constituencies as part of a single, extended community is also part of what it takes to be known as a great law school.

Finally, and no less importantly, is the financial support we give to UT Law School. You have received letters from Dean Powers, from me, and from others associated with the Law School, asking you to contribute to the Annual Fund. There are many reasons to give to the Law School. Some of those reasons you've read about in the letters you received. By reading this issue of *UTLAW*, you may well learn of other reasons to give. For me, and perhaps for many of you, the most compelling reason of all is the need of a worthy enterprise.

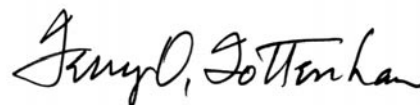
As alumni, we know the mission of UT Law School is worthy. And we know that UT Law School needs our sup-

port. Let's do our part, then—just as alumni of our Law School have done now for more than one hundred years.

If you have questions about the Law Alumni Association, the Annual Fund, or the Law School's other development programs, please write to me at the Law Alumni Association or call one of the association's staff members. Contact information for the UT Law Alumni Association can be found on page 2 of the magazine.

Again, I am honored to serve the Alumni Association this year as its president, and I hope I have the opportunity to visit with many of you this year. Together, we can make great things happen.

Sincerely,



Terry Tottenham  
President

---

*Terry O. Tottenham, '70, is a senior partner with Fulbright & Jaworski and currently serves as partner-in-charge of the firm's Austin office. He earned his B.S. in Pharmacy with High Honors from UT-Austin and his LL.M. in law, psychiatry, and criminology from the George Washington University National Law Center.*



# Educating Leaders

*Lawyers are the day-to-day embodiment of the rule of law.*

WE OFTEN SAY THAT LAW SCHOOL TEACHES students to “think like lawyers.” In fact, that’s true. We teach analytical skills and bodies of knowledge that are essential for lawyers. But we do more than that. We incubate our state’s and nation’s leaders.

In 2003 UT president Larry Faulkner convened the Commission of 125. Like the Committee of 75 and the Centennial Commission before it, the Commission of 125 was composed of civic leaders and was charged with the task of envisioning the University’s future. (In 2001–02 the Law School had a similar Long-Range Planning Committee. I am proud to say we have implemented all of its recommendations, including our new “society” program, which I discuss below.) I had the privilege of being the lead liaison for the Commission of 125’s Committee on Graduate and Professional Education, and I was proud to see how many of the commission’s members are lawyers. But that’s true in almost any civic enterprise: lawyers—especially UT lawyers—are community leaders. Lawyers are the day-to-day embodiment of the rule of law. We need to remember that when lawyers are attacked in the media. Remember, when Shakespeare penned the lines “First thing we do, let’s kill all the lawyers,” he put them in the mouth of Dick the Butcher, who wanted to overthrow the regime. Lawyers, and the law, are our guardians of liberty. But even when they are not serving as lawyers per se, UT lawyers serve as our local, state, and national leaders.

For the University as a whole, the Commission of 125 focused on UT as an incubator for leadership. In its final report in October, it concluded that educating leaders requires more than merely providing students with the entry-level skills for first jobs in narrow fields. It also requires having students grapple with the fundamental human and intellectual problems presented by history, literature, science, mathematics, and philosophy. It requires a strong foundation in analytical skills, and in oral and written communication. It requires a firm understanding of rich cultural heritages in our pluralistic state, nation, and world.

The Law School is no different. I am proud to say that employers report that our graduates are extremely well prepared for entry-level jobs in law firms, government, and nonprofit organizations. But I am equally proud to say that this is not where our graduates stop. They rise to become leaders in their profession. They rise to become leaders in other enterprises. And, most impor-

tant, they rise to become leaders in their communities.

This is why our curriculum, in addition to including analytical skills and bodies of knowledge, also focuses on legal history, social policy, legal philosophy, economics, and comparative law. It is why in our clinics students learn to grapple with what it means to be responsible for the fate of a real live client. It is why our public interest program instills in all students the value of striving to ensure that our legal system serves all people.

Classrooms are not the only place where we foster leadership. In a multitude of extracurricular activities and organizations, students learn leadership. This fall, we instituted a new “society” program, in which the entering class is divided into eight societies (and further into sixteen “mentor groups”). Each society is led by a faculty member, an upper-level student advisor, and two upper-level student mentors. The societies will involve students in activities in which they learn about our profession and its many paths. And the societies will involve students in public-service projects. By locating these and other social activities in the societies, we have enabled the TQs in our writing program to focus more heavily on research and writing skills. Along with our hiring an additional writing instructor, this has strengthened our writing program.

So with our curriculum, our new societies, our clinics, and our student organizations we try to foster leadership as well as technical skill. We try to prepare students for their first jobs, and for a lifetime as leaders in our communities.

This issue of *UTLAW* focuses on four alumni who are models of what we strive to foster. Four people—two couples—each of whom has manifested leadership, not just in our profession but in our communities as well. They are Michelle and Bryan Goolsby and Laura and John Beckworth. As their stories show, they are incredibly accomplished, dedicated, and talented. I hope you will enjoy their individual stories. They are representative of many alumni whose stories I wish we had the space to tell.

I often say how grateful I and our entire faculty are for the support you give us. It is essential to our success. We are also enormously proud of you. Proud of your professional success, and even more proud of your legacy of service.

Sincerely,



Bill Powers, Dean



# ARE YOU A UT LAW GRAD NOT PRACTICING LAW?



## The Law School's Non-Practicing Alumni Advisory Council (NPAAC) wants to hear from you!

On **JANUARY 28, 2005**, Dean Powers and Stan McLelland invite the non-practicing advisory council to the Law School for its annual meeting. The advisory council focuses on a variety of projects, including ways to involve non-practicing alumni in the life of the Law School and to provide mentoring services to students and alumni who are considering alternatives to the traditional practice of law.

If you are interested or know someone who is interested in serving on the council, please send the name, address, phone number, fax number, and E-mail address to:

**Fran Chapman**

Director of External Relations  
The University of Texas School of Law  
727 E. Dean Keeton Street  
Austin, Texas 78705-3224

E-mail: fchapman@mail.law.utexas.edu  
Phone: (512) 232-9394  
Fax: (512) 471-6987

For more information, visit our Web site: <http://www.utexas.edu/law/depts/alumni/npaac/index.html>

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**Saturday, April 16**

For more information, visit our web page at [www.utexas.edu/law](http://www.utexas.edu/law) or phone (512) 232-1118.



APRIL 16, 2005

## SAVE THE DATE: REUNION!

## JANUARY 28

The Alumni Association will hold its annual **Non-Practicing Alumni Advisory Council meeting**. For more information about the council, please contact Fran Chapman, director of external relations, at fchapman@mail.law.utexas.edu or (512) 232-9394.

## FEBRUARY

Professor Karen Engle and the Center for Human Rights at UT Law will present **"Working Borders: Linking Contemporary Debates Over Insourcing and Outsourcing of Capital and Labor."** For more information, contact Professor Engle at kengle@mail.law.utexas.edu.

Spring **On-Campus Interviews (OCI)** will be held at the Law School in the Career Services Office Interview Suite.

For more information, visit [www.utexas.edu/law/career](http://www.utexas.edu/law/career) or contact Andrea Schlafer in the Career Services Office at aschlafer@mail.law.utexas.edu or (512) 232-7110.

## FEBRUARY 4 - 5

The Texas Law Review will host its annual symposium, this year titled **"Water Law Issues in the Desert Southwest."** For more information, contact Amanda Borichevsky at amandalb@mail.utexas.edu or (512)

232-1280. The Web site is found at [www.utexas.edu/law/journals/tlr/](http://www.utexas.edu/law/journals/tlr/).

## FEBRUARY 11

The 14th annual **Public Service Career Day**, the largest public interest job fair for law students in Texas, will be held at the Law School this spring. Law students from throughout the state and employers from throughout the nation will be in attendance. For more information, visit [www.utexas.edu/law/career](http://www.utexas.edu/law/career) or contact Tina Fernandez in the Career Services Office at tfernandez@mail.law.utexas.edu or (512) 232-1159.

## MARCH

The Career Services Office will host its fifth annual **Small- and Mid-Size-Firm Reception**. This event offers firms and solo practitioners the opportunity to meet outstanding UT Law students in a casual setting. Nearly three hundred UT Law students and recent graduates are expected to

attend this popular networking event. Student résumé directories will be distributed at the reception, and practitioners do not need to be hiring to attend. For more information, visit [www.utexas.edu/law/career](http://www.utexas.edu/law/career) or contact Mitch Kam at mkam@mail.law.utexas.edu or (512) 232-1162.

## THIS SPRING

Each year Texas Law Fellowships (TLF) grants the **Excellence in Public Interest Awards** to two Texas attorneys who have demonstrated their commitment to serving the public. TLF invites all members of the Texas legal community to join us in honoring the achievements of this year's recipients. Also, the week before and the week after spring break, TLF will hold its annual **TLF Pledge Drive** to fund summer 2005 fellowships for students employed in the public interest field. For more information, contact TLF at tlf@mail.law.utexas.edu or at [www.utexas.edu/law/orgs/tlf/](http://www.utexas.edu/law/orgs/tlf/).

For more information, contact TLF at tlf@mail.law.utexas.edu or at [www.utexas.edu/law/orgs/tlf/](http://www.utexas.edu/law/orgs/tlf/).

To review a complete schedule of the Law School's **CLE conferences**, go online to [www.utcle.org](http://www.utcle.org) or call the CLE office at (512) 475-6700. For information on **training sessions** offered by the Center for Public Policy Dispute Resolution, contact Natalie Gray at (512) 471-3507 or go online to [www.utexas.edu/law/academics/centers/cppdr/training](http://www.utexas.edu/law/academics/centers/cppdr/training).

TEXAS LAW REVIEW HOSTS "WATER LAW ISSUES IN THE DESERT SOUTHWEST." PHOTO OF BIG BEND'S HOT SPRINGS CANYON BY LAURENCE PARENT.





# AROUND THE



## Viva Brazil!

**I**N AUGUST, UT LAW DEAN Bill Powers and several faculty members traveled to Brazil to discuss North American law with attorneys and judges in Rio de Janeiro, Porto Alegre, Goiânia, and Brasília.

UT Law faculty have been going to Brazil annually to teach about American law as part of an ongoing Brazil-U.S. Legal Education Exchange Program. In addition to Powers, this year the group included Jane Cohen, Karen Engle, William Forbath, David Rabban, Larry Sager, Jane Stapleton, and Jordan Steiker.

"For the past eight years we've had a very productive relationship with the Federal University of Rio Grande do Sul School of Law and with

the Brazilian courts. This is part of our focus on Latin American law. It is tremendously helpful for opening up opportunities for our students," said Powers. He noted that four UT Law students had internships in Brazil this past summer.

A highlight of this year's trip was the first comparative constitutional law dialogue at the Brazilian Supreme Court in Brasília. UT faculty exchanged ideas with members of the Brazilian Supreme Court, the attorney general of Brazil, and the dean of the National University of Brasília.

Topics discussed included the contemporary meaning of the constitution in the United States and Brazil, individual and social

rights in the constitution, the impact of the constitution on private law, the protection of free speech, the constitution and affirmative action, philosophical foundations of the

American and the Brazilian constitutions, and human rights and the American Constitution.

The panel "The Constitution and the Economic Order" included presentations by Brazilian professors Antonio Benjamin, special advisor for judicial affairs to the president of the Brazilian Senate, and Claudia Lima Marques, of the Federal University of Rio Grande

**Visiting law professor Antonio Benjamin welcomes guests to Rio de Janeiro, left. Below (l. to r.): Dean Powers, Benjamin, and Professor Larry Sager share a panel discussion at a conference in Brasília. Bottom: Law faculty visit the Supremo Tribunal Federal in Brasília with U.S. Embassy members and Brazilian Supreme Court chief justice Nelson Jobim (center).**





# LAW SCHOOL

WINTER 2005

do Sul. Benjamin is a regular visiting professor at UT Law who teaches comparative environment law and biodiversity law. Marques has also visited UT Law.



AARON FORBATH (2)

**Above: Some UT Law faculty hiking through Chapada dos Veadeiros, a national park near Brasília.**



## Montoya, '95, Tapped to Lead School's Career Services Office

**W**HEN ASSISTANT DEAN for career services Kathy Richardson, '95, stepped into her new role as a member of a private legal talent recruiting firm, Dean Powers hired her classmate David A. Montoya, '95, to lead one of the nation's largest legal career service office operations.

"Dean Richardson did a wonderful job leading our Career Services Office. We will miss her. We are extremely fortunate to have David Montoya join us to carry on our tradition of career services. He has been an outstanding lawyer, and he will be a marvelous dean of career services. We are lucky to have him."

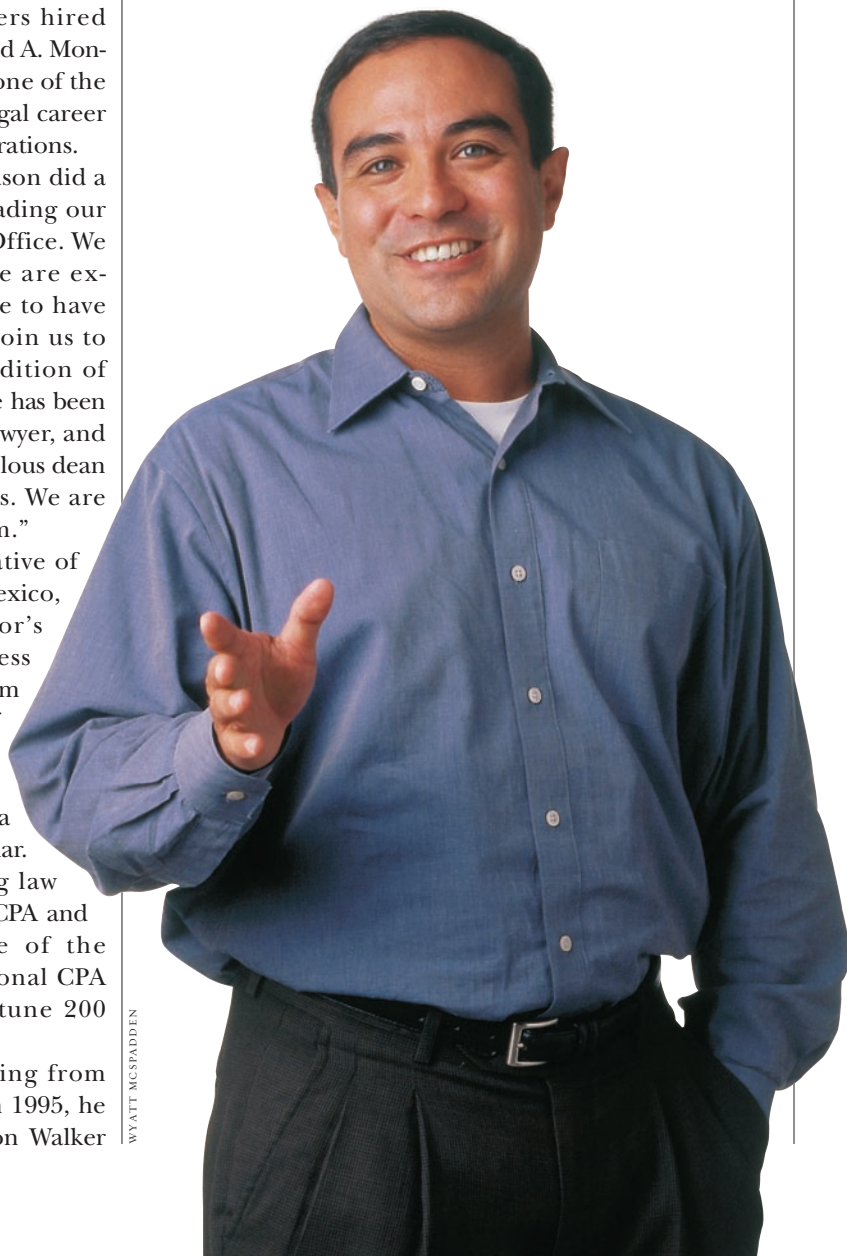
Montoya, a native of Santa Fe, New Mexico, earned a bachelor's degree in business administration from the University of Notre Dame in 1985, where he was designated a Notre Dame Scholar. Before attending law school, he was a CPA and worked for one of the largest international CPA firms and a Fortune 200 company.

After graduating from the Law School in 1995, he worked for Jackson Walker

for six years, most recently serving as a partner in the Commercial Litigation and Corporate Reorganizations/Restructuring sections. *Texas Monthly* named him a Texas

Rising Star for 2004.

**"I look forward to working with the students, faculty, and staff of this great institution," assistant dean David A. Montoya, '95, said.**



WYATT MCSPADDEN



# AROUND THE LAW SCHOOL

## UT LAW #1 FOR HISPANICS

The recognized influence of UT Law's 1,300-plus Hispanic alumni contributed to the Law School's top placement in this fall's *Hispanic Business* magazine top law schools survey. It is the fourth consecutive time the Law School has claimed the top spot on the survey.

## UT Law's Center for Human Rights

**T**HIS YEAR THE LAW SCHOOL announced a major donation from the Bernard and Audre Rapoport Foundation of \$100,000 per year for five years to fund the Center for Human Rights (CHR).

CHR creates a meeting ground for interdisciplinary analysis of contemporary human rights issues and supports human rights activism. It supports student service and learning opportunities by awarding three scholarships, identifying summer internship opportunities, and hosting support workshops and conferences.

In addition, the center establishes the Transnation-



COURTESY

**Karen Engle will direct the Center for Human Rights. The center's Transnational Worker Rights Clinic represents migrant workers.**



WYATT MCSPADEN

al Worker Rights Clinic to represent low-income immigrant workers in the Austin area. The clinic allows students to improve their understanding of workers' rights and will help immigrant workers recover unpaid wages for work performed. Professor Sarah Cleveland directs the clinic.

CHR's kickoff event will be a February conference, "Working Borders: Linking Contemporary Debates Over Insourcing and Outsourcing of Capital and Labor."

## In Brief

### A WIN FOR UT'S CAPITAL PUNISHMENT CLINIC

A 6-3 ruling by the U.S. Supreme Court in a case involving the Law School's Capital Punishment Clinic could lead to the reversal of dozens of death sentences imposed in Texas before 1991. In *Tennard v. Dretke*, the Court ruled that a death-sentenced inmate could continue with his claim that his jury was unable to give effect to evidence of his 67 IQ as a mitigating factor in the penalty phase of a capital trial. UT Law professors Rob Owen and Jordan Steiker and law students Kimberly Carter, Heather Fraley, Haverly Rauen, Leslie Conant Thorne, Amanda Tyler, and Mitria Wilson took leading roles in this case. (For related story, see *UTLAW*, Spring 2004, page 49.)

### ALUMNI, FACULTY WORK TO DONATE INSURANCE LAW PAPERS TO STATE OF TEXAS

Joe K. Longley, '69, and adjunct professor Philip K. Maxwell, '69, have donated 12 linear feet of records regarding the drafting of Texas' Deceptive Trade Practices Act and private remedies amendments to the Texas Insurance Code to the Texas Legislative Reference Library. Longley, the principal drafter of H.B. 417 (the vehicle used by the Texas

Legislature to enact these measures in 1973), and Maxwell donated materials including drafts of legislation and transcripts of hearings, correspondence, news clippings, talking points, vote counts, and other papers that document the political maneuvering and battles that took place during the adoption and amending of these laws beginning in 1973 and continuing through the 1990s.

### UT LAW COMPETES IN DANSKIN TRIATHLON

Dean Alexandra W. Albright, '80, led a group of UT Law students and staff members who all finished the Danskin Triathlon, held June 13, 2004. Clockwise from top left: Class of 2004 members Jodie Slater, Albright, Lauren Held, Martha Newton, and Amy Pharr Hefley. Not pictured: Law School staff members Sally Emrick and Susan Schultz.



# Justice Center Launch



WYATT MCSPADDEN

**T**HIS YEAR A TEAM OF ALUMNI, faculty, and administrators at the Law School helped to raise \$1 million to

establish the William Wayne Justice Fund for Public Service in honor of Judge Justice, '42, and his more than fifty years' commitment to public service and equal justice.

The Justice Fund endows the work of the Law School's Center for Public Interest Law, now called the William Wayne Justice Center for Public Interest Law. The center will help educate law students about the

need to increase access to justice and the rewards of fulfilling their ethical obligation to engage in pro bono, public service, and public interest law as part of their professional lives.

Center director Eden Harrington said the \$1 million is an initial endowment and the Law School is continuing to seek support through the Justice Fund for operating programs and a larger endowment for the Justice Center. Steering committee co-chairs for the Justice Fund

are Richard Warren Mithoff, '71, a former law clerk to Judge Justice, and William O. Whitehurst, Jr., '70, a former president of the State Bar of Texas.

(For related story, see *UTLAW*, Summer 2003, page 48.)



**Edén Harrington (left) will direct the new Justice Center; Professor Lynn Blais will serve as one of the fund's faculty liaisons.**



BRADFORD



CADENA



GREEN



HARGRAVE

## New Society System for ILs

UT Law launched a new society system for first-year students this year. Societies, or groups of fifty to sixty students, will help students foster a stronger sense of community, further improve student access to faculty members, and



serve as a base for students' pro bono, athletic, and social activities. Professor David S. Sokolow (left) and Allyson Childs, '95, will coordinate society activities.

**The Law School societies were named for:**

**GLORIA K. BRADFORD**, '54, our first African American female graduate  
**CARLOS CADENA**, '40, a respected judge and a civil rights crusader  
**LEON GREEN**, '15, one of the most important tort scholars  
**HELEN HARGRAVE**, UT Law's longtime librarian and the school's first female faculty member

**GUS HODGES**, a highly popular professor

**CHARLES MCCORMICK**, a former dean

**ALICE SHEFFIELD**, '18, one of UT Law's first female graduates

**JOHN SUTTON**, '41, a former dean known for his collegiality

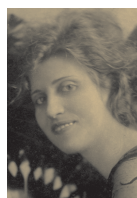
HODGES



MCCORMICK



SHEFFIELD



SUTTON

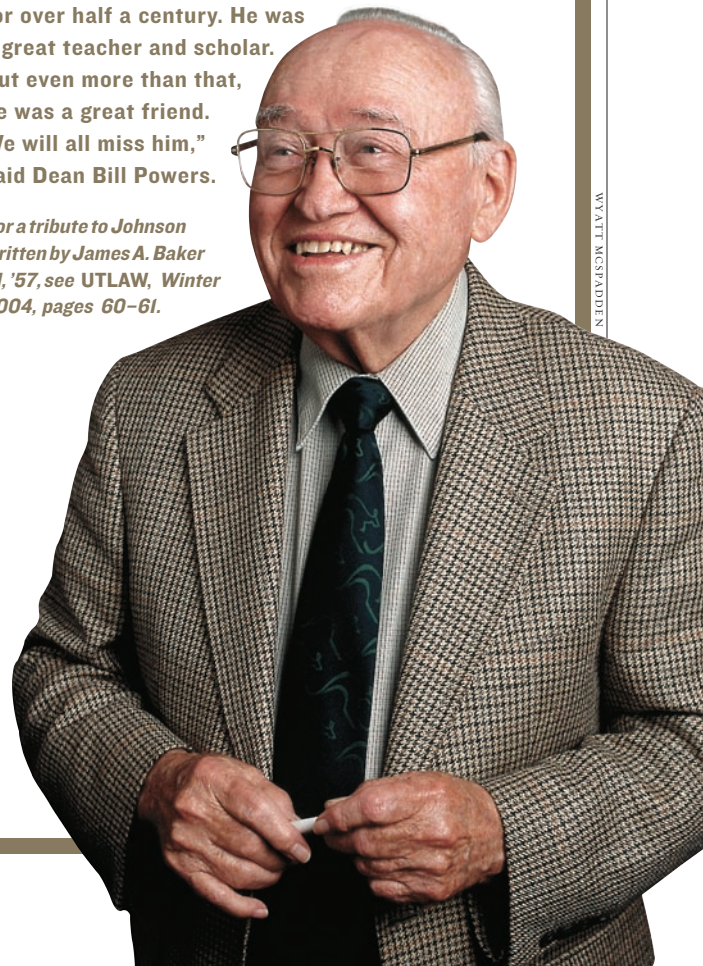


## REMEMBERING CORWIN W. JOHNSON 1917-2004

Corwin W. Johnson, a Law School professor for almost six decades and a national expert on property law and water law, died this past summer on July 29 after suffering a stroke. He was 86 years old. On the day of his memorial service, President Faulkner ordered the University's flags to be flown at half-mast.

"Corwin was a pillar of the Law School community for over half a century. He was a great teacher and scholar. But even more than that, he was a great friend. We will all miss him," said Dean Bill Powers.

*For a tribute to Johnson written by James A. Baker III, '57, see UTLAW, Winter 2004, pages 60-61.*



WYATT MCSPADDEN



# John Schwartz

## A LAWYER REPORTS THE NEWS

*Did I throw away a perfectly good law degree? Not at all.*



I'M ONE OF THOSE UT LAW GRADUATES who doesn't practice law. Never did, except for a couple of clinics I took in school, getting a divorce for a nice woman whose husband beat her and defending a kid who ended up going up the juvenile river. I figured that quitting while I was batting .500 was pretty good.

I had nothing against practicing law, or against lawyers. My dad and two of my brothers are members of the profession, and I enjoyed learning the law. But when it came time to decide on a career, I felt the pull of journalism more compellingly. I started working for the *Daily Texan* and *UTmost*, the campus magazine, after getting into law school, and found myself freelancing for *Texas Monthly*, the *Texas Observer*, *Newsweek*, and the *New York Times* while struggling through classes. The avuncular associate dean of students, T. J. Gibson III, was indulgent; he said that having a law student so involved with the main campus was good for the school, and he let me rack up quite a few incompletes. By the time I graduated (working off the incompletes by churning out some 200 pages' worth of independent-study papers), I knew that I'd have to at least give writing a

**"I wouldn't have passed up the experience of attending UT Law for anything."**

try before committing myself to a career in law. My wife, who was even more indulgent than T.J., agreed to give me five years to try to get a real job in journalism, say, with a health plan. A year later, in mid-1985, I got a job at *Newsweek*—and we never looked back. Since then, I've worked at the *Washington Post* and at the *New York Times*. I know, I know. I just can't keep a job.

So did I throw away a perfectly good law degree? Not at all. The things I learned at UT Law, and the ability to learn and understand the law, are an important part of many stories that I write. One of the most important ongoing technology stories I have covered at the *New York Times* has been the fight over music file trading, with its complexities of copyright. You don't have to be a lawyer to get up to speed on those issues, but it definitely helped. And when I covered the fight over tobacco regulation for the *Washington Post* in the 1990s, there was tort litigation, regulatory law, legislation, and more, with a bonus of Chancery law for the State of Mississippi's suit. I can talk *Chevron* deference with the best of them.

Well, that's not quite right. I can bluff my way through a discussion of regulatory deference under the *Chevron* line of cases, so long as I don't have to actually go into anything in depth. For a journalist, that passes for expertise.

As I worked on these stories, lawyers began many conversations talking to me as if I were an idiot child who happened to own a suit. They'd say things like, "You might not understand the legal background here." It has always been great to be able to respond, "Well, I only went to a state law school, but I'll try to keep up if you use small words." It seems to open doors every time, telling them, in some small way, "I'm in the club." (It was almost as effective an ice-breaker as asking tobacco lawyers and lobbyists during breaks in trials or congressional testimony if I could bum a cigarette.)

I'm far from the only lawyer in the

## EXTRA! EXTRA!

Everyone has favorites—these are mine.

**Best books about newspapering:**

**ALEX JONES AND SUSAN TIFFT, *The Trust*.** A sweeping history of the *New York Times*.

**ARTHUR GELB, *City Room*.** A longtime *Times* editor tells of everything from the wild days during WWII, when reporter Meyer Berger would celebrate finishing a big story by running around the city room atop the reporters' desks, to the Jayson Blair scandal.

**KATHARINE GRAHAM, *Personal History*.** The owner of the *Washington Post* tells her story, and with it the story of a great paper.

**DAN BARRY, *Pull Me Up: A Memoir*.** One reporter's story, richly told, with heart.

reporting trades. The editor who hired me to work at *Newsweek* in 1985, Jerrold K. Footlick, was an attorney and had been the writer of the magazine's respected Justice section for many years. He said one of the reasons he hired me was the fact that I had gotten the law degree and passed the bar—signs of stick-to-itiveness, he thought. At the *Times*, other reporter-lawyer colleagues include Barnaby Feder and Adam Liptak, who actually served on the paper's legal staff before making the jump to typing for a living.


Of course, law school is not just about learning black-letter stuff. There are connections, too. That part has come in handy from time to time. When I was sent to cover the collapse of Enron, I was pleased to find that UT Law dean William Powers had conducted the critical early study of Enron's business, giving me a familiar person to talk with about the report and its implications. I also discovered that several people I knew from law school had ended up in positions of authority at one time or another at Enron and its affiliates. It should not have been any surprise, of course, since UT Law grads are real heat seekers, and find interesting, challenging places to be.

I can't say that the people I got in touch with were especially helpful—they were, after all, loyal employees and executives. But the experience of covering that disaster helped put things in perspective. I might not be able to afford much of a house on a reporter's salary, and I don't know how we'll pay for our kids' college education. But at least I'm not on the wrong end of a shareholder suit or wondering what to pack for an extended stay in a federal lockup.

Besides, journalism has its rogues, too. When the Jayson Blair fiasco erupted at the *Times*, one of my good friends from law school who had been at Enron called out of the blue. "Media feeding frenzy," he said, striking a tone somewhere between rueful and gleeful. "It's not fun, is it?"

I had to admit that he was right. It was awful, gut-churning stuff. The work of a scam artist can be ruinous, whether he is at a newspaper or an energy company. These scandals erode the public trust, and trust is the only real asset in business or in journalism. Nothing else works without it, and it's far quicker and easier to destroy than to build.

Of course, Jayson didn't cause anybody to lose his life's savings, either.

Even though I've traded the profession of law for the trade of journalism, I wouldn't have passed up the experience of attending UT Law for anything. It gave me a chance to get to know iconic figures like Page Keeton, Bernie Ward, and Charles Alan Wright, and to learn from gifted teachers like Mark Yudof, Michael Sharlot, Tom McGarity, and Barbara Aldave. (And many, many more whom I hope I have not insulted through inadvertent omission.) Also, it gave me that thing that all reporters need: a way out. I've always said that if this whole journalism thing doesn't work out, I can just go back to Texas and do divorces. 

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*John Schwartz, '84, writes about science and technology for the New York Times. His father, A.R. "Babe" Schwartz, '49, served in the Texas Senate between 1961 and 1981.*



# Wendy Wagner

## REVERSING INCENTIVES FOR IGNORANCE

*Current laws provide the wrong incentives for environmental protection.*

**D**ESPITE THE ENORMOUS growth in environmental law and regulation since the 1970s, much of the scientific information needed to ensure environmental protection is still missing. The quality of most of our air, water, and land is unknown, even

though the country has devoted hundreds of pages of laws to regulating activities that threaten the environment. We do not know when we are stressing ecosystems beyond the breaking point, and we do not know how to help ecosystems recover, even though the effectiveness of some fed-

eral programs depends on this information. We even lack the knowledge to talk about, much less test for, a variety of invisible hazards associated with household products, pesticides,

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**Wendy Wagner is a leading authority on the use of science by environmental policymakers.**



food additives, and products of biotechnology.

In an article that was published this fall by the *Duke Law Journal*, I argue that a fair share of the blame for this pervasive ignorance can be assigned to the environmental laws themselves, particularly their failure to require regulated parties to share in producing this information. Despite creating most of the need for such information, regulated actors are excused under most environmental laws from providing any more than a partial inventory of their activities and are not required to track the resulting impact of their products and activities on public health and the environment. In fact, in many circumstances the laws actually deter regulated parties from volunteering information on the adverse effects of their activities. Regulators are more likely to greet such information with fines and increased restrictions than with regulatory rewards and letters of commendation. In such a legal environment, regulated parties might be more willing to contribute, and even invest in, the perpetuation of ignorance.

The failure of the laws to require regulated parties to contribute to research about the adverse effects of their activities is especially unfortunate given their superior access to much of the information needed to understand the effects of their products and activities on health and the environment. Regulated entities best know the contents, contaminants, and waste products associated with their activities, and they often experience firsthand any adverse effects of the products and associated wastes on public health and the environment. With mountains of detailed facts about the nature of their products and polluting activities, these entities amass specialized private expertise about the ways their activities or products could cause harm.

Indeed, faced with especially incriminating information about the adverse effects of a product or activity, regulated actors may not only decline to voluntarily assist in producing or sharing this information

but also may actively work to obfuscate especially damaging information produced by others. In dramatic cases, where expensive liability or regulations could result from an unflattering scientific assessment of their activities, these actors could have strong incentives to discredit third-party research and obscure research results.

Experience in the area of public health and safety confirms these suspicions. Industries rarely volunteer information on the long-term safety of their products and activities, and they lobby against laws that require them to share even basic internal information. For example, the makers of the Dalkon shield, ultra-absorbent tampons, Bendectin, DES, breast implants, and tobacco all dug in their heels and resisted conducting safety research on their products, even when preliminary signs indicated that the products might harm the public. "Hired gun" attacks commissioned by manufacturers against publicly funded research are also common in high-stakes cases where acceptance of the results could lead to shattering liability and publicity. The tobacco industry is most notorious for using this tactic, but it is by no means alone. Individual companies or trade associations engaged in the production of oil, lead, asbestos, and beryllium have all actively worked to discredit research that, if widely understood and accepted, would likely result in substantial liability, regulatory, and market costs.

In such a setting, where there are such strong incentives for ignorance, one would expect the environmental laws to play a vital role in reversing the rational inclination of regulated actors to conceal adverse information and resist research on potential harms. Nevertheless, environmental laws as currently implemented require regulated parties to produce information on their products and activities only in limited circumstances, such as testing for a subset of pesticides and toxic substances and requiring polluters to monitor the amount (not the effects) of large

sources of pollution being released into air, water, or land. Beyond these limited requirements, the laws generally excuse regulated entities from providing information on their activities. It is rare for a facility engaged in manufacturing or polluting activities, for example, to be required to monitor the receiving environment into which it places its products or pollutants or to test for potential adverse effects on health or the environment.

It is bad enough that environmental laws fail to require regulated actors to produce information needed to assess the adverse effects of their products and wastes, but some environmental laws lead to a still worse state of affairs by legally reinforcing an actor's predisposition toward concealing damaging information and mounting attacks on unflattering public research. First, the environmental laws generally penalize, rather than reward, facilities for volunteering information. Under the current regulatory system, sharing adverse information about one's activities is equivalent to shooting oneself in the foot. Except for a few partial protections, regulation and enforcement increase in lockstep with the availability of public information about a product or a facility's adverse effects. Coors Brewing Corporation learned this lesson the hard way when it voluntarily discovered and reported to state regulators 189 violations of Clean Air Act requirements. Rather than rewarding Coors' candor, state regulators greeted the voluntary disclosure with a \$1.05 million fine and more stringent emissions reduction requirements.

A variety of legal tools also facilitates the ability of regulated actors to disparage credible research. A new law passed as an appropriations rider in 2001, for example, provides private parties with the opportunity to complain about the quality of public research disseminated by agencies without the risk of sanctions if the complaints are unfounded. Just in the last two years, a number of industry groups have used the act to petition for the [ CONTINUED ON PAGE 56 ]



# Susan R. Klein

## CRIMES, SENTENCES, AND JURIES

*The ongoing struggle over who has final authority to define a "crime."*

*This excerpt is taken in part from "Essential Elements," 54 Vand.L.Rev. 1467 (2001) (with Nancy J. King), and "Apprendi and Plea Bargaining," 54 Stan.L.Rev. 295 (2001) (with King). The Supreme Court cited these articles in Harris and Blakely. The practical implications of Blakely, as discussed below, were published as "Beyond Blakely," 16 Fed.Sent.Rep. 314 (June 2004) (with King), and a more theoretical version was presented at a Stanford sentencing symposium on October 8, 2004.*

THE COURT HAS STRUGGLED for well over a century with the issue of who has final authority to define what is a "crime" for purposes of applying procedural protection guaranteed by the Constitution in criminal cases. After numerous shifts back and forth from judicial to legislative supremacy, the Court settled upon a test for policing the criminal-civil divide, a multifactor analysis that will permit courts to override legislative intent in the rare case where the action waddles and quacks like a crime despite a contrary legislative label. Just as labeling an action "civil" may allow the government to circumvent constitutional criminal procedure entirely, so labeling a fact an "affirmative defense," a "mandatory minimum," an "aggravating factor," or a "sentencing factor" instead of an element of the offense may allow states and the federal government to escape constitutional criminal procedure selectively, bypassing the burden of proof, pleading, and jury requirements that would other-

wise apply to an offense element.

However, in a series of recent closely divided cases, the Supreme Court has shown itself much more willing to restrict legislative experimentation where the government has labeled the proceeding a criminal one but attempted to selectively circumvent constitutional guarantees, particularly the Sixth Amendment right to a jury trial. In the most important of these cases, *Apprendi v. New Jersey*, 530 U.S. 466 (2000), a closely divided Court declared that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum [other than the fact of a prior conviction] must be submitted to a jury and proved beyond a reasonable doubt." The trial judge could not potentially double *Apprendi's* 10-year statutory maximum penalty for the weapon's offense on the basis of his finding, by a preponderance of the evidence, that the defendant "acted with a purpose to intimidate an individual . . . because of race."

Two years later, the four justices who dissented in *Apprendi*, joined by Justice Scalia, held in *Harris v. United States*, 536 U.S. 545 (2002), that *Apprendi* did not require a fact triggering a mandatory minimum sentence to be established beyond a reasonable doubt to a jury. Thus, the trial judge could increase Harris' sentence from five to seven years, still within the statutory maximum of life imprisonment, on the basis of a finding by a preponderance of evidence that the defendant "brandished" rather than merely "possessed" a

weapon during a drug trafficking offense. That same term, the Court in *Ring v. Arizona*, 536 U.S. 584 (2002), applied *Apprendi* to hold that because Arizona conditioned eligibility for the death penalty upon the presence of an aggravating fact that was not an element of first-degree murder, the Sixth Amendment guaranteed the defendant a right to a jury determination of that fact. The Court stated: "If a state makes an increase in a defendant's authorized punishment contingent on the finding of fact, that fact—no matter how the state labels it—must be found by a jury beyond a reasonable doubt."

The most recent case, *Blakely v. Washington*, 124 S.Ct. 2531 (June 24, 2004), presented the Court with another variation of the *Apprendi* problem, this one posed by a state sentencing scheme that included what might be called dueling maximum sentencing statutes. The statute setting the sentencing ranges for each class of felony offense in Washington designated 10 years as the maximum punishment for Blakely's Class B kidnapping offense. Washington's Sentencing Reform Act specified in a separate statutory provision a "standard range" of 49 to 53 months for Blakely's offense, a range that could not be exceeded unless a judge found "substantial and compelling reasons" justifying an exceptional sentence. The trial judge in Blakely's case imposed an exceptional sentence of 90 months, after finding that Blakely had acted with "deliberate cruelty," an enumerated factor for an exceptional sentence. With Justice Scalia writing for

the same five justices who composed the majority in *Apprendi*, the Court concluded that because a sentence higher than 53 months required additional factual findings not admitted by the defendant or proven beyond a reasonable doubt to a jury as part of his conviction, the relevant “statutory maximum” was the 53-month presumptive sentence and not the 10-year maximum specified for Class B

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**Klein is an expert in the fields of criminal procedure, federal criminal law, and ethics.**

offenses. Any fact triggering a sentence exceeding 53 months, the Court reasoned, must be admitted by the defendant or proven to a jury beyond a reasonable doubt.

In holding that *Blakely*’s sentence was implemented in a manner inconsistent with the Sixth Amendment right to a jury trial, the decision threatens the operation of the Federal Sentencing Guidelines and the presumptive sentencing systems in 14 states. In Parts I and II of this article, we address how *Blakely* has affected

the Federal Sentencing Guidelines and how assistant U.S. attorneys, federal public defenders, and district and appellate court judges might proceed post-*Blakely*. In Part III, we discuss *Blakely* challenges raised in cases on direct and collateral review. Finally, in Part IV, we collect some of the various options for reform open to Congress and state legislatures. ✍

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*Susan R. Klein is the Baker & Botts Professor in Law at The University of Texas at Austin.*





# William Forbath

## SOCIAL RIGHTS AND THE CONSTITUTION

*Most other democratic nations include these rights in their constitutions. Why don't we?*

*"Social rights"—to housing, health care, education, and so on—form an important part of most of the world's constitutions. So I was not surprised to be asked to give a talk on social rights and the American Constitution at a televised seminar in Brasilia last summer that paired UT law professors with members of Brazil's Supreme Court. Here is a revised version of my talk, drawing on work in constitutional history and theory that I've produced over the past few years.*

**M**OST OF THE WORLD'S constitutions include three kinds of rights: civil, political, and social. The U.S. Constitution is an outlier. It makes no mention of "social rights," and the Supreme Court says the Constitution's "majestic generalities," such as "equal protection of the laws," confer no "affirmative rights"—no right to housing or health care, for example, or to decent work or a decent livelihood. If most other democratic nations include these rights in their constitutions—either through explicit textual provision or via interpretation, why don't we?

Standard answers hinge on generalities like "American individualism," or the fact that ours is an "eighteenth-century Constitution," whose rights language is "negative," imposing only limits on government, not "positive" duties of social provision. These answers assume that our constitutional tradition has never supported robust social rights claims, and that's wrong. Exactly sixty years ago, in 1944, Franklin Roosevelt delivered one of the twentieth centu-

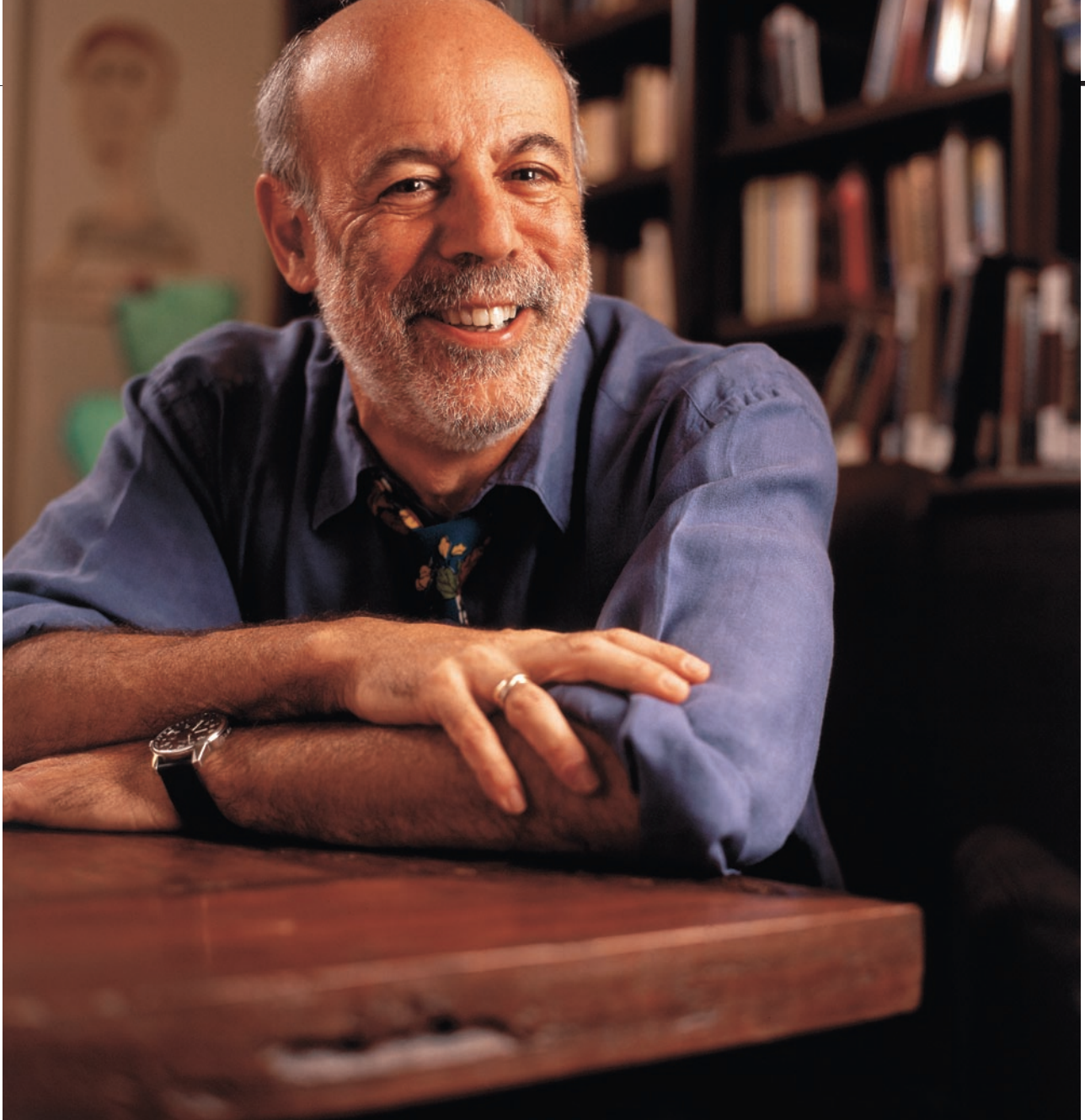
ry's great speeches, proposing a "Second Bill of Rights." As FDR conceived it, every American would have the right to a "useful job" and a decent livelihood, the right to a "good education," "adequate medical care and the opportunity to . . . enjoy good health," and the right to "adequate protection from the economic fears of old age, sickness, accident, and unemployment." Social insurance would cover every jobless American and every needy family.

The framers, FDR argued, knew that personal liberty and political freedom were inseparable from a measure of economic independence and material security. But in their day land was cheap and plentiful, and even laborers owned some property. So, for a century or more, the old common-law rights "involved in acquiring and possessing property" combined with the ballot and the freedom to live by one's "own lights" to ensure the liberty of ordinary Americans. By the end of the nineteenth century, however, working Americans were propertyless and dependent on "our industrial combinations [which] had become great uncontrolled and irresponsible units of power within the State." These new conditions robbed the old rights of their ability to secure the political equality and "welfare and happiness of ordinary Americans." The "political tyrants" of the eighteenth century had been replaced by "economic royalists." A mature industrial America needed an "economic constitutional order" and a "declaration of social and economic right" to keep citizens'

civil and political rights meaningful. FDR did not propose to amend the Constitution. He argued instead that these rights should be seen as fundamental commitments already implicit in the Constitution's promises of liberty and equality, commitments that legislators, not courts, must redeem.

FDR offered his Second Bill to the world—and the world bought it. During the 1940s, the Second Bill's social rights became a leading American export, shaping the United Nations' Universal Declaration of Human Rights and influencing dozens of other new constitutions. But the United States did not embrace the Second Bill, and today America exports an *anti*-social-and-economic-rights dogma sometimes called the "Washington consensus." Roosevelt's Second Bill is forgotten, and to most Americans the idea of "social rights" may sound like a suspicious foreign ideology.

Elsewhere, during the post-World War II years, advanced capitalist democracies enacted broad new social rights, many including them in new postwar constitutions, others in groundbreaking legislation such as FDR championed. Here, things unfolded differently. From the late 1930s onward, FDR and New Dealers in Congress tried to pass bills to enact national health insurance, to remedy the many gaps in the Social Security Act, and to commit the federal government to full employment. These programs enjoyed broad support, but there was a problem—a reactionary core at the heart of Roosevelt's liberal coalition. The Southern delegates in



Congress were all Democrats, but by the late 1930s, they had come to view the New Deal agenda as too great a threat to the South's racial order and its caste-based, low-wage feudal economy. No doubt the Dixiecrats in Congress would have supported these efforts to "complete the New Deal" if they had voted the wishes of the region's disenfranchised black and poor white majority. But the same combination of Dixiecrat power and constitutional bad faith that led the national government to condone Jim Crow undercut Roosevelt's vision of a Second Bill of Rights.

This was no coincidence. The Second Bill aimed to secure the equal respect and dignity of working Amer-

icans. The oligarchs who ruled the South were determined to preserve a social and economic system that descended in apostolic succession from slavery and rested on the open denial of any such equality. Throughout the nation, employers feared and loathed the Second Bill; but elsewhere than the South, employees had the vote. The lack of *political rights* in that region (not only blacks but also poor and working-class whites were prevented from voting) doomed the creation of *social rights* throughout the nation. Thus, ironically, even though most Americans shared with the rest of the advanced world the view that social rights were essential to a modern constitu-

**Forbath came to The University of Texas in 1997 after more than a decade at UCLA.**

tional democracy, our betrayal of nineteenth-century constitutional commitments thwarted that quintessentially twentieth-century project.

The New Deal was left incomplete; the major programs it did enact were crafted to exclude African Americans, and it enacted few broad social rights. Instead, the industrial unions, aided by New Deal labor reforms, bargained with employers to create a generous *private* welfare state of job security, pensions, and health insurance in the core of the industrial economy. This, too, excluded most of the nation's black citizens. It [ CONTINUED ON PAGE 56 ]



# John Dzienkowski and Robert Peroni

## EQUITY INVESTMENTS: AN UNDERSTATED DANGER

*Serious conflicts of interest arise when lawyers invest in client stock.*

*Dzienkowski and Peroni began their teaching careers at the Tulane Law School in New Orleans. Dzienkowski taught in the natural resources and professional responsibility areas, and Peroni taught in the federal income tax, international tax, and professional responsibility areas. Their friendship and common interests have led to a series of coauthored projects. In 1988 they coauthored the first major casebook on natural resource taxation. For several years they were contributing editors of the Natural Resources Tax Review, published by Tax Analysts. Their recent focus has turned to the interaction of legal ethics and business law practice. In 2000 Dzienkowski and Peroni coauthored the leading article "Multidisciplinary Practice and the American Legal Profession" in the Fordham Law Review, a work that has been cited many times by other scholars. In 2002 they published "Lawyer Equity Investments in Clients" in the Texas Law Review. The following essay is based upon an excerpt from that article. Dzienkowski and Peroni have recently completed a coauthored work revising the tax chapters of Hemingway's Law of Oil and Gas and plan to coauthor many more articles critically analyzing the legal profession's regulation of lawyers in the business law practice context.*

### INTRODUCTION

**F**OR MANY YEARS, LAWYERS have entered into business transactions with their clients. Real estate lawyers have purchased investments in the real estate ventures for which they were performing legal work. Oil and gas lawyers have exchanged legal work for interests in oil and gas prop-

erties. Clients have paid their legal bills by transferring non-cash property to their lawyers. These business transactions have been governed by the conflict-of-interest rules in the ethics codes and by the basic principles of

fiduciary law. The traditional view in the legal profession until the late 1990s was that lawyer equity investments in clients should generally be avoided because they pose special risks and conflicts. The fiduciary duty

**Peroni (left) and Dzienkowski work together on ethics, natural resources, and tax matters.**



case law and the application of both the Model Code and the Model Rule provisions dealing with lawyer-client business transactions established a significant but not insurmountable barrier for lawyers seeking to invest in clients. For many years law firms chose not to invest in clients because of the risks inherent in such transactions.

Beginning in 1995, several bar associations, ultimately including the ABA in 2000, issued ethics opinions that basically placed their stamp of approval on lawyers obtaining equity interests in clients, subject to a few exceptions and provided that they meet certain requirements. Lawyers throughout the country have used these opinions to justify aggressive and even arrogant demands for client equity in standard corporate practice. These opinions have com-

pletely reversed the traditional view of the organized bar that such practices should be severely restricted. Although they caution the lawyer about some of the ethical and nonethical issues that could arise, these opinions greatly understate the legal dangers facing the lawyer who enters into these arrangements.

We challenge the tacit approval that the organized bar has given these modern arrangements in which lawyers invest in their clients. Even in situations in which the exceptions and requirements set forth in these ethics opinions are met, the current practice of allowing equity investments in clients continues to severely undercut many time-honored ideals of the legal profession. How can lawyers exercise independent professional judgment and offer unbiased legal advice to their clients if they have an ownership interest at stake in the venture? How can

lawyers fulfill their function as gatekeepers of the securities laws if their personal equity interests in the venture will be injured by disclosure of negative information concerning the client? How can a client exercise its right to discharge a law firm, with or without cause, if that law firm has an investment in the client? Furthermore, in today's climate of legal malpractice and expansion of lawyers' fiduciary duties, equity investments expose lawyers to potentially serious liability if the parties suffer harm by reason of a lawyer's judgment colored by an equity investment.

### POTENTIAL AND ACTUAL SUBSEQUENT CONFLICTS RESULTING FROM LAWYER EQUITY INVESTMENTS IN CLIENTS

**W**HEN A POTENTIAL client approaches a law firm for representation, the firm must check to see whether the representation of that potential client may be materially limited because of the firm's and individual lawyers' responsibilities to other clients, third persons, and the law firm's and lawyers' personal interests. Thus, in most cases, a law firm's or lawyer's ownership of an equity interest in the plaintiff or defendant gives rise to a conflict of interest that should be analyzed under the conflict-of-interest rules. Of course, a lawyer's ownership of only a few shares or indirect ownership of client equity through ownership of an interest in a diversified mutual fund would be unlikely to give rise to a sufficiently definite conflict of interest to trigger application of the conflict-of-interest rules. On the other hand, if a partner in the firm owns 10 percent of the defendant, and the plaintiff asks the law firm to represent it, that ownership interest does create a conflict that must be carefully examined to determine whether it is a materially limited conflict of interest that precludes the lawyer from accepting the plaintiff's representation. In resolving this issue, one must look at what other stock the

partner owns (i.e., whether the partner's stock portfolio is well diversified), whether this is a controlling block of stock, and the size of this investment compared to the partner's total net worth. But client consent after full disclosure and an independent determination that the conflict does not adversely affect the representation could solve the Rule 1.7(b) materially limited conflict.

The major problem with allowing law firms to take equity interests in clients is the possible impairment of the lawyer's judgment because of the lawyer's competing objective to maximize the value of the equity investment. The lawyer's ownership of equity in the client creates a conflict of interest between the lawyer's own financial interest as an equity owner and the client's interest. This conflict may make it difficult for the lawyer to exercise independent professional judgment and provide unbiased advice to the client in an ongoing representation. The key to whether the conflict is actual or potential depends upon the nature of the legal representation undertaken by the lawyer. If the lawyer's legal work has some potential bearing on increasing or reducing the value of the lawyer's shares, the conflict becomes actual and more serious. If the legal representation is unrelated to a potential effect on the value of the shares, the conflict is more attenuated.

A law firm may be influenced by its own investment and urge a client to adopt a more risky or less risky strategy than would be recommended if the firm did not have the investment. The potential impairment of the lawyer's professional judgment may be illustrated by several examples. In the first example, when a law firm accepts pre-IPO equity with a warrant to acquire more shares at the IPO stage, the firm may have a divergent interest in the timing of the IPO. The client may wish to time the IPO to maximize the success of the offering, but the firm or specific lawyers in the firm may want more immediate access to their equity. The lawyers [ CONTINUED ON PAGE 57 ]



# Bernard Black

with Brian Cheffins  
and Michael Klausner

## OUTSIDE DIRECTORS AND LAWSUITS: WHAT ARE THE REAL RISKS?

*Our investigation suggests that  
liability concern is overdone.*

**W**E OFTEN HEAR THAT hardly anyone wants to sit on corporate boards anymore and that public companies struggle to attract outside directors. There are several reasons for this reluctance, including the increased workload imposed by new corporate governance rules and the risk of a damaged reputation if problems arise. The primary concern that one hears, however, is that a lawsuit could oblige outside directors to dig into their own wallets—even if they do their job well.

Analysis of the relevant legal rules as well as experience suggests, however, that the concern over personal liability is unjustified by the facts. Provided an outside director of a public company refrains from enriching himself at company expense, he faces only a minute risk that he will pay damages or legal fees out of his own pocket. This is true in the United States, as well as in less lawsuit-happy countries.

This is not to say that outside directors of public companies can just take it easy and let executives do as they please. As we discuss below,

even without out-of-pocket liability, directors have a number of incentives, both financial and nonfinancial, to do a good job. To be sure, those incentives are not perfect, but it is not clear that increasing the risk of out-of-pocket liability would do much to improve the vigor of board oversight. Meanwhile, a significant increase in this risk would likely have adverse consequences, including fostering a *justified* unwillingness of good candidates to serve.

### IT LOOKS SCARY OUT THERE . . .

CONSIDER THE UNITED STATES FIRST. Outside directors of public companies face a daunting array of legal obligations. Under federal securities law, directors are potentially liable whenever a company makes misleading public statements. Under corporate law, they can be sued for failure to adequately oversee management. Recent court decisions suggest that they can be liable under pension law as well, if the company's retirement plan holds the firm's shares. To top matters off, procedural rules governing shareholder suits and the recovery of attorneys' fees make it easy for entrepreneurial lawyers to bring cases against directors.

### THE REALITY IS LESS FRIGHTENING . . .

DESPITE THE LITIGIOUS ENVIRONMENT in the United States, outside directors almost never end up paying out of their own pockets.<sup>1</sup> Trials are rare, but plaintiffs are often successful in the

sense that they obtain a settlement in cases where directors are named as defendants. The damages plaintiffs receive, however, are almost always paid fully by the company, a directors' and officers' (D&O) insurance policy, or both. Indeed, our research has uncovered only one case where outside directors made an out-of-pocket payment as part of a settlement.<sup>2</sup> The details of settlements are sometimes kept confidential, so we may have missed a few instances of out-of-pocket liability, but such cases are surely rare.<sup>3</sup>

What about trials? Under corporate law, only once in modern times has a U.S. court ruled that outside directors of a public company were liable to pay damages. This was the famous 1985 *Smith v. Van Gorkom* case, in which a Delaware court found the defendants had exercised insufficient care in approving a merger.<sup>4</sup> Under securities law, over 3,000 suits were filed in U.S. federal courts from 1990 to the present, many naming outside directors as defendants. However, only three cases have gone to trial, only one of these involved outside directors as defendants, it was unsuccessful, and the directors were in any case protected by both indemnification and D&O insurance.

The rarity of out-of-pocket liability for outside directors is a predictable result of a number of factors. To start, many lawsuits are screened out early in the litigation process. The corporate charters of almost all public companies eliminate director liability for breaches of the duty of care, the legal duty that governs a director's attentive-

This article is a revised and condensed version of Bernard Black, Brian Cheffins, and Michael Klausner, *Liability Risk for Outside Directors: A Cross-Border Analysis*, European Financial Management vol. 10 (forthcoming 2004), available at <http://ssrn.com/abstract=557070>, which in turn is a summary of two longer papers, Bernard S. Black, Brian R. Cheffins, and Michael Klausner, *Outside Director Liability* (working paper 2004), available at <http://ssrn.com/abstract=382422>, and Bernard S. Black and Brian R. Cheffins, *Outside Director Liability Across Countries* (working paper 2003), available at <http://ssrn.com/abstract=438321>. We are keen to track down counterexamples to the thesis advanced in this paper, so readers should feel welcome to inform us of any of which they are aware.

ness and diligence (as opposed to the duty of loyalty, which governs self-interested behavior). Even without this shield, judges often rely on the “business judgment rule” to dismiss a suit if the board has followed a reasonable decision-making process, even if the process yielded a bad outcome. For securities suits, a judge is obliged under federal securities law to dismiss the case unless plaintiffs—*before* they obtain access to company documents—present strong preliminary evidence of liability. Many securities law claims fail to surmount this hurdle.

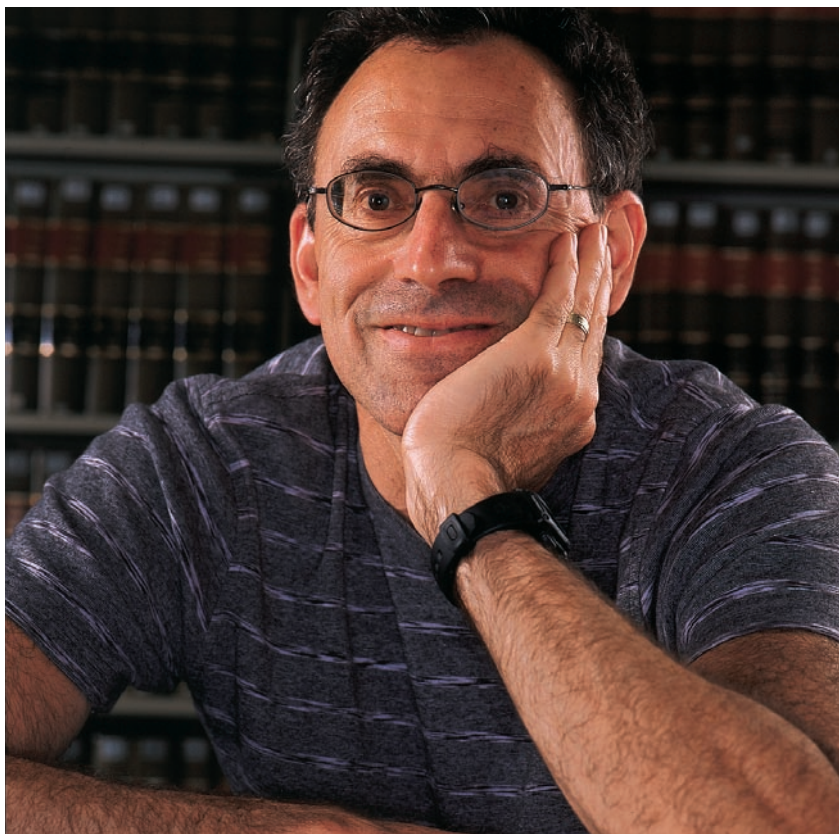
For lawsuits that make it through these initial screens, other factors protect outside directors from out-of-pocket liability. In a securities suit, the company, if solvent, is *always* a more attractive defendant. Outside directors are liable only in proportion to their culpability relative to other defendants, including the inside managers, and the outside directors’ relative culpability is usually low. In contrast, the company is fully liable, has a deeper pocket, and has fewer defenses than the outside directors.

If an outside director does end up on the hook to pay legal expenses or damages, U.S. public companies routinely indemnify directors for legal costs and, in securities cases, damages as well. For indemnification to be available, a company’s directors must have acted in “good faith,” in the sense that they have not engaged in a self-interested transaction or exhibited extreme inattentiveness bordering on intentional neglect. In addition to

indemnifying directors, U.S. public companies invariably purchase D&O insurance. D&O policies provide a crucial final layer of protection to outside directors, assuming that they did not put money in their own pockets or otherwise commit “deliberate fraud,” thus triggering a policy exclusion.

A pivotal by-product of the set of

unavailable to pay damages or to indemnify directors, the incentives to settle within D&O policy limits actually increase. The defendants’ motive to settle within policy limits is obvious. For the plaintiffs, going to court is risky because they might lose. Also, if a case is litigated, the D&O policy will cover the directors’ defense costs, for both



**Black holds the Hayden W. Head Regents Chair for Faculty Excellence. (See story on page 47.)**

protections just outlined is that plaintiffs, defendants, and insurers all have strong incentives to settle suits before trial on terms that leave outside directors’ personal assets untouched. Except in rare cases, a company’s assets and D&O insurance are the pots of gold targeted in a lawsuit. Especially when a trial could expose them to a risk of out-of-pocket liability, directors will welcome a settlement that is entirely funded by the company and the insurer. Plaintiffs’ lawyers will be similarly inclined, since a trial is risky and time-consuming—particularly if there are appeals, which there surely will be if outside directors face an out-of-pocket payment.

If a company is insolvent, and thus

the trial and, if the directors lose, the likely appeal. Thus, taking a case to trial can shrink substantially the principal “deep pocket”—the D&O policy—from which the plaintiffs hope to collect. A settlement avoids this risk.

Insurers, in turn, will likely go along. For both legal and reputational reasons, they rarely reject a settlement to which the plaintiff and the defendant directors have agreed. Indeed, we know of no shareholder suits since 1990 (as far back as we looked) that insurers have forced to go to trial. Insurers can predict the frequency and expected amount of settlements and can set premiums high enough to cover these payouts. Shareholders [ CONTINUED ON PAGE 60 ]

1. Directors with day-to-day management responsibility do face some risk of paying civil damages and are sometimes even subject to criminal prosecution. Our research, however, focuses on outside directors.

2. We can’t name the company because the settlement details are confidential. We are also aware of one ongoing case in which the corporation is insolvent, the D&O insurer is contesting coverage, and outside directors are currently paying their own legal expenses and may ultimately face out-of-pocket liability. It is unclear, however, whether the insurer will succeed in denying coverage.

3. One cannot prove a negative (the absence of out-of-pocket liability). But we have made extensive efforts to find counterexamples, including consulting with numerous lawyers specializing in corporate and securities litigation and presenting our work at practitioner conferences.

4. Even here, the acquiring company voluntarily paid the claims against the takeover target’s outside directors, so in the end the directors did not pay.



# Mitchell Berman

## CONSTITUTIONAL DECISION RULES

*Exploring the logical structure of  
constitutional adjudication.*

**H**OW DO COURTS ADJUDICATE constitutional disputes? The orthodox view recognizes two steps: first, a court interprets the Constitution; second, it applies the interpreted meaning to reach a holding. Take one example at random: having interpreted the Equal Protection Clause to provide that racial classifications must be narrowly tailored to advance a compelling interest, the Supreme Court then concluded that the University of Michigan Law School's affirmative action program satisfies that test, hence is constitutional.

To be sure, that first step—interpretation—is more difficult than is sometimes naively supposed. Philip Bobbitt famously typologized the “modalities” of constitutional interpretation to include text, history, structure, precedent, prudence, and ethics. And many scholars, Sandy Levinson notable among them, have demonstrated that choosing and applying the interpretive modalities are very far from mechanical processes. Still, increasing realism about the nature of interpretation is not inconsistent with the standard notion that judicial review consists of two steps (interpretation and application) and two outputs (meanings and holdings).

Nonetheless, this two-step view will not do, for too much of constitutional law is not plausibly described as constitutional “meaning.” Of course, the claim that some particular court-announced constitutional doctrine extends beyond interpretation is familiar. Thus have critics charged that the pre-

**A forthcoming essay in the *Texas Law Review* applies this analysis to partisan gerrymandering.**



cisely worded *Miranda* warnings or *Roe*'s trimester rule are "legislation from the bench," not constitutional interpretation. But my point is more fundamental: an ocean of contemporary constitutional doctrine—from the tiers of Equal Protection scrutiny to quotidian details of complex justiciability rules—is a product of processes not comfortably termed interpretation. So we may do better to think of *three* steps, not two: interpretation, doctrine creation, and application.

This is not a novel observation.



Spurred in part by Larry Sager's observation, 25 years ago, that much of constitutional doctrine underenforces constitutional norms, scholars are increasingly attuned to the fact that the "constitutional doctrine" issuing from our courts (the U.S. Supreme Court most particularly) is not identical to what courts take the Constitution to mean. This is a step in the right direction, but only one step. Having noticed what constitutional doctrine is *not*, what can we say about what it *is*? Progress in all domains of knowledge—law no less than natural sciences—requires taxonomic understanding. Yet constitutional theorists rarely turn classificatory attention to their field, often describing constitutional doctrine as an undifferentiated mass of "interpretations, reasons, principles, and frameworks."

In recent work I have offered the start (only the start) of a taxonomy of constitutional doctrine by distinguishing judicial interpretations of constitutional meaning from directions regarding how courts should decide whether constitutional meaning has been complied with. Coining terms, I call the former components of doctrine "constitutional operative propositions" and the latter "constitutional decision rules."

This is admittedly abstract. So consider a few concrete examples of the distinction I mean to capture. The *Miranda* doctrine is commonly thought to order police officers to inform suspects of their rights prior to custodial interrogation. However, it is better understood as an operative proposition that statements "compelled" by the police are inadmissible, administered via a decision rule directing courts to conclude that a statement was compelled if elicited during an unwarned custodial interrogation. In a recent case from Lago Vista, Texas, involving the arrest of a woman for failing to have seat-belted her children, the Court held that an officer who has probable cause to believe that an individual has committed any criminal offense in his presence may, without violating the Fourth Amendment, arrest her. This doctrine can be analyzed as an operative proposition that all arrests must be reason-

able, all things considered, administered via a decision rule that courts must conclude that an arrest was reasonable if the offender committed any criminal offense in the officer's presence. The newly evolving Commerce Clause doctrine that permits Congress to regulate intrastate activities only if the activity is commercial in character, can be reconceived as the conjunction of an operative proposition that Congress may regulate under the Commerce Clause only for commercial purposes and a decision rule that courts conclusively presume lack of the requisite commercial purpose if the regulated activity is not itself commercial.

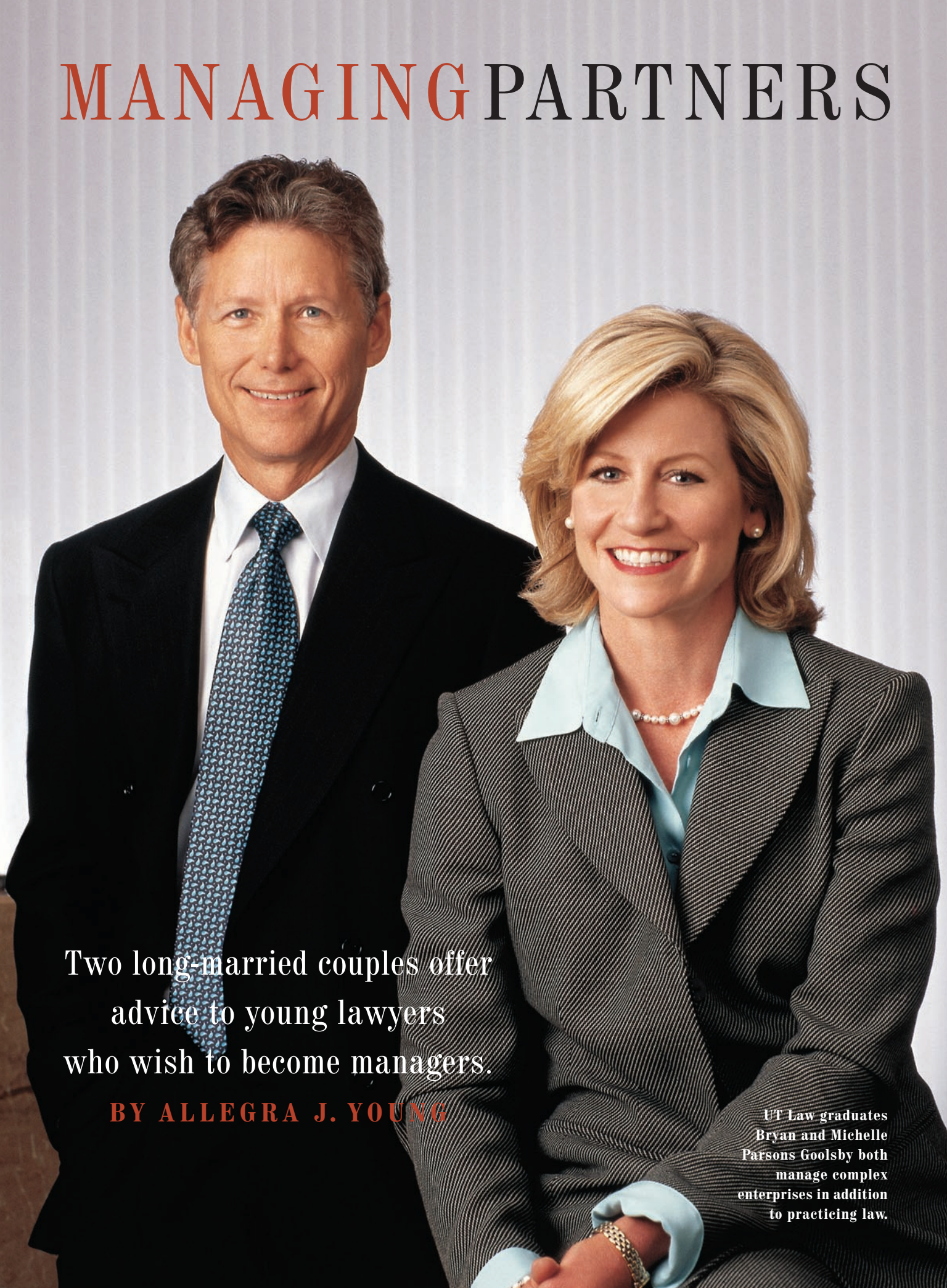
Now, I do not insist that each of the particular doctrinal unpackings I have just offered is correct, let alone uncontested. They simply illustrate how the conceptual distinction between operative propositions and decision rules might look in practice. A separate question, though, concerns what is to be gained by the effort.

In my view, doctrinal classification along these lines can have substantial practical value. It can, for example: enhance the social meaning, or cultural uptake, of judicial decisions; facilitate more sensible judicial refinement of constitutional doctrine; and clear more space for the democratically accountable branches to become involved in the enterprise of constitutional implementation.

Take three brief illustrations. The *Lago Vista* decision I just mentioned was widely denounced by those who read it to condone the police officer's callousness. Very possibly, though, the public would have a healthier sense of officers' true constitutional responsibilities, and of the propriety of this particular officer's conduct, if the Court had made the constitutional operative proposition explicit—an arrest *does* violate the Fourth Amendment if it is not reasonable under all the circumstances—and then explained that it selected an underenforcing decision rule for pragmatic reasons. The *Miranda* decision has generated many subordinate questions, such as whether officers may forgo the warnings in emergencies, [ CONTINUED ON PAGE 61 ]



# MANAGING PARTNERS



Two long-married couples offer  
advice to young lawyers  
who wish to become managers.

**BY ALLEGRA J. YOUNG**

UT Law graduates  
Bryan and Michelle  
Parsons Goolsby both  
manage complex  
enterprises in addition  
to practicing law.



*Different institutions require different types of builders. This season, UTLAW talks with two long-married couples who, between them, work at four different types of corporations. In Dallas, Dean Foods' Michelle Goolsby, '83, serves as a top manager and lawyer. Her husband, Bryan Goolsby, '77, is a successful lawyer and the managing partner of Locke Liddell & Sapp LLP in Dallas, one of America's largest law firms. In Houston we speak with Laura Beckworth, '83, a lawyer who also helped build the Hobby Center for the Performing Arts, a public-private enterprise. Her husband, John Beckworth, '83, is a named partner at the Watt Beckworth Thompson & Henneman law firm who, in his volunteer time, serves as the chairman of the board of trustees of the independent Kinkaid School. Both couples have also provided important support for UT Law's mission of providing a first-class legal education for the next generation of lawyers. In this article, they discuss the unique managerial challenges they face in their careers and offer advice to young lawyers who wish to become managers.*

**M**ICHELLE GOOLSBY'S GOT MILK. Two billion gallons of it. The 1983 UT Law honors graduate serves as executive vice president, general counsel, chief administrative officer, and corporate secretary of Dean Foods. Headquartered in Dallas, Dean Foods is the leading dairy beverage company in the United States, with annual sales of \$10 billion and 28,000 employees in three countries. The company manufactures and distributes products including such brands as Oak Farms (milk and ice cream), Silk (soymilk), Marie's (dressings), Horizon Organic (organic milk), International Delight (flavored creamers), and others.

"It's my job to understand our industry, our operations, and the unique challenges our company faces and then work with our team to find the right solutions. Our success is graded the same way our company is graded—meeting our short-term growth and earnings targets while continuing to focus on the long-term strategic opportunities," Michelle says of her role.

Michelle's position doesn't always reflect a typical law student's idea of what a lawyer does. In her managerial role, she is not the lone trial lawyer winning the big case but an institution builder working with hundreds of employees to help them succeed in a common venture. It's important work, and Goolsby is an important part of that team.

Michelle and her husband, Locke Liddell & Sapp LLP managing partner Bryan L. Goolsby, '77, both have busy lives. Their partnership has expanded to allow each to pur-

## Michelle Goolsby Managing a large corporation

sue a high-powered career, raise five children, and engage actively in public service, including supporting UT Law's mission. Such a commitment to their marriage, family, and community requires effort, perspective, and a flexibility that they have cultivated over the years. They have also been resourceful in learning new skills, including the managerial skills required for their management roles.

Michelle urges young lawyers to learn from the many people and experiences they encounter working on cases, even if they are relatively junior members of the project team. It was this attitude that helped Michelle build her career, one project at a time. She started as an associate at a law firm and then worked for a corporation. When she returned to law firm life she'd learned enough about business to successfully manage a large section of the firm's practice. By 1998, when Dean Foods asked her to become a member of their executive management team, she was prepared.

"We learn from many people, whether we're aware of it or not. I've learned management skills throughout the years from more-senior lawyers, from clients, and from my own managers and coworkers (and, yes, even from my kids and my husband). I have always tried to find the best attributes in each of them and emulate those things, stringing together the successful habits, traits, and problem-solving skills of lots of talented people. But regardless of your talent, there is still no substitute for hard work and commitment. There is no silver bullet."



AS MICHELLE AND HER HUSBAND, BRYAN, both rose through the ranks of their respective professions, they've shared many things, including a familiarity with those concepts of "hard work and commitment."

Locke Liddell & Sapp LLP was formed in 1999 from the merger of Liddell, Sapp, Zivley, Hill & LaBoon and Locke Purnell Rain Harrell. The firm employs more than four hundred lawyers who represent a broad range of businesses and individual clients. In 2001 the Locke Liddell partners asked Bryan Goolsby, '77, to assume the additional responsibilities of managing partner, a role that he had filled for Liddell Sapp before the merger. By all accounts, the firm has prospered under his stewardship, adding accomplished attorneys in strategic practice areas, increasing its diversity, and making wise decisions that support industry leadership, community outreach, and pro bono work.

It's not easy. As managing partner of a large law firm, Bryan faces the challenge of coordinating a commonwealth of small law firms within a larger corporate context. He must implement decisions that help individual lawyers' practices thrive. He handles issues related to strategic planning, marketing, finance, general operations, and human resources (recruiting, promotions, retention).

Bryan says, "To become a managing partner you typically need to be a top producing lawyer and have the people skills to deal with a diverse group of partners. The practice of law is essentially a people business, and a managing partner must be able to satisfy the expectations, however unrealistic at times, of not only partners but demanding clients."

Managing partners often face the toughest challenge at the firm. They layer responsibilities for the firm on top of the needs of their own individual practice, which include significant client development and service efforts. Bryan has built a nationally recognized legal practice representing real estate investment trusts (REITs). He has become involved in national REIT trade associations, in part to build his practice by meeting people and understanding the business better. Today, *American Lawyer*

## Bryan L. Goolsby Managing partner

## Laura Beckworth Managing the entrepreneurial venture

ranks his current firm in the top five REIT practices in the country, and he sits as an associate member of the board of governors for the National Association of Real Estate Investment Trusts.

And that's just his role as a lawyer. Bryan also balances these commitments with those to his marriage, his children, and his public service. (He and Michelle support UT Law as members of the Charles Alan Wright Society, he serves as a director for Junior Achievement of Texas and for SMU's Cox School of Business, and he is a member of a number of Dallas' civic organizations.)

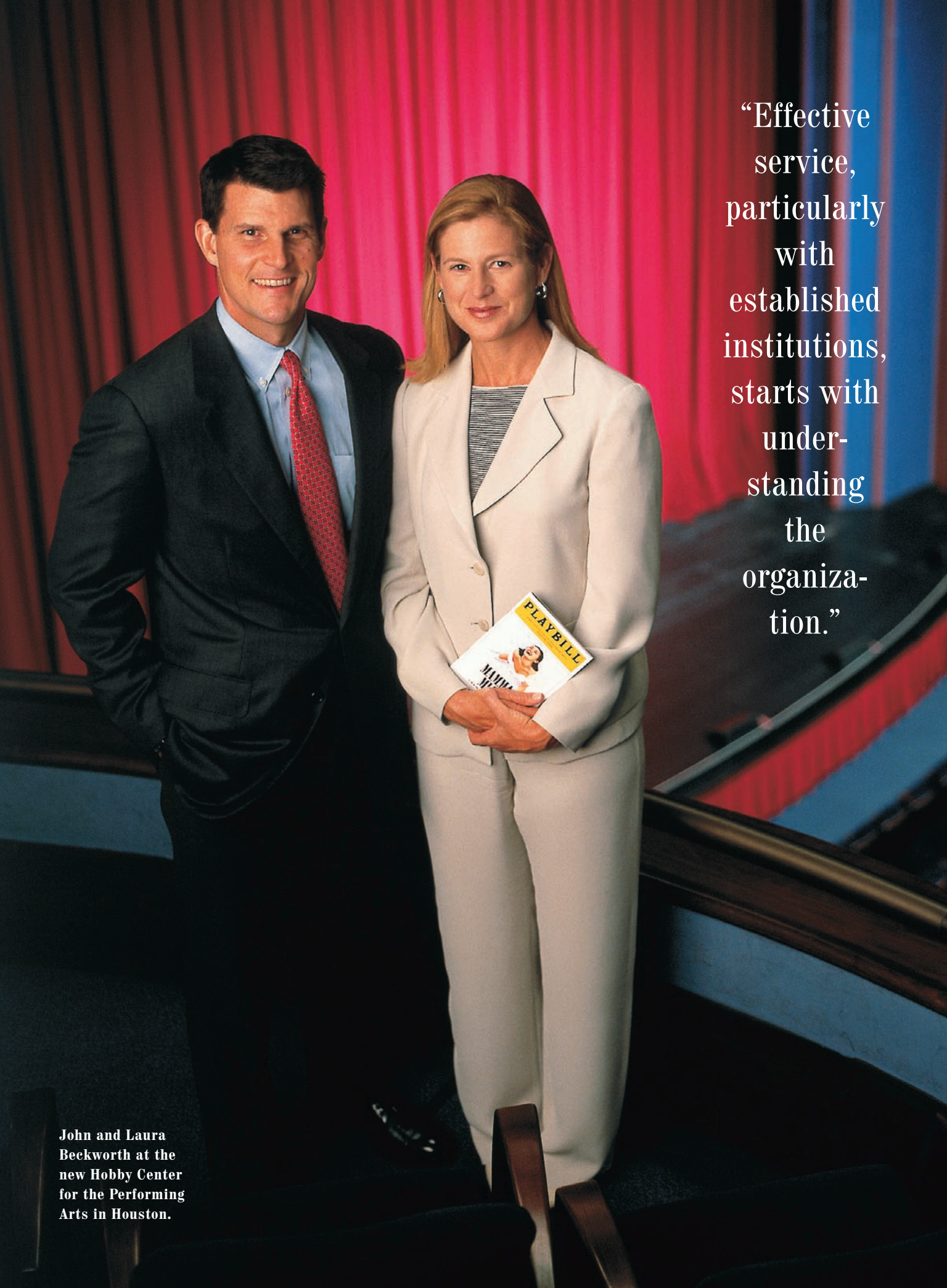
How does he do this? "Building a practice requires a lot of effort over a long period of time. The efforts have to be sustainable, meaning that your efforts have to be in some balance with the rest of your life," he said. His firm sets goals that are both financial in nature and non-number driven (e.g., individual client commitment). His firm also creates an environment that helps individuals sustain their commitment to their practice and to their outside interests.

But even with the firm's assistance, Goolsby emphasizes, a young lawyer needs to prioritize. "The best approach is to focus on becoming a top-notch lawyer. You should treat the prospects of participating in management as an obligation to serve your firm rather than a career goal."

START-UPS—for an individual product line or an entire company—are risky. And they can feel even riskier when played out in the public eye.

Laura was raised in a prominent Houston family with a unique legacy in public service. Her grandfather and father were a former Texas governor and a long-serving lieutenant governor, respectively, and her grandmother was Oveta Culp Hobby, a legendary Houston civic leader, presidential Cabinet member, and publisher of the *Houston Post* newspaper.

While at law school, Laura met classmate John Beckworth, '83. They knew they shared interests early on. Both had a strong desire for a challenging career in a fast-moving city and a desire for public service born of fam-

A full-page photograph of John and Laura Beckworth standing in a theater lobby. John, on the left, is wearing a dark suit, light blue shirt, and red patterned tie. Laura, on the right, is wearing a light-colored suit and holding a Playbill for 'Mamma Mia!'. They are standing in front of red curtains, with a balcony railing visible in the foreground.

“Effective  
service,  
particularly  
with  
established  
institutions,  
starts with  
under-  
standing  
the  
organiza-  
tion.”

John and Laura  
Beckworth at the  
new Hobby Center  
for the Performing  
Arts in Houston.



ily experience. They graduated, married, and moved to Houston 21 years ago to pursue their goals and to raise a family, now three sons strong.

Upon Laura's return to Houston, she practiced communications law and served as general counsel to her family media company, which at the time included Houston's KPRC-TV. Her practice naturally focused on media law, with a healthy dose of employment matters and governmental regulatory compliance issues. She and her husband also supported UT Law with their time and resources.

In 1994 Houston citizens established the Houston Music Hall Foundation to build a new performing arts facility on the site of the old Houston Music Hall. Two years later, Houston business leaders approached William P. Hobby, the former Texas lieutenant governor and owner of the large media corporation, about taking a leadership role in the project and helping to provide its initial charitable funding. Hobby agreed and suggested that his daughter would be the family's representative as the project was undertaken. Laura Beckworth was called and, after catching her breath, accepted the role for the Hobby family.

She laughs when discussing how she received the responsibility of raising money for and participating in building what is now the Hobby Center for the Performing Arts. "The simple fact is that I missed the meeting—wasn't even invited to it. My father understood that Houston needed a new performing arts center; he was going to commit our family's help to it, and I was supposed to help drive," she said.

The challenges of navigating the maze of public interests and regulations that accompanies construction of a complicated public building in downtown Houston were significant. When Laura became involved, fundraising was just getting started. The building site was adjacent to City Hall and an environmentally sensitive bayou. Since the complex would be presented as a gift to the City of Houston by private donors, there were additional managerial hurdles. The center would be built on public land, which necessitated operating within certain city regulations and working closely with city staff and elected officials. Finally, the community had to be consulted with regard to how the building would be used and by whom.

Laura approached these multifaceted issues using many of the skills that she learned in law school and in her practice as general counsel to her family's media company. While she was not formally taught how to draft promotional materials or how to sell projects to prospective donors, she used her advocacy skills, legal knowledge, and problem-solving skills to accomplish those tasks and others. She helped her team identify times when outside legal help was required, and she served as an advocate and part-time mediator, working with architects, contractors, environmentalists, and arts groups, among others.

By all media accounts, the Hobby Center team of volunteer leaders succeeded beyond all expectations. In May 2002 Houston's Hobby Center for the Performing Arts, a sparkling state-of-the-art complex, opened with a star-studded gala. The center's main theater (there are two) seats 2,650 under a domed ceiling that twinkles with more than 2,000 stars against a blue background, duplicating the South Texas sky at the summer solstice. (Laura is quick to point out that the domed ceiling was made possible thanks to UT Law benefactors Lee and Joe Jamail.) Now in its second operational year, the Hobby Center has hosted more than 500,000 patrons and has produced more than 350 performances. And today, three years after the last nail was hammered, Laura still serves as a board member and advisor.

## John Beckworth Managing volunteers

JOHN AND LAURA BECKWORTH share a commitment to public service, something John's parents fostered in him from an early age. (His father was a long-serving U.S. congressman, federal judge, and teacher.) But coming from law school he was primarily interested in learning the craft of being a trial lawyer with a major national firm. After he and Laura married and moved to Houston to start their family, John began work at Fulbright & Jaworski, where he stayed for ten years, becoming a partner in the firm's Litigation Section. Today he is a named partner in Watt Beckworth Thompson & Henneman, which focuses its law

practice on commercial litigation, oil and gas, insurance, employment, and media law.

"For my dad, being a lawyer was a way to help people. He was clear that lawyers occupy a position of privilege that carries with it an obligation of service. Rather than seeking a paid public position, my compromise has been to work in a busy law practice and to do volunteer work as time allows," says John. "I am sure that many of our friends sought to become lawyers in the first place at least in part out of a desire for service. You need only to look at the State Bar's voluntary records of the thousands of hours lawyers contribute annually to their communities to understand that commitment."

As the son and grandson of teachers and school administrators, Beckworth devotes many hours to volunteering at schools. He believes that quality education remains the most efficient means to address many of our society's challenges. At UT Law, he joined the leadership of the UT Law Alumni Association, serving first as a volunteer and eventually as its president in 1995. He continues to serve as a trustee of the Law School Foundation.

Twelve years ago, John was invited to become a trustee of the Kinkaid School in Houston, where he now serves as chairman of the board and where he has worked during more than a decade of significant change at the nationally recognized independent school. Among other projects in which he has been involved at Kinkaid have been two long-range plans, an ambitious expansion and deepening of curricular offerings, the development of the new Center for Student Life and Character Education, and an extensive \$45 million-plus capital campaign that resulted in a reshaping of the school's physical plant. Since 1999 approximately 180,000 square feet of new space have been added.

Beckworth emphasizes that while some of the skills needed to succeed as a volunteer overlap with those used in the courtroom, not all do. "Effective service, particularly with established institutions, requires some different approaches from working in private practice, but there are a number of complementary skill applications," he says. "It starts with understanding the organization. Nonprofits are driven by individual cultures and missions, and you have to try to understand and respect both. If you can do this, your skills as

a lawyer can yield significant contributions."

In particular, Beckworth notes, litigation skills that transfer well to leadership in nonprofits include distilling complicated issues, effectively communicating ideas and goals, conflict resolution, and an appreciation for bottom-line results. Beckworth adds lightly, "The thick skin you develop in years of butting heads in litigation helps a lot, too."


And just how do couples as busy with career and family as the Beckworths and the Goolsbys find time to contribute to their communities when their family life and primary careers are so demanding? "No one has the time," says John. "But organizations can benefit from part-time volunteers who are committed to trying to help. They seem to complement the full-time volunteers and professionals."

He urges young lawyers to get involved early and to take the time to learn what makes an organization work, or sometimes not work, before attempting to assume a leadership role. "If you can choose an organization, like a foundation or a school, and participate in a variety of positions for a sustained period, it can be a more satisfying experience and, in turn, more useful to the organization."

The benefits flow both ways, too. "I never expected to receive so many benefits, opportunities, and deep friendships from a relatively small amount of time and effort."

## A Flexible Degree

AS YOUNG LAWYERS SEEK to make the most of their law practice or branch out into alternative careers, they are finding their degree is even more flexible than they realized. The J.D. skill set, at its core, helps UT Law graduates not only in the practice of law but in many walks of life.

"The best skills I learned at UT Law included how to think critically and analytically and how to be a problem solver," said Michelle Goolsby in discussing how her legal degree prepared her for the important managerial tasks her current position requires. "If you have those skills, some creativity, and are open to opportunity, you can successfully manage people, departments, or companies. You can do anything." 



# ACTUAL innocence

UT Law's new Actual Innocence Clinic has students reading between the lines in an effort to give just **one innocent prisoner** his life back.

**by** Laura Castro Trognitz

**S** STUDENTS IN UT LAW'S FLEDGLING ACTUAL Innocence Clinic have screened more than 500 letters from Texas inmates in the past year, looking for new evidence to prove that some of them did not commit the serious crimes for which they're imprisoned. It's a complex and difficult job, and there are hundreds more letters waiting to be read.

"We're all looking for a needle in a haystack—a claim of actual innocence that can be proved," said Professor Robert Dawson during a recent interview in his office, where tall stacks of inmate let-

ILLUSTRATION BY DIANE FENSTER

ters on his desk are a constant reminder of the work ahead. He is one of three criminal law attorneys who are supervising students as they dig deep into the factual cases of inmates serving long sentences for murder, burglary, and rape.

The clinic, still brand-new, hasn't yet sprung anyone from prison. Of the hundreds of cases reviewed so far, only 10 to 15 merited investigations. But while Dawson acknowledges that the exoneration of an inmate can be a long shot, he and his colleagues, William P. Allison, '71, director of the Criminal Defense

Clinic at UT Law, and David Sheppard, '74, a criminal defense attorney, know firsthand that it's not impossible.

"There have been over twenty exoneration cases in Texas between 1989 and 2002, driven primarily by the availability of DNA testing," said Dawson, whose scholarship has led to substantial reform in the Texas criminal and juvenile laws. Of those cases, he emphasized, Allison was successful in using DNA testing and corroborating evidence to prove the innocence of two inmates—Christopher Ochoa and Carlos Laver-





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B-544748



Handwritten letters and documents are visible through the fence. One letter is dated April 6, 1961, and another is dated April 11, 1961. The letters are written in cursive and contain personal correspondence.



nia—in 2000 and 2001. And Sheppard obtained freedom for a third, Richard Danzinger, in 2001.

It was these cases that inspired Allison, Dawson, and Sheppard to start in 2003 the Texas Center for Actual Innocence, a nonprofit corporation that operates the Actual Innocence Clinic. The three attorneys were confident that they could find and help additional innocent people languishing in Texas' huge prison population.

"The Texas Department of Criminal Justice has 150,000 inmates incarcerated," says Dawson, now in his 37th year of teaching at UT Law. "If the Texas justice system is 99 percent accurate, there are 1,500 innocent people in prison. And if the system is 99.9 percent accurate, that's still 150 innocent people in prison," he says. "That is both a reassuring and a depressing thought."

The center's founders were also certain that law students would want to learn how to investigate and analyze potential exoneration cases. "We expected a lot of interest in the clinic because the work is cutting edge," says Professor Allison, noting that fifty students applied for ten slots the first semester the clinic was offered.

"Actual innocence is unique because American courts have never been given the option of finding people 'innocent.' The only options judges and juries have are 'guilty' and 'not guilty,'" Allison explains. "It was only in the nineties that the courts and the legislature began to try to craft procedures, burdens of proof, pardons, and compensation packages for the actually innocent."

The first innocence project was founded in 1992 by attorney Barry Scheck at Cardozo University in New York, with whom Allison worked on a couple of exoneration cases. Today there are about fifty innocence projects nationwide. In Texas, efforts exist at the University of Houston Law Center, Texas Tech, and UT Law. The clinics at the University of Houston and UT Law cosponsored a conference at UT Law on November 5 aimed at creating a statewide actual innocence network.

The Texas Center for Actual Innocence, a nonprofit organization funded by private sources, is a unique hybrid model of how a project can be affordable for public law schools. Graves,

Dougherty, Hearon & Moody in Austin will provide office and administrative support when clinic cases are litigated, while UT Law faculty assistant Debbie Steed maintains the clinic's docket and provides secretarial services. The center's founders do not receive salaries for supervising the clinic. Allison and Dawson do it in addition to their normal teaching responsibilities because they are passionate about the subject—something that students notice immediately.

"Their passion for the subject was clear to me in class and is one of the things that motivated me to do the work," says third-year Kate Welbes, a former clinic student. The clinic, open to second- and third-year law students, meets once a week to study topics such as the law of exoneration upon proof of actual innocence or the science and law of DNA testing. Students also spend time screening letters from Texas inmates—ten every two weeks—with an eye to eliminating cases with no claim of actual innocence.

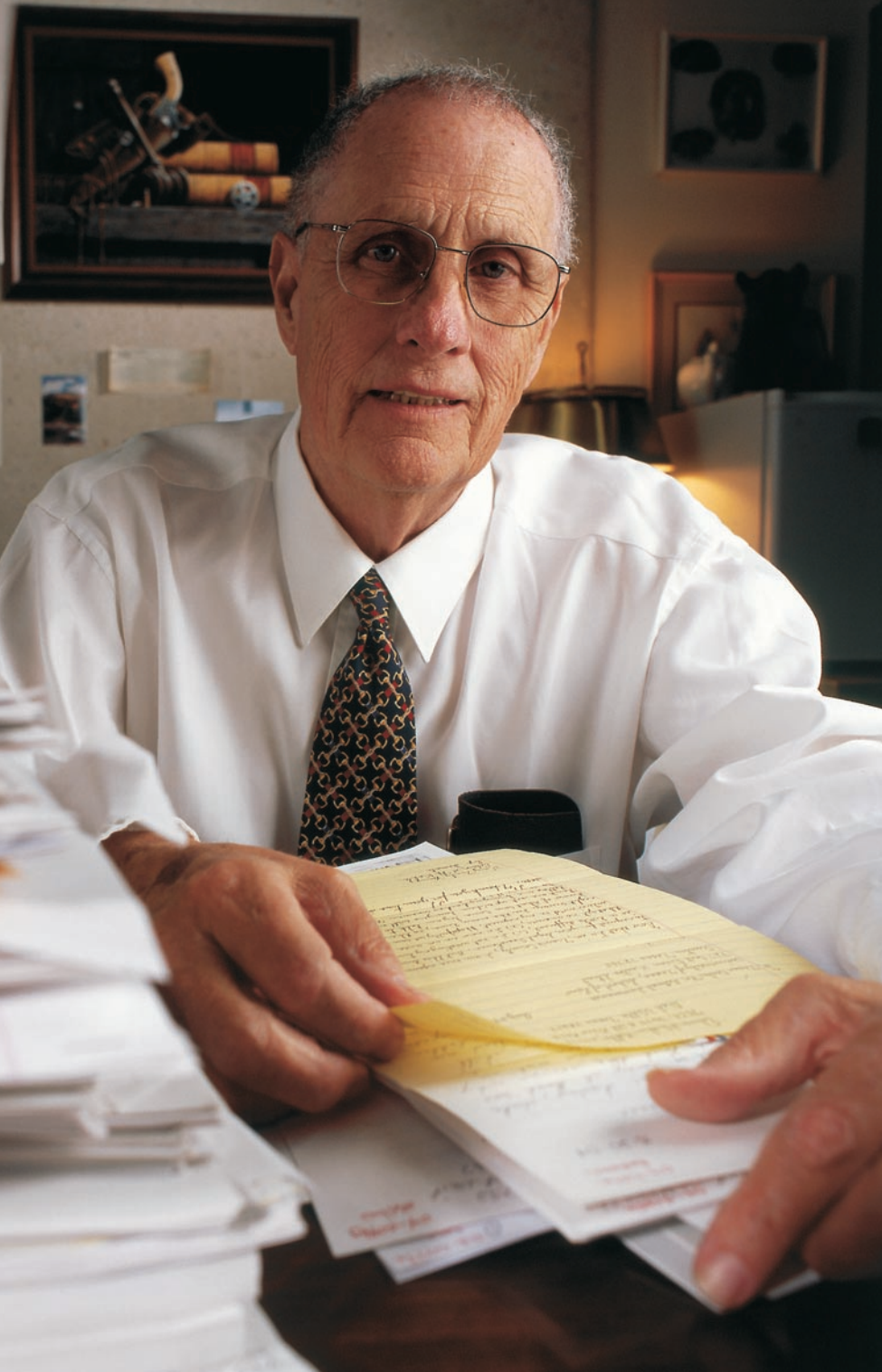
If an inmate isn't making an innocence claim, the student will draft a reply letter explaining why the center can't help the inmate. However, students do refer inmates to any resource that may help with their non-innocence legal problems. The clinic will also refer actual innocence claims from non-Texas inmates to other innocence projects. When a claim of innocence is made, students search appellate opinions and news articles for information that might refute the inmate's claim. If it is not refuted, then a 15-page questionnaire is sent to the inmate asking for details, and the answers provided help the student and supervising attorneys decide whether to conduct a field investigation. Students give class presentations on cases that have merit.

In the clinic, students are taught to pay close attention to the facts of the case, and they are cautioned to be objective when deciding the truth of an inmate's claim. "You don't want to be overly cynical or overly naïve," Dawson says. Students are also reminded to maintain the confidentiality of the cases and communications with inmates, since both are covered by the attorney-client privilege. For this reason, students and supervisors don't discuss cases outside the clinic, including the current 10 to 15 cases that have been identified

UT LAW PROFESSOR ROBERT DAWSON IS ONE OF THREE CRIMINAL LAW ATTORNEYS WHO ARE SUPERVISING STUDENTS IN THE FLEDGLING ACTUAL INNOCENCE CLINIC.



"We're all  
**NEEDLE**  
— a claim  
cense that



looking for a  
**IN A HAYSTACK**  
of actual inno-  
can be proved."

as warranting further investigation.

"Think of this as a law firm," Sheppard tells students. "Bill, Bob, and I are the partners, and you are associates in the firm. You're doing what real lawyers do—working on real cases with real people. If you devote the time to it, you'll find this work is more interesting than sitting through one more class reading about cases."

Former clinic student Debra Innocenti, '04, agrees. "It's a meticulous process, but we learn a lot about what's not found in the casebooks," she says. "We start with handwritten inmate letters asking for everything from help with civil rights claims, to requests for transfers, to pleas for free legal help, to the heart-wrenching claims of innocence. We read between the lines of everything—the letters, the records, and the appellate opinions—to find the gold in the ore," she says. "And the process is not just about crafting legal arguments; it includes the delicate task of persuading police officers and prosecutors to side with you in searching for the truth."

The process can at times be frustrating. "Believing someone is actually innocent and proving it are two different things," Dawson says. The process can require hundreds of hours of investigative work, and many of the cases don't involve biological evidence, so DNA testing isn't an option. There's also a high burden placed on the defendant to show his actual innocence. "Texas law requires that the defendant prove by clear and convincing new evidence that he is actually innocent," Dawson says. "The law of actual innocence starts with a presumption that a conviction is final and should remain final unless there is a strong showing that the inmate was not involved in the criminal episode."

The clinic uses the term "actual innocence" to mean that the defendant is able to prove that he did not engage in the conduct charged and that his conviction was the result of mistaken identification or that nobody committed the offense of which he was convicted. Often the latter includes sexual assault cases involving children. Sheppard emphasizes that "actual innocence" is not the same as a wrongful conviction caused by a procedural mistake. "Deductively learning this distinction from the letters, [ CONTINUED ON PAGE 61 ]



# RECRUIT THE BEST.



## Recruitment Opportunities Spring 2005



David Montoya  
Assistant Dean for Career Services

The University of Texas School of Law  
727 East Dean Keeton Street  
Austin, Texas 78705  
(512) 232-1150  
Fax (512) 471-6790

[www.utexas.edu/law/career](http://www.utexas.edu/law/career)

### FREE LISTING!

#### TEXAS SMALL & MID-SIZE FIRM DIRECTORY

Small and mid-size law firms as well as solo practitioners are invited to be included in this directory, which will be made available to UT Law students and alumni.

Mitch Kam, Associate Director  
[mkam@law.utexas.edu](mailto:mkam@law.utexas.edu)

#### PUBLIC SERVICE CAREER DAY

FEBRUARY 11, 2005

Tina Fernandez  
Director of Public Service Programs  
[tfernandez@law.utexas.edu](mailto:tfernandez@law.utexas.edu)

#### SPRING ON-CAMPUS INTERVIEWS

FEBRUARY 21-MARCH 3, 2005

Andrea Schlafer, OCI Coordinator  
[aschlafer@law.utexas.edu](mailto:aschlafer@law.utexas.edu)

#### TEXAS OFF-CAMPUS RECRUITMENT PROGRAM MARCH 4, 2005

Nicole Dubuque  
Job Fair Coordinator  
[ndubuque@law.utexas.edu](mailto:ndubuque@law.utexas.edu)

#### SMALL & MID-SIZE FIRM RECEPTION MARCH 10, 2005

Mitch Kam, Associate Director  
[mkam@law.utexas.edu](mailto:mkam@law.utexas.edu)

#### OFF-CAMPUS JOB FAIRS AUGUST-SEPTEMBER 2005

Off-campus recruitment opportunities will be held in Atlanta, Boston, Chicago, Dallas, Los Angeles, Miami, New York, San Francisco, and Washington D.C.

Nicole Dubuque  
Job Fair Coordinator  
[ndubuque@law.utexas.edu](mailto:ndubuque@law.utexas.edu)

#### JOB BANK & RECRUIT-BY-MAIL

Deb Freeman  
Assistant Director  
for Communications  
[dfreeman@law.utexas.edu](mailto:dfreeman@law.utexas.edu)



# TOWNES HALL NOTES

## 46 NOTEWORTHY

*Bernard Black*  
*Philip Bobbitt*  
*Oren Bracha*  
*Elizabeth Chestney, '02*  
*Robert (Ben) Fleming, '05*  
*Harold Joseph "Tex" Lezar, '77*  
*Curtis Meadows, '62*  
*Benjamin W. Putnam, '04*  
*Erin E. Ruble, '03*  
*Wayne Schiess*  
*Diane Wood, '75*  
*Elizabeth Youngdale, '92*



### PRESIDENTIAL CAMPAIGN

**BANDANNA** A POLITICAL GIFT TO INSPIRE GOODWILL AND MEMORY AMONG VOTERS, THIS ONE FOR TEDDY ROOSEVELT'S UNSUCCESSFUL 1912 RUN FOR PRESIDENT AS THE CANDIDATE OF THE PROGRESSIVE ("BULL MOOSE") THIRD PARTY. THE HYDER COLLECTION ALSO CONTAINS BANDANNAS FROM OTHER PRESIDENTIAL CAMPAIGNS, SOME WELL REMEMBERED, SOME LARGELY FORGOTTEN. COURTESY OF MICHAEL HORN, CURATOR.

## 50 CLASS NOTES

## 62 IN MEMORIAM



# Philip Bobbitt, Curtis Meadows, Diane Wood

## THREE NAMED FELLOWS IN AMERICAN ACADEMY OF ARTS AND SCIENCES

**P**ROFESSOR PHILIP BOBBITT, Curtis Meadows, '62, and Judge Diane P. Wood, '75, have been elected fellows of the American Academy of Arts and Sciences, one of the highest academic honors in the United States. Texas is one of only nine law schools in the

country to have at least four faculty elected to the academy. Other members from UT Law are Douglas Laycock, Sanford Levinson, and Mark Yudof.

Bobbitt, who holds the A. W. Walker Centennial Chair in Law, is one of the nation's leading constitutional theorists. His six books focus on constitu-

tional law, international security, and the history of strategy. They are *Tragic Choices* (with Calabresi) (1978), *Constitutional Fate* (1982), *Democracy and Deterrence* (1987), *U.S. Nuclear Strategy* (with Freedman and Treverton) (1989), *Constitutional Interpretation* (1991), and most recently *The Shield of Achilles: War, Peace, and the Course of History* (Knopf, 2002). His seventh, about the war on terror, will be forthcoming this spring.

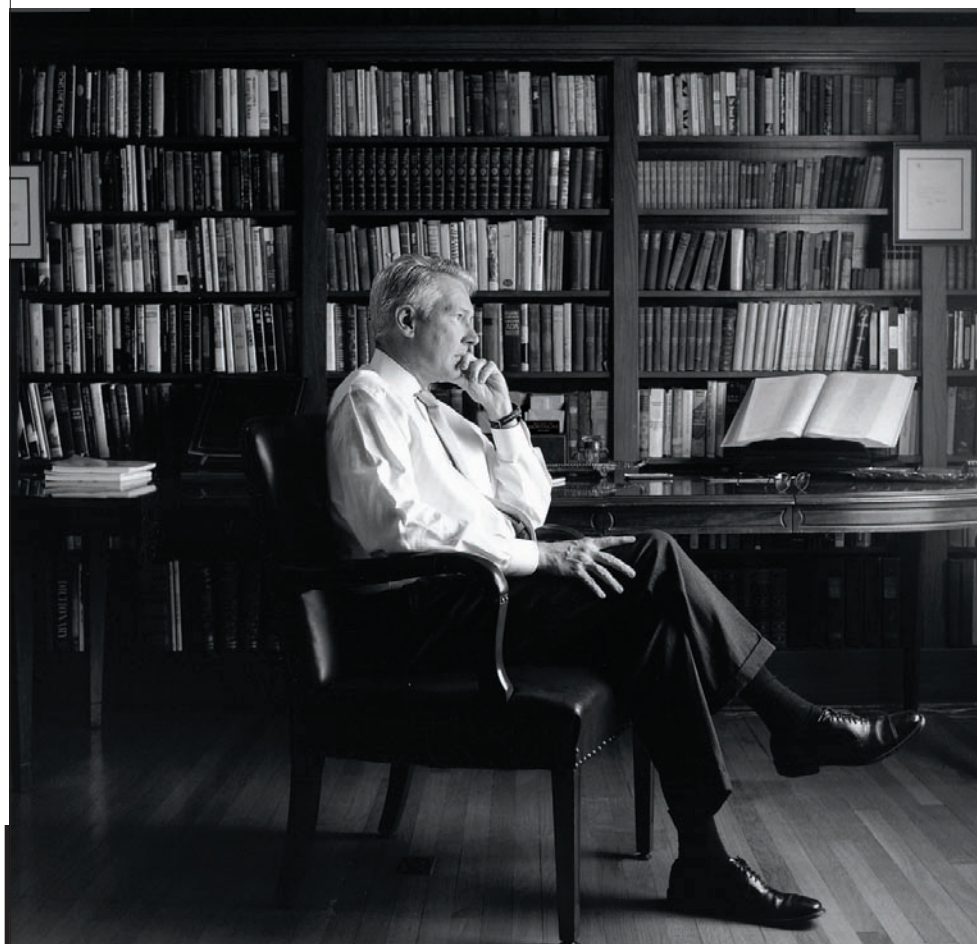
In public life Bobbitt has served as associate counsel to the president, the counselor on international law at the State Department, legal counsel to the Senate Iran-Contra Committee, and director for intelligence, senior director for critical infrastructure, and senior director for strategic planning at the National Security Council.

Curtis Meadows serves as executive director of the RGK Center for Philanthropy and Community Service. His long career in the independent sector

includes 18 years of service as president, CEO, and director of the Meadows Foundation of Texas. During that time, the foundation grew its assets from \$60 million to almost \$735 million, while dispensing more than \$270 million in gifts and grants to assist the work of charitable and community organizations in Texas. At the time of his retirement in 1996, the Meadows Foundation was the third-largest private foundation in Texas and the 39th-largest in the United States. He has also held leadership positions with more than sixty charitable and community organizations.

Judge Wood currently serves as both a judge on the U.S. Court of Appeals for the Seventh Circuit and a senior lecturer in law at the University of Chicago. Wood clerked for Judge Irving L. Goldberg of the Fifth Circuit and for U.S. Supreme Court associate justice Harry A. Blackmun. She worked briefly for the U.S. State Department on international investment, antitrust, and trans-

**UT Law is one of only nine law schools to have at least four faculty elected to the academy. Its members include Philip Bobbitt (pictured here), Douglas Laycock, Sanford Levinson and Mark Yudof.**



# RECENTLY ESTABLISHED SCHOLARSHIPS

## **S. Jack and Sophia K. Balagia Endowed Presidential Scholarship in Law**

Established by S. Jack, Jr. ('76) and Mary D. Balagia, James K. and Linda F. Balagia, Susan M. Balagia, and Terry and Heather Balagia, in honor of their parents

## **Steve Bickerstaff Endowed Presidential Scholarship in Law**

Established by Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel, L.L.P., in honor of Steve Bickerstaff, '76

## **Eugene H. and Gaetana F. Broillet Endowed Presidential Scholarship in Law**

Established by Bruce A. ('74) and Norah F. Broillet, in honor of his parents

## **Edward Idar Endowed Scholarship in Law**

Established by Rebecca and Bruce Brockway and their daughters, Erin Brockway, Katherine Brockway, and Laura Brockway, in memory of Rebecca's father, Edward Idar, Jr., '56

## **John Lyle Endowed Presidential Scholarship in Law**

Established by friends in memory of former Texas congressman John Lyle

## **Richard T. McCarroll Endowed Presidential Scholarship in Law**

Established by Brown McCarroll, L.L.P., in honor of Richard T. McCarroll, '68

## **Arvind J. Sudarshan Endowed Presidential Scholarship in Law**

Established by the Sudarshan family in honor of Arvind J. Sudarshan, '86

fer of technology issues and until June 1980 as a lawyer at Covington & Burling, where her practice focused on more general antitrust and commercial litigation issues. In 1981 Wood joined the faculty of the University of Chicago School of Law, taking two leaves to visit at Cornell and to revise the Department of Justice *Antitrust Guide for International Operations*. From 1993 until 1995 she served as deputy assistant general in the U.S. Antitrust Division with responsibility for the division's international, appellate, and legal policy matters. Before her elevation as a judge in 1995, she was the Harold J. and Marion F. Green Professor of International Legal Studies at the University of Chicago.

Meadows and Wood received both their undergraduate and their J.D. degrees from UT-Austin.

# Harold Joseph "Tex" Lezar, Jr.

## MEMORIAL LECTURE SERIES CREATED TO HONOR LAWYER

ON SEPTEMBER 16 FORMER U.S. SOLICITOR GENERAL Ted Olson delivered the inaugural speech of the Tex Lezar Memorial Lecture Series to a packed room in Dallas, Texas. In addition to Olson's powerful speech about the separation of powers, Tex's thirteen year-old daughter, Maverick, read letters from both of Texas' U.S. senators, Kay Bailey Hutchison and John Cornyn, which honored her late father. Lezar's family attended, as did Senator Hutchison, members of the Law School faculty and staff, and many of Tex's friends, including Judge Kenneth Starr, who spearheaded efforts to endow a memorial series to honor Tex.

Friends of Harold Joseph "Tex" Lezar, Jr., created the series to honor Lezar, who died this past January. The UT Law-based fund will support an annual lecture on law and public policy, which will be held in different cities.

Lezar loved the Law School and excelled in both academics and politics. He came to UT Law after graduating from Yale. In 1976 he graduated, having served as editor in chief of the *Texas Law Review*. Lezar then served as an assistant to *National Review* editor Bill Buckley, a speechwriter for President Nixon, general counsel to the Texas secretary of state, and special counsel to U.S. attorney general William French Smith. He held the unprecedented and unduplicated dual position as Smith's assistant attorney general for legal policy and chief of staff.

Lezar left Washington in 1985 for Texas to work at Carrington Coleman and to pursue public office. He also served as CEO of the conservative think tank Empower America. At the time of his death, Lezar was practicing appellate law for the Houston firm of Clements, O'Neill, Pierce, Wilson & Fulkerson. He was the author of a newspaper column and edited the book *Making Government Work: A Conservative Agenda for the States*.

His wife, Merrie Spaeth, and three children, Beau, Philip, and Maverick, survive him.





# Legal Writing Program

SCHIESS NAMED DIRECTOR, CHESTNEY, '02, AND YOUNGDALE, '92, HIRED

**T**HIS YEAR THE LAW SCHOOL REORGANIZED its writing program, appointing Wayne Schiess the new director of legal writing. Schiess, a senior lecturer, teaches the required first-year course in legal writing, as well as writing for litigation, basic drafting, and a seminar in legal writing.

Schiess announced the appointment of two new legal writing faculty members: Elizabeth Chestney, '02, who recently completed two years as a clerk for the Honorable Sam Sparks of the United States District Court for the Western District of Texas, and Elizabeth Youngdale, '92, formerly the head of the library's student services department. In addition to her law degree, Youngdale holds

an M.L.I.S. degree from UT-Austin's library school.

Schiess also implemented a significant change in the Teaching Quizmaster program. "Historically, the TQs had primarily an academic role," Schiess said. "That role evolved and expanded over the years to include a large social component. Our alumni from the last fifteen years well know that your TQ was your friend, your mentor, your social director, and your teacher." This year the TQs returned to their academic roots, with social responsibilities handled by UT Law's new societies.

This change follows another change in the program, from pass-fail to grades, implemented in 2003-04.

Schiess (c.) added Youngdale (l.) and Chestney to the writing faculty.



# HIGH HONORS

Markesinis Receives  
Commander of the  
Legion of Honor

On October 11, **Professor Basil Markesinis, QC**, Jamail Regents Chair in Law, was awarded the insignia of the Commander of the Legion of Honor at his induction into the French Academy as its new Corresponding Fellow. The rare commander's honor was conferred upon him by President Chirac of France, who has described Markesinis as "one of the very greatest comparatists of Europe."

Lebowitz Receives  
Legion of Honor Insignia

On August 15 in a ceremony held in the American Cemetery in Draguignan, France, **emeritus professor Leon Lebowitz** received France's Legion of Honor medal. The ceremony was held sixty years after he and the U.S. Third Infantry invaded southern France to provide support to troops already in Normandy.

Rabban Wins Massey  
Teaching Excellence Award

This year's Massey Teaching Excellence Award honored law professor **David M. Rabban**, a member of the elite Academy of Distinguished Teachers. "I am thrilled to be the first recipient of the Massey Teaching Excellence Award and grateful to the Masseys for recognizing teaching through their generous endowment. It is a pleasure to teach at a law school whose faculty values teaching as well as scholarship and whose students stimulate and appreciate the efforts of their professors," said Professor Rabban. (For more information on the award, see cover story, Winter 2004.)

Torres Honored by MALDEF

Professor **Gerald Torres** has been given the 2004 Legal Service Award by the Mexican American Legal Defense and Educational Fund

(MALDEF) for his work to advance the legal rights of Latinos. "The Legal Service Award is presented annually to an individual for his or her exemplary advancement of the legal rights of Latinos," said Luis Figueroa, legislative staff attorney at MALDEF. "Professor Torres is being recognized in particular for his academic contributions to critical race theory. His book *The Miner's Canary* is one of the more powerful pieces dealing with everything from affirmative action and race theory to the importance of advancing the causes of minorities." Torres also holds the post of president of the Association of American Law Schools (AALS).

Reasoner, '62, Honored  
at Fifth Circuit  
Judicial Conference

This summer the U.S. Fifth Circuit Court of Appeals awarded **Harry Reasoner, '62**, its 2004 American Inns of Court Professionalism Award for the Fifth Circuit. The Circuit Professionalism Award is presented to honor a senior practicing judge or lawyer whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standards of the legal profession. Candidates are nominated through circuit-wide open nominations and selected by a panel of representatives from both the circuit and the American Inns of Court Foundation.

Tarlton Library  
Wins Library Public  
Relations Award

The **Tarlton Law Library** has received an LPeRCy award from the Library Public Relations Council for a series of brochures that were designed and distributed by the library for the groups that utilize its resources, including members of the Law School, UT-Austin, and the general public.

## Bernard S. Black

CORPORATE LAW AND  
FINANCE SCHOLAR  
JOINS UT LAW FACULTY

**T**HIS FALL BERNARD S. BLACK joined UT Law, where he holds the Hayden W. Head Regents Chair for Faculty Excellence in the School of Law and is also codirector of the Center for Law, Business, and Economics.

Dean Powers said: "Bernie Black is a wonderful addition to our faculty. He is one of the nation's leading scholars and teachers in corporate law. He is also a nationally recognized leader in empirical research on issues of corporate law and finance. I am excited, and our students are excited, that he will be part of our family."

Black has authored or coauthored four books and more than fifty published articles. (See related essay on page 28.) He is also sought for his legislative and regulatory advice and has advised on company law reform in Russia, South Korea, Mongolia, Vietnam, and other countries.

Educated at Princeton (B.A.), Berkeley (M.A. in Physics), and Stanford (J.D.), Black has taught at Columbia University (1988-98) and Stanford (1998-2004). He served as counsel to Commissioner Joseph A. Grundfest of the Securities and Exchange Commission, as an attorney at Skadden Arps in New York, and as a clerk for Judge Patricia Wald of the U.S. Court of Appeals, District of Columbia Circuit.

Black joins a number of UT faculty who are pursuing business law and empirical studies, among them Henry T. C. Hu, Kate Litvak, Ronald Mann, Charles Silver, and Jay Westbrook.



# Oren Bracha

## INTELLECTUAL PROPERTY AND LEGAL HISTORIAN JOINS UT LAW FACULTY

**T**HIS YEAR OREN BRACHA joined UT Law as an assistant professor of law. His primary scholarly interests are intellectual property, cyberlaw, and legal history. Last year he served as a visiting assistant professor of law.

"We are delighted to have Oren in Austin on a permanent basis. His scholarship and his proven ability to connect with students will be great assets to our community," said Dean Bill Powers.

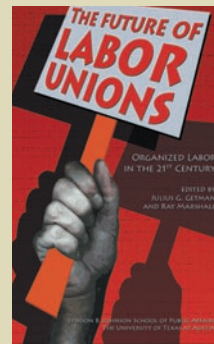
As a Byse Fellow at Harvard Law School, Bracha taught a workshop titled "Owning Ideas: Theoretical and Historical Perspectives on Intellectual Property." Bracha also worked on several teaching and research projects for the Berkman Center for Internet and So-

ciety at Harvard Law School. He clerked for Chief Justice Aharon Barak of the Supreme Court of Israel from 1998 to 1999 and is currently completing his dissertation, about the history of intellectual property in the United States.

He joins a number of UT faculty working in the areas of legal history and intellectual property, among them William E. Forbath (legal history), Ronald J. Mann (commercial transactions, intellectual property, and electronic commerce), David M. Rabban (labor law, higher education and the law, and American legal history), and R. Anthony Reese (copyright, intellectual property, and the law of cyberspace).

Bracha joined the permanent faculty this year.

## BOOK 'EM

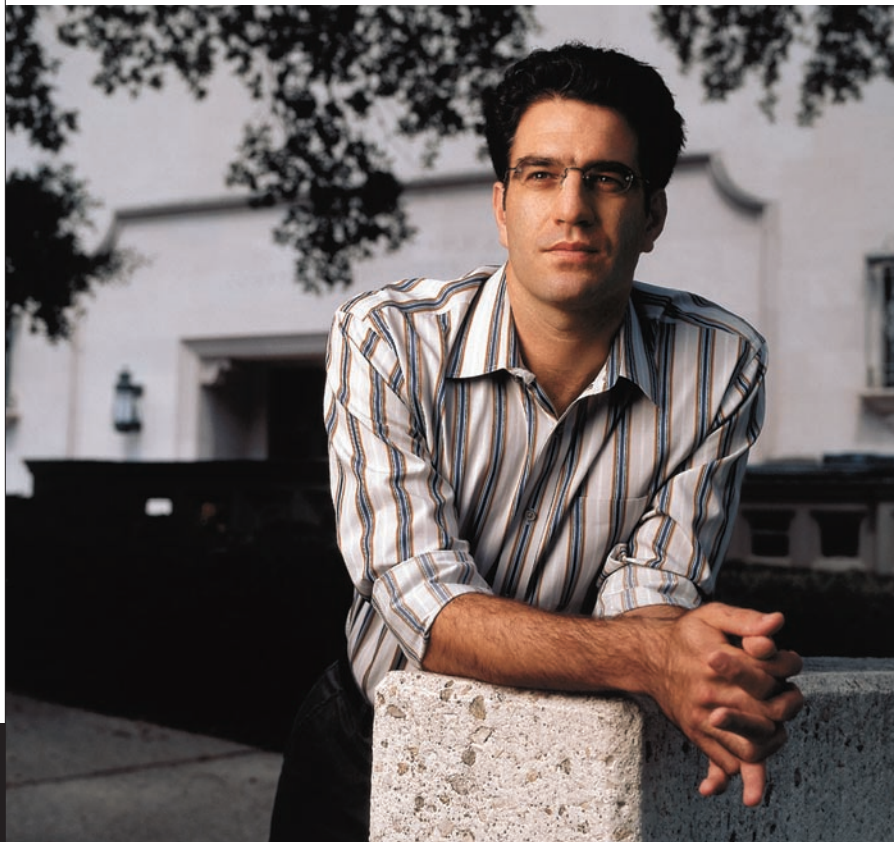


Award-winning author and professor **Jack Getman** and **Ray Marshall**, the secretary of labor under President Jimmy Carter, have published a volume of

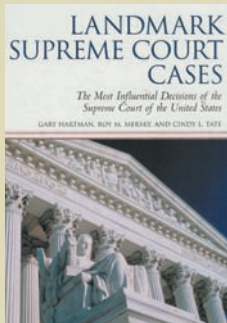
essays titled *The Future of Labor Unions: Organized Labor in the 21st Century*. The essays stem from last year's conference in Washington, D.C., where fifty distinguished international business and labor leaders and scholars discussed such topics as the impact of the war on terrorism on labor policy and law, immigration and organizing, and the strengths and weaknesses of 21st-century labor unions in the United States, Europe, and the developing world. The book is available from the Lyndon B. Johnson School of Public Affairs.

Where does philosophy, the oldest academic subject, stand at the beginning of the new millennium? Do Marx, Nietzsche, and Freud matter in the 21st century? In his new book, *The Future of Philosophy* (Oxford University Press, 2004), **Brian Leiter** brings together leading figures from four countries and most major branches of the discipline to offer answers.

This fall **Sanford Levinson** released *Torture* (Oxford University Press, 2004), an edited collection of essays by leading scholars from various disciplines who offer their reflections on torture. In it they discuss exactly what constitutes torture; under what circumstances, if ever, it should be used; and whether law can play any useful role in structuring its use. Contributors to the volume include such well-known figures as Alan Dershowitz, Jean Bethke Elshtain, Judge Richard Posner, and Elaine Scarry.



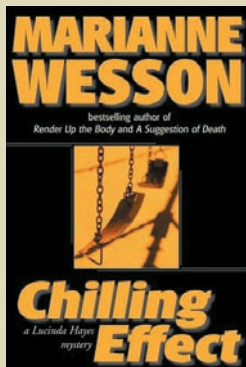
**Roy M. Mersky** and coauthors **Gary Hartman** and **Cindy L. Tate** have released *Landmark Supreme Court Cases: The Most Influential Decisions of the Supreme Court of the United States* (Facts on File, 2004). The book provides current, concise, and straightforward summaries of more than 350 of the most important and influential United States Supreme Court cases, organized A to Z. Each entry includes



the case title and legal citation, year of decision, key issue, historical background, legal arguments, decision (majority and dissent-

ing opinions), aftermath and significance, related cases, and recommended reading.

This spring Birmingham attorney **Jim Noles, '97**, released *Twenty-three Minutes to Eternity: The Final Voyage of the Escort Carrier USS Liscome Bay* (University of Alabama Press). This narrative of the sinking of the ill-fated escort carrier, one of the U.S. Navy's worst WWII disasters, has been reviewed as "a fascinating read."



*Chilling Effect* (University Press of Colorado, 2004) is the third Lucinda Hayes mystery by **Marianne Wesson,**

'73, a UC-Boulder law professor. This time, Hayes must investigate a murder in which one of the suspects, a pornographer, invokes a free-speech defense. *Publishers Weekly* said readers who enjoy the series will be "most satisfied."

# Rwandan War Crimes Tribunal Interns

ROBERT "BEN" FLEMING, '05, BENJAMIN W. PUTNAM, '04, AND ERIN E. RUBLE, '03

**T**WO RECENT GRADUATES of the Law School and one current student have been selected by the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania, to serve as interns in the Office of the Prosecutor this fall. Robert "Ben" Fleming, '05, Benjamin W. Putnam, '04, and Erin E. Ruble, '03, will be the seventh, eighth, and ninth UT Law students and recent alumni to be accepted to participate in the ICTR internship program.

The United Nations Security Council established the International Criminal Tribunal for Rwanda in 1994 to investigate and prosecute participants in the 1994 genocide in Rwanda. Students work in the Office of the Prosecutor, conducting a range of investigative work, factual development, and legal research on both procedural and substantive international criminal law issues.

The Law School has been sending students and graduates to the tribunal since 2000, but this fall will mark the first time it has sent three at one time. Other interns include James Sanford (summer of 2004), Hope Williams (2003), Yonit Sharaby (2003), Douglas Cox (2002), James Bischoff (2002), and Roberta Ritvo (2000).


"These internships provide UT Law students and recent graduates

with unique opportunities to learn and serve in the area of human rights and international criminal law, as well as expose them to parts of the world they would otherwise be unlikely to see. It is a great tribute to Ben, Benjie, and Erin, but also to the work of for-



Interns work in the prosecutors' office in Arusha, Tanzania.

mer UT interns and to the Law School that the tribunal has selected three applicants from UT for the coming fall," said Professor Karen Engle, director of the newly founded Center for Human Rights at the Law School.

The International Criminal Tribunal for Rwanda internships last for three to six months. The internships are open to qualified second- and third-year students, as well as recent graduates who have strong backgrounds in international and/or criminal law. Participants receive either academic credit or a living stipend, as well as airfare. Travel expenses and stipends are made possible by a grant from the Effie and Wofford Cain Foundation. 



# C L A S S N O T E S

## THROUGH SEPTEMBER 2004

Have questions about the overall development program of the Law School, including endowed gifts and planned giving?

### Nancy Brazzil

Assistant Dean for Development and Alumni Relations  
(512) 232-1129  
nbrazzil@mail.law.utexas.edu

### Fran Chapman

Director of External Relations  
(512) 232-9394  
fchapman@mail.law.utexas.edu

Want to become more involved in the Law Alumni Association? Have questions about the Law School's Annual Fund, including online giving and the Class Fundraising Competition? Need information about an upcoming alumni event, or to RSVP?

### Tom Henninger, '92

Director, Law Alumni Association  
(512) 232-1156  
thenninger@mail.law.utexas.edu

Want to update your contact information, including e-mail and employer?

### Suzette Molina

Database Manager  
(512) 232-1216  
smolina@mail.law.utexas.edu

## 1949



**Ben McDonald**, an adjunct professor of environmental law and policy at Texas A&M University-Corpus Christi and a practicing attorney, was selected as a delegate to the Oxford Round Table and

will present a paper during its "International Trade and the Environment" conference, August 7-14, 2004, at St. Anthony's College, University of Oxford. McDonald will also chair a discussion group and present an analysis of the Guadalupe River Delta water usage issues in Texas.

## 1955

**Sidney C. Farrar, Jr.**, senior district judge in Fort Worth, was awarded the Silver Gavel by the Tarrant County Bar Association at the Annual Law Day Award Banquet on May 13, 2004. This award is presented to a jurist who has an outstanding reputation for competency, efficiency, and integrity.

## 1962

**Harry M. Reasoner**, of the Houston office of Vinson & Elkins, has been awarded the 2004 American Inns of Court Professionalism Award for the Fifth Circuit Court of Appeals. Judge Patrick E. Higginbotham of the U.S. Court of Appeals for the Fifth Circuit, former president of the American Inns of Court, presented the award to Reasoner in May at the 2004 Fifth Circuit Judicial Conference in Austin. The Circuit Professionalism Award is presented to honor a senior practicing judge or lawyer whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standards of the legal profession.

## 1964

**Irwin H. Steinhorn** was one of the keynote speakers at the 21st Annual Southwest Business Symposium, sponsored by the University of Central Okla-

homa in spring 2004. His topic was "Impact of Sarbanes-Oxley on Corporate Governance." He is a shareholder and director of the Oklahoma City office of Conner & Winters.

## 1965



**Arthur H. Bayern**, of Bayern & Aycock in San Antonio, was honored in October 2004 with the Distinguished Probate Lawyer Lifetime Achievement Award from the Real Estate, Probate, and Trust Law Section of the State Bar of Texas. A former chair of the section, a former president of the San Antonio Bar Association, and a former director of the State Bar of Texas, Bayern has been active in the trusts, probate, and estates field for his entire career.

## 1967



**R. Kinnan Golemon** has been elected a fellow of the American Bar Foundation. The fellows constitute an honorary organization of practicing attorneys, judges, and law teachers whose professional, public, and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession. He has also been appointed chair of the American Bar Association Standing Committee on Environmental Law. This committee is devoted to examination and analysis of environmental law and policy issues, development of ABA policy positions in the field, and coordination and facilitation of ABA environmental law programming and policymaking. Golemon, the senior environmental partner in the Austin office of Brown McCarroll, assumed his responsibilities at the con-

clusion of the 2004 ABA annual meeting in early August.

1968

**Claud McIver** was chosen by *Atlanta Magazine* as one of the "Super Lawyers" in 2004. In 1999 *Atlanta Lawyer* magazine named him one of the "Outstanding Legal Minds in the City of Atlanta."



**Charles H. Still**, a senior partner in the Houston office of Fulbright & Jaworski, recently was recognized with three separate honors. In its survey of Fortune 1000 general counsel, BTI Consulting Group named Still to its annual All-Star Team of lawyers across the nation. Only the top ninety U.S. attorneys in client service are named to this prominent list annually. Additionally, the *Chambers & Partners, USA* directory named Still as a highly ranked Texas attorney in the practice area of corporate mergers and acquisitions. Still was also recognized as one of the world's leading mergers and acquisitions lawyers in *PLC Mergers and Acquisitions Handbook 2003-2004*. In addition to mergers and acquisitions, his practice areas include corporate finance and securities law and other corporate specialty areas.

1969

**Richard G. Morgan** has joined Preis, Kraft & Roy and will manage the firm's Houston office. Morgan, formerly managing partner at Shook, Hardy & Bacon, will continue his energy law practice, with particular emphasis on litigation.

1970

**Michael Wims** and **David Stallard**, '77, attended the Utah Attorney General's Criminal Justice Division annual retreat at a mountain cabin near Salt Lake City on July 9. In addition, the *City Confidential* episode on A&E that aired on July 17 featured a case that Wims prosecuted, *State of Utah v. John Pinder* (double murders). The episode is titled "Duchesne, Utah: Blown Away."

1971

**Chris Paliare, LL.M.**, was one of five recipients of the 2004 Law Society Medal.

The Law Society Medal was struck in 1985 as an honor to be awarded by the Law Society of Upper Canada, the governing body of the lawyers of Ontario, Canada, to members who have made a significant contribution to the profession. Chris is a litigator practicing in Toronto with Paliare Roland Rosenberg Rothstein. He is also a fellow of the American College of Trial Lawyers and the current chair for Ontario.

1973

**Randolph D. Addison**, president of Addison Law Firm, announces that the firm was named Law Firm of the Year at the 2003 "Excellence in Achievement" awards ceremony held in Anaheim, California, on February 14, 2004. The event was sponsored by *The BoardRoom* magazine, the official publication of the Association of Private Club Directors. This was the fifth consecutive year that Addison Law Firm has received the prestigious award.

**William L. LaFuze**, a partner in the Houston office of Vinson & Elkins, has been named the chair of the American Bar Association's Section of Intellectual Property Law. LaFuze, who was elected by his peers last year to lead the 20,000-member IP Section, was sworn in as chair on August 7, 2004. He will serve a one-year term. LaFuze has been a lawyer at V&E for 31 years and a partner since 1980. He specializes in electronics, oil field equipment, and computer-related litigation. LaFuze is currently a member of the Patent Public Advisory Committee of the U.S. Patent and Trademark Office.

**John M. Nolan**, a shareholder and member of Winstead Sechrest & Minick's real estate/real estate finance practice, has been elected a member in the American College of Real Estate Lawyers (ACREL). Nolan, a 31-year veteran of the legal profession, was nominated for his professional legal reputation and expertise and for his contributions to the improvement of real estate law and practice.

**Marianne Wesson** published her third Lucinda Hayes mystery, *Chilling Effect*, in September 2004. Wesson, a distinguished law professor at the University of Colorado, Boulder, has published two previous novels featuring Lucinda Hayes, *Render Up the Body* and *A Suggestion of Death*.

1974



**Lee Polson** of Strasburger & Price has been appointed partner-in-charge of the Austin office. In his new role, Polson will have primary responsibility for the office's operations and strategic planning. In practice for more than 28 years, Polson is a leading corporate and securities attorney.

1975

**J. Scott Chafin** joined the Regulatory Law and Intellectual Property Division of the U.S. Army Legal Service Agency in Arlington, Virginia, in March as the agency's first full-time in-house trademark and copyright attorney.

**Mike McConnell**, a shareholder in Winstead Sechrest & Minick's Bankruptcy and Business Restructuring Practice Groups in Fort Worth, has been elected to serve as a member of the American Law Institute.

1977



Strasburger & Price is pleased to announce that **John Adkins**, an attorney in the Houston office of Strasburger & Price, has been named president-elect of the Texas Exes, the alumni association of The University of Texas at Austin. Adkins will hold the position of president-elect for a one-year term under the president, Hector DeLeon of Austin, '73. As president-elect, Adkins will work closely with the board of directors and carry out the president's duties in his absence. Upon the completion of his one-year term in July 2005, he will become the president of the Texas Exes. In his legal practice, Adkins represents financial institutions in lending transactions, regulatory matters, and mergers and acquisitions.

**David J. Clark** has become a shareholder in Robinson, Bradshaw & Hinson in Charlotte, North Carolina. He concentrates his practice in the areas of general corporate and commercial law, international transactions, and construction.



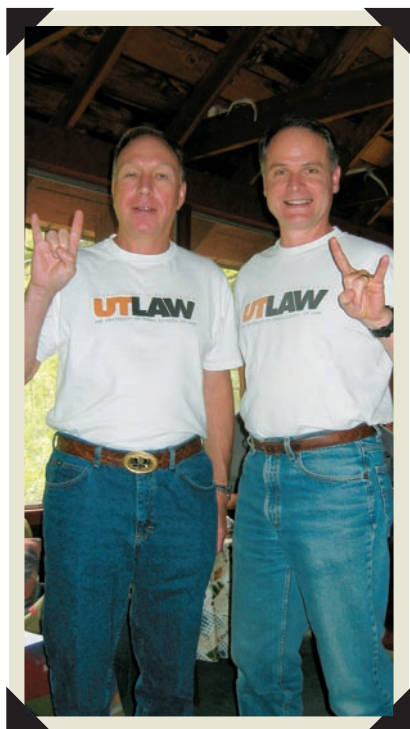
**Paul Parsons** has been appointed by the State Bar of Texas as the chair of the Committee on Laws Relating to Im-



migration and Nationality for 2004–05. He previously served as a member of the board of governors of the American Immigration Lawyers Association.

Dewey Ballantine has announced that **Alison L. Smith** joined the firm as a litigation partner and co-chair of the antitrust and trade regulation practice group in Houston. Smith was previously a partner with Vinson & Elkins, where she co-chaired the firm's antitrust practice group. From 1989 to 1991, Smith served in the U.S. Department of Justice as deputy assistant attorney general of the Antitrust Division. In this role she was responsible for enforcement of the federal antitrust laws in the nation's regulated industries, including investigations and challenges of anticompetitive mergers and criminal antitrust violations. Smith is included in *Chambers & Partners, USA's* "America's Leading Lawyers for Business in 2004," recommended in antitrust. She has also been named a "Texas Super Lawyer" for 2003 and 2004.

**David Stallard** and **Michael Wims, '70**, attended the Utah Attorney General's Criminal Justice Division annual retreat at a mountain cabin near Salt Lake City on July 9. In addition, the *City Confidential* episode on A&E that aired on July 17 featured a case that Wims



Wims (left) and Stallard caution that the "UT" on their shirts does not stand for "Utah."

prosecuted, *State of Utah v. John Pinder* (double murders). The episode is titled "Duchesne, Utah: Blown Away."

## 1978

**Steven L. Bell** has become a fellow of the American College of Trial Lawyers, one of the premier legal associations in America. The induction ceremony took place during the 2003 annual meeting of the college in Montreal, Canada.

**Mike Steinhauser** was elected vice chairman of the board of Texas United Bancshares, Inc., in 1998. The stock has been traded on NASDAQ under the symbol TXUI since 2003. He also continues to be very active in a small-town law practice in Flatonia, Texas, centered on real estate, probate, estate planning, and banking law.

**Stephen D. Willey**, an estate planner in Arlington, Texas, taught a practicum in estate planning as an adjunct professor at the Texas Wesleyan School of Law in the spring of 2004. He has served for more than 22 years as a board member of Boys and Girls Clubs of Arlington, is the founding officer-director of the Texas Alliance of Boys and Girls Clubs, and of the Texas Boys and Girls Clubs Foundation, and founding officer-director of the Texas Alliance for the Blind and of the Dallas Foundation of the Blind. Willey was also pleased and honored recently by *Fort Worth, Texas* magazine, which named him one of "The City's 91 Best Attorneys."

**Ellen Anderson Yarrell** was named an Angel in Adoption by the Congressional Coalition on Adoption, Inc., in September 2004. This award recognizes 100 individuals from across the United States in the field of adoption. Yarrell is currently serving a three-year term as membership chair and board member of the American Academy of Adoption Attorneys. She served as the president of the Texas chapter of the American Academy of Matrimonial Lawyers from August 2003 to August 2004.

## 1980

**Alexandra Albright**, associate dean for students and technology and a senior lecturer at The University of Texas School

of Law, was named the 2004 Outstanding Administrator of the Year by the Student Bar Association.



**Kenneth Ramirez**, a partner with the Austin office of Bracewell & Patterson, has been included in *Chambers USA: America's Leading Lawyers for Business 2004 Client's Guide*.

## 1982

**The Honorable Joseph "Tad" Halbach** of the 333rd District Court in Harris County, Texas, was elected as the administrative judge for the Board of Civil District Judges in January 2004.

## 1983

**Susan F. Zinn** of San Antonio was lead counsel in the case *Frew v. Hawkins*, 124 SCT 899 (2004). Zinn argued before the U.S. Supreme Court in October 2003 and won in January 2004. The case involves a class-action lawsuit filed against Texas officials alleging improper medical care for about 1.5 million indigent children covered under the federal Medicaid program. At issue was the ability of federal courts to enforce legal settlements made by state officials. The Eleventh Amendment provides sovereign immunity to states, unless they voluntarily and unequivocally waive it. There are legal exceptions, and one question before the justices was whether such exceptions applied in this case.

## 1984



**Stephen W. Lemmon** has been elected partner with the Austin firm of Brown McCarroll. Lemmon specializes in bankruptcy litigation, commercial litigation, and white-collar criminal defense. He was formerly of counsel with the firm.

## 1985



**Eric Groten** is included in *Chambers USA: America's Leading Lawyers for Business 2004 Client's Guide*.

**Judith W. Ross** has joined the Dallas office of Baker Botts as partner. Before

joining Baker Botts, Ross was a partner in the Dallas office and practice leader of the Houston and Dallas bankruptcy department of Thompson & Knight.

**Ron Stutes** has joined the Potter Minton law firm in Tyler, where he will concentrate on commercial litigation and work to establish a municipal law practice in the area.



**Alan Ytterberg**, a partner in the Houston office of Fulbright & Jaworski, was named chairman of the Institute for Rehabilitation and Research (TIRR) board of directors. Located in the Texas Medical Center, TIRR is recognized by *U.S. News & World Report* as one of the leading rehabilitation hospitals in the nation. Ytterberg joined the firm in 1985. He is certified in estate planning and probate by the Texas Board of Legal Specialization and currently serves as the chair of the Houston Bar Association Probate, Trusts, and Estates Section.

## 1986

Houston lawyer **Daniel David Hu** has received the Justice David Wellington Chew Achievement Award for exemplary professionalism and outstanding accomplishment from the State Bar of Texas Asian Pacific Interest Section. Hu is deputy chief, Civil Division, with the U.S. Attorney's Office for the Southern District of Texas. He is a founding member of the Asian Pacific Interest Section and currently serves as a commissioner on the Texas Access to Justice Commission and as a director and executive committee member of Lone Star Legal Aid.

**Karen Patton Seymour**, chief of the criminal division in the U.S. attorney's office in New York City, was lead prosecutor in the Martha Stewart trial. The prosecution took place between January and March 2004.

## 1987

**Sharon Reuler** of the Dallas law firm of SettlePou has joined the American College of Real Estate Lawyers. Reuler was honored with the Weatherbie Workhorse Award at the State Bar's 2004 Advanced Real Estate Law Course in July 2004.

## 1989



**Alistair Dawson** and his wife, Wendy, announce the birth of their son, Collin Stuart McCoy Dawson. Collin was born on March 8, 2004. Both he and Wendy are doing well. Alistair is a partner in the Houston litigation and trial firm of Beck, Redden & Secrest. He was recently recognized by *Texas Monthly* as a Rising Star in the Texas legal profession.

**David Frederick** has been named one of 12 of the D.C. area's top appellate litigators in July 2004 by *Legal Times* magazine in its ongoing Leading Lawyers series. Frederick's *Supreme Court and Appellate Advocacy* was published in 2003 by West Publishing. He is a partner with Kellogg, Huber, Hansen, Todd & Evans.

**Mark A. Kammer** and Linda W. Browning opened the law firm of Kammer Browning in February 2004. Both are registered patent attorneys and practice in the field of intellectual property law, Kammer with a focus on electronic and computer technology and Browning with a focus on biotechnology.

**Jonathan E. Retsky** has been elected to the position of corporate vice president and director of patent operations at Motorola, Inc.

## 1990

**Brian Hail** was recently named a Super Lawyer by *Texas Monthly* and one of the Best Lawyers Under 40 in Dallas by *D Magazine*. He also recently became board-certified in civil trial law by the Texas Board of Legal Specialization. He and his wife, Dr. Stacey Hail, are the proud parents of Alexander Brian, born on January 2, 2004. Hail is a partner at the Dallas law firm Godwin Gruber, where he specializes in commercial and employment litigation.

**Andres Villareal** joined American Health and Life Insurance Company in its legal department on March 15, 2004. He is associate general counsel for the Fort Worth-based company, which is a subsidiary of Citigroup.

## 1991



**Dewey Gonsoulin** of the Houston office of Bracewell & Patterson has been recognized by the firm as a rising star for 2004. Gonsoulin's practice focuses on corporate finance.



**Sandra L. Phillips** has joined the Houston office of Shook, Hardy & Bacon as a partner in its Pharmaceutical and Medical Device Division. Phillips was an associate and partner in the firm's Houston office from 1995 to 2003. She spent the past year as a partner at Baker & Hostetler in Houston.

## 1992

**Jay Aldis**, board-certified in labor and employment law by the Texas Board of Legal Specialization, was elected partner in the Houston firm of Bracewell & Patterson.

## 1993



**Carol Huneke** received the 2004 president's award from the Washington Association of Criminal Defense Lawyers. This award is for "distinguished service to the highest traditions of the criminal defense bar."

**Monica Wiseman Latin**, a partner with Carrington, Coleman, Sloman & Blumenthal in Dallas, was named the Outstanding Young Lawyer of Dallas for 2004 by the Dallas Association of Young Lawyers. She was also named a Best Lawyers Under 40 in Dallas by *D Magazine* in 2004 and a Texas Super Lawyer by *Texas Monthly* in 2003. Her practice is concentrated in the areas of business and employment litigation.

## 1994

**Warigia Bowman** is a third-year doctoral student in public policy at the John F. Kennedy School of Government at Harvard University.



**David M. Genender** has been recognized by his peers as among the Best Lawyers Under 40 in Dallas in the May



2004 issue of *D Magazine*. This is his second appearance on the list.

**Shelton M. Vaughan** and his wife, Yone Vaughan, are happy to announce the arrival of a new baby boy, Lucas Collins, on June 29, 2004. Lucas joins big sister, Ashley, and big brother, James.



Bradley Arant Rose & White has named **Laura Parchman Washburn** a partner in the firm's Birmingham, Alabama, office. She is a member of the Corporate Practice Group. Her practice covers a broad variety of corporate issues, with a focus on public companies and compliance with federal and state securities laws. Washburn's work in the area of mergers and acquisitions includes experience in buying and selling companies, corporate divisions, and asset sales.

## 1995

**Victor Alcorta III** was named partner in the Austin office of Thompson & Knight. Alcorta is the leader of the firm's government relations and public policy practice group, where he focuses his practice on representing clients before governmental agencies and the state legislature, and counseling clients on campaign-finance regulations under state and federal law.

**Allyson Childs** was named the director of student programs at The University of Texas School of Law. Childs will act as a counselor and advocate for students and will work with Professor David Sokolow, director of student life. Childs worked for the U.S. Securities and Exchange Commission in Washington, D.C., and the Australian Stock Exchange in Sydney, Australia, before returning to Austin.

**Douglas A. Daniels** was elected partner in the Houston firm of Bracewell & Patterson, where he has significant experience in complex commercial litigation.

**Barbara Garcia** was appointed associate municipal court judge with the City of Austin in February 2004. She lives in Austin with her husband, Steven De Leon, and their two daughters, Leticia and Elizandra.

**Brian Graham** was promoted to shareholder at the Austin office of Jenkins &

Gilchrist, where he practices immigration law. Brian and Deena Brodsgaard Graham, '94, reside in Austin and have two children.

**Ann Perry O'Connell**, felony prosecutor with the Travis County D.A.'s office, was named Texas child abuse prosecutor of the year by the Children's Advocacy Centers of Texas for 2003. She was also named 2003 child abuse prosecutor of the year for Travis County by the Travis County Children's Advocacy Center.



**Shannon Ratliff**, of the Austin office of Bracewell & Patterson, has been recognized by the firm as a rising star for 2004.

Ratliff's practice focuses on lobbying.

**Thomas M. Tomlinson** was elected partner in the Houston firm of Bracewell & Patterson, where he concentrates on complex financial transactions in the energy sector.

**Major Susan L. Turley** was named staff judge advocate at Gunter Air Force Base in Montgomery, Alabama, in January 2004. She oversees the operations of an eight-person legal office supporting the Standard Systems Group, which handles the acquisition and sustainment of Air Force-wide information technology systems.

**Hunter E. Webb** has joined Hoffman, Warnick & D'Allesandro in Albany, New York, as a patent attorney. He was previously a general practice attorney specializing in bankruptcy at the Law Offices of Ed L. Laughlin in Temple, Texas.

## 1996



**Michael A. Blake** has recently started his own patent law practice in West Hartford, Connecticut. He can be reached at [www.blake-ip.com](http://www.blake-ip.com).



**Michelle Cheng** and **Laurie Higginbotham**, '99, both with Whitehurst, Harkness, Ozmun & Brees in Austin were named Texas Rising Stars Super Lawyers by *Texas Monthly* magazine in the July 2004 issue. Texas Rising Stars consist of the top 2.5 percent of up-and-coming Texas attorneys. UT Law produced the

most 2004 Rising Stars of any law school, with 26 percent of the recipients graduating from UT Law.

**Robert E. Kinney** has opened his own legal recruiting practice after two years of managing the Texas, Arizona, and South Central operations of a large legal recruiting firm.

**Rachel Matteo-Boehm** was named a partner at Piper Rudnick in San Francisco. Her practice is concentrated in media law and intellectual property counseling and litigation. Before attending law school, she was a reporter for the metropolitan section of the *Dallas Morning News*.

**William Prescott Mills Schwind** has been elected a partner in the banking, finance, and major projects practice group of Baker & McKenzie in Houston.

**Morris L. Sheats II** was named partner in the Fort Worth office of Thompson & Knight. Sheats is a member of the firm's trial practice group, where he focuses on commercial litigation. His expertise also includes defending claims concerning premises and products liability.

## 1997

**Roberto Anaya-Moreno** was appointed undersecretary of public attention and normativity of the Ministry of Public Function of Mexico on May 1, 2003.

**Mirut P. Dalal** has been promoted to partner with McAndrews, Held & Malloy in Chicago. Dalal has more than six years' experience writing patents in such diverse areas as video compression, wireless telecommunications, computer software and hardware, fiber optics, and biomedical devices.

**Jen (Gray) Moss** and her husband, **Brian Moss**, '98, welcomed a daughter, Emeline, into their family on February 17, 2004. Emeline joined big brother, Will, who turned two in June. Moss reports that Will has accepted Emeline with open arms and lots of sloppy kisses.



**Charlotte Rasche**, with the Houston office of Bracewell & Patterson, has been recognized by the firm as a rising

star for 2004. Rasche's practice focuses on banking and financial issues.

**Jay E. Ray** has joined the Plano office of Moseley Martens as a participating associate.

## 1998



**Bill Childs** has been named to the faculty at the Western New England College School of Law. Childs brings to the faculty extensive experience in mass tort, patent, commercial, and other litigation, including trial, discovery, appellate, and motions practice. Most recently, he was an associate with Williams and Connolly in Washington, D.C. Childs' legal writings include "The Intersection of Peremptory Challenges: Challenges for Cause and Harmless Error," which appeared in the *American Journal of Criminal Law*, and "The Implementation of FDA Determinations in Litigation—Why Do We Defer to the PTO but Not to the FDA?" published in the *Minnesota Intellectual Property Review* in spring 2004.



**Monica Marie Jacobs**, of Bracewell & Patterson in Austin, has been recognized by the firm as a rising star for 2004. Jacobs' practice focuses on environmental and land use.

**Brian Moss** and his wife **Jen (Gray) Moss, '97**, welcomed a daughter, Emeline, into their family on February 17, 2004. Emeline joined big brother, Will, who turned two in June.

## 1999



**Brian Beckcom** has formed a law firm in Houston with Vuk Vujasinovic. Vujasinovic & Beckcom focuses its practice on plaintiffs' personal injury and wrongful-death matters, with a special emphasis on offshore injuries, commercial trucking accidents, and oil field accidents.



**Bradley Benoit**, of Bracewell & Patterson in Houston, has been recognized by the firm as a rising star for 2004. His practice focuses on business litigation.

**Jeffrey Engerman** of Santa Monica has left his former firm to start his own practice prosecuting class-action pension benefit and 401(k) cases on behalf of plan participants. He also serves as the vice president of the National Center for Retirement Benefits in Northbrook, Illinois.



**Aisha Nawaz Hagen**, formerly of Thompson Coburn in St. Louis, Missouri, has joined Winstead Sechrest & Minick as an associate in Austin.

**Lars Hagen**, formerly of the Office of the Attorney General of Missouri, has joined the General Civil Litigation Division of the Office of the Attorney General of Texas in Austin.



**Laurie Higginbotham**, along with **Michelle Cheng, '96**, both with Whitehurst, Harkness, Ozmun & Brees in Austin, were named Texas Rising Stars Super Lawyers by *Texas Monthly* magazine in the July 2004 issue.

**Steven Runner** has been appointed counsel to Exxon Mobil Qatar, Inc., an affiliate of Exxon Mobil Corporation located in Doha, State of Qatar. He is responsible for providing legal support for sales of liquefied natural gas to Asia, Europe, and North America.



**Stephanie Perin Slobin**, of Bracewell & Patterson in Houston, has been recognized by the firm as a rising star for 2004. Her practice focuses on labor and employment issues.

**Jacqueline Watson** has joined the immigration firm of Hines & Leigh in Austin.

## 2000

**Siobhan E. Fitzpatrick** and Christopher Kratovil, both of Dallas, were married on March 13, 2004, in Fort Worth. Fitzpatrick continues to practice corporate law with an emphasis on securities work at Locke, Liddell & Sapp in Dallas. Kratovil practices appellate litigation with Hughes & Luce in Dallas. Three other members of the Class of 2000, Soumit Roy (in-house intellectual property lawyer at Texas Instruments in Dallas), Basil

Umari (bankruptcy associate at Andrews & Kurth in Houston), and Jason Ross (white-collar criminal defense lawyer at McManemin & Smith in Dallas) served as members of their wedding party. Numerous other Longhorn lawyers from the Class of 2000 also attended the wedding celebration.

**Sean Price Rasberry** has joined Pircher, Nichols & Meeks as a litigation associate. He is based in the firm's Los Angeles office. Before joining Pircher, Nichols & Meeks, Rasberry was a litigation associate for Harrington, Fox, Dubrow & Canter, a real estate law firm in Los Angeles.

**Patrick Ryan** spent the past four years in Europe, where he supervised the downsizing of two telecommunications companies. He married Wendy McCallum in 2002 and returned to university, where he received a Master of Laws (MBL-HSG) from the Universität St. Gallen (Switzerland) and a Ph.D. from the Katholieke Universiteit Leuven (Belgium). His dissertation was an interdisciplinary project involving the law, economics, and regulatory policy of wireless frequency allocation in the United States and Europe. In the summer of 2004 Patrick started his own law firm, PSR Law Firm, in Denver, Colorado (see [www.ryanlegal.net](http://www.ryanlegal.net)).

**Major Rachel VanLandingham** is now on active duty with the U.S. Air Force as the chief recruiter for the U.S. Air Force JAG Corps.

## 2001

**James D. Hornfischer**, author of *The Last Stand of the Tin Can Sailors: The Extraordinary World War II Story of the U.S. Navy's Finest Hour*, will be honored by the Naval Order of the United States with the 2004 Samuel Eliot Morison Award for Naval Literature. The prestigious writing prize—past recipients include David McCullough, Tom Clancy, Stephen Coonts, and former secretary of the navy John F. Lehman—is awarded to an American author "who by his published writings has made a substantial contribution to the preservation of the history and traditions of the United States Navy." The award was given to Hornfischer in a ceremony at the Racquet and Tennis Club in New York City on November 8, 2004. Published in February 2004 by Bantam



Books, a division of Random House, *The Last Stand of the Tin Can Sailors* is Hornfischer's first book—and the first book in sixty years to tell the full story of the Battle of Samar, where a squadron of small U.S. ships heroically upset a much larger Japanese battleship task force on October 25, 1944, thereby sparing General Douglas MacArthur's Philippines invasion force from disaster. A literary agent and former book editor, Hornfischer lives with his wife and three children in Austin, Texas.

**Dana Davis Paul** is pleased to announce the birth of her son, Caden James, on November 4, 2003.

## 2002

**Angela (McGee) Abney** and Mitchell Abney were married at the Lady Bird Johnson Wildflower Center in Austin on June 7, 2003. Serving in the wedding party were fellow law students and friends Danielle Greco, '02, Stephanie Fisch, '02, and Julie Carter, '02. Angela, formerly an associate with Bracewell & Patterson in Houston, also recently joined the Austin office of Martin, Disiere, Jefferson & Wisdom as an associate. Her practice will focus primarily on civil litigation and first-party insurance defense.

**Sean W. O'Donnell** has joined Husch & Eppenger as an associate attorney in the firm's General Business Litigation Practice Group. Before joining Husch, he served as judicial clerk for the Honorable Harry Lee Hudspeth, '58, of the U.S. District Court for the Western District of Texas. O'Donnell practices in Husch & Eppenger's Jefferson City, Missouri, office.

## 2003

**Adam Flick** is working as special counsel at the Dallas IRS office.

**Andrew D. Graham** has joined Jackson Walker in Dallas, as an associate in the Litigation Section.

**Michelle Smith** joined Lloyd Gosselink in 2003 and practices in the areas of water, environmental, and administrative law. She is a member of the firm's water practice group, assisting clients with various permitting and enforcement issues related to water supply and water quality. ☞

# Wagner

[ CONTINUED FROM PAGE 21 ] censorship or exclusion of models, studies, and other scientific inputs used in government decision-making. By contrast, industry-produced research is effectively exempted from the act.

Finally, a number of disparate regulatory programs provide regulated parties with additional privacy protections on the limited information they are required by law to produce. Trade-secret or confidential business information protections, for example, provide firms with a powerful vehicle for imposing costly and sometimes unjustified barriers to information about the potential harms of their products or activities. Under several statutes, this trade-secret claim can be asserted without substantiation, and the information is classified (whether it deserves the protection or not) until a member of the public requests it under the Freedom of Information Act. Even if the information is ultimately disclosed, there are no sanctions for an unjustified trade-secret claim. Not surprisingly, studies reveal that firms classify large amounts of information relevant to public health and environmental protection as trade-secret protected, often without basis. One facility even went so far as to claim a firm address as protected trade-secret information.

These cumulative legal provisions serve to perpetuate a state of near-ignorance about health and environmental protection and immunize regulated parties from contributing much-needed information about their products and activities. In order to correct this legal failure, laws and regulatory requirements need to be amended in ways that penalize regulated actors when they conceal adverse information or inappropriately attack damaging public research and reward actors for producing needed information. While this will require an enormous effort by regulators and even Congress, until current, counterproductive legal approaches are corrected, ignorance about environmental protection will prevail. ☞

*Wendy Wagner is the Joe A. Worsham Centennial Professor of Law.*

# Forbath

[ CONTINUED FROM PAGE 25 ] also meant the erosion of broad working-class support for social rights. Social rights talk fell into disuse. And the New Deal's institutional legacy became a great affirmative action program for white Americans.

In the 1960s, the doors of social reform opened once more, and this time, of course, it was African Americans who pushed them open. Because the limited system of social provision and labor rights bequeathed by the New Deal had failed most African Americans, public assistance stood as the primary federal protection against poverty for inner-city blacks, and many of the new "anti-poverty" programs of the 1960s were targeted at minorities. Many civil rights and labor leaders tried to craft a broader agenda, including jobs, housing, and health care as rights of all Americans. But the mass constituencies and organizations for such an agenda weren't there.


The lack of broad political support for the more costly social rights, including the right to decent work that was at the heart of Roosevelt's vision, explains why welfare was the terrain on which poor people's advocates fought their War on Poverty. It also explains why they, like civil rights advocates, so often turned to the courts in their battles. Indeed, Jim Crow supplied the first cases in which the Supreme Court recognized a limited constitutional duty to lift some of the handicaps of poverty. Thus, in 1966, the Court held that a person's poverty could not stand as a barrier to voting and that therefore the South's poll taxes were unconstitutional. Likewise, appeals from trials in Jim Crow courthouses dramatized how poor, lawyerless (and black) defendants could not enjoy equal justice, prompting the Court in 1963 to announce the states' constitutional obligation to provide counsel for indigent defendants in criminal cases. But voting and access to the courts already had constitutional moorings, and neither one is a social right like the right to adequate welfare provision.

Far from a right, however, welfare, until the 1960s, had been treated by the nation's lawmakers and courts as public charity—precisely *not* a right. So when

the federal judiciary set about transforming welfare into a right, it was behaving as though the Constitution actually did include parts of Roosevelt's Second Bill. This process first unfolded in hundreds of statutory construction cases that transformed a federal grant-in-aid to the states, to be administered as meanly as state and local officials saw fit, into a no-strings and no-stigmas national right to welfare. Federal public assistance had been crafted in the 1930s to allow states to apply their own standards of "moral character" and "suitability" for assistance, and during the intervening decades Congress had done nothing to disavow and much to reaffirm this tradition. Yet in 1968 the Court read the Social Security Act as though it embodied a congressional intent to provide for *every* needy family. The Court behaved as if the U.S. Constitution, like many others, contained a "directive principle," instructing courts to construe social legislation in light of a governmental duty to provide a basic subsistence for all citizens. And it made this social rights approach explicit in later equal protection and due-process cases, declaring that welfare was not only a "statutory entitlement" as deserving of due-process safeguards as traditional property rights, but also a means of bringing within reach of the poor "opportunities to participate in the life of the community." "Public assistance," said the Court, weaving social rights, in Rooseveltian fashion, into the Constitution's Preamble, was "not mere charity, but a means to 'promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.'" The federal courts used equal-protection scrutiny of administrative and statutory exclusions and due-process scrutiny of termination procedures to compel welfare authorities to enlarge the circle of eligible poor Americans. These strategies resemble the ways many constitutional courts around the world have set about providing a measure of judicial protection to social provision for the poor and vulnerable.

But with the spate of appointments by President Nixon in the mid-1970s, the Court cut short most of these constitutional developments. It refused to find any constitutional redress for the

"brute need" occasioned by public assistance that fell below subsistence levels. Was there no constitutional minimum in respect of a bare subsistence? Or, in a neighboring area of poor people's advocacy, no constitutional minimum in respect of education? The Court answered no, reasoning that choices about the allocation of public money for welfare, education, and other social goods were not ones for the federal judiciary to make, nor were courts well suited to judge what should count as minimally adequate education or subsistence. These judicial concerns about democratic accountability, separation of powers, and institutional limitations are serious ones. But they are no basis for saying that the Constitution safeguards no social rights. Limits on what courts can or should do don't tell us what the Constitution means, or what obligations it imposes on other branches and levels of government. The Constitution has many requirements that courts can't enforce, or can enforce only modestly, indirectly, and not to the hilt. Social rights may be one of them, as the Court itself came close to acknowledging.

FDR's logic remains compelling. An ill-fed, ill-clad, uneducated, jobless, and shelterless American can't participate on even a roughly equal footing in the political community or in the world of work and opportunity. Life itself, a measure of health and vigor, presentable clothes, a decent livelihood, shelter not only from the elements but also from the onslaughts of social and psychological debilitation—these are rock-bottom prerequisites of political equality, even more basic than education, and certainly more so than the niceties of apportionment and ballot access on which so much scholarly and judicial labor has been lavished since Roosevelt's day. It is a shame that the Court no longer will remind our lawmakers that, whatever the judiciary's distinct limitations, the nation is obliged to bring social rights out of constitutional exile. 

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*William E. Forbath holds the Lloyd M. Bentzen Chair in Law and is a professor in UT's history department. He is one of the nation's leading legal and constitutional historians.*

## Dzienkowski and Peroni

[ CONTINUED FROM PAGE 27 ] may also have conflicts in timing given the specific intra-firm arrangements that they may have for vesting and distribution of the shares. Thus, the advice and judgment given to the client may be colored by the lawyers' personal financial goals.

A clear example of how the equity investment affects the lawyer's judgment involves the client's negotiation with venture capitalists in drafting the venture capital term sheet. Because the law firm in many cases acquires preferred stock along with the venture capitalists, at the same price and terms, the law firm's interest is identically aligned with the interest of the venture capitalists in these negotiations with the client. The law firm desires everything that the venture capitalists desire. Thus, when the venture capitalists demand a low valuation, a big liquidation preference, aggressive anti-dilution adjustments, conversion rights, rigid protective provisions, and voting rights, these issues benefit the law firm as well as the venture capitalists. These provisions also weaken the current management's control of the company. Consequently, the alignment of the law firm's interest with that of the venture capitalists presents a glaring conflict of interest when the law firm acquires preferred stock in the same transaction in which it is representing the client in negotiation with venture capitalists. This is a fundamental conflict of interest that cannot be validly consented to by the client unless the client has the requisite expertise and knowledge regarding negotiation of the venture capital term sheet.

A second example involves the law firm's role in complying with the disclosure requirements under state law or the federal securities laws. A law firm with an interest in the client may downplay adverse items that should be more fully disclosed in the public offering documents. As we will discuss later, this impairs the lawyer's gatekeeper duties to the legal system and the client under the securities laws. The lawyer's obligation to the client and the legal system should be to advise full compliance



with the law, but strict compliance may in fact lead to a reduction in the value of the law firm's equity investment. The argument that lawyer equity investments more closely align the interests of the client and the lawyer overlooks the fact that it is the entity itself, not the start-up entrepreneurs and venture capitalists, that is the client deserving of the lawyer's protection.

A third type of conflict arises when the client experiences financial difficulties and the venture capitalists exercise their contractual and market power to strong-arm the founders into positions that place the current management at risk. If the economic viability of the client is uncertain, the venture capitalists may propose that they will fund an additional round of preferred stock financing only at a substantial devaluation that dilutes the founder's common stock interests. The interests of the common stockholders and the preferred stockholders are adverse. Moreover, given that the law firms in many of these cases have taken preferred stock equity, their interests are directly adverse to the interests of the common stockholders. The law firms may owe duties to their former clients—the founders who are now in the position of being forced out of the company. This situation also may raise significant "who is the client" issues, as it may be difficult to identify the best avenue for the entity client. Perhaps, in a down round financing, the common stockholders, the preferred stockholders, and even the board of directors should each have their own lawyers representing them in the negotiations. In some cases, the venture capitalists insist on removing the founders from the board of directors and from management of the company. In such situations, a law firm with financial interests closely aligned with the venture capitalists would have a difficult time offering independent legal advice to the management of the corporation, the entity client of the law firm. With the downturn in equity markets, the power shifted from entrepreneurs to venture capitalists, and law firms working in this area were under considerable pressure to keep the venture capitalists on board. One could refer to this as the shifting of interests from the

founders to the venture capitalists, which, in turn, creates a "shifting" conflict-of-interest problem. It is difficult to believe that a law firm with an equity investment could remain as counsel to the company and provide independent and competent legal advice in this situation.

A fourth example of a conflict arises when the client, through its founders, has misled all of the investors, including the law firm. When the law firm discovers the "fraud," both of the alternatives available to the firm pose ethical dilemmas. On the one hand, the law firm could continue to represent the corporation and keep its discovery quiet until it sells its shares on the open market, thereby violating the federal securities laws. On the other hand, it could find itself withdrawing from the representation and leading the lawsuit against the former client in an attempt to recover its share of funds. Even though the client is culpable in this situation, the law firm's investment causes the firm to turn into a plaintiff against the client. This is a troublesome development that would not arise if the firm did not own the equity interest.

A final example involves the incentives of a lawyer who holds equity in a client. The lawyer who receives stock in the issuer has a greater direct interest in the success of the offering and, thus, "has an interest in seeing the stock price climb in the immediate after-market (either as a result of optimistic statements in the prospectus or of underpricing by the underwriters)." The compensation arrangement in which a lawyer for an issuer in an IPO receives stock as payment for the legal services raises at least two additional potential conflict-of-interest problems vis-à-vis the lawyer and the issuer client. Underwriters tend to significantly underprice the initial offering price of stock in an IPO in order to create the potential for a large run-up in the price of the stock on the first day of trading. The issuer looks to its counsel to assist in negotiating with the underwriter to limit the amount of the underpricing. However, if the lawyer is paid in stock priced at the initial public offering price, the lawyer has a conflict with the client, since the lawyer's finan-

cial interests are enhanced if the initial offering price is low and the stock runs up in value in the first days of trading.

Furthermore, since IPOs on average tend to underperform with respect to comparable firms in the equity market during their first year of issue, the lawyer who receives stock in payment for legal services in an IPO has a financial incentive to sell the stock as soon as he may do so under the securities laws. However, this may harm the lawyer's relationship with the issuer client, who may be upset that the lawyer wants to sell its stock so soon after the initial public offering. It may also create a conflict between the lawyer and the client concerning when favorable information should be publicly released by the issuer—the issuer client may have sound business or legal reasons for delaying the release of the information, but the lawyer may pressure the client to release the information to enhance the value of the stock before sale.

A lawyer who holds equity in a client focuses on an exit strategy—deciding when she should sell her equity interest in the client. This observation completes the analogy between the lawyer and the venture capitalist. Both seek to maximize the return on their investment. Both have competing demands for their capital. The law firm entered the arrangement to represent the founding entrepreneurs in their dream of taking a company public. The founders and the venture capitalists often have inconsistent goals for the entity. An independent lawyer would be far more likely to represent the interests of the client without the impairment of judgment that occurs when the law firm aligns itself with the venture capitalists. In many of these cases, the lawyer will not clearly disclose to the founders the shift in motivation resulting from the lawyer's pecuniary interests. And when law firms own capital in many different clients, the motivations truly mirror the venture capital model. The founders who control a corporation may find themselves directly in conflict with their lawyers as well as their venture capitalists.

Some commentators have stated that these problems "do not appear to be any more significant than . . . in the

contingent fee setting.” On a general level, this argument is appealing. A lawyer invests time in a client’s business and is rewarded when the markets react to the value of the business model created in part by the lawyer’s work. But a more careful examination of this analogy shows its flaws. In litigation, the contingent fee is applied to monies received in settlement or through a jury verdict. Once finality sets in, the lawyer receives the contingent fee, and in the vast majority of cases there is no ongoing relationship regarding the subject matter of the litigation. Furthermore, the details of the litigation example have been worked out through decades of practice, and the lawyer’s conduct occurs in a setting before a tribunal with significant procedural and substantive rules. Contingent fees in the nonlitigation setting have been more innovative, but in the vast majority of instances, the lawyer does not own an interest in the client’s business activities. It is the ownership of an interest in the client and the ongoing representation that in a sense make the lawyer part counselor and part client-owner of the venture. In the vast majority of contingent fee arrangements, the client is in complete control of the lawyer’s continued involvement. By contrast, in the equity-investment-in-client situation, the lawyer is in complete control of when he chooses to divest himself of the ownership interest in the client. The client does not possess information about the lawyer’s goals and desires regarding the decision to retain or dispose of the equity interest. In fact, the law firm may have many opportunities to sell out, and these timing issues are unlikely to be completely congruent with the interests of the client. Thus, in the nonlitigation representation, a divergence of interest is more likely than in the contingent fee litigation setting.

Additionally, equity-based compensation arrangements may harm the client by creating or enhancing the perception that the lawyer’s independence of professional judgment is impaired. This, in turn, will undermine the credibility of the lawyer’s legal opinion in the eyes of third parties or government regulatory agencies, thus preventing the lawyer from


providing the client with the opinion that is acceptable to such parties. One of the important roles of an attorney is to certify to such parties the legality and respectability of a corporate client’s past or future conduct. Accordingly, the attorney’s reputation for integrity and independence is a key asset and an important component of the attorney’s reputational capital.

Under the general rules of ethics, a lawyer who accepts an equity interest in the subject matter of the representation should disclose several other risks relating to the continued representation of the entity to the client or clients before accepting the interest. A lawyer who has an interest in the business deal may automatically be foreclosed from representing the parties in many actions arising out of the business venture because of a conflict of interest. Thus, the acceptance of an interest in the venture gives the lawyer a financial stake in the enterprise, which, in turn, would preclude many future representations. This risk must be disclosed to the client, and the lawyer could face a very difficult situation if a suit later develops against the former client.

Apart from conflicts created between the law firm’s interests and the client’s interests, a firm equity investment in a client is likely to accentuate conflicts with other current and former clients of the firm. When a law firm owns interests in one or more clients, the conflicts that arise among the clients who may be competing generally or specifically with each other seem extremely complex and difficult to manage. The fine line between connections, relationships, and conflicts seems difficult to balance. The lawyers may have lost faith in the business model of the client and may decline to make the introductions of the client to the venture capitalists, as promised at the time of engagement. In such a case, the lawyers do not want to taint their reputations in the venture capital community and harm their credibility in the representation of other start-up clients. Obviously, the law firms seek to pick the clients who are the winners in the marketplace. And, given that the law firms have ongoing representations of other clients who are seeking capital from the same venture capitalists, the

firm’s desire to stay on the good side of the venture capitalists may have an effect on the representation of the client. Furthermore, large law firms sometimes represent the venture capitalists on other matters at various other times, thus complicating the decision on whether to continue to represent a failing client.

The future conflict-of-interest problem raises several possibilities. Either the law firm will need to obtain the consent of the clients or try to go forward without consent. Obtaining consent from all of the affected parties is a very difficult process because of the disclosure that is needed to make the consent informed. In many instances, the law firm and its clients cannot easily disclose all of their legal positions or business plans without suffering significant harm. If the firm decides to go forward in all of the representations without obtaining consent, it has failed to follow the requirements of the conflict-of-interest rules and has decided to pursue a perilous ethical course.

Alternatively, the firm may seek to withdraw from one of the clients. Some commentators have complained that lawyers in the Silicon Valley often “dump” their clients for another current client. Those now former clients are likely to seek redress through disqualification motions or malpractice actions against the law firm. Although this “hot potato” issue in conflicts has been debated significantly in the litigation context, a lawyer dropping one client (like a hot potato) for another client in the nonlitigation context also poses some troubling questions. Could the law firm have stayed in the representation had it not taken equity investments in the client? What is the harm to the client from the law firm’s withdrawal? And, should the firm consider withdrawing from all of the affected representations? At this point, one must question whether lawyers qua lawyers should engage in non-law-related behavior that has a significant impact on their independent judgment for all of their clients. 

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# Black, Cheffins, and Klausner

[CONTINUED FROM PAGE 29] ultimately bear the cost of high insurance premiums, but so far have not objected.

The bottom line is that only an unlikely convergence of conditions can lead to outside directors' facing out-of-pocket liability: (1) significant evidence of director culpability; (2) an insolvent company; (3) inadequate D&O insurance, either because the insurer can plausibly deny coverage or because damages greatly exceed the policy limits; and (4) one or preferably several outside directors who are seriously wealthy and thus constitute sufficiently attractive lawsuit targets to offset the costs and risks of taking a case to trial. Without this sort of "perfect storm," outside directors have little reason to fear that they will have to pay personally as a result of litigation.

## ARE THINGS CHANGING?

WE DON'T THINK SO. THE SARBANES-OXLEY Act of 2002 is one source of concern, since it imposes additional duties on outside directors, especially audit committee members. Sarbanes-Oxley, however, does not create new ways for shareholders to sue. Moreover, failure to fulfill the new obligations will constitute carelessness or perhaps disclosure infractions, not self-dealing. Thus, suits against directors are likely to be handled much as they have been to this point.

A recent ruling in an ongoing case against directors of the Walt Disney Company, based on allegations of conscious inattention to a rich severance package awarded to former Disney president Michael Ovitz, has also raised concerns about liability under corporate law. But this case was decided on a preliminary motion, where the judge was legally required to assume that the plaintiffs' characterization of the facts was true. The directors' story, which is likely to create some shades of gray, has yet to be heard. Moreover, even if the case proceeds to trial and the directors lose, any damages should be covered by Disney's D&O insurance.<sup>5</sup>

5. One of us (Black) was briefly retained as an expert witness on the Disney side of this lawsuit.

Liability fears have also cropped up during the past few years because some insurers have threatened to rescind D&O coverage on the grounds of application fraud, alleging that company management supplied false financial statements when purchasing insurance. By and large, however, these insurers have ultimately negotiated reduced coverage limits rather than walking away entirely. Meanwhile, insurers are now offering noncancelable policies that protect outside directors against future claims of application fraud.

## DIFFERENT COUNTRIES, SAME CONCLUSION

FOR DIRECTOR LIABILITY OUTSIDE THE United States, the legal terrain differs considerably from country to country. The bottom line, however, is the same: there is only a remote chance that outside directors of public companies will pay anything out of pocket. Our study of three common-law countries—Australia, Britain, and Canada—and three civil-law jurisdictions—France, Germany, and Japan—found that litigation against outside directors is rare and out-of-pocket liability is very rare, though not entirely absent.

In these six countries, a common theme is that procedural factors do much to insulate outside directors from lawsuits. For instance, for a breach of duty under corporate law, usually only the company itself can sue and shareholders have much weaker rights, compared to the United States, to sue on a company's behalf. Procedural factors also discourage securities law claims against directors. In the United States, almost all securities suits are brought as class actions, on behalf of thousands of shareholders. A U.S.-style class action is impractical in most civil-law countries, including France, Germany, and Japan. In Australia, Britain, and some Canadian provinces, securities class actions are permitted, but "loser pays" rules, under which plaintiffs must reimburse the directors' legal costs if the directors are found not liable, discourage the common U.S. strategy of suing all plausible defendants. Even where a company is insolvent and cannot pay, plaintiffs often ignore directors and sue only auditors and other professional advisors.

In all six countries, public officials can seek sanctions against directors for breach of legislative obligations. In practice, however, efforts to prosecute outside directors of public companies are rare. One recent exception: In 2003 German prosecutors brought criminal charges against two members of the Mannesmann supervisory board based on allegations that executive bonuses the board awarded after Mannesmann agreed to be acquired by Vodafone were improper. The prosecution was unsuccessful, but at press time the prosecutors were contemplating an appeal.


In our cross-border study, we did encounter isolated instances where outside directors personally paid damages or a financial penalty. Still, two trends should ensure that the risk of out-of-pocket liability remains small. One is expanded use of D&O insurance, with growing numbers of companies purchasing policies and negotiating higher coverage limits. The other is legislation that responds to the instances of out-of-pocket liability risk by improving director protection. Japan offers a striking example: a couple of high profile cases against inside directors led to a 2002 reform, which lets companies limit outside directors' legal damages to two years' compensation (perhaps US \$80,000 to \$100,000). This is an amount low enough to ensure that, even if there are several outside directors who can potentially be sued, hardly anyone is likely to do so.

## IS THIS GOOD POLICY?

OUTSIDE DIRECTORS' NEARLY COMPLETE insulation from personal liability for conduct short of actual self-dealing raises an important question: Is this good policy? We believe that it probably is.

To begin with, outside directors have a number of reasons to do their jobs diligently. Many own the company's shares or hold stock options; these holdings can sometimes be a significant fraction of a director's net worth. Directors are also professionals who are motivated by prevailing norms of proper boardroom behavior. Moreover, most will be keen to preserve and enhance their reputations for business acumen. Mismanagement or scandals occurring

on their watch can harm their reputations, even if no lawsuit results. The potential harm to reputation likely increases if a suit results in a sizeable settlement, even without out-of-pocket liability. The former outside directors of Enron and Tyco, for example, have not paid a dime to settle lawsuits but have been publicly shamed nonetheless. Lastly, directors will be eager to avoid the time and aggravation that a lawsuit entails.

From a policy perspective, a significant risk of out-of-pocket liability would also impose large costs. Good candidates, especially those with significant wealth, would no doubt regularly decline board seats—more than they reportedly do today. A shift toward personal liability would also cause boardroom fees to rise as directors demanded compensation for bearing the additional risk. This greater compensation might in turn make outside directors hesitate to “rock the boat” in a way that could cost them their appointments. Greater liability might also lead directors to act defensively and reject sensible business gambles for fear of the consequences if things went badly. Paradoxically, then, greater out-of-pocket liability risk could lead to less independence and worse governance. We do not claim that directors’ incentives are always sufficient to induce proper vigilance. Scandals will surely continue to emerge to highlight directors’ failings. But if most directors are reasonably vigilant already, and if greater personal liability would have important adverse consequences, the current system might not be far from optimal. 


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## Berman

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[ CONTINUED FROM PAGE 31 ] and whether fruits of an unwarned statement are themselves admissible. I have argued at length elsewhere (but will here only assert) that such questions can be resolved more satisfactorily when doctrine is analyzed into separate operative-proposition and decision-rule components. The Court has divided in a series of cases over the scope of Congress’s power under section 5 of the Fourteenth Amendment to enforce that amendment’s substantive guarantees. That question turns on whether the scope of a challenged statute is “congruent and proportional” to a judicially recognized constitutional violation. Were the Court to appreciate that doctrine consists of operative propositions and decision rules, however, it would be driven to acknowledge that federal legislation must be congruent and proportional not to the doctrine full stop but only to that part of the doctrine that represents a constitutional operative proposition. And where a decision rule effectively underenforces its operative proposition, the net result is that Congress should have broader enforcement power than the Court’s current approach allows.

I don’t mean to make extravagant claims for this particular take on the taxonomic project. The distinction between judicial determinations of constitutional meaning and judicially crafted instructions for how courts should decide whether given constitutional meaning has been complied with cannot eliminate substantive disagreements in the shaping of constitutional law. A large role for subjective judgment is inescapable. But if the distinction between decision rules and operative propositions is sound, then embracing it will not just mirror our reality more faithfully; it will have consequences. That’s how conceptual frameworks work. 

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*Mitchell Berman works in both constitutional law and criminal law, and is especially interested in the conceptual structures of these domains. Portions of this essay are drawn from recent articles in the Virginia Law Review and the Iowa Law Review.*

## Innocence

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[ CONTINUED FROM PAGE 41 ] documents, investigation, and class discussion is part of the teaching. It’s a longer, more rigorous way of learning, but it is the way real lawyers learn,” Allison notes.

“It’s an important distinction because there are lots of cases that merit a reversal or retrial for these reasons. But that’s not what we’re looking for. When we go into court we want to prove our client didn’t commit the crime,” Sheppard says.

That’s not an easy job, but it becomes easier when the cause is rewarding, says Preston Findlay, a clinic student who aspires to be a public defender. “I can’t think of anything more rewarding than giving an innocent prisoner his or her life back,” he says.

While freeing an innocent person from prison is the ultimate reward, the publicity generated by an exoneration case also has the potential to bring about changes in the criminal justice system. “When it hits, the news is all over,” Allison says, noting that the Ochoa case he worked on was covered worldwide in the press. “The cases that result in exoneration are so startling that they tear at people’s hearts. It is the unthinkable.”

Sheppard says his hope for the clinic is that it will serve as a real-world resource for anyone who has ever been convicted of a crime he or she didn’t commit. “My hope for the students is that they leave the class with an understanding of how our legal system actually functions and how innocent people can be convicted despite all the procedural protections built into the system,” he says.

The clinic instructors can’t promise their students that they will exonerate an inmate during their law school careers. But Allison, Dawson, and Sheppard do guarantee that the more cases the clinic investigates, the closer they come to that goal. And they are certain that during this process students will learn how to analyze and investigate not just criminal cases but any case. Remaining ever hopeful, Dawson adds, “And if we manage to spring somebody—that will be glorious and we will celebrate.” 

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*Laura Castro Trognitz, ’97, is communications strategy manager for the Law School.*



# IN MEMORIAM

THROUGH SEPTEMBER 2004

**Professor Corwin W. Johnson**, a professor at the Law School for almost six decades and a national expert on property law and water law, died Thursday, July 29, 2004, at 86. *For a memorial tribute, see page 17.*

**Maurice Randolph Bullock, '36**, died August 15, 2004. He was a partner with Silliman and Bullock, county attorney of Pecos County, and founded Bullock, Kerr and Scott and Bullock, Scott and Neisig. He was president of the State Bar of Texas (1955-56), first chairman of the State Securities Board of Texas (1957-66), director of the American Judicature Society (1957-61), and trustee of the Southwestern Legal Foundation (1969-88). In 1993 an Endowed Presidential Scholarship was created in honor of Maurice Bullock at the Law School.

**Elliott G. Flowers, '37**, died April 13, 2004, at 91. He worked for McCarthy Oil and Gas Corporation and Allied Chemical Corporation.

**Armond G. Schwartz, '38**, of Hallettsville, died June 2, 2004. As an undergraduate at UT, he was an undefeated debater, winning the NCAA national competition. He was editor of the *Texas Law Review* and a member of the Order of the Coif. He practiced with his family law firm, Schwartz & Schwartz, for 63 years.

**Jackson N. Townsend, Jr., '38**, died March 14, 2004, at 89.

**Max Harris Wier, Jr., '38**, died March 6, 2004, at 89. He became his

father's partner in the law firm of Wier and Wier in San Antonio. He later worked for the USAA Claims Division. He was a founding member of both the Federal Insurance Council and the National Insurance Crime Bureau.

**The Honorable Reynaldo G. Garza, '39**, died September 14, 2004. He was the country's first Mexican American federal judge when he was appointed by President John F. Kennedy to the Southern District Court in 1961. In 1979, President Jimmy Carter appointed Garza to the U.S. Court of Appeals for the Fifth Circuit. He was the first Mexican American to sit on that bench. He assumed senior status in 1982 and continued to work until a month before his death. Two elementary schools, one in Brownsville and another in McAllen, bear his name. He has been honored as a Distinguished Alumnus by both the UT Ex-Students Association (1989) and the UT Law Alumni Association (1994).

**Gilbert Morgan Denman, Jr., '42**, died May 16, 2004, at 83. He donated his extensive collection of Greek and Roman artifacts to the San Antonio Museum of Art. He was a third-generation member of Denman, Franklin & Denman, founded by his grandfather, Texas Supreme Court justice Leroy G. Denman.

**Alfred Schulman, '42**, died April 23, 2004, at 84. He joined the Law Firm of Chris Dixie, '36, and later established a practice with J. Edwin Smith, '37, and Jack Rawitscher, '57.

**Rex Gavin Baker, '47**, died March 21, 2004, at 83. He served as president and chairman of the Southwestern Savings and Loan Association, later known as Bank United, from 1952 to

1979. He was also a founding member of Baker, Sharman and Wise, now Thompson and Knight. In 1977 he was honored as a Distinguished Alumnus of UT and was a recipient of the Pro Bene Meritis Award from the College of Liberal Arts. He endowed the Rex G. Baker Chair in Natural Resources Law at the Law School.

**Waggoner Carr, '47**, died February 25, 2004, at 85. Carr, a Democrat, spent two years as the Lubbock assistant district attorney, three years as a Lubbock County attorney, and ten years as a state representative. From 1957 to 1961, he was the Speaker of the Texas House of Representatives. In 1963 he began a four-year term as the attorney general of Texas. In 1971 he was tried on federal fraud and conspiracy charges for the Sharpstown stock fraud scandal but was acquitted. In 1977 he wrote a memoir, *Waggoner Carr, Not Guilty*. He worked with the firm of DeLeon, Boggins & Icenogle from the late 1970s until his death.

**Paul G. Davidson, '47**, died February 26, 2004.

**Joseph Francis Turpen, Jr., '48**, died May 2, 2004. Most of his practice was related to the oil and gas industry. He was a member of the Exxon Mobil Retiree Club of Lake Houston.

**Harold H. Young, Jr., '49**, died April 28, 2003. For 5 years he was a partner in Ragsdale and Young in Dallas. For 20 years he worked for Standard Oil, Pan American Petroleum Company, and Amoco Oil Corporation. For 22 years he worked for El Paso Natural Gas Company.

**Harry Loftis, '50**, died December 9, 2003, at 83. He was an assistant county

attorney, a criminal attorney, and was appointed by Governor Allan Shivers, '33, as Smith County's first criminal district attorney. He served as county judge from 1958 to 1965. He was then executive vice president of Tyler Bank and Trust Company until returning to his law practice in 1970.

**John T. Simmons, '51**, died April 19, 2004, at 82. He was a commercial real estate attorney at Prudential for 34 years.

**Arthur Burch "A.B." Waldron, Jr., '51**, died April 28, 2004, at 75. He co-founded Southwest Land Title Company, now North American Title Company, where he served as chairman and president. He retired in 1997 after 52 years of service in the land title industry. He was recognized as an honorary member of the Texas Land Title Association for sustained and meritorious service, the highest award presented by the association.

**Herschel Bernard, '52**, died April 28, 2004 at 77. He practiced law in San Antonio for more than fifty years.

**Roger Finnacle Robinson, '52**, died January 6, 2004, at 74. He was a partner in Robinson, Strawn and Robinson in Raymondville from 1953 until its dissolution, and then was a solo practitioner until his death. He was also an attorney for the Willacy County Navigation District and Willacy County Drainage Districts Number One and Number Two.

**Delmar Lee Sroufe, '53**, died April 17, 2004. He was an intellectual property attorney with Baker & Botts for 25 years. Near retirement age, he joined the firm Bard, Groves and Sroufe. He then cofounded Sroufe and Payne.

**Marvin F. Sentell, '55**, died April 15, 2003, at 73.

**Thano Dameris, '56**, died February 12, 2004, at 72. He practiced in Houston until 1966, when he was appointed by President Lyndon B. Johnson as assistant to the director of the FDIC. After completion of his term, he returned to Houston, where he practiced law and owned and operated several local banks.

**The Honorable Jerome Anthony Dellana, '57**, died March 9, 2004, at 71. After law school, he was an assistant county attorney under Judge Tom Blackwell, '47. When Blackwell was promoted to County Court at Law, he was appointed Travis County attorney. He was elected justice of the peace and then judge of County Court at Law #1. In 1974 he was elected judge of the 201st District Court and presided there for 21 years. In addition, he served in the U.S. Army Reserves in the First Judge Advocate General detachment.

**Richard Curry Giles, Sr., '57**, died June 23, 2004. He worked with Allstate Insurance Company for forty years in San Antonio, Houston, and Dallas.

**Audrey Elizabeth Poulos, '59**, died May 4, 2004, at 79. She graduated from the Law School as one of only two women in her class. She returned to Texarkana to practice with Raffaelli and Keeney. In 1963 she established the Law Office of Audrey E. Poulos. She was appointed the first female municipal court judge for the City of Texarkana. She served in that capacity for 29 years and in 1994 returned to her law and mediation practice.

**David Caldwell, '65**, died April 29, 2004, at 66. He served in the U.S. Navy until 1965 when he joined his father's law practice and oil business in Dallas.

**Thomas Nendell Crowell, '65**, died March 31, 2004, at 63. He joined the Houston law firm of Hutcheson and Grundy, where he served as partner for 26 years. He was president of the Houston Estate and Financial Forum.

**Dr. Charles William Bailey, Sr., '66**, a surgeon and general practitioner who became President Lyndon B. Johnson's friend and personal physician, died February 17, 2004, at 86. He was a fellow of the American College of Legal Medicine. He practiced medicine in Austin until his retirement in 1985.

**Phillip Lynn Sampson, '66**, died April 21, 2004, at 66. He practiced at Vinson & Elkins until 1972, when he

joined FirstCity Bancorporation. At FirstCity, he was an executive vice president and corporate secretary.

**John Richard Lock, '67**, died January 21, 2004, at 62. He earned his C.P.A. while practicing with Small, Craig, and Werkenthin. He then formed Lock and Virr, P.C. He was board-certified in estate planning and probate law as well as tax law. Despite 11 years of AMLS, he practiced law until his death and was photographed by *UTLAW* for the Spring 2003 issue.

**John C. Nabors, '67**, died June 14, 2004. During law school, he was an associate editor of the *Texas Law Review*, a member of Chancellors, and a member of the Order of the Coif. Nabors was a senior partner at the law firm of Gardere Wynne Sewell in Dallas, where he had practiced since 1989.

**Willie Phillips, '69**, died July 22, 2004. He was a 34-year member of the State Bar of Texas and became municipal court judge in Irving in January 2004.

**Stafford Hutchinson, '71**, died February 28, 2004, at 58. He worked as an attorney with the SEC and later as a law clerk to Justice Tom C. Clark, '22, U.S. Supreme Court. From 1974 to 1997, he worked for the Department of Justice as an assistant U.S. attorney for the Northern District of Texas, Dallas Division.

**Dennis Ray Garza, '86**, died March 29, 2004, at 42. He worked as a senior attorney and deputy division chief for the General Litigation Division under state attorney general Jim Mattox. In 1997 he became a litigator for American Airlines. He served as president of Austin LULAC Council 650 and South Austin Mexican American Democrats.

**Arvind Jewett Sudarshan, '86**, died June 13, 2004. During law school, he was a member of the *Texas Law Review*. He was admitted to practice law in Texas, Hawaii, and the U.S. Supreme Court.

**Mary Rene Miko Ryan, '02**, died March 31, 2004, at 32. 



# “Listen to the Book”

BY MICHAEL WIDENER

I ENCOURAGE AND HELP BOOK COLLECTORS, especially those who are UT Law alumni, because book collecting is good for libraries and libraries are good for book collectors. Collectors use libraries, keep the book market healthy, and contribute to libraries with their knowledge, their advice, their collections, and their pocketbooks. Libraries in the United States have a long tradition of encouraging book collecting. Since private collections often end up in libraries, it's in our best interests as librarians that these collections be well built.

On a personal level, I love book collecting, and I want to share the fun. Book collecting at its best is a social activity, based on a web of relationships with book dealers, librarians, and fellow collectors.

What is book collecting? For me, it is more than merely accumulating books. It is gathering books that have something in common. Collections of a particular author or about a certain subject or activity are popular. Some collections are built around a literary genre or physical aspects of the book, such as bindings or illustrations. I've thought it would be fun to collect books by curmudgeons. The possibilities are endless, and discovering your own collecting theme is a big part of the fun.

Whatever that theme is, the cardinal rule is to collect books that are interesting to you. “Listen to the book,” writes Colin Franklin in *Book Collecting as One of the Fine Arts*. “I believe in those moments of identity as revelations of a collector's truth . . . reasons appear later threading these beads together. Without scheme or shrewdness, a subject is born.” I follow this rule in building the Tarlton Law Library's Rare Book Collection. We do not collect rare books. We collect interesting books that are valuable for the study of law and legal culture.

By following your own interests, you are more likely to find books that are underpriced because they aren't appreciated by others. Over the long term, your collection will have more intrinsic value, and perhaps even monetary value. One of the great bookmen of modern times, Michael Sadlier, said, “In Nature the bird who

gets up earliest catches the most worms, but in book-collecting the prizes fall to birds who know worms when they see them.”

The Internet has revolutionized the market in rare and out-of-print books. Never has information on books been so plentiful, and the Internet book market will continue to grow.

The largest online database,


Advanced Book Exchange, reports 12,000 dealers offering 50 million books. There have been a number of results.

In terms of supply, the Internet has shown that some books previously thought rare are actually quite

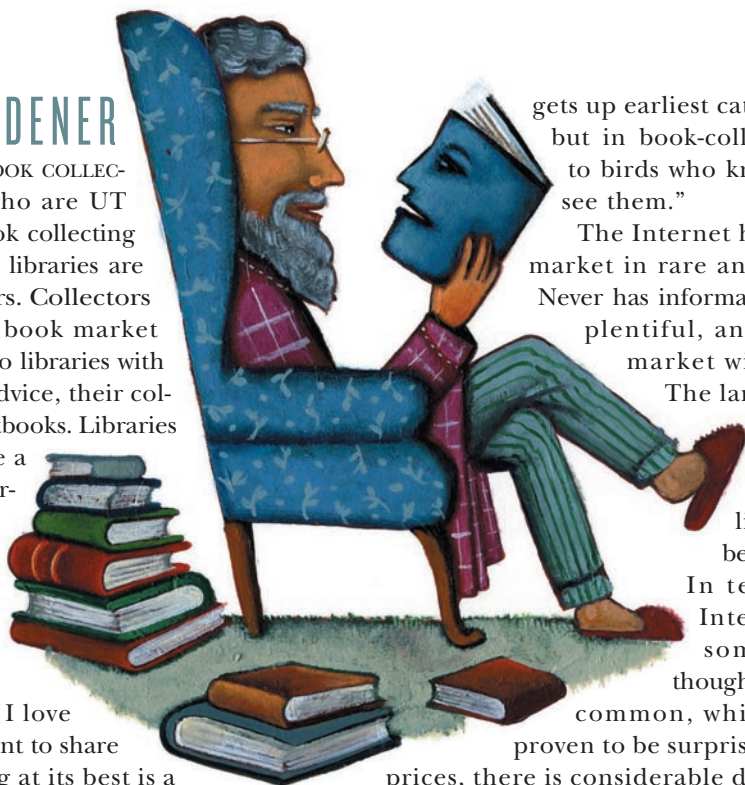
common, while other books have proven to be surprisingly rare. In terms of prices, there is considerable downward pressure on books in the lower price ranges, and comparing prices is vastly easier than it was 10 years ago.

However, the huge online inventory is deceiving. For most dealers, large portions of their stock are still not online. For books over \$1,000, catalogs and word of mouth continue to be important marketing channels. As a result, avid collectors of all kinds still need to form good relationships with dealers in their specialties. Book fairs are a great way to meet dealers and to learn about books. Major antiquarian book fairs are held annually in New York, Boston, and California, and there are a number of regional fairs, including the ones in Austin.

My “Introduction to Book Collecting” Web page, at <http://tarlton.law.utexas.edu/rare/bookcollecting.html>, has links to dozens of resources for book collectors, including the major databases, specialist dealers in rare law books in the United States and Europe, and reference sources on book collecting and related topics.

I'd love to hear from our alumni book collectors, beginning or advanced. I'm happy to share what I know, and eager to learn. Call me at (512) 471-7263, or e-mail me at [mwidener@mail.law.utexas.edu](mailto:mwidener@mail.law.utexas.edu), and let's talk books! 

*Michael Widener is the head of Special Collections, Jamail Center for Legal Research. This essay has been excerpted from the “Introduction to Book Collecting” seminar that the author presented at the 2004 Alumni Reunion.*



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A man and a woman in business attire are looking at a mobile device. The woman is in the foreground, wearing a black blazer over a white and blue striped shirt. The man is behind her, wearing a dark suit, light blue shirt, and a dark tie with small red dots. They are both looking down at a small device held by the woman. The background is blurred, showing what appears to be an office setting.

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