

THE
MAGAZINE
OF THE
UNIVERSITY
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SCHOOL OF
LAW

UTLAW



Our New Dean:
LAWRENCE G. SAGER

UT LAW
at the
UNITED STATES
SUPREME COURT

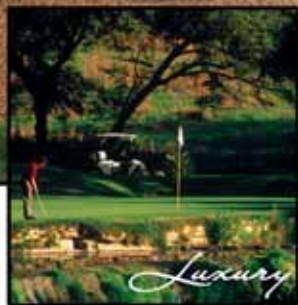
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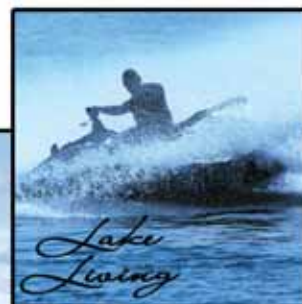
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UT LAW AT THE UNITED STATES SUPREME COURT

During its most recent term the Supreme Court agreed to hear only seventy-eight of the 8,517 cases filed. Of the cases selected for review this term, students and faculty in the Law School's Supreme Court Clinic and Capital Punishment Clinic have been involved in five—an unprecedented number of active Supreme Court cases at any law school in a single term. Story on page 18.

IN CAMERA



Photo: Claire Duggan



FROM LAW STUDENT TO JUDICIAL CLERK

In 2007, fifty UT Law graduates will clerk at the federal and state level in courts around the country, including a record twenty at the federal appellate level. The excitement about clerking among current students is the direct result of a dynamic new clerkships program. Story on page 22.

IN CAMERA



Photo: Marsha Miller



Recently appointed law school dean Lawrence Sager was the keynote speaker at the *Texas Law Review's* annual banquet, which was held last March. He noted that when he was appointed to this position more than a few people expressed the lingering concern that he just didn't look enough like a dean of the University of Texas Law School. At the banquet Sager offered as evidence to the contrary a portrait of O.M. Roberts, with whom he is photographed here, sporting a shock of white hair and a luxurious beard. Roberts, also called the Old Alcalde, was a former governor of Texas, one of the first two professors at UT Law School, and a primary force behind the establishment of the University of Texas.

OUR NEW DEAN

LAWRENCE G. SAGER

Tom Henninger, '92

Finding time on Dean Larry Sager's calendar is no easy feat. Experience tells me that's true of most deans, but it seems particularly so for the new dean of UT Law School. For one thing, he's been on the road a lot since he officially took office in September of last year—hosting law alumni members of the National Bar Association for breakfast during their annual convention in Detroit, or speaking to prospective students and alumni in Washington DC, New York, Tyler, Dallas, Edinburg, Brownsville, Harlingen, Los Angeles, San Francisco, Houston, and Fort Worth. Before the summer is over he'll meet with alumni in Austin, El Paso, and Atlanta. At these events he talks a bit about himself, a bit about the state of the Law School, and a great deal about his plans for the future.

In the fall of 2002, then-dean Bill Powers (now president of UT-Austin) asked Larry Sager, the Law School's new Alice Jane Drysdale Sheffield Regents Chair, to make a presentation to the board of trustees of the University of Texas Law School Foundation, the men and women who invest and oversee the Law School's endowment. The Foundation board is a Who's Who of lawyers—all of them gifted, all of them successful, all of them Texan. Legendary trial lawyer Joe Jamail serves on the board. So does Kay Bailey Hutchison, Texas's senior United States Senator. Harry Reasoner, the former managing partner of Vinson & Elkins is a member, along with Ken Roberts, current chair of the Foundation and former general counsel of Exxon. In short, it's an impressive and distinguished group. And Sager is an impressive and distinguished addition to UT Law. Lured away from his

lengthy tenure at NYU Law School, where he was instrumental in building that faculty into a national and international powerhouse, Sager brought with him an indisputable reputation as one of the nation's greatest constitutional theorists. He is held in high esteem by fellow scholars, by judges, and by the legal academy generally. But as much as Sager had going for him, he faced, at least as I saw it, a few hurdles. First, he was not a Texan. Indeed, he had come to Texas from New York, and not just New York, but New York City (although he grew up, like Powers, in southern California). Second, he did not look like a Texan. He had long, curly, sometimes unruly, hair—and a beard to match. And third, he was going to advance a new constitutional approach to the thorny issue of religious liberty. (See an excerpt from his recently published book, *Religious Freedom and the Constitution*, co-authored with Christopher L. Eisgruber, on page 12). Despite these challenges, his presentation to the Foundation's Board of Trustees was a great success, and was like Sager himself—erudite, articulate, courteous.

"An outstanding Texan by choice"

I don't know what the trustees thought about Sager before his presentation that fall day in 2002. Perhaps they shared my concerns, perhaps not. But I do know that they became increasingly engaged with him during the presentation, and that they asked specific and thoughtful questions afterward. They were genuinely taken with the man and his message. So much so that at the announcement of Sager's appointment as dean, Tom Loeffler, a UT Law graduate, trustee of the Law School Foundation, former Republican congressman, former

chairman of the UT System Board of Regents, and advisor to several Republican presidents, including George W. Bush, was nothing short of effusive. "I am thrilled that Larry Sager is our new dean at the Law School," he said. "He's second-to-none as a scholar, teacher, and leader. Larry is one of the most dynamic individuals I have ever met, and an outstanding Texan by choice. I could not be happier with the decision or more confident about the future of our great Law School." Sager's predecessor, Bill Powers, who left the Law School to assume the presidency of the University, had this to say: "We recruited Larry to the campus about four years ago as one of the leading constitutional scholars in the country and, as a bonus, he also was enthusiastic about being a major player in helping build the Law School. That vision and ambition is a terrific asset we're going to have under his leadership."

Lawrence Gene Sager was born and reared in Southern California by parents who cared deeply about social and political justice. These were, Sager recalls, the dominating forces in their lives, and they passed their values and passion on to their son. Even as a young boy, he had a curious mind and he loved books. He was an avid reader, consuming all the Sherlock Holmes and Father Brown mysteries, along with the seafaring adventures of Horatio Hornblower. And he loved to take things apart, figure out how they worked, then put them back together again. His room was always filled with broken clocks and other gadgets acquired through various means—including screening the neighbors' garbage—each in some state of assembly and repair. Sager knows that to understand the internal logic of issues

and arguments—and clocks and toasters—it helps to get inside things and learn how they work.

Sager was also an accomplished prankster when he was growing up and, not surprisingly, he most enjoyed playing pranks that involved machinery, about which anecdotes abound. In high school, one of Sager's science teachers bought a new car and, with an interest unique for the time, spoke to his class at some length about the vehicle's excellent gas mileage. As the weeks passed, the teacher became increasingly excited, then dismayed, as the car's fuel efficiency rose and rose, then declined to below the expected mileage per gallon. Finally, Sager and a fellow classmate confessed. They had slipped out to the parking lot each day and added gasoline to the tank and, when the teacher reported the car was averaging over fifty miles to the gallon, they began siphoning off the gas. In college, Sager combated a dorm neighbor's habit of playing his stereo loudly at all hours of the night by wiring it so that when other residents on the floor complained and the owner turned the dial down, the volume increased. This went on for a few minutes until the stereo was turned off entirely, at which point the machine came back to life, blasting Aaron Copland's *Fanfare for the Common Man*.

In high school Sager really discovered the power of language. He was active on the debate team, and he began writing in earnest. After high school, Sager attended Pomona College in Claremont, California, where he studied government and international relations and was active in the Model United Nations program. But it was an assignment in a freshman government course that first sparked Sager's interest in the law. He became "intellectually indignant" on learning that Congress could take away the jurisdiction of the federal courts, including the Supreme Court—the doctrine of separation of powers notwithstanding. When Sager expressed skepticism about this to his professor, the teacher sent him to the library to review cases on the subject, and so began his lifelong love affair with the law. Twenty years later, Sager would be given the honor of writing the foreword to the Supreme Court

volume of the *Harvard Law Review*. His subject: constitutional limitations on Congress' ability to restrict the jurisdiction of the courts.

Sager turned down a Woodrow Wilson Fellowship after college in favor of studying law at Columbia. His decision was based in large part on a lack of interest in one of the fellowship's requirements—teaching. The irony is not lost on Sager that three months after graduating from Columbia, he was on the faculty of UCLA Law School, and he's been teaching ever since. After UCLA, Sager spent thirty years at New York University before arriving at UT. From the outset, he was a superior student of the law. His lively intellect is revealed in his many writings which include, besides the recently published *Religious Freedom and the Constitution*, the widely hailed *Justice in Plain Clothes: A Theory of American Constitutional Practice*, dozens of law review articles, book reviews, and other scholarly presentations. Ronald Dworkin, Sager's colleague at NYU and one of the nation's leading legal philosophers, described Sager as "subtle, fast, and deep."

Sager is married to Jane Cohen, and they have eleven-year-old twins remaining at home. Cohen is not only Sager's wife, but also his colleague. Cohen is a respected member of the law faculty, with academic interests in, among other things, property and family law. She is, like her husband, thoughtful and caring and deeply engaged with the world around her. Sager and Cohen enjoy a wide and diverse circle of friends—academics, actors, artists, cab drivers, lawyers, musicians. They are friends—truly friends—with a vast array of individuals, and all are welcome around their table. For eighteen years, Sager commuted between Boston and New York, teaching at NYU but living with Cohen and their family in Massachusetts, where she taught at Boston University School of Law. He came to know the security personnel who worked for the Delta Airlines Shuttle so well that he delivered to each of them during the holidays one of his culinary specialties—apple pie.

During Sager's tenure at NYU, and to a great degree because of his efforts, that law school hired John Sexton and,

thanks to Sexton, Sager, Dworkin (whom Sager helped recruit to the faculty), and others, NYU Law School rose in the rankings from somewhere around 30th during the mid-1970's to 4th this year—surpassing Sager's *alma mater*, Columbia. You don't have to listen to Sager for very long to know that he has similar ambitions for UT Law. Following the groundwork laid by his highly successful and popular predecessor, and employing the strategies that led to success in New York, Sager is moving UT Law forward on several tracks simultaneously. Under Powers, the Law School committed itself to reaching the very first rank of law schools in the United States, and under his leadership we made real progress in that direction. Sager is eager to see this progress extended, at a faster pace and on a greater scale. He sees the Law School as "perched on the brink of extraordinary distinction." Because of its size—UT Law is one of the largest law schools in the country—Sager believes we can create more opportunities for specialized areas of study than is possible at smaller schools. As it is, the core is bracketed by a terrific set of clinical programs, by sophisticated offerings at the intersections of law and philosophy, economics, and history, and by programs with a global reach. Sager will continue to strengthen the core curriculum with a particular focus on faculty retention and recruitment, creating new intellectual and practice initiatives, and student support.

Faculty

Sager proposes adding as many as fifteen distinguished hires to the faculty as a short-term goal. He notes that Harvard is adding between twenty-five and forty members to their faculty, and that Yale and Stanford have begun expansions of their own. Given the stature of the faculty at UT, it should be no surprise that these law schools, and others, are coming to Texas on recruiting expeditions. So a strong emphasis on retaining faculty must be coupled with recruitment efforts.

Faculty size is especially important at this time in UT's history. First, the faculty/student ratio weighs heavily in national rankings. At UT, this ratio compares unfavorably not only to those at the top twenty law schools, but to law

schools with lower rankings overall. To the extent that both prospective students and faculty rely on rankings when choosing among schools, UT is at a disadvantage. Moreover, Sager argues, the faculty/student ratio undermines the school's efforts to achieve excellence in providing a contemporary legal education.

Emerging intellectual initiatives

Traditional casebook instruction remains essential, but this core has been expanded with the addition of important new initiatives and approaches that are much more faculty intensive. These programs include clinical education and specialized interdisciplinary initiatives, such as Law and Economics, Law and Philosophy, and Law and History, as well as global legal studies like international, transnational, and comparative law.

Sager supports these initiatives wholeheartedly. The Law School currently offers fourteen clinical programs, and he has increased or initiated funding for each. The newest clinic is the Supreme Court Clinic, launched in September 2006, and led by Professor Michael Sturley. In its first year of operation it can already claim a remarkable success: the first case appealed by the clinic was granted certiorari by the United States Supreme Court. That case was ultimately settled, but it was a significant experience for the students involved.

And this fall, the Law School's fifteenth clinic will open its doors. This new clinic, focusing on the civil and human rights of the Guantanamo Bay detainees, will be led by Professors Derek Jinks and Jack Ratliff, who co-taught a course entitled *Rule of Law in Wartime* during the fall 2006 semester. UT Law's preeminent constitutional law scholars will also be heavily involved in this effort. The clinic, combining experiential learning and theoretical analysis, will be the first of its kind in the nation.

Students

Sager is committed to recruiting the best students and to creating a diverse and inclusive community. To that end, and like Bill Powers before him, Sager has increased financial support of the activities of the Admissions Office for prospective student outreach.

Recognizing that students learn from extra-curricular projects, Sager has also increased support of student organizations across the board, enhancing both the educational and social experience. And because students learn from their peers as well, Sager will continue to build programs that enhance the diversity of the student body. One such program is the Law School's summer pre-law institutes in El Paso, Houston, San Antonio, South Texas, and the Valley. We know that these programs are responsible for an increase in minority applications and admission, and Sager is committed to helping them flourish.

A concern among prospective law students is the cost of a legal education. Even with substantial tuition increases over the past three years, UT Law remains a remarkable bargain in legal education. Texas residents pay nearly \$10,000 a year less than do California residents, and \$20,000 less than do students at our peer schools. A substantial portion of the recent tuition increases is used for scholarships. Still, law school tuition is expensive. Sager intends to increase scholarship assistance to keep UT competitive in student recruitment, and to lessen the growing burden of loans on our graduates.

Any discussion of student loans raises the issue of loan repayment. UT is the only school among the top twenty law schools that does not have a loan repayment assistance program (LRAP). LRAPs provide varying levels of loan forgiveness to graduates who accept lower-income jobs in the public interest. Sager has noted that such a program, though costly, has the dual benefit of easing the loan burdens of those who elect to work for the public interest and of attracting students who contemplate careers in public service. He established a faculty-student committee to research LRAPs, one which will shortly make recommendations on how to structure a program that will best serve the unique needs of UT Law students.

Space

It isn't news to current students, faculty, and staff that the Law School has run out of space. It is clear evidence of our success that there is a growing shortage of adequate room for clinics, student journals, and faculty offices—but that makes the problem

no less acute. In an effort to ease the space crunch, the administration has rented nearby, but off-site, space for the Continuing Legal Education offices, and it's looking for other remote space to further relieve the squeeze. Factor in the goals of increasing the size of the faculty and of increasing support for student initiatives, and the lack of space becomes a crisis. Without a solution to the current space problem, faculty and programmatic growth cannot be achieved.

A recently commissioned space study places the immediate space deficit at about 45,000 square feet. Assuming no growth of the student body and reasonable growth of the faculty and programs, the deficit will be in excess of 60,000 square feet in ten years. And like so many other things—the quality of the faculty and of the student body, the availability of scholarship support, cutting edge scholarship and pedagogy—the infrastructure matters, too. We need more space. A variety of options are currently under consideration, but addressing these infrastructure issues is another challenge Sager will tackle.

The pursuit of excellence

Sager's ambitions for the Law School will ultimately benefit all of its constituencies, but these ambitions require resources. Without resources, the pursuit of excellence remains a goal incapable of being realized. Later this year, the University of Texas will undertake a multibillion dollar capital campaign and the Law School will be a critical part of that endeavor. Sager will lead the Law School during this effort, and he has set a goal of historic size. You'll be hearing more about it in the months ahead, and when you do I hope you'll remember everything behind the appeal—the need to support our people so that our school can continue to flourish.

Sager has a vision for transforming this great Law School into the greatest law school. It's an ambitious vision, but then Sager's an ambitious fellow. Smart, charming, ambitious. UT Law School deserves such a dean.

TEN *Command*

**Three Plastic Reindeer,
and One Nation...Indivisible**

Commandments

Constitutional analysis of religious freedom has been hobbled by the idea of “a wall of separation” between church and state. That metaphor has been understood to demand that religion be treated far better than other concerns in some contexts, and far worse in others. Sometimes it seems to insist on both contrary forms of treatment simultaneously. Missing has been concern for the fair and equal treatment of religion. In response, the authors offer an understanding of religious freedom called Equal Liberty.

This article is an excerpt from chapter four of *Religious Freedom and the Constitution*, written by Lawrence G. Sager and Christopher L. Eisgruber, published earlier this year by Harvard University Press. It is reprinted here without footnotes. The full text of this chapter, with footnotes, can be found on the University of Texas School of Law’s website, at www.utexas.edu/law/faculty/lsager/religiousfreedom_excerpt.pdf.

Early one December day some years ago, the principal of a public elementary school somewhere on Long Island called the executive director of the New York Civil Liberties Union. “Ira,” he said, “Please don’t tell anyone I’m calling you, but we’re having an assembly next week, and I want to know whether it is okay for us to sing a few Christmas carols.” Ira replied: “Joe, please don’t tell anyone that I told you this, but just go ahead and do it!”

Some disputes about religious liberty can seem either deeply important to a pluralistic society or so trivial that the attention paid them is silly and exasperating. Constitutional questions about Christmas carols are like that, which is our point in recalling the brief telephone exchange between two men, who in different circumstances might have been courtroom adversaries. So too are the roiling controversies we take up in this chapter: Ten Commandment displays, crèches in public parks, and Pledge of Allegiance ceremonies. Perhaps this sense of vacillating between the profound and the irritating is inevitable: the stakes in

these cases are purely symbolic, but religious conviction is a domain in which symbols are often very important to Americans.

Whatever else is true, public exhibitions of religious symbols excite intense and heated controversy. The resulting cases provide a starting point for exploring Equal Liberty’s implications for Establishment Clause jurisprudence. At the outset of that exploration, we need an account of how religious symbols matter in American culture. It is to the task of developing such an approach that we first turn.

PUBLIC DISPLAYS

Cases about crèche displays, town-sponsored Christmas trees, and other public exhibitions of religious symbols came to the Court relatively late in its continuing effort to develop an attractive and workable approach to Establishment Clause cases. Cases about public aid to religious schools first reached the Court in the late 1940s, and the Court’s first school prayer cases were decided in the 1960s;

in contrast, the first Christmas display case arose in the 1980s. Now, however, the annual Holiday Wars—political and legal skirmishes over whether the government can sponsor displays celebrating Christmas, Hannukah, and so on—have joined eggnog, greeting cards, and fruitcake as staples of December culture in America.

When Supreme Court justices analyze cases about the public display of religious symbols, they tend to use

about a prayer at a public school graduation, Justice Scalia wrote a blistering dissent critiquing Justice O'Connor's endorsement test. Scalia would recognize Establishment Clause violations only in cases in which somebody suffered "coercion...backed by threat of penalty." Pawtucket had not forced anybody to say a prayer, or to participate in a ritual, or to visit its homage to the Christmas season. So where, Scalia asked, was the harm?

*Equal Liberty is about
finding fair rules of cooperation
among a religiously diverse people.*

reasons and concepts that fit nicely with the precepts of Equal Liberty. In particular, they usually invoke some version of the endorsement test that Justice O'Connor developed in the Court's very first holiday display case, *Lynch v. Donnelly* (1984). *Lynch* involved the display by the city of Pawtucket, Rhode Island, of a nativity scene or crèche in a park owned by a nonprofit organization and located in the city's shopping district. Justice O'Connor said that the crucial question was whether the display amounted to an endorsement of religion (or of a particular religion):

The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person's standing in the political community. Government can run afoul of that prohibition ... [by its] endorsement or disapproval of religion. Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.

Justice O'Connor's words are music to an Equal Liberty enthusiast's ears. Not everyone finds them convincing, though. In *Lee v. Weisman* (1992), a case

"Taxpayers were forced to pay for the display," someone might say, "even if they rejected its religious message." But this explanation is question-begging at best; Pawtucket had not spent much taxpayer money on its crèche display. Suppose that the city had spent none at all, relying entirely on private contributions to pay the modest expenses associated with an officially sponsored display. Would that make a difference? Not under Justice O'Connor's endorsement rationale and not, we think, to most citizens. Complaints about the misuse of taxpayer dollars are a staple of American political rhetoric, but they do a poor job of capturing what is constitutionally troublesome about crèche displays.

If endorsement per se amounts to a constitutional violation, then the fact of disparagement must by itself—unsupplemented by any concerns about coercion or the expenditure of government money—be the relevant harm. To Scalia and other critics of the endorsement test, that injury seems too flimsy and subjective to deserve constitutional attention. After all, people can feel disparaged at the drop of a hat. Indeed, as we shall discuss later in this chapter, some religious believers feel themselves disparaged by the absence of religious symbols from

public spaces. And governments might plausibly deny that they intend to disparage anybody with their displays; Pawtucket claimed that its purpose was simply to attract holiday shoppers to local stores, and that might have been so. Why, then, should we single out the public display of religious symbols as a constitutionally impermissible form of disparagement?

We believe that this question has a sound answer, one consistent with Justice O'Connor's reasoning in *Lynch*. The answer pertains to what we will call the social meaning of religious symbols in American culture. To answer Justice O'Connor's critics fully, we need to develop the idea of social meaning in some detail. Our treatment of it will involve some subtle distinctions, but the basic idea has a venerable pedigree in American constitutional jurisprudence and ought, we believe, to resonate with our readers' understandings. We begin our discussion with a simple example, one to which we will return several times.

RELIGION, SOCIAL MEANING, AND DISPARAGEMENT

Imagine that the officials of a small town—let's say "Fineville"—have decided to erect a handsome highway-spanning arch as the portal to their municipality. Now imagine two different inscriptions they might choose to blaze across their arch. One imagined slogan would be "Fineville—A Nuclear-Free Community." The other would be "Fineville—A Christian Community." Now it is certainly possible that in the Fineville of our imagination questions of nuclear power and/or weapons are a matter of controversy—possibly even heated controversy—and that advocates of things nuclear might be irked at the highly visible side-taking implicated in the nuclear-free-community sign. But it would be odd in the extreme to regard the losing side in the nuclear debate as disparaged in a way that should invoke our constitutional sympathies. When we shift our attention to the Christian-community sign, it is not at all odd to think that non-Christians are so disparaged.

What accounts for this difference? We suggest that public endorsements of religious belief must be understood

against the background of four structural features of religion in our society, features that, even if not common to everything that might be called "religion," are nevertheless common to most of American religion. These features affect the social meaning of religious displays—that is, they affect the meanings that competent participants in American culture may reasonably associate with the government display of religious symbols.

First, religions tend to be comprehensive; they are not discrete propositions or theories, but large, expansive webs of belief and conduct. Second, despite the real diversity within American churches, there are still important respects in which one is either "in" or "out" of a religion. In some of the most cohesive faiths, churches distinguish insiders and outsiders in a strictly enforced, institutional sense: the Mormon church, for example, excommunicates those whom it deems unfaithful. Most American churches are more loosely structured. Catholics can be relatively orthodox or quite secular, and it is possible to be a "secular Jew." Still, it makes little sense to "mix and match" religions, and groups that pretend to do so, such as the evangelical Christian group Jews for Jesus, only underscore the point. Third, open ritual is prevalent in religion, and participation in ritual—standing up or staying seated, bowing one's head or not, repeating designated words or remaining silent—plays an important role in signifying who is "in" or "out" of these comprehensive structures in the eyes of individual believers, church communities, and the more general public. Fourth, the perceived stakes of being within or without these structures of belief and membership are often momentous: being chosen or not, being saved and slotted for eternal joyous life or condemned to eternal damnation, leading a life of virtue or a life of sin, acknowledging or repudiating one's deepest possible debt, fulfilling or squandering one's highest destiny. Or the stakes may be less transcendental and more mundane, but no less categorical, such as being like us or very different from us, or being or not being perniciously under the sway of particular leaders or worldwide movements.

As we have observed throughout, Americans are keenly sensitive to distinctions in religious identity. Though most American faiths are reconciled to the fact of religious pluralism and to the consequent need for religious tolerance, they nonetheless continue to insist on the unique truth of their beliefs and the special significance of their religious identity. In the late 1950s the sociologist Will Herberg said that in the United States, the

groups and over time. Moreover, by making constitutional law so dependent upon personal reaction, we would risk creating a "tyranny of the squeamish": an especially thin-skinned group would have a better chance of getting doctrines offensive to it excised from publicly sponsored speech. It might seem more reasonable to tell the group to toughen up a bit.

Nor does this understanding of a public religious endorsement depend

Religious endorsements valorize some religious beliefs and those who hold them, and thereby disparage those who do not share those beliefs.

question "What are you?" usually calls for an answer drawn from the list "Protestant, Catholic or Jew." The list may have grown—to include, for example, "Muslim"—but the basic point still holds: in the United States, religion plays a major role in defining civic identity.

All this means that public endorsements of religion carry a special charge or valence. Such endorsements signify who is "in" and "out" of competing large-scale social and ideological structures, and assign powerful and pervasive judgments of identity and stature to the status of being in or out. Religious endorsements valorize some religious beliefs and those who hold them, and thereby disparage those who do not share those beliefs.

There is thus a deep and crucial difference in the meaning of the two Fineville signs, and the disparagement of non-Christians implicated in the social meaning of the second sign is inconsistent with the requirement of evenhandedness—of what we have called "equal regard"—that lies at the heart of the Establishment Clause.

This understanding of public religious endorsements is not just a matter of a statistical generalization about personal sensibilities. Sensitivities vary across

on what the public officials had in mind when they chose to make the endorsement. A particular official or group of officials may not intend to contribute to the disparagement of persons in their community and yet do or say something that constitutes such a disparagement, just as an individual speaker might overlook or misunderstand the linguistic meaning of her words.

The pernicious element of disparagement that inheres in public religious endorsements like Fineville's sign is a product of the social meaning of such endorsements. The social meaning of an event or a public expression is the meaning that a competent participant in the society in question would see in that event or expression. Social meaning is in this respect like linguistic meaning, which depends upon the understanding and use of language by a competent practitioner in the relevant linguistic community. In our national community, the structure of religious belief and affiliation is such that endorsements carry with them the taint of disparagement. And in our national community, "Fineville—A Christian Community" disparages non-Christians, while "Fineville—A Nuclear-Free Community" merely irritates nuclear advocates.

The concept of social meaning—whether invoked by that name or explicitly invoked at all—is important in thought and discourse about justice in political communities, and in fact it has a venerable pedigree in constitutional jurisprudence. The first Justice Harlan called upon it in his justly famous dissent in *Plessy v. Ferguson* over a century ago. *Plessy* involved a constitutional challenge to a Louisiana law mandating that whites and blacks ride in separate railway cars. The majority of the Court rejected the challenge, insisting that no

meaning that contributed to the perpetuation of social caste, and for that reason, as plainly unconstitutional. We think Harlan’s invocation of social meaning was morally precocious, and that his concept of such meaning was very similar to the one we are using here. Like us, he believed that certain practices had a disparaging effect that was “real” and not reducible either to the personal intentions of their sponsors or to the personal perceptions of observers. These practices pertain to important constituents of identity—

season, and the Fineville City Council directs the Parks Department to display a large crèche in a prominent location in the public park that surrounds the City Hall; and second, in a remarkable coup, the Fineville City Art Museum borrows and displays one of Fra Angelico’s paintings of the Annunciation as part of its “Treasures of the Italian Renaissance” exhibition. These two events are likely to have very different social meanings. The social meaning of the crèche includes disparagement of those who do not embrace Christianity as their religious belief, while the social meaning of the art exhibition does not. Why is this so?

We can begin to understand the difference when we realize that the proper question is “What is the meaning of the display?” as opposed to “What is the meaning of the object that is being displayed?” Ordinarily these questions produce the same answer, because governments will properly be understood to express the meaning of the symbols they invoke. So when a government erects a crèche, that act will have the social meaning of celebrating the birth of Jesus Christ and thereby affirming those faiths that embrace Jesus Christ as a figure of reverence. When this is true, the social meaning of the display will be more or less the same as the meaning of the object displayed, and with a sectarian object like a crèche, that meaning will include the disparagement of nonbelievers.

Sometimes, however, governments will properly be understood in effect to be holding a religious object at arms length, to be putting quotation marks around religious text or a contextual frame around a religious object. Our story about the Fineville City Art Museum’s display of one of Fra Angelico’s paintings of the Annunciation is like that. The content of the painting is exquisitely religious: the Annunciation—in which the Angel Gabriel tells Mary that she will conceive the child Jesus—is a an event depicted and celebrated most prominently within Catholic theology. And Fra Angelico depictions are faithful to their subject—Gabriel is undeniably an angel, and his message spills forth in explicit Hebraic text. But Fra Angelico is a great painter, and his works

The display of the painting in a museum would properly be understood as an instance of framing rather than embracing the religious content of the painting, and thus the display would not carry the bitter social meaning of disparagement.

harm to constitutional equality was at stake. At one point, the majority came close to the heart of the case, only to demonstrate a peculiar inability to see the world as it clearly was:

We consider the underlying fallacy of the plaintiff’s argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.

In response, Justice Harlan insisted that “the real meaning” of the Louisiana law was unduckable, namely, “that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens.” Harlan thus saw “separate but equal” railway cars as carrying an insidious social

most notably, race and religion—that, within American culture, function as especially significant markers of social division...

WHEN IS A DISPLAY AN ENDORSEMENT?

In *Lynch*, after propounding the endorsement test, Justice O’Connor went on to observe that not all public displays of religious material constitute endorsements—or, as we would put it, that not all displays of this sort have a social meaning that includes the disparagement of some members of the community on the basis of their religious beliefs.

We agree with Justice O’Connor about this point (though not with the conclusion she ultimately drew from it). To see why, we return again to the fictional hamlet of Fineville and imagine two more cases. First, it is the Christmas

are widely appreciated for their extraordinary artistic force and their importance in the evolution of Western art. The display of the painting in a museum, as a great and important work of the Italian Renaissance, would properly be understood as an instance of framing rather than embracing the religious content of the painting, and thus the display would not carry the bitter social meaning of disparagement.

This distinction—between invoking the sacred meaning of a religious object and framing that meaning—more or less tracks the distinction in the philosophy of language between “using” and “mentioning.” In a later section we will present some excerpts from the Ten Commandments. Were our project in this book different than it is, we might be offering the Commandments to support a claim about theological truth. We would then be *using* the Commandments. In fact, though, we include these quotations simply as a reminder of what the Commandments say, so that we can go on to discuss the constitutional status of their public display. We are not using the Ten Commandments; we are *mentioning* them.

There are many examples of the public quoting or framing of religious material. The federal government maintains the San Antonio Missions National Historical Park, which preserves for public appreciation four missions, the greatest concentration of Catholic missions in North America. These were established by Franciscan friars bent on extending the influence of Spain and of the Catholic church. The historical and architectural significance of these buildings makes them worthy objects of public appreciation. Their public presentation by the Park Service—from the name of the park onward—makes them a clear instance of historical framing.

The name San Antonio itself is an instance of the framing of religious content. “Saint” or its equivalent is something of a commonplace in community names in the United States; other prominent examples include St. Paul, San Diego, and San Francisco. There can be no doubt that these names have religious origins, but we think it would be just plain silly to

suppose that any constitutional violation results. “St. Paul” now has at least two meanings: it refers to a Christian saint and to a city in Minnesota, and the latter meaning is secular. Acceptance of the city’s historical name does not imply that residents or officials admire or venerate the eponymous saint—any more than use of the name Germantown, Maryland, implies that current residents are from, or support, Germany.

FIG LEAVES VERSUS FRAMES

Having used the Italian Renaissance and Fra Angelico as our prime example of the public framing of objects with religious content, we are tempted to borrow from an adjacent tradition of

crèches, Christmas trees, and other holiday displays. The justices seem in those cases to be struggling to find a way to distinguish between frames and fig leaves—between, that is, thinly disguised cases of endorsement/disparagement, on the one hand, and cases in which the community in question is framing or mentioning religious materials, on the other. To date, the results have been a bit clumsy. Consider what some commentators have come to think of as the “three plastic animals rule,” which is yet another product of *Lynch*, the case about Pawtucket’s crèche display.

We have thus far emphasized the more abstract parts of Justice O’Connor’s opinion, including its endorsement test. When it came time to decide upon the constitutionality of

*Fig leaves come to mind because
sometimes public officials stick a kind
of fig leaf on religious displays.*

Italian painting: in the late 1600s and thereafter for a century or so, church functionaries—more prudish than their predecessors had been—ordered the addition of fig leaves to quite prominent works of art, like Michelangelo’s Sistine Chapel ceiling and Masaccio’s depiction of Adam and Eve in the Brancacci Chapel in the church of Santa Maria del Carmine in Florence. Modern restorations have removed these fig leaves, leaving the human figures in their original undressed state; but the fig leaf has survived as a metaphor for a fairly flimsy disguise.

Fig leaves come to mind because sometimes public officials stick a kind of fig leaf on religious displays. These cover-ups do nothing to deflect the social meaning of the displays; in fact in some instances these thin disguises may have the perverse effect of emphasizing the religious social meaning that lies just underneath. This problem has been very much at the center of the Supreme Court’s unwieldy jurisprudence about

Pawtucket’s display, Justice O’Connor produced a conclusion about which we are less enthusiastic. She emphasized that the crèche was part of a larger display, along with such items as colored lights offering “Season’s Greetings,” a Santa, flying reindeer, a clown, an elephant, and a teddy bear. Justice O’Connor—who cast the decisive vote in the case—suggested that by surrounding a crèche with a few Santas and flying reindeer, a town frames it in a way that separates the crèche’s theological content from the government’s authority. That, we think, is a mistake. The reindeer do subtly change the meaning of the crèche display—they suggest a less theologically rigorous, more commercialized form of religious belief, one that will be offensive to some devout Christians as well as to some non-Christians. But the Santa and his reindeer neither secularize the crèche nor mark it as only one of several competing religious and philosophical symbols valued by citizens. They are at best a fig leaf, not a frame.



Capital Punishment Clinic
Law Professors, left to
right: Jordan Steiker,
Rob Owen, Maurie Levin,
and Jim Marcus at the
Supreme Court after oral
arguments in January.

SUPREME PERSUASION

UT LAW CLINICS ENJOY REMARKABLE SUCCESS AT THE UNITED STATES SUPREME COURT

Laura Castro, '97

When third-year student Scott Keller joined the inaugural class of the Law School's Supreme Court Clinic last fall, one of the first things he learned was how daunting the odds were against taking a case all the way to the Supreme Court.

But Keller and his five classmates, supervised by Professor Michael Sturley and Washington DC lawyer David C. Frederick, '89, beat those odds in January when the U.S. Supreme Court granted certiorari in the case *Altadis USA v. Sea Star Line*, the first case taken on by the young Clinic.

The opportunity to litigate at the highest level is uncommon. It's even more unusual when the advocates are still in law school. During its most recent term the Supreme Court agreed to hear only seventy-eight of the 8,517 cases filed, less than one percent. Of the cases selected for review this term, students and faculty in the Law School's Supreme Court Clinic and Capital Punishment Clinic have been involved in five—an unprecedented number of active Supreme Court cases at any law school in a single term.

CAPITAL PUNISHMENT CLINIC WINS THREE CASES

In addition to agreeing to hear the Supreme Court Clinic's case, the high court announced last fall it was granting

certiorari in three death penalty cases filed by the Capital Punishment Clinic. Those cases were argued before the Court in January by Professors Rob Owen and Jordan Steiker, assisted by students and faculty co-counsel.

On April 25, the Court ruled in favor of three death-sentenced inmates represented by the Clinic. The three inmates, Laroyce Smith, Brent Brewer, and Jalil Abdul-Kabir, had challenged their sentences on the ground that the instructions given at their trials failed to permit meaningful consideration of mitigating evidence.

With these three decisions, the Capital Punishment Clinic has now won five consecutive victories in the Supreme Court over the past three years.

"These three decisions confirm that the Supreme Court's death penalty jurisprudence is not optional or advisory to the Texas courts and the Fifth Circuit Court of Appeals," Steiker said. "The victories are bittersweet, though, in light of the numerous inmates with similar claims who have already been executed. We are gratified that the Supreme Court has restated in unequivocal terms its commitment to full consideration of mitigating evidence in capital cases."

The Capital Punishment Clinic was established at the School of Law in 1987. Since then about 300 law students have assisted in representing indigent defendants charged with or convicted of capital crimes. Students, who must also attend a weekly class in the practical skills required to defend a capital case,

work at least ten hours a week under the supervision of attorneys handling death penalty cases at trial, on appeal, or in post-conviction review.

Students perform tasks that are integral to effective defense representation, including visiting clients on death row or in local jails, interviewing witnesses, conducting other field investigations, drafting legal pleadings, and helping attorneys prepare for trials, evidentiary hearings, and appellate arguments.

"One of the things that distinguishes our Clinic from other capital punishment law school clinics around the country is simply the accelerated pace of the death penalty in Texas," said Owen, who along with Steiker codirects the University of Texas's Capital Punishment Center, which houses the Capital Punishment Clinic. "We have a lot more cases and there are a lot more people who are in imminent danger of being executed, so students are working on cases with a certain urgency to them."

Owen said it's the steady stream of Texas capital punishment cases that allows students to gain valuable experience at various stages of the litigation process, including appellate work at the Supreme Court level.

"One of the unusual things about death penalty litigation, and one of the reasons that I was interested in it as a student and drawn to it as a lawyer, is that it is so Supreme Court focused," Owen said. "The Supreme Court still devotes a surprisingly large proportion of its docket to capital cases, so you need to be aware of what's going on at

This article is based on a story that originally appeared on the University of Texas website, which can be found at <http://www.utexas.edu/features/2007/supreme>

the Supreme Court and be a closer student of that body of law than you do in other kinds of practice.”

Eric Harrington is a third-year law student who has worked in the Clinic for three semesters and finds the range and depth of the Clinic’s legal training compelling. “I’ve researched whether a certain drug interacts with another

Owen in oral arguments before the Supreme Court, and to experience the Court and the personalities of the justices in a way that isn’t possible from opinions or through the media. “You are really on the edge of your seat,” he said. “It was an amazing experience to watch our professors spar with Justice Scalia and Justice Breyer.”

THE OPPORTUNITY TO LITIGATE AT THE HIGHEST LEVEL IS UNCOMMON. IT’S EVEN MORE UNUSUAL WHEN THE ADVOCATES ARE STILL IN LAW SCHOOL.

drug when talking to a physician about mitigation for one client,” Harrington said, noting that he has penned several memos about issues critical to particular cases. “I’ve also had truly transformative client interactions on death row.”

But for Harrington the culmination of his clinical experience was traveling to Washington DC with his classmates earlier this year to observe Steiker and

“The volleying of Supreme Court litigation is just absolutely fascinating,” said Harrington, adding that Steiker had barely started his argument when Justice Scalia interrupted with a question.

Capital Punishment Center directors Steiker and Owen are nationally recognized experts on death penalty constitutional law. Steiker—who joined the law faculty in 1990 after serving as a

law clerk to Supreme Court Justice Thurgood Marshall—argued *Smith v. Texas* in January before the Court with co-counsels Maurie Levin, a professor with the Clinic, and Harvard University Law Professor Carol Steiker, whose students also contributed to the effort. Owen—who has defended people facing the death penalty since 1989 and who also leads a Plan II Honors freshman seminar on the death penalty—argued the consolidated cases of *Brewer v. Quarterman* and *Abdul-Kabir v. Quarterman* with Steiker serving as co-counsel.

Smith, *Brewer*, and *Abdul-Kabir* all addressed the similar question of whether the sentencing instructions given to the defendant’s jury during the punishment phase of the trial allowed jurors to consider mitigating evidence such as a defendant’s intellectual impairments, learning disabilities, placement in special education, and traumatic family background. Jurors allowed to consider such evidence,



Capital Punishment Clinic students and faculty standing in front of the U.S. Supreme Court after oral arguments in three of their cases in January. Left to right: Anna Baker, Jasmine Erdener, Eric Harrington, Linford Coates, Meghan Shapiro, Jamie Dickson, Sian Crichton, Kimberly Gustafson, Professor Jordan Steiker, Stefanie Collins, Professor Rob Owen, Mary Beth Hickcox-Howard, Chase Hamilton, Professor Maurie Levin, Paul Riffe, James Dowd, Daniel Gagarin, Christina Thoda, and Professor Jim Marcus.

argued the Clinic's attorneys, might choose to sentence the defendant to life in prison rather than death by injection.

Another law student who attended the oral arguments in January was Meghan Shapiro, who will join the Clinic in the fall. As a first-year student she volunteered to work on *Smith*.

"Meghan jumped in and found terrific

highest levels of practice." Steiker said. "And our students come out of the Clinic much better equipped to wrestle with complicated legal issues and to work with others to refine their positions and advocacy." He noted that many former students are now highly successful and highly respected advocates in capital litigation.

"IT WAS AN AMAZING EXPERIENCE TO WATCH OUR PROFESSORS SPAR WITH JUSTICE SCALIA AND JUSTICE BREYER."

support for an important issue in the case," Steiker said. "And that issue became a very salient one at argument, where we were asked about how the Texas courts had traditionally treated a failure to make a contemporaneous objection."

"Contributing to a case that goes to the Supreme Court is such an exciting experience that when I was doing that I couldn't wait to finish the work for my regular classes," said Shapiro, a Virginia native who chose to attend the Law School for the clinical opportunities to work on death penalty cases. "It's really what motivated me to study hard, so I could do something that was current and affecting a real person and possibly affecting history," she said.

Shapiro arrived outside the Supreme Court building in the predawn hours on the day of the oral arguments and stood in bitterly cold temperatures for hours with more than a dozen students to ensure seats inside the Court.

"We were thrilled that the students were able to attend the arguments in the Supreme Court after working on the cases and understanding the issues from the inside out," Steiker said. "They also got to see the evolution of what we had said in our moots and how we were encouraged to reframe or change our argument. It's great for our students to see us as students, too."

Owen often tells his students that any one of them could end up arguing a case before the Supreme Court. "You should not assume that your life's path will not lead you to that podium. It can surprise you."

"One of the best things that our Clinic can do is allow our students to envision themselves involved in the

Shapiro said she can imagine becoming a Supreme Court litigator. "It becomes very real when you're actually sitting there watching people you know argue these cases," she said. "You're sitting there the whole time thinking: I guess I could have answered that question. Then suddenly you start to think, maybe I might be doing that one day."

CAPITAL PUNISHMENT CLINIC ASSISTS WITH A FOURTH CASE BEFORE THE COURT

Under the supervision of professors Maurie Levin and Jim Marcus, students in the Capital Punishment Clinic worked on another Supreme Court case this term as well. The case, *Panetti v. Quarterman*, was argued by Gregory Wiercioch, an attorney with the Texas Defender Service, a private, non-profit law firm that represents death row inmates. Levin, an experienced death penalty lawyer, works part-time as a staff attorney at TDS, where Marcus was executive director before joining the Law School's faculty.

The issue in this case is whether Scott Panetti is mentally competent to be executed. Marcus said that Panetti, with a long history of severe mental health problems, has been diagnosed as a schizophrenic and doesn't have a rational grasp of why Texas intends to execute him.

Several of the students have worked on the opening brief, including Christina Thoda. During spring break in March, she traveled with Marcus and other clinic students to death row at Texas Department of Criminal Justice's Polunsky Unit in Livingston to meet Panetti face to face for the first time.

"It's a very emotional experience talking to any one on death row, especially someone like Panetti, who is visibly mentally ill," Thoda said.

Thoda endeavors to get inmates a fair trial. "Ninety-nine percent of the time, these people have not gotten a fair shake from the justice system because their previous counsel or the process has been inept," she said. "They've never had anyone truly understand or fight for the issues in their cases."

Thoda helped produce a chart for the Supreme Court brief surveying the law related to competency for execution in the country's thirty-eight death penalty states. She said her work on *Panetti* was much more advanced than the work she did for the Clinic's three other Supreme Court litigation cases this year.

"That made the experience of going to the Supreme Court the second time so much more satisfying," she said. "To see the law culminate at this level, to see the process go all the way to the Supreme Court, this is what as a law student I've been studying for. It reminds me that what I'm doing is really important and this is why I wanted to be a lawyer."

When Thoda graduates this May she will join the New York office of Fulbright & Jaworski in the firm's litigation department, where she expects to have the opportunity to do pro bono death penalty work.

EARLY VICTORY FOR NEW SUPREME COURT CLINIC

In 1977, the Law School's first Clinic, the Criminal Defense Clinic, brought *Acker v. Texas* to the Supreme Court. The Court agreed to decide the case (and ruled in favor of the Clinic's client)—apparently the first time that a clinic-generated case had been accepted for review. Thirty years later, one of the newest clinics at the law school, the Supreme Court Clinic, also scored a huge victory when the Court announced in January that it had agreed to review *Altadis*.

Word of the Clinic's early success quickly heightened the allure of Supreme Court advocacy among UT Law students. Clinic student Keller

reported, “I’ve already had ten 1Ls [first-year law students] come up and ask me, ‘How do you get into the Supreme Court Clinic?’”

The Clinic meets once or twice a week, often on the fifth floor of the law library in a corner room where pictures of Supreme Court justices cover the walls. In the Clinic, students are assigned to represent real clients seeking review of lower court decisions.

or other documents to be filed with the Court. The Clinic also includes traditional classroom sessions to introduce students to Supreme Court practice and procedures.

In its first case, the Clinic agreed last fall to represent a Florida company, Altadis USA, which contracted with Sea Star Line to carry a sealed container of cigars and cigar bands from San Juan, Puerto Rico, to Tampa, Florida.

provides the rules to determine a carrier’s liability for damaged cargo that is carried by both ship and truck?” said Clinic supervisor Sturley, whose specialties include maritime law, commercial law, and Supreme Court practice.

Sturley, who clerked at the Supreme Court for Justice Lewis F. Powell Jr. in the 1982–1983 term, explained that the courts of appeals have been split on the answer to this question, with some courts applying the federal transportation law for land to determine a carrier’s liability and others applying the federal law for ocean carriage. Disagreement in the lower courts over the issue made it a good candidate for Supreme Court review.

By deciding to represent Altadis, the Clinic made it possible for an important case to proceed that would otherwise have been abandoned because the amount of money at stake in the individual case was too small to justify the normal expense of Supreme Court litigation. The client obtained the benefit of first-rate legal representation at no charge and the Clinic obtained a perfect vehicle for the students to learn first-hand about Supreme Court practice.

For students in the Clinic, being a part of the Supreme Court legal team meant working on almost every facet of the case. “We were finding case law on point, poring over statutory history, and crafting policy arguments that would help our client. Students also produced the entire first draft of the certiorari petition,” Keller said. The draft was then revised under the guidance of Sturley; Brendan Crimmins, ’03, an associate at Kellogg, Huber, Hansen, Todd, Evans & Figel in Washington DC; and David Frederick, ’89, a partner in the DC office of Kellogg, Huber. Frederick clerked for Justice Byron R. White and now regularly represents private clients in the Supreme Court. Both he and Crimmins are Sturley’s former students.

“At times I felt like Indiana Jones searching for a lost text when I was digging through statutory history from literally one hundred years ago,” said Keller. In its brief to the Court, the team needed to summarize a statute known as the Carmack Amendment, which the Clinic argued was the federal law that applied in *Altadis*.

“We had to go back through the legislative history and the changes to

“OUR STUDENTS COME OUT OF THE CLINIC MUCH BETTER EQUIPPED TO WRESTLE WITH COMPLICATED LEGAL ISSUES AND TO WORK WITH OTHERS TO REFINED THEIR POSITIONS AND ADVOCACY.”

The cases may be in any substantive area of law ranging from transport law to the Fourth Amendment, although they are most likely to involve federal statutory issues.

Clinic faculty members retain the ultimate responsibility for a case, but students take the lead in conducting the legal research, developing the arguments that will be used, and preparing the initial drafts of the briefs

Although the shipment made the trip by sea without incident, the cigars were stolen from a truck during inland transport.

The Clinic team took the case because the dispute raised important questions of liability involving goods shipped by sea and land—which total more than a trillion dollars in U.S. trade each year. “The legal issue is difficult and significant: Which federal legal regime



Members of the Supreme Court Clinic on the steps of the Court during their March visit. From left to right (front row): Clinic Co-Director David Frederick—a 1989 Law School graduate, Sammy Ford and Ashley McKeand; (second row) Scott Keller, Elizabeth Hardy, Aaron Liskin and Brendan Crimmins—supervising attorney and a 2003 Law School graduate; (third row) Tim Gerheim, Benjamin Wallfisch, and Joe Conley.

the Carmack Amendment to succinctly explain how the statute had become so convoluted that six separate statutory provisions really all stemmed from the same 1906 statute,” Keller explained.

After the Court agreed to hear *Altadis*, but before the case could be argued, a settlement was reached between the parties. The Court did not issue an opinion, leaving the issue in the case unresolved. Sturley explained that the defendant offered *Altadis USA* a settlement that was more generous than the result that the client would have achieved if it had won the case before the Court.

“It would have been gratifying to participate with the students in clarifying the law in this important and complicated area,” said Sturley, who has participated in several dozen Supreme Court cases. “But our real pedagogical goal is to train our students to be better lawyers, which means, among other things, best serving their client’s interests,” he said. “In this case, they learned that the best way to serve a client’s interest is not necessarily to get a favorable opinion from the court.” Sturley added that at the time the settlement happened, the students had already done the overwhelming bulk of the work on writing a merits brief. “So in effect, they’ve had the experience of writing a successful cert petition and writing a merits brief.”

Despite the settlement, the students traveled to Washington DC in late March to see an argument at the Supreme Court and meet with two Court officials—the Chief Deputy Clerk and the Administrative Assistant to the Chief Justice. “Seeing an oral argument for the first time gave me a greater appreciation of the skill required of a Supreme Court advocate,” said third-year law student Benjamin Wallfisch. “But it was priceless to hear the vivid stories of two Supreme Court veterans, who gave us an inside perspective on the operation of the Court.”

The same students who worked on *Altadis* are currently in the preliminary research stages of a new case involving the Fourth Amendment. Another four students who joined the Clinic in the spring semester worked with Sturley, Frederick, and Professor Lynn Blais (who clerked for the late Justice Harry A. Blackmun) to file the Clinic’s



In the West Conference Room, Chief Deputy Clerk Chris Vasil (center) gives an inside perspective on the operation of the Court to visiting Supreme Court Clinic students in March.

second petition for certiorari in March. That case, *United States ex rel. Bly-Magee v. Premo*, involves a whistleblower seeking relief under the False Claims Act. On May 29, the Court invited the Solicitor General to file a brief expressing the views of the federal government, which is often a preliminary step before the petition is granted.

THE NATIONAL PICTURE

While it’s still fairly unusual for a law school clinic to take a case to the Supreme Court, the competition to work on this type of litigation has been growing recently. Stanford Law School established the first Supreme Court Clinic in 2003. In the past year, Supreme Court clinics have also been launched at Yale, Virginia, and Northwestern. Harvard announced it will start one next fall.

Students commented they were surprised at the amount of teamwork and interaction clinical work requires. “Most people think of appellate lawyers as meticulous brief writers who are holed up in an office poring over cases,” Keller said. “That’s not exactly false—it’s just not the whole picture. We spent hours bouncing ideas and arguments off of each other.”

Part of the preparation for Supreme

Court litigation is teaching students to figure out what cases the Court might want to hear, and how to properly frame and brief cases. “So many clients are represented at the Supreme Court by lawyers who have no experience in Supreme Court practice,” Sturley said. “They may be good lawyers but they are not aware of what the Court is looking for, or which aspects of the client’s case need to be presented to the Court. Working on these cases enables the students to learn what the Court is looking for and also enables the clients to have their cases presented in a way that stresses their strongest arguments.”

Sturley added that he passes out statistics on the first day of class showing how hard it is to persuade the Court to review a case, not to intimidate students but to give them a sense of realism. “The odds are against you,” he tells his students. But, he also teaches students how to improve those odds.

This leaves clinic student Keller optimistic as he searches for cases like *Altadis* that could once again beat the odds. Since October, Keller has been sorting through cases trying to find cert-worthy issues. In the process, he discovered the Fourth Amendment case on which he and his classmates are currently working. Now he’s hoping this will become another success story.

From **Law Student** *to* **Judicial Clerk** *(and how to get there)*

Tom Henninger, '92

Following her graduation, Liz McKee, '06, left Texas for Kentucky to begin a prestigious judicial clerkship with Judge John M. Rogers of the U.S. Court of Appeals for the Sixth Circuit. As a clerk, McKee said, her "primary job is preparing bench memos for Judge Rogers. [Such memos] provide an overview of each case and the issues on appeal. Another big part of our job is assisting in the drafting of opinions, attending oral arguments, and conferring with Judge Rogers to discuss pending cases."

Now more than eight months into the clerkship, McKee has perspective on the value of clerking. "This job forces you to be a better, more succinct, writer, and Judge Rogers has been a great teacher in that regard. Also, being in a position to read and evaluate briefs and to watch oral arguments is extremely beneficial because it provides a unique opportunity to get a good sense of the difference between an effective brief and an ineffective brief, and provides an opportunity to see how good oral advocacy is done—and not-so-good oral advocacy. Finally, it's been great to be able to work closely with Judge Rogers. He's a great mentor and teacher to his clerks, and he takes a lot of time to ensure that we're getting all we can from this experience."

The creator of the judicial internship program at the University of Texas, Bea Ann Smith, '75, a justice from 1991 through 2006 on the Texas Court of Appeals, Third District, knows what Elizabeth means. Speaking to students recently about clerking, she told them, "It matures you as a lawyer. You see how law is made. It improves your writing and analytical skills, and you gain composure—you see 'the good, the bad, and the ugly' with both advocacy and writing."

"Clerking is a way to contribute, using skills that law students uniquely have, as a citizen."

Judge Royal Furgeson, '67, U.S. District Judge for the Western District of Texas, believes clerks also benefit judges and the judicial system. "Judges can get isolated. This is especially true of federal judges, who are appointed, not elected. While some isolation bestows the benefit of detachment, too much can hinder perspective. Law clerks are the best resource available to a federal judge to achieve the needed balance between detachment and perspective. In the quiet of chambers, all the issues of a case can be thrashed out between the judge and the law

clerks. Just out of law school, taught in the most advanced research techniques, clerks are able to ensure that the judge does not miss the guiding precedents. The dialogue aided by scholarship allows every angle of a case to be examined, in strict confidence, so that the ultimate decision is enhanced to the fullest. The process makes the judge and the justice system better."

Law firms also value the experience. "What better opportunity is there for a young trial attorney to learn the law

and legal writing, theory, and process than from those who interpret the laws of our land?" asked Holt Foster III, '95, the hiring partner at Thompson & Knight in Dallas. "Even a transactional attorney benefits from a clerkship as it provides him/her a unique opportunity to see the complicated manner in which business arrangements are attacked and unwound."

David Oelman, '90, hiring partner at Vinson & Elkins in Houston, said, "In hindsight, I wish I had considered a clerkship. I think the experience is incredibly valuable for a lawyer in

whatever practice area he or she may ultimately choose. More than that, it is a way to contribute, using skills that law students uniquely have, as a citizen.”

With all of these good reasons to clerk, it is not surprising that the faculty clerkship advisors found a receptive audience for their renewed efforts to increase the number of UT students applying for clerkships. In 2007, about fifty UT Law graduates will clerk at the federal and state level in courts around the country, including twenty at the federal appellate level, a significant increase over previous years.

Advisors Launch Innovative Clerkship Program

Last year, with the full support of Dean Sager and the Law School’s faculty and administration, Professors Emily Kadens, Tony Reese, and Ernie Young implemented a program to help UT

Kravitch on the U.S. Court of Appeals for the Eleventh Circuit, this institutional attention to judicial clerkships “helped to generate a buzz among the students that didn’t exist before.”

The process begins with an informational meeting for 1Ls in March, before they register for their 2L classes. Faculty advisors and guest judges and clerks explain what clerks do and how the

toward a judge whom [the student] might not have considered, but who may turn out to be a great fit.”

Over the summer, the students prepare their applications, submitting their preliminary list of judges to the faculty advisors and to their recommenders for review. Before school starts at the end of August, the clerkship team organizes a huge

“It provides a unique opportunity to get a good sense of the difference between an effective brief and an ineffective brief.”

students can best position themselves to be attractive candidates. In the fall semester, the advisors hold meetings for applying second- and third-year students, during which they address

“Centralized Mail Out,” to which students bring their applications so that they can be bundled and sent out to judges as a group. The following week, the advisors and visiting clerks present a



2007 Judicial Clerks photographed at the Texas Supreme Court (left to right) Mark Dundon, Sammy Ford, Mansoor Bharmal, Neil Fuquay, Chase Hamilton, Brian Stoltz, Keith Henneke, Zeke DeRose, Ian Shelton, Mike Crnich, and Courtney Barksdale.

Law students secure judicial clerkships. Working with the Law School’s Career Services Office and a designated clerkship administrator in the dean’s office, the team centralized the application process, streamlined the obtaining of faculty recommendation letters, met one-on-one with applicants, and organized a series of presentations by judges and current and former law clerks. These initiatives increased student awareness of and excitement about clerkships. In the words of Sean Flammer, a third-year student who will clerk after graduation for Judge Phyllis

process-oriented questions, like obtaining recommendation letters and application deadlines. The group meeting is followed by interviews with Kadens, Young, and each student. In these meetings, the advisors discuss the student’s interests and advise them on those clerkships for which they are best positioned.

David Mader, a third-year law student who will clerk in the coming term for U.S. District Judge T.S. Ellis III of the Eastern District of Virginia, had this to say: “Professors Young and Kadens are able to guide students

program on how to prepare for interviews.

Then the waiting begins. As students receive phone calls from judges requesting interviews, anticipation builds. “The day the federal judges could first contact students for interviews, Ernie Young and I were pacing our offices waiting for news,” said Kadens. Meanwhile, the students were clustered in journal offices and elsewhere anxiously waiting for their cell phones to ring. As the number of interviews, and then offers, mounted, the students, advisors, Career Services, and faculty all joined in the excitement. “We were thrilled by

our success last year,” said Dean Sager, “and I hope and expect that it will continue in the future. Clerkships are a valuable part of the education of young lawyers; it enables them to be partici-

one that focuses on district courts and the other on appellate courts. Students use actual case material—briefs, motions, and records—to learn to draft orders, bench memos, opinions, etc.

“Clerkships are a valuable part of the education of young lawyers; it enables them to be participants—not merely spectators—in the process of American adjudication.”

pants—not merely spectators—in the process of American adjudication.”

To help prepare students who receive clerkships for their new jobs, the Law School created two new courses,

And while developing writing skills is an important goal, it isn’t the only one. “There are two objectives,” said Betsy Chestney, ’02, who teaches a course called Preparation for a Federal

District Clerkship. “Students need experience writing the types of things trial court clerks write. But they also need to be familiar with the specific issues and key areas of the law that often come up in these courts. So we talk about federal procedure and spend some time on issues like immunities that apply to government defendants, patent claim construction, criminal sentencing, and habeas and death penalty cases. The ultimate goal is to give them confidence going in.”

Judicial Clerkship Workshop

To continue to generate enthusiasm about clerking, and to let students learn what judges are like, Kadens and Young organize a number of events



Seated in the front row, (left to right): Nathan Bruggeman, Elizabeth Hardy, and Eugene Tanner. Standing, second row: Susana Canseco, Melissa Devine, Paige Bruton, Ruth Karper, Emily Jolly, Robert Bruner, Esther Sung, and Ryan Newman. Third row: Parisa Fatehi, Ben Wallfisch, Christian Hurt, Scott Keller, Carlos Romo, Benjamin Siegel, and Jacob Scheick. Fourth row: Adam Sencenbaugh and James Lebeck.

that put students in direct contact with sitting judges and former judicial clerks. This year, for instance, Justice Smith came to speak about clerkships with the Texas courts of appeals, and Judge Susan Braden came to speak about her court, the Court of Federal Claims. The largest such event is the annual two-day Judicial Clerkship Workshop. In April, fourteen judges from around the country, representing the federal appellate, magistrate, district, and bankruptcy courts, as well as state supreme courts, came to discuss what they and their clerks do.

The Workshop began with a panel of recent UT Law graduates who clerked following graduation. The panelists discussed what day-to-day clerking was like for them and answered questions about the application process. Four judicial panels followed—a panel of U.S. bankruptcy and magistrate judges, a panel of state supreme court judges, another of federal district court judges, and, finally, a panel of federal appellate judges. Many of the judges also led discussion sessions about opinion writing. They discussed in detail the work of their respective courts, the work of clerks in their chambers, and the application and interviewing process—including application strategies.

“The competitive stress and tension that surrounds the hiring of law clerks is my least favorite part of the job,” said Judge Ed Carnes of the U.S. Court of Appeals for the Eleventh Circuit, one of the Workshop participants. “So anything that makes that process easier is a blessing. There is real competition among judges for the best students, and programs like this increase the pool of well qualified applicants. Everybody benefits from that. UT Law has the most impressive clerkship program that I’ve seen—I don’t know of any other school that is doing anything even approaching it.”

The workshop was also widely praised by participating students. “It offered us an excellent opportunity to meet with judges from all levels. The judges were very open and honest in the sessions about some of the frustrations of their courts, as well as what made them enjoy their life as a



Chief Justice Wallace Jefferson, left front, photographed with (first row, left to right) Kody Kleber and Sean Flammer; (second row, left to right) Mittie Jones, Alia Derrick, Melonie DeRose, and Ashley McKeand; (third row, left to right) Teddy Cory, Robert Romig, and Adam Nugent.

judge,” said Jared Hubbard, a second-year law student. “We also had opportunities to talk with the judges in a more casual setting. It was great to have the chance to meet and get to know these judges as people and not as the oracles of the law that we might imagine in class.”

“The Judicial Clerkship Workshop

was extraordinarily beneficial,” said Samantha Porphy, a second-year law student. “The program provided opportunities to interact with the judges in several different contexts. The small-group discussions, in particular, provided valuable insights into the judicial decision making



Judge Ed Carnes of the U.S. Court of Appeals for the Eleventh Circuit speaking about judicial writing style.

process. Additionally, the panelists were frank about what clerks in their chambers work on.”

Come autumn, UT graduates will begin clerkships all over the country. One will head to California to clerk for Judge Alex Kozinski on the Ninth Circuit, another to New York City to clerk for Judge John Walker on the Second Circuit. Some will stay closer to home, clerking for the justices of the Texas Supreme Court, the judges of the Texas Court of Criminal Appeals, and many Fifth Circuit appellate, district, bankruptcy, and magistrate judges. One student will travel across the globe to serve as the American law clerk for Justice Johann van der Westhuizen of the South African Constitutional Court. At the same time, the rising 3Ls will submit their applications and the process will begin again.



Judge Diana G. Motz of the U.S. Court of Appeals for the Fourth Circuit explaining her opinion in the case concerning the admission of women to the Virginia Military Institute.



Chief Judge Helen G. Berrigan of the U. S. District Court, Eastern District of Louisiana discussing sitting on death penalty cases.

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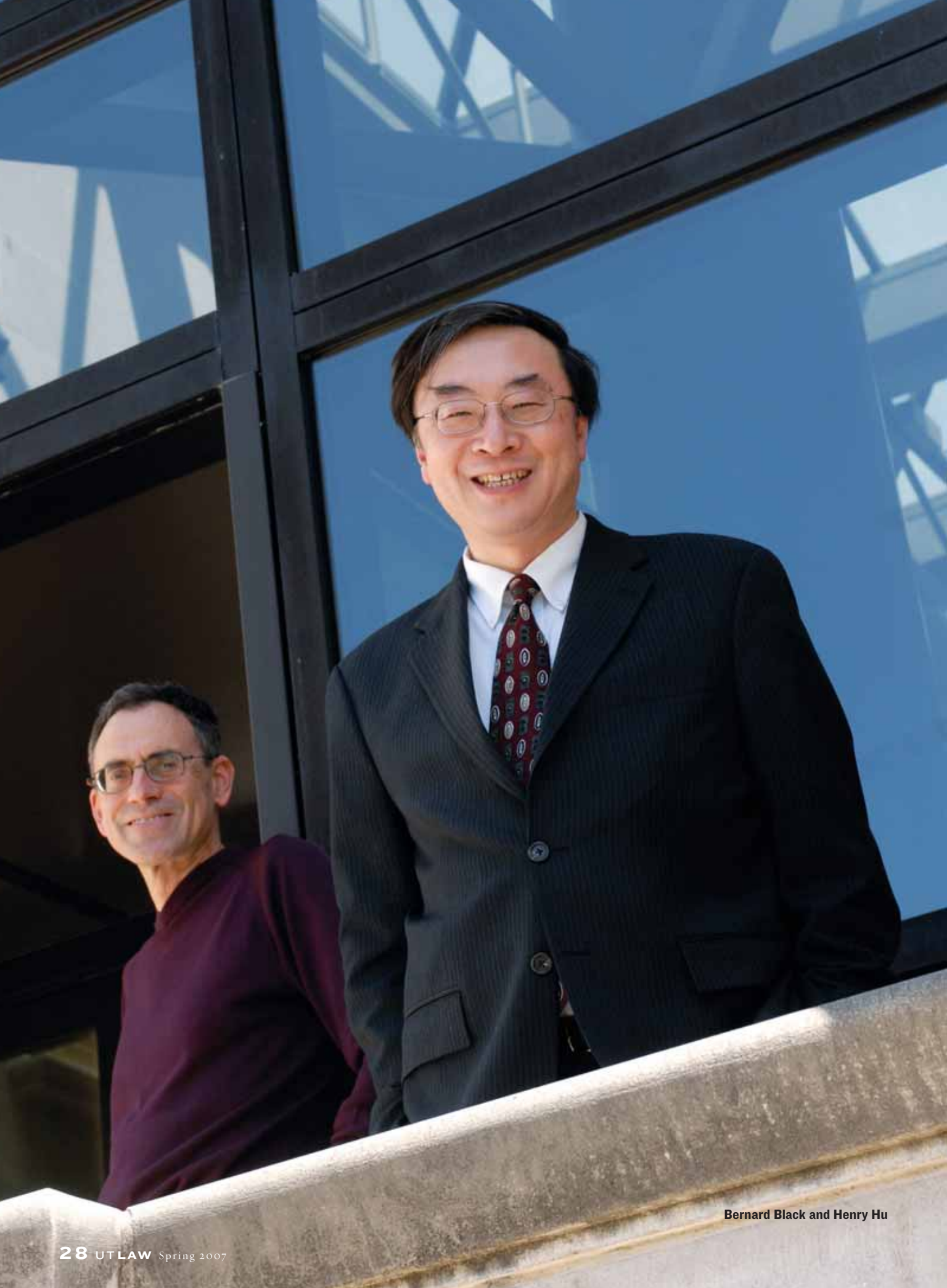
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Bernard Black and Henry Hu

“EMPTY VOTING”

and the Foundations of Corporate Governance

The lead front-page story of the *Wall Street Journal* on January 26, 2007 was devoted to a new phenomenon now known as “empty voting.” The *WSJ* credited Professors Henry Hu and Bernard Black with coining the term and quoted repeatedly from their May 2006 law review article. A subsequent *WSJ* story noted that this phenomenon had been “thrust into the spotlight last year” by the same law review article. The *Financial Times* was already aware of the importance of these matters, having scooped its American competitor with four stories that discussed Hu and Black’s research. The key *FT* story, which focused on Hu’s September 2006 speech to the Council of Institutional Investors, ran under the headline “Thesis on hedge fund tactics gives investors a shock—Professor’s warning on ‘empty voting’ has big impact in the U.S.” This research is receiving exceptional recognition.

Hu and Black’s term, “empty voting,” is coming into use worldwide among bankers, corporate executives, hedge funds, institutional investors, lawyers, and regulators. Prominent outside observers, such as the London-based International Corporate Governance Network, have characterized the research as “ground-breaking” and “seminal.” Recent published reports suggest that this research is sparking regulatory rethinking.

Why this brouhaha? *UT Law* sat down recently with Professor Hu to find out.

UTL: What’s the research about?

Hu: Everyone’s aware of the increasing role of hedge funds in corporate governance. What’s less well known is the emergence of new techniques for either “buying” shareholder votes or hiding ownership. Relying on financial innovations such as “equity swaps” and other techniques, the traditional link

between votes on common shares and the economic interest in those shares can now be “decoupled.” Hedge funds have been especially active in getting around the familiar “one share-one vote” system.

Our research is the first systematic attempt to analyze this decoupling—the “new vote buying”—and its corporate

governance implications. We also offer a framework for thinking about decoupling, one that sets out the functional elements and a taxonomy of strategies.

UTL: Why might this be of interest to those on Main Street, and not just Wall Street?

Hu: The whole architecture of corporate governance largely rests on the notion that there is a coupling of economic interest and voting power: a one share, one-vote structure. This structure gives shareholders economic incentives to exercise their voting power well and helps to legitimate managers’ exercise of authority over property that the managers do not own. In addition, mechanisms rooted in the shareholder vote, including proxy fights and takeover bids, constrain managers from straying too far from the goal of shareholder wealth maximization.

That is, all existing legal and economic theories of the public corporation presume a link between voting rights and economic ownership, a link that can no longer be relied on. Decoupling has potentially large

implications for the continued viability of the corporate governance systems of this and most other industrialized countries.

UTL: *Please explain what you mean by “decoupling.”*

Hu: Decoupling comes in two basic forms, which we term “empty voting” and “hidden (morphable) ownership.”

Empty voting occurs when an investor holds more votes than economic ownership. In an extreme case, an investor can hold votes with no economic interest, or potentially with a negative economic interest in the company. These investors have been emptied of an accompanying economic interest.

Think about the really extreme case: a person with a negative economic interest would want to—and could—exercise his votes to cause the company to make bad decisions, not good ones. He might want someone totally clueless—a Maxwell Smart or Mr. Magoo—to be Chairman and CEO.

Hidden (morphable) ownership occurs when investors have economic ownership, often undisclosed, that exceeds their apparent voting rights. Using financial innovations such as “equity swaps,” hedge funds can do end runs around large shareholder ownership disclosure requirements—such as the familiar 5%-and-over disclosure requirements under Schedule 13D so important in takeover contexts. A hedge fund might, for instance, hold a 9% economic stake in a company without any public disclosure, even though that ownership can often “morph” into a full 9% direct shareholder ownership stake at any time.

UTL: *So how have hedge funds actually engaged in empty voting?*

Hu: Let’s consider two examples, the first involving a hedge fund called Perry Corp. In late 2004, Perry owned seven million shares of King Pharmaceuticals. Mylan Laboratories agreed to buy King. King’s shares jumped, but Mylan’s shares dropped sharply. To help ensure that Mylan obtained the requisite shareholder approval, Perry bought 9.9% of Mylan, thereby becoming Mylan’s largest shareholder.

However, Perry fully hedged its market risk on the Mylan shares through equity

swaps and other means, thereby ending up with 9.9% voting ownership but zero economic ownership. Including its position in King, Perry’s overall economic interest was thus negative. The more Mylan (over)paid for King, the more Perry would profit.

Another example involves the use of share borrowing, though there are certain regulatory and other factors limiting use of this technique in vote buying, especially in the U.S. Suppose that a shareholder is upset with management and wants to support a shareholder proposal or election of minority directors. The shareholder might be tempted to try to enhance his voting power by borrowing shares just before the record date for a shareholder vote, and return the shares afterwards.

One example of this “record date capture” occurred in the U.K. in 2002. Laxey Partners, a hedge fund, held about 1% of the shares of British Land, a large property company. At the annual general meeting, Laxey voted over 9% of British Land’s shares to support a proposal to dismember British Land.

How was this possible? Just before the record date, Laxey borrowed almost 42 million shares. Laxey perceived itself as calling weak management into account; it believed that such vote buying was improving corporate governance. British Land’s chairman didn’t see matters the same way, lambasting Laxey’s “rent-a-vote” strategy as an abuse of the voting system.

UTL: *So what, if anything, should be done?*

Hu: The current regulatory regime has been undermined by financial innovation. Current state corporate law is unlikely to reach much of the new vote buying by outside investors. For instance, decoupling of the Perry-Mylan sort would not even fall within the definition of vote buying under the leading Delaware case.

The federal disclosure side is no better. The SEC has five discrete sets of ownership disclosure rules that, taken as a whole, are bewilderingly complex. Key elements have been rendered obsolete by the emergence of equity swaps and other financial innovations known as “over-the-counter derivatives.” The transparency and level playing field goals that motivate longstanding disclosure rules are undermined. This

is a worldwide issue; hidden ownership has even been litigated in Australia and New Zealand.

Our articles propose a set of integrated disclosure rules which would simplify and modernize the current rules. We anticipate the new rules would not only provide better information but may actually be less burdensome overall.

In contrast, an assessment of what responses beyond such disclosure reforms might be appropriate must reflect the fact that not all vote buying is bad. Vote buying could enhance shareholder oversight of management in certain circumstances.

Moreover, the response must consider potential effects on the derivatives, share borrowing, and short-selling markets on which the new vote buying depends. The derivatives, share borrowing, and short-selling markets have valuable social roles. For instance, some believe that short sellers can help make stock prices more efficient.

Financial innovation and hedge funds make times interesting for the world’s academics, corporate executives, lawyers, and regulators.

The Research:

Henry T. C. Hu and Bernard Black, “The New Vote Buying: Empty Voting and Hidden (Morphable) Ownership,” 79 Southern California Law Review 811-908 (2006), also available at <http://ssrn.com/abstract=904004>

Henry T. C. Hu and Bernard Black, “Empty Voting and Hidden (Morphable) Ownership: Taxonomy, Implications and Reforms,” 61 Business Lawyer 1011-1070 (2006), also available at <http://ssrn.com/abstract=887173>

Henry T. C. Hu and Bernard Black, “Hedge Funds, Insiders, and the Decoupling of Economic and Voting Ownership: Empty Voting and Hidden (Morphable) Ownership,” Journal of Corporate Finance (forthcoming 2007), also available at <http://ssrn.com/abstract=874098>

RECENT FACULTY BOOKS

Steve Bickerstaff *Lines in the Sand: Congressional Redistricting in Texas and the Downfall of Tom DeLay* (University of Texas Press 2007)

Jens C. Dammann *Die Grenzen Zulässiger Diskriminierung Im Allgemeinen Zivilrecht* (Duncker & Humblot 2005)

John S. Dzienkowski *Ethical Dilemmas in the Practice of Law: Case Studies and Problems* (Thomson/West 2006) (with Amon Burton)

Legal Ethics: The Lawyer's Deskbook on Professional Responsibility, 2006-2007 (Thomson/West 2006) (with Ronald D. Rotunda)

Professional Responsibility: A Student's Guide, 2006-2007 (Thomson/West 2006) (with Ronald D. Rotunda)

Jörg Fedtke *Patterns of Regionalism and Federalism: Lessons for the UK* (Hart Publishing 2006) (editor, with Basil Markesinis)

Francesco Francioni, editor, *Biotechnologies and International Human Rights* (Hart Publishing 2007)

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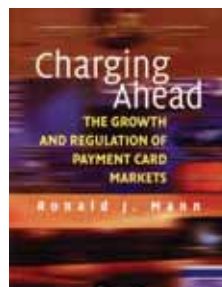
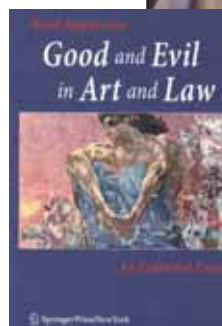
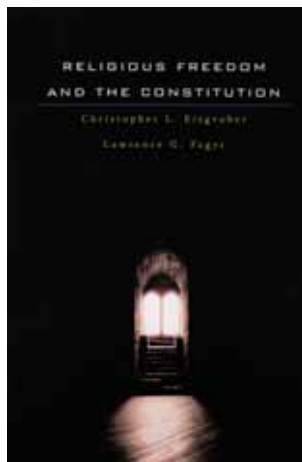
Sanford Levinson *Our Undemocratic Constitution: Where the Constitution Goes Wrong (And How We the People Can Correct It)* (Oxford University Press 2006)

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Patterns of Regionalism and Federalism: Lessons for the UK (Hart Publishing 2006) (editor, with Jörg Fedtke)

Lawrence G. Sager *Religious Freedom and the Constitution* (Harvard University Press 2007) (with Christopher L. Eisgruber)

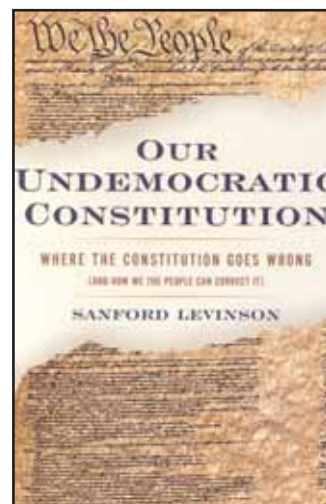
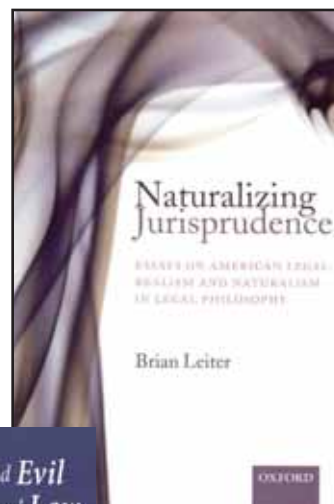


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Rescuing Science from Politics: Regulation and the Distortion of Scientific Research (Cambridge University Press 2006) (editor, with Rena Steinzor)



We the People

of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do hereby establish this Constitution for the United States of America.

Article I

Article II

A Tale of Two Signings

Article III

Article IV

Article V

Article VI

Article VII

done

in Convention by the unanimous Consent of the States present the thirteenth Day of September in the year of our Lord one thousand seven hundred and eighty one and of the Independence of the United States of America the Twelfth In witness whereof We have hereunto subscribed our Names.

John William Writtle Secretary

Delaware	<p>George Read Gunning Bedford junr John Dickinson Richard Bassett Jesse Berzon James McKean</p>	New Hampshire	<p>John Langdon Nicholas Gilman</p>
Massachusetts	<p>John Hancock</p>	New Jersey	<p>Richard Stockton Lafayette</p>
New York	<p>John Jay Alexander Hamilton William Livingston</p>	Pennsylvania	<p>Robert Morris George Clymer Thomas Mifflin James Smith Gouverneur Morris</p>
Virginia	<p>George Mason James Madison</p>	South Carolina	<p>Charles Cotesworth Pinckney Thomas M. Branch John Rutledge</p>
North Carolina	<p>James Iredell Richard Dobbs Spaight Abraham Williamson J. E. H. H. H.</p>	Georgia	<p>William B. Ewald George Thomson</p>

It's time to take a hard look at our much-venerated Constitution, argues Sanford Levinson in his new book. Too many of its provisions promote either unjust or ineffective government. It offers the president the power to overrule both houses of Congress on legislation he disagrees with on political grounds. Under the existing blueprint, we can neither rid ourselves of incompetent presidents nor assure continuity of government following catastrophic attacks. Is this a recipe for a republic that reflects the needs and wants of today's Americans?

Sanford Levinson is one of the country's preeminent Constitutional law scholars, and the W. St. John Garwood and W. St. John Garwood, Jr. Centennial Chair in Law at the University of Texas School of Law. This article is the introduction to his book, *Our Undemocratic Constitution: Where the Constitution Goes Wrong (And How We the People Can Correct It)*, published last year by Oxford University Press. It is reprinted here without footnotes. The full text of this chapter, with footnotes, can be found on the University of Texas School of Law's website, at www.utexas.edu/law/faculty/slevinson/undemocratic/undemocratic_excerpt.pdf

In 1987, I went to a marvelous exhibit in Philadelphia commemorating the bicentennial of the drafting there of the U.S. Constitution. The visitor's journey through the exhibit concluded with two scrolls, each with the same two questions: First, "Will You Sign This Constitution?" And then, "If you had been in Independence Hall on September 17, 1787, would you have endorsed the Constitution?" The second question clarifies the antecedent for "this" in the first: It emphasizes that we are being asked to assess the 1787 Constitution. This is no small matter inasmuch, for example, it did not include any of the subsequent amendments, including the Bill of Rights. Moreover, the viewer had been made aware in the course of the exhibit that the 1787 Constitution included several terrible compromises with slavery.

Even in 1987, I tended to regard the original Constitution as what William Lloyd Garrison so memorably called "A Covenant with Death and an

Agreement With Hell" because of those compromises. So why did I choose to sign the scroll? As I explained in the final chapter of a 1988 book, *Constitutional Faith*, I was impressed that Frederick Douglass, the great black abolitionist, after an initial flirtation with Garrison's rejectionism, endorsed even the ante-

bellum Constitution. He argued that the Constitution, correctly understood, was deeply antislavery at its core. The language of the Constitution—including, most important, its magnificent Preamble—allows us to mount a critique of slavery, and much else, from within. I was convinced by Douglass—and many other later writers—that the

Constitution offers us a language by which we can protect those rights that we deem to be important. We need not reject the Constitution in order to carry on such a conversation. If the Constitution at the present time is viewed as insufficiently protective of such rights, that is because of the limited imagination of those interpreters with the most political power, including members of the Supreme Court. So I was willing in effect to honor the memory of Douglass and the potential that was—and is—available in our Constitution, and I added my signature to the scroll endorsing the 1787 Constitution.

On July 3, 2004, I was back in Philadelphia, this time to participate in the grand opening of the National Constitution Center. The exhibit culminates in "Signers' Hall," which features life-sized (and life-like) statues of each of the delegates to the convention. Many of the delegates appear to be holding animated conversations or, as in the case of Alexander Hamilton, striding forcefully toward George Washington—who quite literally, because of his height, towers over the room. As one walks through the hall and brushes against James Madison, Hamilton, and other giants of our history, one can almost feel the remarkable energy that must have impressed itself on those actually in Independence Hall.

As was true in 1987, the visitor is invited to join the signers by adding his or her own signature to the

It is vitally important to engage in a national conversation about the Constitution's adequacy rather than automatically to assume its fitness for our own times.

Constitution. Indeed, the center organized a major project during September 2004, cosponsored with the Annenberg Center for Education and Outreach, called "I Signed the Constitution." Fifty sites in all of the states were available for such a signing. Both the temporary 1987 exhibit and the permanent one at the National Constitution Center leave

little doubt about the proper stance that a citizen should take toward our founding document.

This time, however, I rejected the invitation to re-sign the Constitution. I have not changed my mind that the Constitution in many ways offers a rich, even inspiring, language by which to envision and defend a desirable political order. Nor does my decision not to sign the scroll at the National Constitution Center necessarily mean that I would have preferred that the Constitution go down to defeat in the ratification votes

And this is true even for readers who disagree with me on what specific rights are most important. It is always the case that courts are perpetually open to new arguments about rights—whether those of gays and lesbians or of property owners—that reflect the dominant public opinion of the day. Indeed, liberals should acknowledge that even a Supreme Court composed of a majority of political conservatives—a total of seven justices were appointed by Republican presidents—nonetheless broke new ground in protecting gays

that vindicates the Constitution under which we are governed today. Our eighteenth-century ancestors had little trouble integrating slavery and the rank subordination of women into their conception of a “republican” political order. That vision of politics is blessedly long behind us, but the Constitution is not. It does not deserve rote support from Americans who properly believe that majority rule, even if tempered by the recognition of minority rights, is integral to “consent of the governed.”

I invite you to ask the following questions by way of preparing yourself to scrutinize the adequacy of today’s Constitution:

1. Even if you support having a Senate in addition to the House of Representatives, do you support as well giving Wyoming the same number of votes as California, which has roughly seventy times the population?

2. Are you comfortable with an Electoral College that, among other things, has regularly placed in the White House candidates who did not get a majority of the popular vote and, in at least two cases over the past fifty years, who did not even come in first in that vote?

3. Are you concerned that the president might have too much power, whether to spy on Americans without any congressional or judicial authorization or to frustrate the will of a majority of both houses of Congress by vetoing legislation with which he disagrees on political grounds?

4. Do you really want justices on the Supreme Court to serve up to four decades and, among other things, to be able to time their resignations to mesh with their own political preferences as to their successors?

5. Do you support the ability of thirteen legislative houses in as many states to block constitutional amendments desired by the overwhelming majority of Americans as well as, possibly, eighty-six out of the ninety-nine legislative houses in the American states?

One might regard these questions as raising only theoretical, perhaps even “aesthetic,” objections to our basic institutional structures if we felt truly satisfied by the outcomes generated by our national political institutions. But

Courts are perpetually open to new arguments about rights—whether those of gays and lesbians or of property owners—that reflect the dominant public opinion of the day.

of 1787–1788. Rather, I treated the center as asking me about my level of support for the Constitution today and, just as important, whether I wish to encourage my fellow citizens to reaffirm it in a relatively thoughtless manner. As to the first, I realized that I had, between 1987 and 2004, become far more concerned about the inadequacies of the Constitution. As to the second, I think that it is vitally important to engage in a national conversation about its adequacy rather than automatically to assume its fitness for our own times. Why I believe this is in a real sense the topic of this book.

My concern is only minimally related to the formal rights protected by the Constitution. Even if, as a practical matter, the Supreme Court reads the Constitution less protectively, with regard to certain rights, than I do, the proper response is not to reject the Constitution but to work within it by trying to persuade fellow Americans to share our views of constitutional possibility and by supporting presidential candidates who will appoint (and get through the Senate) judges who will be more open to better interpretations. Given that much constitutional interpretation occurs outside the courts, one also wants public officials at all levels to share one’s own visions of constitutional possibility—as well, of course, as of constitutional constraints.

and lesbians by overturning Texas’s prohibition of “homosexual sodomy.” I applauded that decision; more important is the fact that the public at large, by 2003, also seemed more than willing to accept the Court’s views. The country may be clearly divided about gay and lesbian marriage, but relatively few people any longer seem to endorse a constitutional vision that allows the criminalization of such sexual practices as such.

So, what accounts for my change of views since 1987? The brief answer—to be spelled out in the remainder of the book—is that I have become ever more despondent about many structural provisions of the Constitution that place almost insurmountable barriers in the way of any acceptable notion of democracy. I put it this way to acknowledge that “democracy” is most certainly what political theorists call an “essentially contested concept.” It would be tendentious to claim that there is only one understanding—such as “numerical majorities always prevail”—that is consistent with “democracy.” Liberal constitutionalists, for example, would correctly place certain constraints on what majorities can do to vulnerable minorities.

That being said, I believe that it is increasingly difficult to construct a theory of democratic constitutionalism, applying our own twenty-first-century norms,

this is patently not the case. Polling data offer some insights, even as we must recognize both that they measure support for particular officials and that support levels go up as well as down. That being said, consider that, as I write these lines in May 2006, a USA Today-Gallup poll taken between April 28–30 finds that 34 percent of the respondents approve of George Bush's conduct as President (though 39 percent still have a "favorable" view of him overall, as contrasted with the 60 percent who regard him unfavorably). Only 41 percent find him "honest and trustworthy." Yet President Bush has a higher approval rating than Congress. A slightly earlier CBS-Washington Post poll found that only 36 percent of those polled "approve" of the current Congress, while 62 percent "disapprove." Yet another poll found that Republican congressional leaders were approved by only 33 percent of the respondents, one point less than their Democratic counterparts (34 percent).

Compared to the president and Congress, members of the Supreme Court might feel considerably better. Yet even there, the data are mixed. For example, a May 2005 poll conducted by Quinnipiac University found that only 44 percent of voters approved of the decisions of the Supreme Court, down from 56 percent approval in a March 5, 2003, poll. An analysis of public opinion and the Court during the period of William Rehnquist's chief justiceship—1986–2005—found a general diminution of support for the Court over those years, though several polls continue to show that the majority of the public retains "confidence" in the Court. Still, according to Wisconsin political science professor Herbert Kritzer, a June 2005 poll by the Pew Research Center for the People and the Press finding that 57 percent of its respondents are favorable to the Court "is at the lowest level since it began, falling under 60 percent for the first time." As John Roberts took the helm of the Supreme Court in September 2005, almost a third of the population (31 percent) expressed "not very much" confidence (25 percent) or "none at all" (6 percent) in the judiciary, even if this was offset by the 55 percent who

expressed a "fair amount" of confidence. Only 13 percent had a "great deal" of confidence. Interestingly, Kritzer relates the general drop in support for the Court to "the general demonization of government, particularly the federal government, that took place over the past 25 years."

A different sort of discontent is measured when one asks people if they believe that the country is generally headed in the right direction. In April 2005, a full 62 percent of the respondents to a CBS poll indicated that they believed that the country was headed

We must recognize that a substantial responsibility for the defects of our polity lies in the Constitution itself.

in "the wrong direction." One doubts that the country is any more optimistic a year later, given further setbacks in Iraq and the disasters generated by Hurricanes Katrina and Rita, not to mention more general issues of national security, global warming, and the ever higher cost of gas. One might feel that the country is headed in the wrong direction even if Congress were perceived to be on top of all such issues if one thought we were at the mercy of events—like an oncoming asteroid—simply beyond any human intervention. But surely the sense of dissatisfaction is related for most Americans to a belief that our political institutions are not adequately responding to the issues at hand. Any reader can certainly construct her own list of issues that are not seriously confronted at all—or, if confronted, resolved in totally inadequate ways—by the national government. Serious liberals and conservatives would likely disagree on the particular failings, but both, increasingly, would share an attitude of profound disquiet about the capacity of our institutions to meet the problems confronting us as a society.

To be sure, most Americans seem to approve of their particular members of Congress. The reason for such approval, alas, may be the representatives' success in bringing home federally funded pork, which scarcely relates to the great national and international issues that we might hope that

Congress could confront effectively. In any event, we should resist the temptation simply to criticize specific inhabitants of national offices, however easy that is for most of us to do, regardless of political party. An emphasis on the deficiencies of particular officeholders suggests that the cure for what ails us is simply to win some elections and replace those officeholders with presumptively more virtuous officials. But we are deluding ourselves if we believe that winning elections is enough to overcome the deficiencies of the American political system.

We must recognize that a substantial responsibility for the defects of our polity lies in the Constitution itself. A number of wrong turns were taken at the time of the initial drafting of the Constitution, even if for the best of reasons given the political realities of 1787. Even the most skilled and admirable leaders may not be able to overcome the barriers to effective government constructed by the Constitution. No less a founder than Alexander Hamilton emphasized that "[a]ll observations" critical of certain tendencies in the Constitution "ought to be referred to the composition and structure of the government, not to the nature or extent of its powers." He is correct. In many ways, we are like the police officer in Poe's classic *The Purloined Letter*, unable to comprehend the true importance of what is clearly in front of us.

If I am correct that the Constitution is both insufficiently democratic, in a country that professes to believe in democracy, and significantly dysfunctional, in terms of the quality of government that we receive, then it follows that we should no longer express our blind devotion to it. It is not, as Jefferson properly suggested, the equivalent of the Ark of the Covenant. It is a human creation open to criticism and even to rejection. To convince you that you should join me in supporting the call for a new constitutional convention is what this book is about.

William M. Sage

ADVISES ON CURING
HEALTH CARE CRISIS

In the fall of 2006 the Law School welcomed two new scholars: Professor William M. Sage, a leading expert in health law and policy, and Assistant Professor John M. Golden, an expert in intellectual property law.

Professor William M. Sage, recently arrived from Columbia University, holds a medical degree and a law degree. His appointments at the University of Texas call on him to combine the lessons of each.

Sage joins the law school faculty as the James R. Dougherty Chair for Faculty Excellence. He was also

with the UT Medical Branch in biomedical engineering, cellular and molecular biology, and neuroscience. His evolving mandate will also include working with faculty and students from many UT-Austin schools and departments, with other UT campuses, and with the Austin community to advance education, service, and research involving health care and public health.



William M. Sage

appointed as the inaugural Vice Provost for Health Affairs at UT-Austin. In that capacity, he will participate in the development of the Dell Pediatric Research Institute on the newly designated University of Texas Health Research Campus, the Clinical Education Center at Brackenridge, and interdisciplinary programs such as UT-Austin's joint MD-PhD program

“We live in a time and place where the myriad questions concerning the delivery of medical services are of preeminent interest and concern,” said Dean Larry Sager. “There is no one in legal education who is better versed or more influential in these matters than Bill Sage. That he joins us at the University of Texas

is a cause for celebration.”

“I am delighted to become a member of the UT faculty,” Sage said. “What happens to health care in Texas over the next decade will be critically important for the people of the state and for the nation as a whole. I believe that the University of Texas at Austin has a lot to contribute to the law and public policy of health care, to medical

innovation, and to the training of health professionals.” Sage added, “In addition to collaborating with UT’s dynamic group of law teachers and legal scholars, I look forward to working with faculty and students throughout the University, and to serving the community and state.”

Sage’s work and scholarship in health care is impressive. He has edited two books, including *Medical Malpractice and the U.S. Health Care System* (Cambridge University Press 2006), and has written more than eighty articles in legal, health policy, and medical publications. In 1993 he chaired four working groups for the White House Task Force on Health Care Reform. From 2002 through 2005, he was the principal investigator for the Project on Medical Liability in Pennsylvania funded by the Pew Charitable Trusts.

In 1998, Sage received an Investigator Award in Health Policy Research from the Robert Wood Johnson Foundation. He is an elected fellow of the Hastings Center on bioethics, and he is a member of the editorial board of *Health Affairs*.

Sage received his AB from Harvard College and his medical and law degrees from Stanford University. He completed his internship at Mercy Hospital and Medical Center in San Diego, and served as a resident in anesthesiology and critical care medicine at the Johns Hopkins Hospital. Prior to joining the Columbia Law School faculty in 1995, Sage practiced corporate and securities law in Los Angeles.

John M. Golden

PATENT
TENDING

Interested from an early age in complex systems, John Golden was drawn to the study of physics. This led him all the way to a PhD from Harvard University in condensed matter physics. He then turned to study another complex system—the law—and earned a JD



John M. Golden

from Harvard, too. “In condensed matter physics, you work to model the most important aspects of complex systems,” Golden said. “In law, you often look for the most significant features of complicated fact patterns and social interactions. In both areas, one looks to understand how things are organized, or how they could be—or should be—organized.”

On his arrival at UT Law, Dean Larry Sager tallied the “remarkable and apt set of credentials” that Golden has amassed in his young career: “He began with a PhD in physics; followed with a magna cum laude law degree from Harvard; and then turned to a high-powered practice in patent law.”

Golden’s patent-law practice, undertaken at Wilmer Cutler Pickering Hale and Dorr in Boston, focused on patent litigation at both the trial and appellate levels, and included involvement in the prosecution of patent applications before the U.S. Patent and Trademark Office. “I enjoyed my practice at WilmerHale,” Golden said. “It helped me develop a sense of how both legal practice and the commercial world operate.”

Before beginning his practice Golden clerked for Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit, and for U.S. Supreme Court Justice Stephen Breyer during the October 2002 term.

Golden arrives at the Law School experienced in academic matters as well. He has written or co-written numerous articles on both physics and the law, and in 2004 and 2005, served as the Hieken Lecturer on Law at Harvard Law School, where he taught patent law.

He joined the faculty of UT Law in the fall of 2006 and immediately put his unique synthesis of talents to work. In addition to teaching classes in Administrative Law and Patent Law, he recently presented a paper that will be published in Volume 85 of the *Texas*

Law Review. Entitled “‘Patent Trolls’ and Patent Remedies,” the paper responds to concerns that patent holders who do not practice their inventions or compete with those who do may generate an improper “tax” on technological innovation. It is commonly thought that some reform in U.S. patent law is needed to address the abuses and excesses of “patent trolls,” but there is considerable disagreement on what that ought to be. In his paper, Golden analyzed some of the current reform proposals with an eye to recent trial court decisions.

“Patent litigation has been described as the sport of kings,” Golden remarked, acknowledging the fact that many companies choose to license patents rather than risk infringement suits because of the high cost of litigation. “There have been a number of different suggestions on how to address problems with how patent law operates. Part of the difficulty is figuring out what combination of proposals makes the most sense and will not cause excessive risk to benefits that patent law is meant to provide.”

We may or may not get substantial patent law reform from Congress. In the meantime, concerns with the current patent system will continue to be addressed by the Patent and Trademark Office and the courts, and Golden hopes his research will prove useful as these issues make their way through the system. As it will be, no doubt, to future lawyers who study here at UT Law.

Nurturing Scholarship



Scott Sullivan, Alvaro Santos, Philomila Tsoukala, and David Gamage

UT LAW'S EMERGING SCHOLARS PROGRAM

In an effort to encourage and support young scholars, UT Law launched a program that awards fellowships for up to two years of in-residence research and teaching. “This program is largely the brainchild of Professor Jane Cohen,” said Robert Peroni, the James A. Elkins Centennial Chair in Law. “In three short years, the Emerging Scholars Program has already established itself as one of the top initiatives of its kind. It provides promising law teaching candidates with an opportunity to teach the wonderful UT Law students and work on interesting legal scholarship projects with the assistance of the permanent faculty members, who provide constructive critiques of their work and helpful advice about their scholarly agenda.”

Initiated in 2004 under Dean Bill Powers, the Emerging Scholars Program enriches legal education for students, hones the skills of participating Fellows,

and allows UT Law faculty to contribute to the growth of the legal academy. Professor Mitch Berman chaired the committee charged with creating this program. Berman worked closely with other faculty members, including Professors Cohen and Willy Forbath, to develop something that would fully utilize UT Law’s unique strengths.

“In three short years, the Emerging Scholars Program has already established itself as one of the top initiatives of its kind.”

Treated like tenure-track faculty—they receive a stipend, a faculty office, and administrative assistance—Fellows also have reduced teaching loads and no administrative responsibilities. This gives them time to focus on scholarship, and it is expected that they will present

at least one research paper to the faculty during their time in residence.

The first Emerging Scholars Fellow, Sam Buell, completed the program in 2006 and joined the law faculty of Washington University in St. Louis. During the 2006-2007 academic year there were four Fellows in residence at UT Law: David Gamage, Alvaro Santos,

Scott Sullivan, and Philomila Tsoukala.

Fellows enjoy substantial support from the faculty in the furtherance of their scholarly pursuits. “The most amazing thing about this program is the access to faculty,” said Scott Sullivan, who joined the Law School in the fall of

2006. "In my particular case, Derek Jinks has been incredibly helpful. I've been working on issues surrounding treaty interpretation, arguing that the courts should take a much greater role in this process, despite a traditional deference to the executive branch. Next fall I will co-teach with Derek a course called 'The Rule of Law in Wartime,' which addresses a large variety of issues relating to legal controversies in wartime." Sullivan is a graduate of the University of Kansas. He earned a JD from the University of Chicago Law School and an LLM from the European University Institute.

David Gamage, whose research interests include taxation and the tax lawmaking process, concurs with that assessment. "The faculty here is phenomenal," he said. "I've worked with scholars who specialize in the theoretical aspect of law, as well as scholars who understand how law works on the ground." He also appreciates the Law School's proximity to the state capital. "Texas went through major tax reform last year, and it was very useful to my research

to have such ready access to legislators during that process." Gamage is currently working on a paper that analyzes the effects of economic fluctuations on state budgets. He earned his undergraduate and graduate degrees from Stanford and his law degree from Yale. Gamage accepted a tenure-track position at UC-Berkeley's Boalt Hall which he begins next fall.

Because Fellows bring such extensive and varied scholarly experience, they expand and enrich the intellectual life of the Law School. Philomila Tsoukala is a graduate of the Conservatory of Northern Greece and Aristotle University of Thessaloniki. She earned an LLM from Harvard Law School, where she is now an SJD candidate, and a master's degree in public law from Université Pantheon-Assas Paris II. Her approach is interdisciplinary in nature. "I draw from a wide variety of sources—legal history, feminist theory, law and economics—to understand how the legal system deals with issues such as unremunerated care work," said Tsoukala. "I'm interested in

legal norms in family law and how they relate to market regulations. My time here at UT Law has been tremendously valuable in helping me understand how these things connect." Next fall, Tsoukala will begin at Georgetown University Law Center as a Visiting Assistant Professor.

"The Emerging Scholars Program was a fantastic way of starting my academic career," said Alvaro Santos, who completed his fellowship at end of the spring 2007 semester and accepted a tenure-track appointment at the Georgetown University Law Center. He earned a JD from Universidad Nacional Autonoma de Mexico and an LLM from Harvard, where he is now an SJD candidate.

"It opened the door to a vibrant intellectual and collegial exchange with a first-rate faculty," Santos continued. "Their feedback on my research was invaluable. And, I had the privilege to teach an outstanding and diverse group of students. I'm going to miss UT and Austin a great deal. I might even miss the Longhorns. But I take with me many valuable friendships—and I'll visit often."



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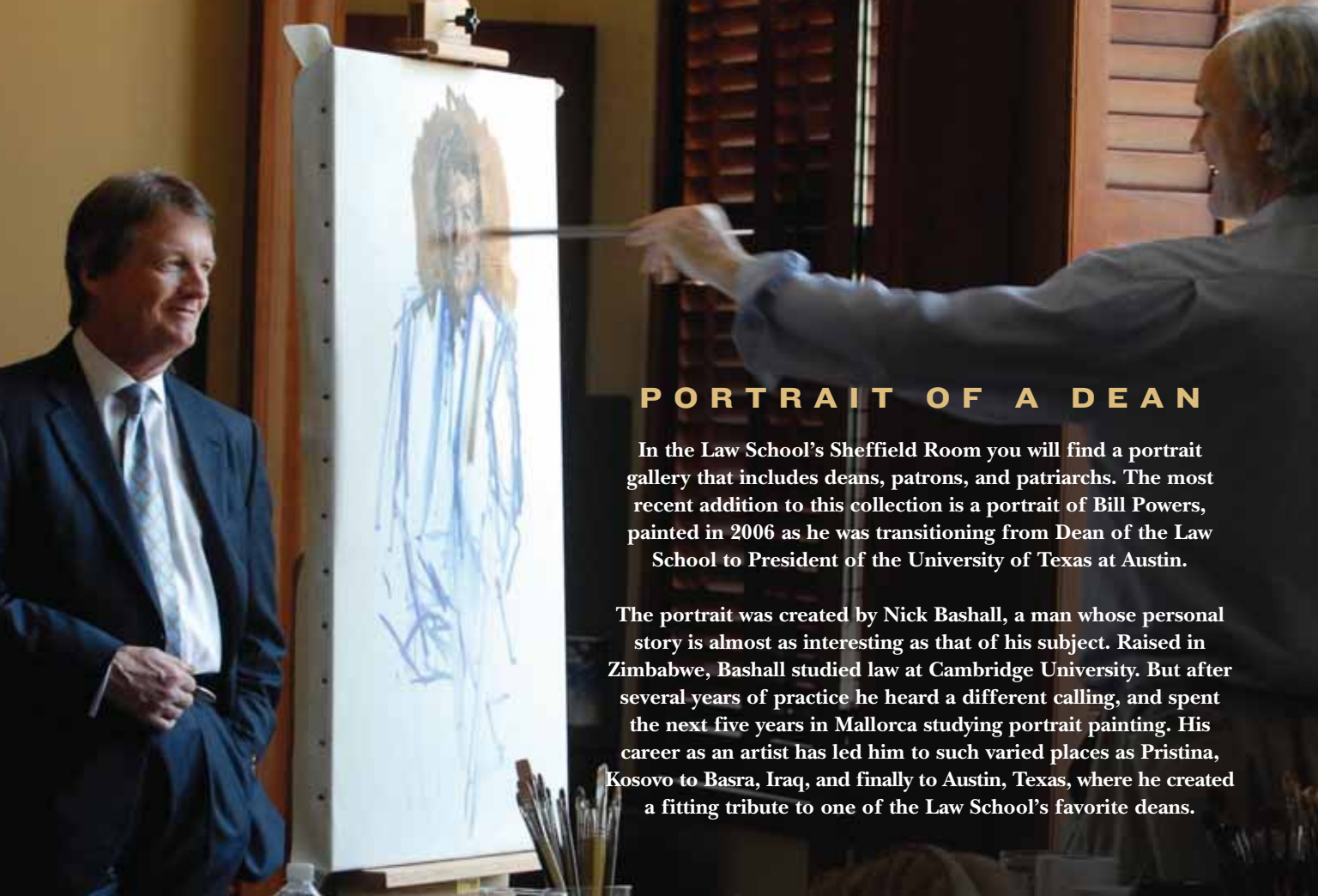
The people depicted above are not Andrews Kurth lawyers or staff.

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PORTRAIT OF A DEAN

In the Law School's Sheffield Room you will find a portrait gallery that includes deans, patrons, and patriarchs. The most recent addition to this collection is a portrait of Bill Powers, painted in 2006 as he was transitioning from Dean of the Law School to President of the University of Texas at Austin.

The portrait was created by Nick Bashall, a man whose personal story is almost as interesting as that of his subject. Raised in Zimbabwe, Bashall studied law at Cambridge University. But after several years of practice he heard a different calling, and spent the next five years in Mallorca studying portrait painting. His career as an artist has led him to such varied places as Pristina, Kosovo to Basra, Iraq, and finally to Austin, Texas, where he created a fitting tribute to one of the Law School's favorite deans.



Photos: Marsha Miller

Chief Justice of the United States Keynotes at Tex Lezar Memorial Lecture Series

The University of Texas School of Law hosted the third annual Tex Lezar Memorial Lecture at the Belo Mansion in Dallas on Wednesday, March 7, 2007 with Chief Justice John G. Roberts, Jr. speaking. Chief Justice Roberts spoke to an invited audience of approximately 400 people about the appropriate role of the courts in society, using the pivotal 1857 case *Dred Scott v.*

Sandford as an example of the negative consequences of judicial activism. This was the second Law School-related event this year at which a sitting member of the U.S. Supreme Court participated.

"At the 2005 Senate confirmation hearings occasioned by his nomination to the position of Chief Justice," said UT Law School Dean Lawrence Sager in his introduction, "Chief Justice Roberts demonstrated a dazzling mixture of intelligence, subtlety, care, and charm. These are the qualities he brings with him to his new office."

Sager thanked Roberts for bringing honor and distinction to the lecture series by his participation. Chief Justice Roberts, a longtime friend of Lezar's, began his remarks by expressing his delight that his first visit to Texas as Chief Justice was to deliver the Tex Lezar Lecture.

The lecture series honors the life and work of Harold J. "Tex" Lezar, who died in 2004. Lezar was born in Dallas and was a 1976 graduate of the Law School. Always interested in public policy and politics, Lezar worked as a speechwriter in the Nixon Administration before

attending law school and, after earning his law degree, went on to serve as Assistant Attorney General for Legal Policy and Chief of Staff to U.S. Attorney General William French Smith in the Reagan Administration.

The Tex Lezar Memorial Lecture Series was conceived and is underwritten by the many friends of Tex Lezar. According to its mission statement, the annual lecture is to be given by a "person learned in affairs of government whose work carries forward the ideals of constitutional government and a free society."

Theodore B. Olson, Solicitor General of the United States from 2001–2004, was the inaugural lecturer. Kenneth W. Starr, former Solicitor General of the United States, former judge on the U.S. Court of Appeals for the District of Columbia Circuit, and now dean of Pepperdine University's School of Law, delivered the second lecture in the series.

Chief Justice Roberts' complete lecture is available for viewing on the UT Law School's website. Please visit www.utexas.edu/law/news/2007/030807_chief.html.



Chief Justice John Roberts

Texas Review of Law & Politics Celebrates its First Decade

Little did anyone know when the *Texas Review of Law & Politics* was first organized in 1996 that it would become one of the most prominent conservative law journals in the country, or that its members would celebrate their tenth anniversary with a United States Supreme Court justice as their honored guest. On March 3, 2007, the *Review* presented its Jurist of the Year

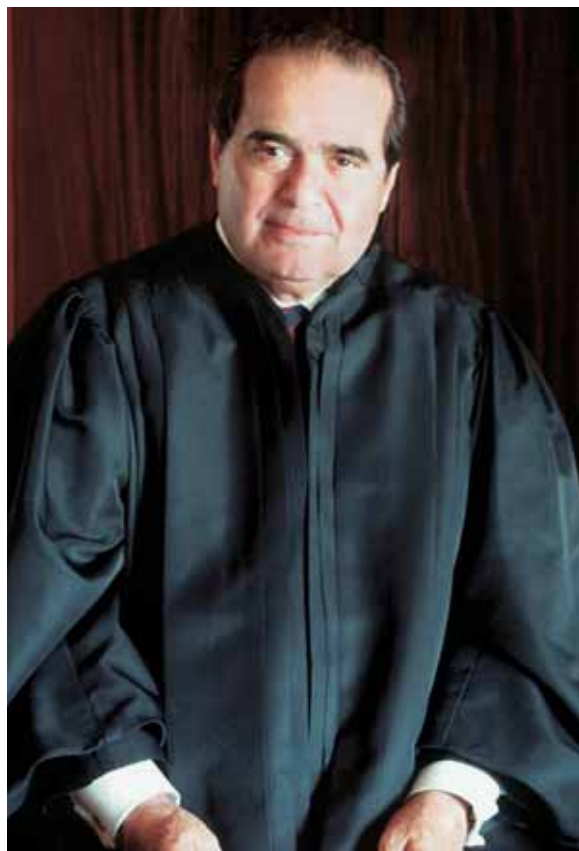
award—given annually to a member of the legal profession who embodies the conservative viewpoint—to Justice Antonin Scalia. Scalia, appointed to the Supreme Court by President Ronald Reagan in 1986, is the second most senior justice on the Court, and the leader of its conservative wing.

Past recipients of the Jurist of the Year award include Texas Attorney General Greg Abbott, U.S. Senator John Cornyn, and Judge Edith Jones, '74, of the U.S. Court of Appeals for the Fifth Circuit.

Justice Scalia addressed the invited audience on the topic of the inappropriate use of international law when interpreting the U.S. Constitution, as well as on the unique role the *Review* plays in legal academia. In addition to attending the journal awards banquet, Justice Scalia also spoke over lunch to the Catholic Law Students Association, and he participated in an informal question and answer session with members of the Texas Federalist Society.

Third-year student Bonnie Rust received the 2007 Tex Lezar "Fill Your Boots" award as the best student editor, receiving

among other things a pair of boots belonging to the late Lezar. Harold J. "Tex" Lezar, '76, served in the presidential administrations of Richard Nixon and Ronald Reagan, was a supporter of the journal from its inception, and enjoyed helping students become active in support of conservative causes. Outgoing editor-in-chief Nigel Stark, '07, introduced Eric Neuman, '08, as the editor-in-chief for the 2007–2008 academic year. Other guests at the awards banquet were Fifth Circuit Court of Appeals judges Will Garwood, '55, and Priscilla Owen, Abbott, and Texas Solicitor General Ted Cruz.



Justice Antonin Scalia

C L A S S N O T E S

1957



Sheldon Anisman, an attorney at the law firm of Jackson Walker LLP, has been recognized by *Fort Worth, Texas* magazine for excellence in the fields of Administrative Land Use and Environmental Law.

1960



John L. Lancaster, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *Super Lawyers* for achievements in Business Litigation.

1962



George C. Chapman, senior counsel at the law firm of Thompson & Knight LLP, is the 2007 recipient of the Heath Award presented by the Dallas County Medical Society. The award is given annually to a lay person who has provided outstanding leadership and service to medicine and the community of Dallas. A major portion of Chapman's practice has been in representing doctors and hospitals in medical malpractice suits, defending peer review decisions of medical staffs, and supporting the Dallas County Medical Society and the Texas Medical Association in litigation arising from disciplinary decisions.



Harry Reasoner, a partner at Vinson & Elkins in Houston, was appointed to a three-year term of the new at-large attorney position on the Texas Access to Justice Commission. The

commission, established by the Supreme Court in 2001, is tasked with developing and implementing policy initiatives designed to expand access to, and enhance the quality of, justice in civil legal matters for low-income Texans. Reasoner joined Vinson & Elkins in 1964 and was the firm's managing partner from 1992-2001. Reasoner is a Fellow of the American College of Trial Lawyers; International Academy of Trial Lawyers; International Society of Barristers; and the American, Texas, and Houston Bar Foundations, and has served on the Texas Supreme Court Advisory Committee; Supreme Court of Texas Judicial Campaign Finance Study Committee; and the Texas Supreme Court Task Force on Civil Litigation. Reasoner is also a member of the Law School's Foundation Board of Trustees.

Broadus A. Spivey has been presented with the inaugural Lifetime Achievement Award from the Texas Trial Lawyers Association. It was announced that the award would hereafter be known as the Broadus A. Spivey Lifetime Achievement Award. Spivey practices with the Austin law firm of Spivey & Grigg, LLP.

1963



Tom Henson, a partner at the law firm of Ramey & Flock, P.C., has been elected 2006-2007 Executive Vice President of the Texas Association of Defense Counsel (TADC). TADC is a statewide association of private practice attorneys specializing in civil defense trial law. Henson focuses his practice on complex tort and commercial litigation.

1965

Marc E. Grossberg, an attorney at the law firm of Thompson & Knight LLP, has been recognized as one of the Top 100 Houston Region Super Lawyers by *Texas Monthly* in the October 2006 issue.

Pete Winstead, founding shareholder of Winstead Sechrest & Minick, received the *Austin Business Journal's* Best of Business Attorneys Lifetime Achievement Award at an awards dinner on September 21, 2006. The award recognizes top lawyers in Central Texas. Winstead was featured in the paper the following day. During his tenure in Austin, Winstead has served as chairman of the Texas Turnpike Authority, the Greater Austin Chamber of Commerce, the Real Estate Council of Austin, the United Way Capital Area, and Austin Area Research Organization. In 2005 he was chairman of Austin's March of Dimes "WalkAmerica" event. Winstead has been involved with the Austin Symphony Orchestra, SafePlace, YMCA of Austin, Colorado River Foundation, the Long Center, The Austin Community Foundation, and the Capital Area Council Boy Scouts of America. This most recent honor caps off an impressive three-year span for Winstead. In 2004, he was named Austinite of the Year by the Greater Austin Chamber of Commerce, and was named one of the "25 most influential people in Austin and Central Texas for the past 25 years," by the *Austin Business Journal* in 2005.

1967



Donald W. Griffis, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *Super Lawyers* for achievements in

Personal Injury Defense and General Law. In addition to this honor, he has also been selected for inclusion in *The Best Lawyers in America 2007* for Alternative Dispute Resolution and Commercial Litigation.

1968



Byron F. Egan, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *Super Lawyers* for achievements in Mergers & Acquisitions. In addition to this honor, he has also been selected for inclusion in *The Best Lawyers in America 2007* for Corporate Law.



David R. Keyes, a shareholder with Winstead PC, has joined the Banking & Credit Transactions Section of the law firm.



Larry W. Langley, an attorney with the law firm of Jackson Walker LLP, has been selected for inclusion in *The Best Lawyers in America 2007* for Health Care Law.



Claud "Tex" McIver was named to the 2007 edition of *The Best Lawyers in America*. McIver is a partner at Fisher & Phillips and specializes in labor and employment law. In 2004, he was selected as a "Legal Elite, Labor & Employment Law" and he has been selected as a "Georgia Super Lawyer, Labor & Employment Law" since 2004. McIver is Vice Chair of the Georgia State Election Board and serves on the Georgia Judicial Nominating Commission.

1969



Rodney C. Koenig, a partner with Fulbright & Jaworski in Houston, was elected as a member of the Executive Council of the International Academy of Estate and Trust Law. Koenig's term will last until 2010.



The Honorable Elizabeth Lacy of the Virginia Supreme Court received one of the 2006 awards of distinction presented by the Virginia Women Attorneys Association (VWAA) as part of its 25th anniversary. The awards of distinction celebrate outstanding women lawyers who have demonstrated professional excellence, advanced opportunities for other women lawyers, or who committed themselves to exemplary public service on behalf of women. Justice Lacy was the first woman appointed to the Supreme Court of Virginia in 1989, after serving as Commissioner of the Virginia State Corporate Commission, and as Deputy Attorney General for Judicial Affairs, and has served in leadership roles for many legal and professional associations, including the American Bar Association, the National Association of Women Judges, the Institute of Judicial Administration, and the Lewis Powell American Inn of Court. Justice Lacy has been an adjunct professor at the T.C. Williams School of Law at the University of Richmond, as well as on the faculty of the National Judicial College and the New York University Institute of Judicial Administration.

1970



Cullen M. (Mike) Godfrey was selected as the Texas A&M University System Board of Regents general counsel on May 26, 2006. Godfrey was previously a partner in the Austin office of Jackson Walker. Prior to that, he was Vice Chancellor and General Counsel of the University of Texas System for four years and Chief Ethics Officer. Godfrey served for ten years as general counsel for FINA, a multi-billion-dollar petroleum and petrochemical company.

Lifetime Achievement Award

RUSH H. RECORD

Rush Record was born in Hugo, Oklahoma in 1917. He died May 25, 2007. Record attended Schreiner Institute, and received his L.L.B. from the University of Texas School of Law in 1940. While in Law School, he was named to the Chancellors and was a member of Order of the Coif. After graduation, he began his legal practice near Wichita Falls, Texas and then enlisted in the military during the Second



World War, where he served in Army Intelligence in Asia. In 1948 he moved to Houston and joined Vinson & Elkins, where he became a partner in 1953. Record practiced with Vinson & Elkins until he retired, after having been a long-term member of the firm's Management Committee and the head of one of the firm's principal business groups.

Outside of the law, Record devoted his energy and attention to a wide variety of topics, including neuroscience and psychiatric disorders. He served on the Texas Board of

Rush H. Record

Mental Health and Mental Retardation and on the President's Cabinet of the University of Texas Medical Branch (UTMB). The Rush H. and Helen Record Symposium in Neurology has been established by the Baylor College of Medicine. Record is survived by his wife, Helen.



Claiborne B. Gregory, Jr., an attorney with the law firm of Jackson Walker LLP, has been selected for inclusion in *The Best Lawyers in America 2007* for Bankruptcy and Creditor-Debtor Rights Law.

M. Lawrence Hicks, Jr., a partner with the law firm of Thompson & Knight LLP, has been selected for inclusion in the 2007 *Chambers USA* "Leaders in their Field" legal directory for Real Estate Law.

1972

Dallas Parker, a partner with the law firm of Thompson & Knight LLP, has been selected for inclusion in the 2007 *Chambers USA* "Leaders in their Field" legal directory for Technology Law. He has also been named as one of the "Leading Lawyers in America" by *Lawdragon*, the legal services information company. In addition, Parker has been elected to serve on the 2007 Management Committee at Thompson &

Knight LLP. He serves as Practice Leader of the International Practice Group in the Houston office.

Glen Rosenbaum, a partner at Vinson & Elkins in Houston, will be honored by the Anti-Defamation League (ADL) with its annual Torch of Liberty Award, Thursday, November 16 at 7:00 p.m. at its Torch of Liberty Dinner, and attendees of the dinner will learn more about the wide-ranging contributions Glen has made to so many facets of the Houston community. The ADL gives its Torch of Liberty Award annually to a business or civic leader in recognition and appreciation for that leader's efforts to promote respect, fight hatred and bigotry, and support fair treatment for all. Rosenbaum has been an ADL board member for twenty-two years, and is a former ADL board chair. Rosenbaum is a member of the Law School's Alumni Association Executive Committee.

1973



Robert M. Cohan, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *Super Lawyers* for achievements in Business Litigation. In addition to this honor he has also been selected for inclusion in *The Best Lawyers in America 2007* for Antitrust Law and Commercial Litigation.



Tom Hutcheson joined Winstead Sechrest & Minick as a shareholder in the Houston office. Hutcheson was elected to serve on the Antitrust Council of the Antitrust Section of the Houston Bar Association. Hutcheson is listed in the 2007 edition of *Best Lawyers in America* in Oil & Gas Law and he's admitted to practice before the 5th, 10th and 11th U.S. Circuit Courts of Appeals as well as all U.S. District Courts and all U.S. Bankruptcy Courts in Texas.

John S. Moody, president of Proterra Management in Houston, was elected to Potlatch's board of directors.



Edward C. Small, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *The Best Lawyers in America 2007* for Energy Law.

1974

John W. Cones has written a book titled *Hollywood Wars: How Insiders Gained and Maintain Illegitimate Control Over the Film Industry*. The book details the unethical and illegal business practices of major Hollywood studios and distributors that hurt independent filmmakers and Hollywood outsiders. The book has been published by Marquette Books LLC. Cones is in private practice as a securities and entertainment attorney in Los Angeles.



David G. Dunlap, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *Super Lawyers* for achievements in Energy and Natural Resources Law. In addition to this honor, he has also been selected for inclusion in *The Best Lawyers in America 2007* for Natural Resources Law and Oil & Gas Law.

Outstanding Alumnus Award

JACK RATLIFF

Jack Ratliff is a native of Sonora, Texas, and an honors Plan II graduate of the University of Texas at Austin. In 1957, he enlisted with the United States Navy and served as a destroyer deck officer and a Navy SEAL. After he was honorably discharged, he attended the University of Texas School of Law where he was an officer and Comment Editor of the *Texas Law Review*. Jack graduated from the Law School in 1962.



Jack Ratliff

Jack was formerly an attorney with the El Paso firm of Ratliff, Haynes and Stadling before teaching at the Law School. He has served as counsel and consulted on class action cases involving asbestos, breast implants, gasoline spills, plant explosions, insurance practices, securities, usury, and deceptive trade practices. In 1999, he was appointed by Attorney General John Cornyn as Special Counsel on complex litigation matters. He is Ben Gardner Sewell Professor Emeritus in Civil Trial Advocacy at the Law School. Professor Ratliff taught courses on Torts, Texas Civil Procedure, and advanced

courses in litigation strategies at the Law School, and was Director of Student Advocacy Competitions. Ratliff lives in Dripping Springs with his wife, Clare.

Stephen F. Fink, a partner with the law firm of Thompson & Knight LLP, has been selected for inclusion in the 2007 *Chambers USA* "Leaders in their Field" legal directory for Employment Law.

John H. Martin, a partner at the law firm of Thompson & Knight LLP, has been selected as one of the Top 100 Dallas/Fort Worth Region Super Lawyers by *Texas Monthly* in the October 2006 issue. He has also been named President-Elect of DRI—The Voice of the Defense Bar, the nation's largest organization of civil defense attorneys. Martin will serve a one-year term as President-Elect and become President in 2007.

1975

Thornton Hardie III, a partner with Thompson & Knight in Dallas, was named one of the "Leading Lawyers in America" by *Lawdragon*, the legal services information company.



The Honorable Charles W. "Tim" McCoy was selected as assistant presiding judge by a unanimous vote of the judges of the Los Angeles Superior Court. Judge McCoy began his two-year term on January 1, 2007.



Bea Ann Smith has joined Brown McCarroll, LLP as Of Counsel. She recently retired as Justice from the Austin Court of Appeals, a position she held since 1991. Judge Smith will work out of the firm's Austin office and plans to conduct a mediation practice and assist the appellate group.

1976



Bryan C. Birkeland, an attorney with Jackson Walker LLP, has been selected for inclusion in *The Best Lawyers in America 2007* for Real Estate Law.



Nina Cortell, a partner at Haynes and Boone, LLP, has been elected to the American Academy of Appellate Lawyers. The academy was founded in 1990 to recognize outstanding appellate lawyers

Leon Green Award

DAVID J. BECK



David J. Beck

David J. Beck, '65, received the Leon Green Award from the 2006–2007 *Texas Law Review* for outstanding contributions to the legal profession. The award is named for the great legal scholar and longtime UT Law professor who, with Professors Ira Hildebrand and Charles Potts, was instrumental in establishing the publication. Beck, a nationally renowned trial lawyer, is a partner in the Houston law firm of Beck, Redden & Secrest. He is the current president of the American College of Trial Lawyers and the immediate past president of the University of Texas Law School Foundation. Beck is also a generous and active volunteer for a host of civic and professional organizations.

and to promote improvement of appellate advocacy and appellate court administration.

Governor Rick Perry appointed **Jack Arnold McGaughey** as district attorney for the 97th Judicial District serving Archer, Clay, and Montague counties. McGaughey will serve until the next general election.



James C. Morriss III, a partner at Thompson & Knight, has been selected to serve on the Executive Committee of the U.S. Business Council for Sustainable Development (US BCSD). This is a non-profit association of businesses whose purpose is to deliver highly focused, collaborative projects that help its members and partners demonstrate leadership in the United States on sustainable development and realize business value. Morriss was also selected for inclusion in the 2007 *Chambers USA* "Leaders in their Field" legal directory for Environmental Law.

1977

Pamela E. George, a professor at South Texas College of Law, is celebrating twenty-five years of teaching by leading a fundraising drive to support a scholarship

for a third-year student with special interest in family law. George is currently the chair of the South Texas Task Force on Family & Juvenile Clinical Activities.

1978

James B. Harris, a partner with the law firm of Thompson & Knight LLP, has been selected for inclusion in the 2007 *Chambers USA* "Leaders in their Field" legal directory for Environmental Law.



Michael P. Pearson, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *The Best Lawyers in America 2007* for Natural Resources Law.

John W. Rain, a partner with the law firm of Thompson & Knight LLP, has been selected for inclusion in the 2007 *Chambers USA* "Leaders in their Field" legal directory for Banking & Finance Law.

1979

Janiece Longoria was unanimously reappointed to the Port of Houston Authority Commission for a third term by

Houston City Council. Longoria chairs the commission's international business task force and serves on the community relations task force and small business development committee. Longoria has been a partner at Ogden, Gibson, Brooks & Longoria since 1997. Longoria serves on the board of directors for the Pilot Commissioners, Centerpoint Energy, and the Greater Houston Partnership.



Kirk Shaffer has been appointed Associate Administrator of Airports for the FAA. He is responsible for national airport planning, which includes airport safety standards and airport design and engineering. From 1986 to 2003, Shaffer served variously as executive

assistant to the president, director of properties, and general counsel to the Metropolitan Nashville Airport Authority.

1980

Jeffrey O. Bramlett, a partner at the law firm of Bondurant Mixson & Elmore, LLP in Atlanta, has received the Elbert P. Tuttle Award from The Anti-Defamation League (Southeast Region).



Caroline C. Fuller was appointed managing director at Fairfield and Woods, P.C. in Denver, the first female managing director in the firm's history. Fuller practices in the areas of financially-distressed companies, including commercial bankruptcies and receiverships, and real estate lending and development.



Michael L. Kaufman, an attorney at the law firm of Jackson Walker L.L.P., has been selected for inclusion in *Super Lawyers* for achievements in Estate Planning and Probate Law.

1981



C. Wade Cooper, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *The Best Lawyers in America 2007* for Bankruptcy and Creditor-Debtor Rights Law.



Jeff Lefkowitz has joined the Houston law firm of Andrews Myers Coulter & Cohen as senior counsel.

1982

Trey Nicoud has become a partner with the law firm of Gibson, Dunn & Crutcher LLP. He practices antitrust and trade regulation law in the San Francisco office.

1983

David A. Furlow, an attorney at the law firm of Thompson & Knight LLP, has been recognized as one of the Top 100 Houston Region Super Lawyers by *Texas Monthly* in the October 2006 issue.

Alex Gonzales has been named managing shareholder of the Austin office at the law firm of Winstead PC. He represents financial institutions in regulatory and compliance matters and he is the Austin section head of Winstead's corporate section.

On February 1, 2007 the U.S. Senate confirmed the nomination of **Dean A. Pinkert** to the position of Commissioner, U.S. International Trade Commission. Prior to this appointment Pinkert held such positions as Senior Attorney at the U.S. Department of Commerce & Trade and he was Judiciary Counsel to Senator Robert C. Byrd. He will serve a nine year term as Commissioner.

Distinguished Alumnus Award for Community Service

FRANCI NEELY CRANE

After graduating Phi Beta Kappa from the University of Texas at Austin, Franci Crane worked her way through the University of Texas School of Law, where she was a member of the *Texas Law Review* and graduated in 1978 with high honors. Franci joined Susman Godfrey, becoming one of its first partners. During her twenty years at the firm, she handled high profile and high dollar litigation, and earned



Franci Neely Crane

literary organization. She conceived, organized, and implemented a Houston community outreach group called We're All Neighbors. Franci is also a Fellow of the Texas and Houston Bar Foundations. She lives in Houston with her husband, Jim.

a reputation as one of the best litigators in Texas. She currently serves on the Board of Houston Media Source.

Her contributions to the non-profit world have been extensive. To name just some of her activities: She serves actively on many nonprofit boards, including the Board of Recipe for Success, a program aimed at reducing childhood obesity, the Advisory Board of Bo's Place, an organization devoted to helping children who have suffered the loss of a loved one, and the boards of various arts organizations. She is the president of InPrint, Houston's most important

1984



Steve R. Martens, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *The Best Lawyers in America 2007* for Real Estate Law.



David T. Moran, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *Super Lawyers* for achievements in Appellate Law.



John H. Spurgin II, senior vice president of legal, general counsel and secretary for Administaff, was awarded Outstanding Corporate Counsel with an Attorney Staff of 11 to 30 among all Houston-based companies. The award, recognizing expertise and accomplishment by in-house counsel in the field of corporate law, was presented by the Association of Corporate Counsel and the *Houston Business Journal*. Spurgin joined Administaff in 1997. Prior to joining Administaff, he was a partner with the Austin office of McGinnis, Lochridge & Kilgore, where he served as Administaff's outside counsel for more than nine years. Spurgin has been recognized as a "Texas Super Lawyer" by *Texas Monthly* for three consecutive years (2004-2006). He formerly served as director of the Employer Services Assurance Corporation (ESAC).

1985

Craig Glick was appointed executive vice president and general counsel of Westside Energy. Previously, he served as senior vice president and general counsel of Kosmos Energy and was president of Hunt Resources. Glick began his career as an attorney with Vinson & Elkins where he made partner in 1993.



Timothy C. Taylor, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *Super Lawyers* for achievements in Real Estate Law. In addition to this honor, he has also been selected for inclusion in

Honorary Order of the Coif

DEMETRIS SAMPSON

DeMetris Sampson is the managing partner of the Dallas office of Linebarger Goggan Blair & Sampson, where she has practiced since 1987. Sampson is the first African-American woman to become a partner in a majority firm in the City of Dallas. Sampson graduated from the University of Texas at Austin with a business degree, and earned her law degree from Texas in 1980. She holds a Master of Laws in Taxation from SMU School of Law.



DeMetris Sampson

Award given by the five local bar associations; the Maura Award from the Women's Center of Dallas; and the Outstanding Young Texas Ex Award from the University of Texas Ex-Students Association. Sampson lives in Dallas.

Sampson serves on the board of the Greater Dallas Chamber of Commerce and chairs its Local Government Committee. She also serves on the Charter Review Commission for the City of Dallas. She served as co-chair of the Mayor's Complete Count Committee for the 2000 U. S. Census, appointed by Dallas Mayor Ron Kirk, and has served since 1987 on the City's Domestic Violence Task Force. She is a former member of the University of Texas Law School Alumni Association Executive Committee. Her numerous awards include the Dr. Martin Luther King, Jr. Justice

The Best Lawyers in America 2007 for Real Estate Law.

Jeffrey A. Zlotky, an attorney at the law firm of Thompson & Knight LLP, has been selected as one of the Top 100 Dallas/Fort Worth Region Super Lawyers by *Texas Monthly* in the October 2006 issue. In addition, he has also been elected to serve on the 2007 Management Committee at Thompson & Knight LLP. Zlotky is a member of the Corporate and Securities Practice Group in the Dallas office.

1986

David M. Bennett, a partner at the law firm of Thompson & Knight LLP, has been selected for inclusion in the 2007 *Chambers USA* "Leaders in their Field" legal directory for Bankruptcy Law.



Ann Benolken, previously a partner with DuBois, Bryant, Campbell & Schwartz, joined Jackson Walker as a partner in the Austin office of the Transactions section. Benolken serves on the Board of Directors of CASA of Travis County, and is also a member of the State Bar of Texas and the Colorado State Bar.

On March 1, Texas Deputy Attorney General for Litigation **Edward D. Burbach** joined Gardere Wynne Sewell LLP as a partner in Austin. He was appointed in 2003 to serve as the Texas Attorney General's lead litigator. Burbach represented the state and its leadership in many high-profile suits including energy, insurance, financial services, environmental claims, and disputes regarding the historic Texas Tobacco Settlement.

Melody Cooper, current member of the Corpus Christi City Council, was appointed

to the Resolutions Committee of the Texas Municipal League, the organization of municipal governments in Texas.



William S. Dahlstrom, an attorney with the law firm of Jackson Walker LLP, has been selected for inclusion in *The Best Lawyers in America 2007* for Land Use and Zoning Law and Real Estate Law.



William H. Hornberger, an attorney at the law firm of Jackson Walker LLP, has been selected for inclusion in *Super Lawyers* for achievements in Tax Law. In addition to this honor, he has also been selected for inclusion in *The Best Lawyers in America 2007* for Tax Law.

Stephen C. Rasch, an attorney at Thompson & Knight LLP, has been elected to serve on the Firm's Management Committee for 2007. He is a member of the Trail Practice Group in the Dallas office.

1987



Russ Stolle was appointed senior vice president of global public affairs and communications at Hunstman Corporation in The Woodlands. Stolle currently serves as Vice President and Deputy General Counsel, and has frequently led the legal aspects of the company's extensive merger and acquisition activities. Previously, he served as Vice President and Chief Technology Counsel, and was responsible for the company's global intellectual property portfolio.

1988

Roger B. Borgelt, formerly Assistant Attorney General of Texas in the Public Agency Representation Section of the Consumer Protection Division, joined Potts & Reilly. Borgelt previously served the Railroad Commission of Texas as a hearing examiner and the Texas Structural Pest Control Board as General Counsel before joining the Attorney General's staff in 1999.

John R. Cohn, a partner at the law firm of Thompson & Knight LLP, has been selected for inclusion in the 2007 *Chambers USA* "Leaders in their Field" legal directory for Tax Law.

Susan M. Ponce was appointed senior vice president, commercial law, for Halliburton's Energy Services Group. Based in Houston, she acts as the general counsel for the oilfield services legal function, leading 30 lawyers and 13 offices worldwide. Ponce is a past chair of the American Bar Association Section of Energy, Environment and Resources' Ethics Committee.



Jay Rutherford, a partner in the Labor and Employment section in the Fort Worth office of Jackson Walker LLP, has been named Vice-President of Finance for the Texas Lyceum and will serve on the Executive and Operating committees. The Texas Lyceum Association, Inc. is a non-profit, non-partisan, statewide organization whose purpose is to identify and develop the next generation of top leadership in the State of Texas. In addition Rutherford has been elected Chairman of the Texas Association of Business (TAB) for 2007. He was also recognized for excellence in Labor Employment Law by the *Fort Worth, Texas* magazine in the December 2006 issue.

1989

Michael G. Adams, an attorney at Parker Poe Adams & Bernstein LLP, has been named to *Law and Politics* magazine's "North Carolina Super Lawyers" for 2007 in the area of Business Litigation. Super Lawyers are selected through a peer nomination and only five percent of North Carolina attorneys receive the honor.

Stacey Cownad Jernigan was appointed as a U.S. bankruptcy court judge for the Northern District of Texas in Dallas.



Patrick Keel was elected president of the board of the Dispute Resolution Center (DRC) of Austin. The DRC is a nonprofit organization that provides dispute resolution services and training in the Austin area. Keel is a sole practitioner

who devotes his law practice to mediating and arbitrating civil disputes.

1991



Leonard H. Dougal, an attorney with the law firm of Jackson Walker LLP, has been selected for inclusion in *The Best Lawyers in America 2007* for Water Law.

1992

David Jackson Ball, Jr. has been elected a partner at the law firm of Weil, Gotshal & Manges LLP. He is a member of the Litigation/Regulatory department in the New York office.

1994



JoAnn Dalrymple has become a partner in the law firm of Jackson Walker LLP. She is a member of the firm's Litigation Section in the Austin office.



Nathan Schattman, an attorney with Johnston Legal Group PC, has been recognized as one of the top attorneys in Fort Worth by *Fort Worth, Texas* magazine in the area of Labor and Employment Law.

1995



Victor Alcorta III, a partner in the Austin office of Thompson & Knight LLP, has been elected President of the Texas State History Museum Foundation. The Foundation is a nonprofit organization that supports the Bob Bullock Texas State History Museum by raising funding for the Museum's educational programs.

Jason Davis has rejoined the law firm of Thompson & Knight LLP as a trial partner in the Austin office. Previously he was running his own private practice in San Antonio and serving as an Assistant United States Attorney for the Western and Southern Districts of Texas. Davis will lead Thompson & Knight's White Collar Crime Practice Specialty Group.

William Everitt Hopkins, a partner in the Health Law Department at the law firm of Thompson & Knight LLP, has been elected to serve as Chairman of the Board of Directors for Big Brothers Big Sisters of Central Texas for the 2006-2007 terms.

1996



Alicia Duleba, a partner in the Labor and Litigation sections of Jackson Walker LLP, has been selected to participate in the 2007 class of Leadership Texas. Leadership Texas brings together Texas women who have demonstrated their leadership ability in the profession, community, or workplace.

1997



Sandra J. Creta has become a partner in the law firm of Quarles & Brady LLP. Her practice focuses on labor and employment law.



Jeffrey S. Johnston has become a partner in the law firm of Vinson & Elkins LLP. He is a member of the firm's Litigation section in the Houston office.



Sesha Kalapatapu has been named a shareholder in the Litigation group of the Houston based law firm Boyar & Miller.

Michael O'Donnell has become a partner in the law firm of Fullbright & Jaworski LLP. O'Donnell handles commercial and class action lawsuits and he maintains an active arbitration practice focusing on commercial disputes.

Brooke W. Quist has joined the law firm of Steptoe & Johnson LLP as part of the Intellectual Property Practice group in the Century City, California office.

J. Christopher Wood has become a partner with the law firm of Gibson, Dunn & Crutcher LLP. He practices antitrust and international trade regulation and compliance law in the Washington DC office.

1998

Michael Barrett has become a partner in the law firm of Fullbright & Jaworski LLP. He focuses on patent litigation, prosecution, and analysis in various technology areas.

Kelly Dybala has been elected a partner at the law firm of Weil, Gotshal & Manges LLP. She is a member of the Banking and Finance group in the Dallas office.

Mark Garrett has become a partner in the law firm of Fullbright & Jaworski LLP. His practice focuses on litigating and prosecuting patents in a variety of technology areas.



Robert B. Little has been elected a partner at the law firm of Vinson & Elkins LLP. He is a member of the firm's corporate finance and securities law section in the Dallas office.

William R. H. Merrill has become a partner in the law firm of Susman Godfrey LLP in the Houston office.



David S. Peck has been elected a partner at the law firm of Vinson & Elkins LLP. He is a member of the firm's tax law section in the Dallas office.



Jennifer B. Poppe has been elected a partner at the law firm of Vinson & Elkins LLP. Poppe is a member of the firm's litigation section in the Austin office.



Carolyn A. Russell has been elected a shareholder at Ogletree, Deakins, Nash, Smoak & Stewart, PC. She focuses her practice on employment litigation and consultation and commercial litigation.

1999

Jeremy Gaston has become a partner in the law firm of Mayer, Brown, Rowe & Maw LLP. His focus is in the areas of commercial litigation, antitrust, intellectual property, class actions, and securities law.

Dr. Eric Hall has become a partner in the law firm of Fullbright & Jaworski LLP. His practice focuses on patent law and communication technology issues.



Laurie Jardine has been selected as a shareholder in the law firm of Winstead PC. She works in the Dallas office serving clients in the practice area of Litigation/Dispute Resolution.



Bradley S. Knippa has become a partner in the law firm of Jackson Walker LLP. He is a member of the firm's Business Transactions, Real Estate, and Tax section in the Austin office.

Suzanne M. Scheuing has joined the law firm of Freeborn & Peters LLP as an associate in the Bankruptcy, Restructuring, and Creditors' Rights practice group in Chicago.



Amy C. Welborn has joined the law firm of Cantey Hanger LLP as an associate in the Austin office.



Scott A. Wheatley has become a partner at the law firm of Jackson Walker LLP. He is a member of the firm's Litigation section in the Dallas office.

2000

Harry R. Beaudry has become a partner in the law firm of Thompson & Knight LLP. He is a member of the firm's Corporate and Securities Practice Group in Houston.

William M. Fisher has been named a shareholder at Cox Smith Matthews Incorporated. He is a member of the firm's Employee Benefits and Tax Department in San Antonio.



Karen Monsen was accepted to participate in the Leadership San Antonio's 2006-2007 class. Candidates are selected annually to participate in a ten day curriculum over the course of nine months through a rigorous application

and interview process. Leadership San Antonio, a ten-month community leadership program, trains participants in civic responsibilities by providing education on issues in the San Antonio community such as economic development, criminal justice, education, health care, human services, government, and politics. The program is designed to develop leadership and networking skills and foster collaborations addressing regional issues.

Gaye White has become a partner in the law firm of Thompson & Knight LLP. She is a member of the firm's Oil and Gas Practice Group in Austin.

2001

Victoria L. Cook has become a partner in the law firm of Susman Godfrey LLP in the Houston office.

President George W. Bush named **Myriah Jordan** as special assistant to the president for policy. Jordan recently served as special assistant for the chief of staff for policy at the White House.



Nickolas G. Spiliotis has joined the law firm of Winstead PC as an associate in the Labor & Employment Section of the Houston office.

2002



Luke Ellis, an associate with Jackson Walker in Austin, was accepted to participate in the Leadership Austin's 2006-2007 class. Fifty-five candidates are selected annually to participate in a ten day curriculum over the course of nine months. The program is designed to develop leadership and networking skills and foster collaborations addressing regional issues.

Bernard J. Kearney III, an associate in the Milwaukee office of Quarles & Brady LLP, has been recognized by *Law & Politics* as a Wisconsin Rising Star 2006.



Joseph R. Marrs has joined the law firm of Jackson Walker LLP as an associate in the Litigation section of the Austin office.

2003



Amanda Bush, an associate at Jackson Walker LLP, has been recognized by *Fort Worth, Texas* magazine for excellence in Intellectual Property Law.

Seth Kretzer has joined the law firm of Fulbright & Jaworski LLP as an associate in the Houston office. His practice focuses on business litigation with an emphasis on antitrust and securities matters.

2005

Michael Song was appointed U.S. federal prosecutor after serving as an assistant U.S. district attorney.

2006



Reed A. Artim has joined the law firm of Winstead PC as an associate in the Real Estate/Real Estate Finance Section of the Dallas office.



Aron R. Burnett has joined the law firm of Jackson Walker LLP as an associate in the Business Transactions section of the Austin office.



Denyse J. Demel has joined the law firm of Jackson Walker LLP as an associate in the Business Transactions section of the Dallas office.

Joe F. Flack III joined the Thompson & Knight's oil and gas practice group in Houston.



Mason Hestor has joined the construction law firm of Andrews Myers Coulter & Cohen as an associate in Houston.



Michael L. Laussade has joined the law firm of Jackson Walker LLP as an associate in the Business Transactions section of the Dallas office.

Schuyler B. Marshall V joined the Thompson & Knight's trial practice group in Austin.

Sam L. Merrill joined the Thompson & Knight's tax practice group in Dallas.

Sharon J. Murry-Roberts joined Blackwell Sanders Peper Martin's litigation department in the Kansas City office.



Lauren E. Mutti has joined the law firm of Jackson Walker LLP as an associate in the Labor & Employment section of the Dallas office.

Stephen T. Olson has joined the law firm of Baker Hostetler as an associate in the Houston office.

Gregory W. Palmer joined Thompson & Knight's real estate and banking practice group in Dallas.



Travis R. Phillips has joined the law firm of Winstead PC as an associate in the Real Estate/Real Estate Finance Section of the Dallas office.

Jill J. Robertson-Li joined the Thompson & Knight's Tax practice group in Dallas.



Zachary D. Sakas has joined the Phoenix office of Snell & Wilmer LLP.

Tara M. Thompson joined the Thompson & Knight's real estate and banking practice group in Dallas.



David S. Wagner has joined the law firm of Baker & Daniels LLP as an associate. He practices labor and employment law from one of the firm's Indianapolis offices.

IN MEMORIAM

THROUGH 2006

Dillard W. Baker, '36, passed away on January 29, 2007. He practiced law with his father and brother until he was employed by the Law Department of Humble Oil and Refining Company. In 1961, he was appointed General Attorney and remained in that position until he retired from Exxon U.S.A., the successor company of Humble Oil and Refining Company, in 1977.

Edward Wallace Austin, '37, died January 17, 2007 at the age of ninety-five. After retiring from the military in 1966 he worked for the Texas Rehabilitation Commission as General Counsel and as Assistant Commissioner for Legal Services. After retiring from the Commission, he continued to serve as Administrative Hearing Judge for the State Commission for the Blind and the Texas Rehabilitation Commission.

Saunders Gregg, Jr., '37, died January 20, 2007 at the age of ninety-two. Gregg practiced law in Houston before joining the United States Navy during the Second World War. After the war, he finished his career with Entex in Houston as a Senior Vice President, General Counsel, and member of the Board of Directors.

M. M. "Mack" Stripling, '37, died September 23, 2006. Stripling received numerous awards and commendations for various efforts and activities including being Texas Delegate to the National Democratic Party Convention in 1964 in Atlantic City.

W. David Ralston, '38, died December 5, 2005. Ralston practiced law in Corsicana for fifty-four years. He also served as Navarro County judge and Corsicana city attorney.

Pendleton Gaines Baldwin, '39, died February 10, 2007 at the age of ninety-one. After graduation he became an FBI agent for two years and then went on to serve in the United States Air Force during World War II. He was a member of the law firm Abney Abney and Baldwin where he practiced oil and gas law until his retirement in 1987.

Doyle McDonald, '40, died October 13, 2006. McDonald joined his father in practicing law. Shortly after, he was called for military service, where he was stationed in England with the Eighth Army Air Corps and was the bombardier of a Flying Fortress B-17 named *The Paper Doll*. The plane was shot down over Germany in 1944. McDonald was captured and served thirteen months as a prisoner of war. The Lone Star Flight Museum was the site of a commemorative ceremony honoring *The Paper Doll's* crew on March 24, 2003. Following liberation, Doyle returned to Galveston and resumed law practice.

Meyer Clyde Wagner, Jr., '40, died January 22, 2007 at the age of eighty-eight. He practiced law at Jaffe, Wagner & Lipscomb in Dallas.

Harry Wilbur Hobbs, '41, died February 10, 2007 at the age of eighty-eight. He served with the Post Office

Department for twenty-six years as Regional Personnel Manager, then as Director of Personnel in Washington DC. He then went on to serve as an Assistant City Attorney for the City of Dallas.

William Edward Stapp, '41, died in September 2006. A veteran of the Second World War, Stapp returned to Texas to become an attorney, first serving with the Attorney General's office in Austin, and later joined Vinson & Elkins, where he became a senior partner.

Darrell Lee Hemphill, '42, passed away on November 6, 2006 at the age of ninety-three. He practiced law in Brownsville, Texas for forty-five years until his retirement in 1991.

John Harold Whittington, '42, died December 20, 2006 at the age of eighty-seven. Whittington enlisted in the Navy during World War II while completing law school. Upon retirement from the Navy he worked for the Veterans Administration's legal department. He went on to serve as Dallas County judge and on the Irving City Council, the Dallas County Commissioners Court, the 5th District Court of Appeals, and the bench of state district civil and family courts.

E. Randolph Dale, '43, passed away on December 25, 2006.

J. Talbot Rain, '43, died September 3, 2006. Following law school, Rain joined the Dallas law firm Thompson, Knight, Wright & Simmons. In 1965, he founded

Rain Harrell Emery with his brother and five other lawyers from his previous firm. The Rain Harrell Emery Young & Doke firm grew and in 1987 it merged with Locke, Purnell, Boren, Laney & Neely to form Locke Purnell Rain Harrell. Rain retired from practice in 1991. In 1999, his firm merged again and became what is now Locke Liddell & Sapp.

Ferinez Briminstool Phelps, '44, died January 12, 2006.

Charles Edward Clark, '48, passed away November 24, 2006 at the age of eighty-five. Clark authored the 1954 Civil Rights Act and co-authored the Bill in 1964 with President Lyndon Johnson. He was regional director of EEOC from 1966 until his retirement in 1979.

Spearos Gus Koliis, '48, of Houston, died December 24, 2006.

The Honorable Charles Hale Store, '48, died October 19, 2006. Justice Store began his law practice in Weslaco and later moved his practice to Dallas in the early 1950s where he practiced law for over forty years. Justice Store accepted his first judicial appointment to the Dallas County Court at Law No. 3, and was appointed to the 95th Judicial District Court and to the Court of Appeals, 5th Supreme Judicial District of Texas. After retiring from the Bench, he served for eight years in an appointment to the Texas Board of Law Examiners. Elected to the Dallas City Council in 1973, he served in numerous leadership capacities.

Charles Richey Ebersole, '49, of Houston, died December 5, 2006.

Ace Hill Alsup, Jr., '49, died August 31, 2006 after a brief illness. Alsup practiced law in Temple and finished his professional career as the Assistant Executive Director of the Teacher Retirement System.

Daniel Lindsay Rentfro, Sr., '49, died February 16, 2007. He served overseas with the 84th Infantry Division, most notably in the Battle of the Bulge, and was awarded numerous commendations. After law school he joined the family firm, now known as Rentfro Faulk, where he practiced until his retirement in 2004. Throughout his life he was involved in a variety of church, community, and philanthropic organizations.

Frates Slick Seeligson, '49, passed away November 28, 2006 at the age of eighty-three. He served in the Texas House of Representatives from 1953–1960. He went on to serve as President of Santa Gertrudis Breeders International and of Texas and Southwestern Cattle Raisers Association.

Edwin Leo Brahaney, '50, of Midland, Texas, died November 14, 2006.

The Honorable James DeAnda, '50, retired Chief Judge of the Southern District of Texas, died September 7, 2006. Judge DeAnda graduated from UT Law in 1950 when there were only a handful of Hispanic law students. After graduation from the Law School, DeAnda practiced with Houston attorney John J. Herrera. In the mid-1950s he moved to Corpus Christi, and through his associations with the American GI Forum, the League of United Latin American Citizens, and the Mexican American Legal Defense and Education Fund, DeAnda became involved in landmark cases dealing with discrimination in the public education system in Texas. Those cases include *Hernandez v. State of Texas*, *Hernandez v. Driscoll CISD*, and *Cisneros v. Corpus Christi ISD*. In *Cisneros*, the United States Supreme Court extended for the first time *Brown v. Board of Education* to Mexican Americans. In 1979 President Jimmy Carter appointed DeAnda to the United States District Court for the Southern District of Texas. The judge became only the second Mexican American appointed to the federal bench. After retiring from

the bench in 1992, DeAnda continued to practice law with the Houston firm Solar & Associates and to be involved in the struggle to secure civil rights for all citizens.

John Richard Dale III, '50, died September 5, 2006. Dale practiced law in Livingston and Lufkin, Texas, before moving to Kansas City to work for the federal government.

William Bryan Finklea, '50, passed away on December 21, 2006.

Hugh Patrick Shovlin, '50, died January 28, 2007. Shovlin served in the United States Attorney's Office, serving as Chief of the Civil Section. In 1975, he was appointed to serve as the interim United States Attorney of the Western District of Texas.

Robert Charles Connor, '51, died December 4, 2006.

Elwood Joe Gaus, '53, died April 16, 2006.

Rogan Banton Giles, '53, died February 16, 2007. He opened his own law practice in Austin and served on the State Bar Grievance Committee for six years. Giles also served as President of the Travis County Bar Association from 1975–1976.

Harold Francis Curtis, '57, passed away December 14, 2006 at the age of seventy-five. He practiced law in his hometown of Greenville, Texas.

J. Lee Dittert, Jr., '57, died November 3, 2006.

Paul MacDonald Green, '57, died September 14, 2006. Green was a litigation attorney, who honed his skills under the tutelage of his mentor, Beb Ladon. Green served as president of the

Texas Association of Defense Attorneys (T.A.D.C.), and was a member of the American College of Trial Lawyers.

Robert H. "Bob" Manderson, '57, died October 4, 2006. Manderson was a retired attorney in Austin.

David Hamilton Brune, '58, died January 13, 2007 at the age of seventy-six. He began his law career with a San Antonio law firm, during which time he also served as general counsel for the San Antonio River Authority and later became the general manager for the group. He helped develop the Las Colinas project in Irving and he served as President and Chief Executive Officer of the Dallas County Utility and Reclamation District until 1999.

Donald N. Goldston, '58, died October 21, 2006. Goldston worked for the General Land Office, where he served as Executive Secretary of the Veterans' Land Board and as Legal Director. From January of 1963 until his recent retirement he was an attorney in private practice in Austin.

Norma Fink-Huffaker, '60, died October 17, 2006.

The Honorable Eduardo Santiago Marquez, '60, died September 18, 2006. Marquez made national headlines in 1994 when he convened a series of courts of inquiry and challenged the state of Texas to stop shortchanging his community in everything from money for highways to social services for hundreds of abused and emotionally traumatized children, the elderly, and mentally ill people.

Glynn Ray Purtle, '61, died January 6, 2007. Purtle practiced law for forty-four years in Wichita Falls. He was a member of Fillmore and Purtle and served as president of the Wichita County Bar Association in 1972.

Richard Allen Barras, '62, died February 3, 2002. Barras practiced law until August 2001. He was managing partner of Lumpkin, Barras, Reavis and Bunkley and later partner of Barras and Bunkley.

Malcolm Dade, '62, died September 26, 2006.

Jim Bob Brookshire, '66, died December 14, 2006 at the age of sixty-five. He was employed as a prosecutor with the Williamson County Attorney's office, followed by ten years with the Federal Trade Commission in Dallas. In 1979 he established his own private practice in Georgetown, Texas, where he practiced criminal and family law for twenty-seven years.

Elwood Lawrence Munson, '66, of Austin, died December 28, 2006.

David Jennings Shaw, '67, died September 15, 2006. Shaw worked as an Assistant City Attorney for the City of Austin prior to entering private law practice.

Gerald G. Huffaker, '68, died August 19, 2006. He practiced law in Tahoka, Texas at Huffaker Green & Huffaker.

H. Lee Lewis, Jr., '69, died September 11, 2006. Lee served as a law clerk for Federal District Judge John J. Fisher and joined the law firm of Fulbright and Jaworski in 1970, where he practiced Maritime Law. In 1978 he joined the law firm Ross, Griggs, and Harrison, where he was a partner and enjoyed a twenty-five year practice as a defense litigation attorney.

W. Michael "Mike" Stephens, '70, died October 4, 2006.

Steven William Arronge, '72, passed away January 14, 2007 at the age of fifty-nine. He served as an Assistant City Attorney and City Attorney of San Antonio for

thirty years. Following his service to the city he opened his own practice.

Thomas Owen Matlock, Jr., '75, died January 24, 2007. Matlock was licensed by the Supreme Court of Texas as an Attorney and Counselor at Law in 1975, and was a board certified Civil Trial Lawyer.

Luis Augusto Moreno, '75, died January 9, 2007 at the age of fifty-seven. He practiced law at Villarreal, Moreno & Ruiz in San Antonio.

David Alan Dwyer, '79, of Houston, died November 28, 2006.

Charles Ronald Kalteyer, '79, passed away December 16, 2006 at the age of fifty-three. After graduating he was an attorney at the law firms of Jackson Walker LLP and Vinson & Elkins LLP. Kalteyer later went on to teach at the SMU Dedman School of Law before joining the Dallas office of Locke Liddell & Sapp LLP.

William David Simmons, '82, passed away December 15, 2006 at the age of forty-eight. He had a twenty-year career as a partner at the law firm of Storey Armstrong Steger & Martin PC and the law firm of McGuire, Craddock & Strother, PC.

Michael David Reyna, '93, died October 10, 2006.

Marisol Soledad Moreno, '00, died November 8, 2006 at the age of forty-nine. She was a broker/owner of Gold Quest Realty & Gold Quest Mortgage in Houston.

The Trial of Gold E. Locks

Last March, UT-Austin hosted its annual open house—Explore UT. This day-long event for kids of all ages was filled with an astonishing variety of activities across the campus. One of UT Law's contributions to the festivities that day included the mock trial of Gold E. Locks, accused of breaking and entering into the home of The Three Bears. The trial was presided over by Judge Edward Prado, '72, of the U.S. Court of Appeals for the Fifth Circuit. Participants included UT Law students as well as boys and girls chosen from the standing-room-only crowd.



Before the trial began, Judge Prado spoke on the role of the courts in American society.



Judge Prado and his judicial clerk (pictured here in sunglasses) assisted with jury selection.



Counsel for the prosecution (David Currie, '08) made his opening arguments.



Counsel for the defense (Betsy Keller, '09) argued for the accused, Gold E. Locks (Lisa Holcombe, '09).



Papa Bear (Teo Seger, '09) waited to testify while Judge Prado ruled on a motion.



There were concerns among court observers about the wisdom of the defense calling the Big Bad Wolf (Mitch Hasenkampf, '09) to serve as a character witness.



Gold E. Locks celebrated her acquittal by posing for paparazzi.

Photos: Mark Rutkowski

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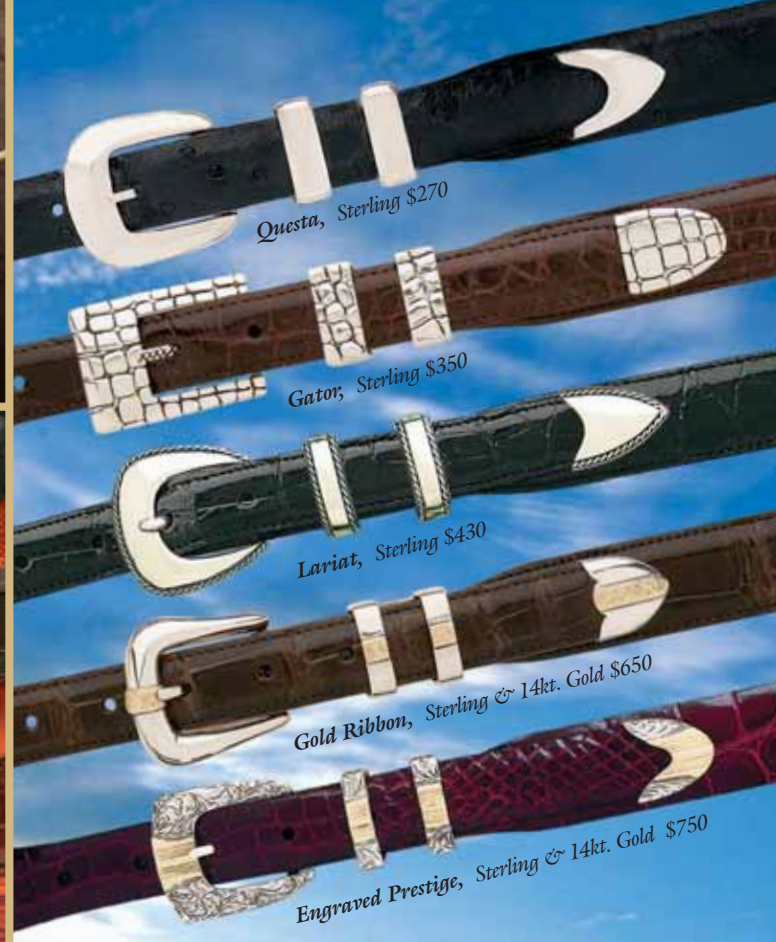
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