

UTLAW

THE
MAGAZINE
OF THE
UNIVERSITY
OF TEXAS
SCHOOL OF
LAW

Great Legal Minds

CELEBRATING

120 YEARS OF
SCHOLARSHIP
AT UT LAW

Professor Douglas Laycock, the Alice McKean Young Regents Chair in Law and Associate Dean for Research, at work in his study



Make a
gift of
your time.

Become
a UT Law
Mentor.

Becoming a MENTOR is an
excellent way to make a
contribution to the Law School.

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

LEGAL
PUBLIC INTEREST
JUDICIAL
INTERNATIONAL
NON-PRACTICING



Mitchell Kam, Associate Director
The University of Texas School of Law
Career Services Office
727 East Dean Keeton Street
Austin, Texas 78705 ★ (512) 232-1150
Fax (512) 471-6790
www.utexas.edu/law/career

SPRING 2004



This past semester the Law School unveiled statues honoring Joseph Jamail, '52, and Harry Reasoner, '62. From left, Mack Brown, Jamail, Darrell Royal, Dean Powers, and Reasoner.

FRONT OF THE BOOK

4 IN CAMERA

8 DEAN POWERS

Talent and Tuition by Bill Powers

9 CALENDAR

10 AROUND THE LAW SCHOOL

Dean Sutton, Bob Hamilton, and Corwin Johnson retire from teaching, conferences, and how our students help others

14 FACULTY FOCUS

Research, Duty, and the Restatement
by Bill Powers

16 ALUMNI FOCUS

Law and War

by Capt. Bryan Taylor, '01, and
2nd Lt. Dan Feather, 2L

FEATURES

GREAT LEGAL MINDS

20

120 years of scholarship at UT Law
by Allegra J. Young

SCHOLARLY PURSUITS 23

Essays from members of our faculty

THOMAS MCGARITY 26

LINDA MULLENIX 28

PHILIP BOBBITT 30

MARK GERGEN 32

RONALD MANN 34

LYNN BAKER 36

LAWRENCE SAGER 38

LOUISE WEINBERG 40

DOUGLAS LAYCOCK 42

Cover photograph and photograph
this page by Wyatt McSpadden

BACK OF THE BOOK

TOWNES HALL NOTES 45

NOTEWORTHY 46

Prize-winning alumni, a national ABA award, students head to the U.S. Supreme Court

CLASS NOTES 52

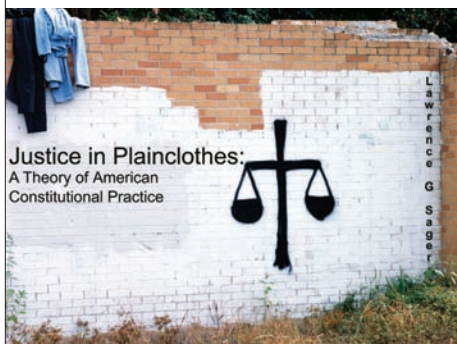
IN MEMORIAM 63

CLOSING ARGUMENT 64

Book Marks
by Michael Widener

UTLAW
VOLUME 3 • ISSUE 1

Justice in Plainclothes



A THEORY OF AMERICAN
CONSTITUTIONAL PRACTICE

by **Lawrence G. Sager**

"This book is elegantly written, subtly argued, and full of interesting asides and original observations." Louis M. Seidman of Georgetown University

Yale University Press
2004, pp. 256, \$40.00  www.yalebooks.com

UTLAW

UT SCHOOL OF LAW

Dean

BILL POWERS JR.

Asst. Dean for Development and Alumni Relations
NANCY BRAZZIL

Director, Law Alumni Association
TOM HENNINGER, '92

Director of External Relations
FRAN CHAPMAN

UT Law School Alumni Association President
STEPHEN TATUM, '79

UT Law School Alumni Association President-elect
TERRY O. TOTTENHAM, '70

MAGAZINE

Communications Director
ALLEGRA J. YOUNG

Communications Strategy Manager
LAURA CASTRO TROGNITZ, '97

Class Notes and In Memoriam Editors
SUZETTE MOLINA
IRMA SANTANA

Editorial Assistance
MICHAEL WIDENER
MICHAEL HORN
JODI BART

Copy Editor
JAN MCINROY

Creative Direction, Design, and Production
NANCY MCMILLEN
NANCY MCMILLEN DESIGN

WE WELCOME YOUR LETTERS AT:

UTLAW Letters
UTLAW Alumni Magazine
727 E. Dean Keeton Street
Austin, Texas 78705
E-mail: utlawmagazine@mail.law.utexas.edu

TO ADVERTISE:

TRACY LAND
ACCOUNT EXECUTIVE

TEXAS MONTHLY
CUSTOM PUBLISHING
Office phone: (512) 320-6934
Mobile phone: (512) 296-4863
Fax: (512) 476-9007
E-mail: tland@texasmonthly.com

TO CHANGE YOUR CONTACT INFORMATION:

Telephone: (512) 232-1118
E-mail: LawAlumni@mail.law.utexas.edu
Online: <http://www.utexas.edu/law/depts/alumni/form.html>

UTLAW Magazine is published two times a year by The University of Texas Law School Foundation, a nonprofit corporation, 727 E. Dean Keeton St., Austin, Texas 78705.

LONGHORN RUGS

WWW.LONGHORNRUGS.COM



4 X 6



6 X 9



9 X 12

SPECIAL ORDER 12X12 12X15 12X18 12X21 12X24 RUGS.
CARPET FOR WALL TO WALL FROM 12X30 MINIMUM.
3 X 12 RUNNER NOT SHOWN.

THE LONGHORN COLLECTION

NATURALS — the new collection from Longhorn Rugs. For the first time your home and office can feature classic Longhorn pieces from our Natural and Beige Collection to create a unique, spirited interior.

VALUE — The designs and colors were developed to give the appearance of a fine hand-woven rug, at a much lower investment.



SEE THEM NOW ON THE INTERNET AT
WWW.LONGHORNRUGS.COM
Toll Free 866 546 9954

Book Marks

[CONTINUED FROM PAGE 64] the annotator has written “inutil por no haber esclavos” (“obsolete, because slavery no longer exists”) next to a law requiring African slaves in Spain’s colonies to be taught the Catholic faith. Other evidence indicates that these notes were written by the Mexican judge Juan Rodríguez de San Miguel, who used this very copy of the *Recopilación* to prepare his digest of Spanish law that remained in force in independent Mexico, the *Pandectas Hispano-Megicanas* (1839).

5. A lengthy legal document is transcribed on the back of the title page of the 1691 edition of *Nomo-Lexikon: A Law-Dictionary*, by Thomas Blount.

6. Ralph Yarborough, LL.B. '25, yells at his opponent in the margins of a brief from *Magnolia Petroleum Co. v. Walker* (1935). Yarborough’s victory in this case has produced more than \$1 billion for the Texas Permanent University Fund.

7. Three UT Law luminaries: Ralph Yarborough’s notes from Professor Robert W. Stayton’s civil procedure class, in the margins of *Cases on Civil Procedure* (1925), by Professor Leon Green (LL.B. '15). This is the oldest surviving Law School casebook in the Law Library’s collection.

8. A love poem in Italian, on the flyleaf of a law dictionary (Venice 1606).

9. At least four different hands have written in this copy of Littleton’s *Tenures*, including (unusual for a law book) a woman named Elizabeth. This little book was one of the basic texts for law students and was commonly printed with wide margins for note-taking. 📖

Professor Hans Baade assisted.

ERRATA In the Contributors’ Report, Winter 2004, the Keeton Fellows were listed as a group but not listed by their class. We regret the error and will correct the problem with the next Contributors’ Report, which will appear in Spring 2005.

WRESTLING WITH DIVERSITY

BY

Sanford Levinson



Duke University Press,
2003, 336 pp., \$21.95

SANFORD LEVINSON Wrestling with Diversity



“In this highly engaging, beautifully written, and provocative volume, Sanford Levinson ‘wrestles with’ the meaning, significance, and consequences of diversity in multi-cultural societies...”




— Mark Kessler,
Law and Politics Book Review



The Meeting Place.™

701 Congress Avenue Austin, Texas • (512) 457-8800 • www.austin.interconti.com





LE LÉGION D'HONNEUR

This spring the French government made Houston attorney Gibson Gayle, Jr., a Chevalier (Knight) of the Légion d'Honneur in recognition of his pivotal support for UT Law's Institute of Transnational Law and its Web site that translates leading decisions of the French courts. The Légion d'Honneur is France's highest award given for outstanding service to France, regardless of the nationality of the recipient. It is also widely regarded as one of Europe's most prestigious civic honors.

PHOTOGRAPH BY ROCKY KNETEN

IN CAMERA



IN CAMERA

A woman with dark hair, wearing a black turtleneck and blue jeans, stands on a balcony with a dark metal railing. She is looking towards the camera. Behind her is a large, arched window with a black frame, through which a brick building with several windows is visible. The scene is lit with soft, natural light.

LEADERSHIP VALLEY

This year's top Student Bar Association leaders all hailed from Texas' Rio Grande Valley. From left, treasurer Eduardo Lucio III, '05, from Brownsville; vice president of programs Amanda Arriaga, '04, and SBA president Annie Holand, '04, both from McAllen.

PHOTOGRAPH BY
WYATT McSPADDEN

Talent and Tuition

How the school's tuition increase will help keep UT Law strong.

IN THE LAST ISSUE OF UTLAW WE FOCUSED ON CLASSROOM teaching. In this issue we focus on faculty research. This is no accident. Teaching and research are our core missions.

I am proud to say that we have one of the most highly respected research faculties in the country. I am also proud to say, as the last issue of UTLAW highlighted, that we have a terrific teaching faculty. And many of our most productive scholars are also among our best teachers. We have been extremely fortunate, and we have worked very hard, to avoid thinking there is a choice between great teaching and great research. We have a lot of people to thank for that, including Page Keeton, Leon Green, Charles Alan Wright, Mark Yudof, and many, many others.

Recent studies of faculty quality in such publications as *Journal of Legal Education* (1998), *Journal of Legal Studies* (2000), and *Chicago-Kent Law Review* (1995, 1996) rate our faculty as high as fifth and not lower than twelfth among the nation's leading law schools. *Science Times* recently ranked the influence of our faculty's scholarship fifth, behind only Yale, Harvard, and the Universities of Chicago and Michigan. A 1996 *Chicago-Kent Law Review* study found that articles by our faculty were cited more often by courts than articles by any other faculty in the nation. More than one-third of our faculty have been elected to the American Law Institute (one of the highest percentages in the nation). We are one of only ten law schools in the United States to have two faculty age sixty or younger who are elected fellows of the American Academy of Arts and Sciences, the nation's most prestigious academic honor society.

You will read about a sample of our scholars in these pages. I hope you enjoy learning about their work.

As I have said on many occasions, we are in the business of attracting the best talent to our Law School and then keeping it. This includes the best students and the best teachers and scholars. It takes money. Your help is crucial, and I am enormously grateful for it. We also have had to raise tuition, as you undoubtedly have heard. I would like to say a few words about that.

Over the next two years, tuition for Texas residents will go from \$8,369 to \$13,484. For non-residents, it will go from \$17,945 to \$23,060. That is a big increase, and we don't do it lightly. One of the central obligations of a public law school is to be affordable. But by the same token, we need to compete with other schools to attract

and keep the best faculty, to reduce our student-faculty ratio, to offer a rich array of courses, to provide student services, and so on. We simply can't afford to become the Detroit Tigers of legal education.

We compare ourselves to 17 peer institutions, including other public law schools such as UCLA, Virginia, Michigan, Berkeley, and Illinois. Of these 17 schools, our per-student spending was dead last, 20 percent behind the next-lowest school. Our tuition and fees were the lowest of all 17 schools. Even after two years of planned increases, our per-student spending will still be dead last, *even if other schools do nothing!* So UT will still be the best bargain in legal education in the country. Moreover, 20 percent of the tuition increase will go toward additional need-based scholarships. We remain committed to an affordable, first-class legal education. And even after two years of planned increases, our tuition and fees will still be the least expensive, again, *even if other schools do nothing!*

And we will be able to continue to attract and keep the very best teachers and scholars, as we highlight in this issue and the last issue of UTLAW.

Sincerely,



Bill Powers
Dean

A LOOK AHEAD TO FALL '04

This fall the Alumni Association will host a **Tailgate Party**, a **Non-Practicing Alumni Advisory Council Meeting**, the **Keeton and Clark Fellows Dinner**, and **regional receptions**. You'll receive more information about these events as they draw closer. We look forward to seeing you next fall!

MAY 22

The **Sunflower Ceremony** will be held on Saturday, May 22, at the Erwin Center. For more information about this event, please contact Student Affairs at (512) 232-1116.

SUMMER

The Center for Public Policy Dispute Resolution will be offering summer training sessions, including a **Forty-Hour Basic Mediation Training** session at the Law School. For more information, contact Natalie Gray at (512) 471-3507 or go online at <http://www.utexas.edu/law/academics/centers/cppdr/training>.

AUGUST

The Jamail Center for Legal Research will host an exhibit commemorating the **50th anniversary of the *Brown v. Board of Education*** decision starting in late August. This exhibit will focus on what one can learn from the case from the papers of U.S. associate Supreme Court justice Tom C. Clark, '22, and will include handwritten conference notes, internal memoranda, and photographs of the plaintiffs and defendants. For more information about the exhibit, contact Michael Widener at (512) 471-7262 or mwidener@mail.law.utexas.edu.



THIS FALL THE LEGAL EAGLES INVITE ALL ALUMNI TO ATTEND THE BEER BOWL ON OCTOBER 17 IN CELEBRATION OF THE 50TH LEGAL EAGLES TEAM. AS IS TRADITIONAL, THE LOSING TEAM WILL BUY THE WINNING TEAM A ROUND OF BEER AT A LOCAL TAVERN. FOR INFORMATION, CONTACT BRIAN RIDER AT (512) 329-0100.

SEPTEMBER 13 - OCTOBER 1

Fall 2004 **On-Campus Interviews** (OCI) will be held at the Law School in the new Career Services Office interviewing suites. To participate, go online at <http://www.utexas.edu/law/depts/careers/> or contact OCI coordinator Andrea Schlafer at aschlafer@mail.law.utexas.edu or (512) 232-7110.

OCTOBER

The Texas Law Fellowships (TLF) invites alumni, faculty, staff, students, and the general public to the annual **Fall Auction** in October to raise money to fund fellowships for Law School students who work in summer public interest internships. Bid on items in the live and silent auctions and support TLF's first major fund-raiser of the year. For time, location, and ticket information, or to donate an item, contact TLF at tlf@mail.law.utexas.edu. Event details will also be posted online at <http://www.utexas.edu/law/orgs/tlf/> in September.

NOVEMBER

The Career Services Office will host its **Seventh Annual Mentor Reception** (cocktails and conversation) in Austin. For details on the mentorship program, go online to <http://www.utexas.edu/law/depts/career/> or contact Deb Freeman at dfreeman@mail.law.utexas.edu or (512) 232-2162.

THIS FALL

The Law School's Office of Continuing Legal Education (CLE) plans to host numerous **conferences** this fall. For a complete schedule of events, visit the CLE Web site at www.utexas.edu/law/cle or call the CLE office at (512) 475-6700.

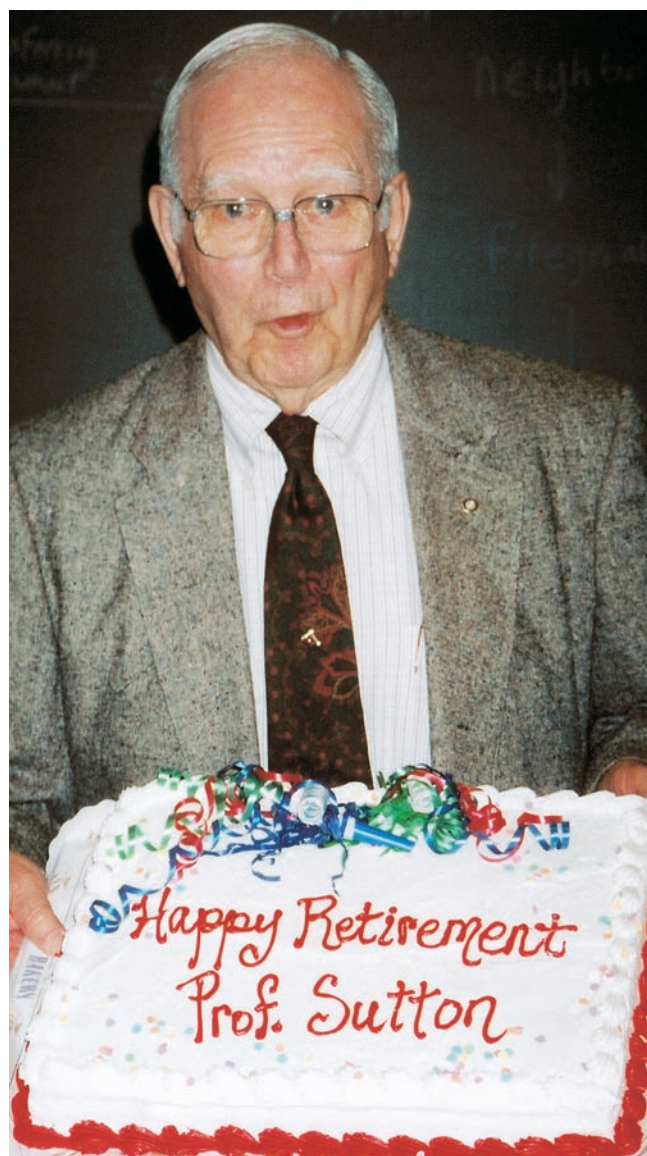
AROUND THE

Sutton, Hamilton, Johnson Retire

THIS YEAR BOTH JOHN F. Sutton, Jr., '41, and Robert Hamilton announced their retirements from teaching. Sutton, a former dean of the Law School, taught for 46 years. Hamilton taught for 40. Corwin Johnson, who taught for 56

years, retired from teaching last May. All three plan to continue their research and writing activities.

"John, Corwin, and Bob have been terrific teachers and will be greatly missed in the classroom," said Dean Bill Powers.



LAURA CASTRO TROGNITZ



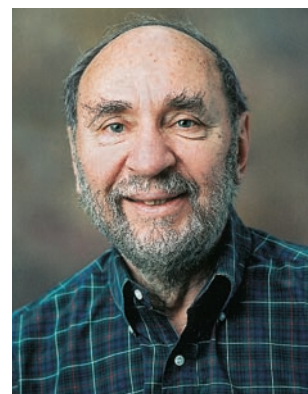
LAURA CASTRO TROGNITZ

Sutton (above, with Dean Powers) retired after 46 years of teaching.

John F. Sutton, Jr., '41, the A. W. Walker Centennial Chair Emeritus, joined the Law School Faculty in 1957 and served as dean from 1979 to 1984. His many publications include *Cases and Materials on Professional Responsibility* (West, 2d ed., 2002) and *Cases and Materials on Evidence* (West, 8th ed., 1996). Sutton has served on numerous committees for the State Bar and in 1983 was elected a fellow of the American Bar Foundation. He is a life fellow of the Texas Bar Foundation, a member of Order of the Coif, and a recipient of the teaching excellence award at the Law School. In 1990 Sutton was selected to receive the Outstanding Alumnus Award from the Law Alumni Association.

Hamilton, the Minerva House Drysdale Regents

Tom C. Clark, '22, and practiced in Washington, D.C., before joining the Texas faculty in 1964. Author of the leading casebook *Corpora-*



WYATT MCSPADDEN

Hamilton taught for 40 years.

tions (West, 6th ed., 1998), Professor Hamilton has also written many other well-known articles and texts, including *Business Organizations* (Aspen, 1996), and *Business Basics for Law Students* (Aspen, 1998) (co-author). From 1980 to 1985, he was the reporter for the

LAW & ECONOMICS SSRN SITE LAUNCHED

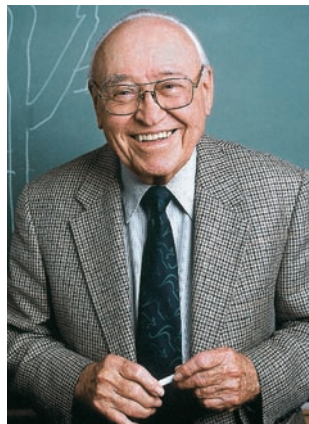
UT Law faculty launched a series of working papers on Law & Economics topics, published on the Social Sciences Research Network (SSRN). The Legal Scholarship Network (LSN) on the SSRN facilitates the distribution of scholarly information related to law to legal, economics, and business scholars and practitioners throughout the world.

This new series can be found at http://papers.ssrn.com/sol3/JELJOUR_Results.cfm?form_name=journal-browse&journal_id=460781 and currently includes work by Professors Chris Fennell, Lee Fennell, Calvin Johnson, Ronald Mann, Richard Markovits, Neil Netanel, and Tony Reese.

"This faculty produces a wide variety of excellent work in the business and economics areas. Because SSRN is so visible among law professors in those fields, this should help a lot in getting out the word about the work we're doing here," said Ronald Mann, the organizer of the series and UT Law's William Stamps Farish Professor of Law.

Professor Jordan Steiker of the Law School also organized the "Public Law and Legal Theory Research Paper" series, which debuted on SSRN in 1999.

Model Business Corporation Act Revision Project. Ham-



Johnson taught for 56 years.

ilton is a member of the American Law Institute and also served as president of the University Co-op.

Johnson, the Edward Clark Centennial Professor Emeritus and a national expert on property and water law, completed his classroom duties last May. A tribute to Johnson, written by James Baker III, '57, as the foreword to the Jamail Center for Legal Research's *Corwin W. Johnson: An Oral History Interview*, was featured in UT LAW, Winter 2004.

Bountiful Deposits

THE STUDENT BAR ASSOCIATION, THE WOMEN'S LAW CAUCUS, and Lexis-Nexis sponsored a canned-food drive this winter that contributed more than 1,000 pounds of food (806 meals) to the Capital Area Food Bank.

"I'm delighted to announce these results. Our students raised almost double what most elementary schools in the area donated this year," said Annie Holand, president of the Student Bar Association.

This past semester, students at the Law School hosted numerous charitable events, including giving tours for elementary school children, organizing clothing drives and fund-raisers for victims of domestic violence, and promoting the performing arts.



MELISSA GRIMES

AROUND THE LAW SCHOOL

STAR-CROSSED LAWYERS

Assault & Flattery celebrated its 51st year with the show *Star-Crossed Lawyers*, a comedic love story.



More than one hundred students were involved in this year's student production.

Juvenile Justice Clinic Awarded Major Grant

UT Law's Juvenile Justice Clinic received a major grant from the Texas Bar Foundation this spring. The grant will be used to help the clinic provide high-quality legal services to low-income children charged with offenses in the juvenile justice system.

"We are thrilled to be awarded this grant, which enables our law students to continue providing services to children in Travis County," said Pam Sigman, director of the Juvenile Justice Clinic.

Founded in 1975, the Juvenile Justice Clinic assigns student attorneys cases for



which they have primary responsibility. Students are supervised by an attorney in the public defender's office.



Left: Amber Armstrong, '03, in court. Above: Chip Waldron and Barbara Watson, '03, discuss the court system with seventh graders.

UT Law: #1 (Again) for Hispanics

FOR THE THIRD CONSECUTIVE year, UT Law was named the number one law school in the country for Hispanics by *Hispanic Business Magazine*.

The magazine wrote: "The University of Texas School of Law has graduated more Hispanic and African-American students combined than any other top-20 law school in the United States. Many of the school's 1,300-plus Hispanic graduates work at the highest levels of the bar and government, in state and federal judgeships, in public interest work, and

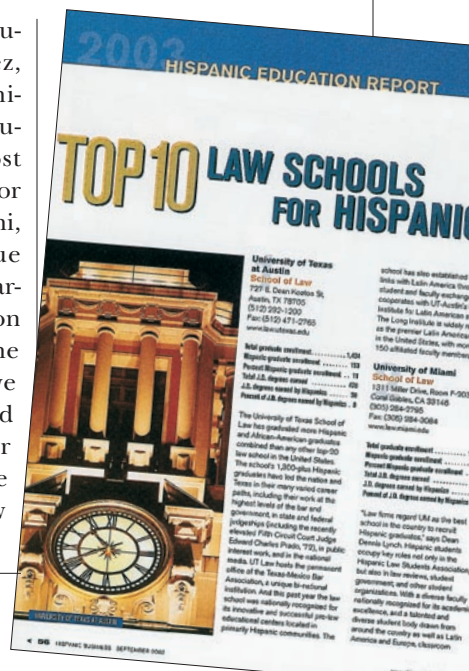
in the national media."

It further reported: "UT Law hosts the permanent office of the Texas-Mexico Bar Association. And this past year the law school was nationally recognized for its innovative and successful pre-law educational centers located in primarily Hispanic communities. The school has also established strong links with Latin America through student and faculty exchanges."

"The ranking is a reflection of the intense commitment of students and administration alike striving to recruit a greater number

of qualified Hispanic students," said Chako Perez, '04, president of the Chicano/Hispanic Law Students' Association. "Most importantly, it is an honor to our tremendous alumni, who have seen the value and need for minority participation and took action to ensure it. Because of the vision of our alumni, we have regained ground and look to making further strides in solidifying the prestige of a diverse law school."

UT Law has been ranked #1 for three consecutive years.





The TLR conference "Comparative Avenues in Constitutional Law" explored the emergence of constitutional courts around the globe.

Student-Led Conferences Abound

THE TEXAS INTELLECTUAL *Property Law Journal* produced the standing room only conference "Protecting and Exploiting Ideas: Staying Ahead of the IP Curve" in late January at the Law School. According to its coordinator, 2L Allison Fulton, the conference met with great enthusiasm. "With over eighty paying attendees, as well as numerous University of Texas Law students in attendance, the Jeffers Courtroom was at overflow capacity."

"Our students work hard to provide our community with an excellent venue to explore interesting legal issues," said Dean Powers. "And I congratulate them on a job well done."

This semester, students at UT Law organized and hosted several public conferences on important legal issues. These included:


THE TEXAS LAW REVIEW (TLR) hosted its annual symposium, this year titled "Com-

parative Avenues in Constitutional Law," to explore the emergence and impact of constitutional courts around the globe and to review what new light comparative constitutional scholarship sheds on enduring problems in American constitutionalism.

THE EDITORS OF THE TEXAS *Journal of Women and the Law*, in association with the Student Bar Association, the Law School, and numerous other groups, produced the conference "Islam and the Law: The Question of Sexism." At the event, speakers addressed a variety of issues where Muslim women's rights in Islam appear to be compromised by Islamic law, such as the hijab (the veil), inheritance, marriage and divorce law, polygamy, virginity and honor, and honor crimes.

THE TEXAS JOURNAL ON CIVIL *Liberties and Civil Rights*,

in association with the Individual Rights Section of the State Bar of Texas, hosted a symposium, "Terrorism & the War on Civil Liberties, Civil Rights, and Immigrants After 9/11," to explore post-9/11 legal and policy changes.

THE REVIEW OF LITIGATION hosted a symposium, "Litigating Business Ethics," in March to discuss such issues as fiduciary relationships within LLCs and whistleblowing under the new Sarbanes-Oxley regulations. 

A Grand Honor

This March, the Law School inducted 16 students with the highest grade-point averages after two years at UT Law into the Chancellors, an honorary organization. This year's awards went to Grand Chancellor Lisa E. Ewart (pictured below); Vice Chancellor James K. Williamson; Clerks Benjamin W. Putnam; Keepers of the Peregrinus Corey Benjamin Blake and Laura Jann Kissel; and Chancellors-at-Large Sundeep K. "Rob" Addy, Andrew L. Dahm, Shweta Gera, Adam S. Harbin, Jamie L. Naiser, Matthew C. Powers, Brian K. Prewitt, Garrick B. Pursley, Eric M. Solomon, Sarah E. Stasny, and Bryan T. Yeates.

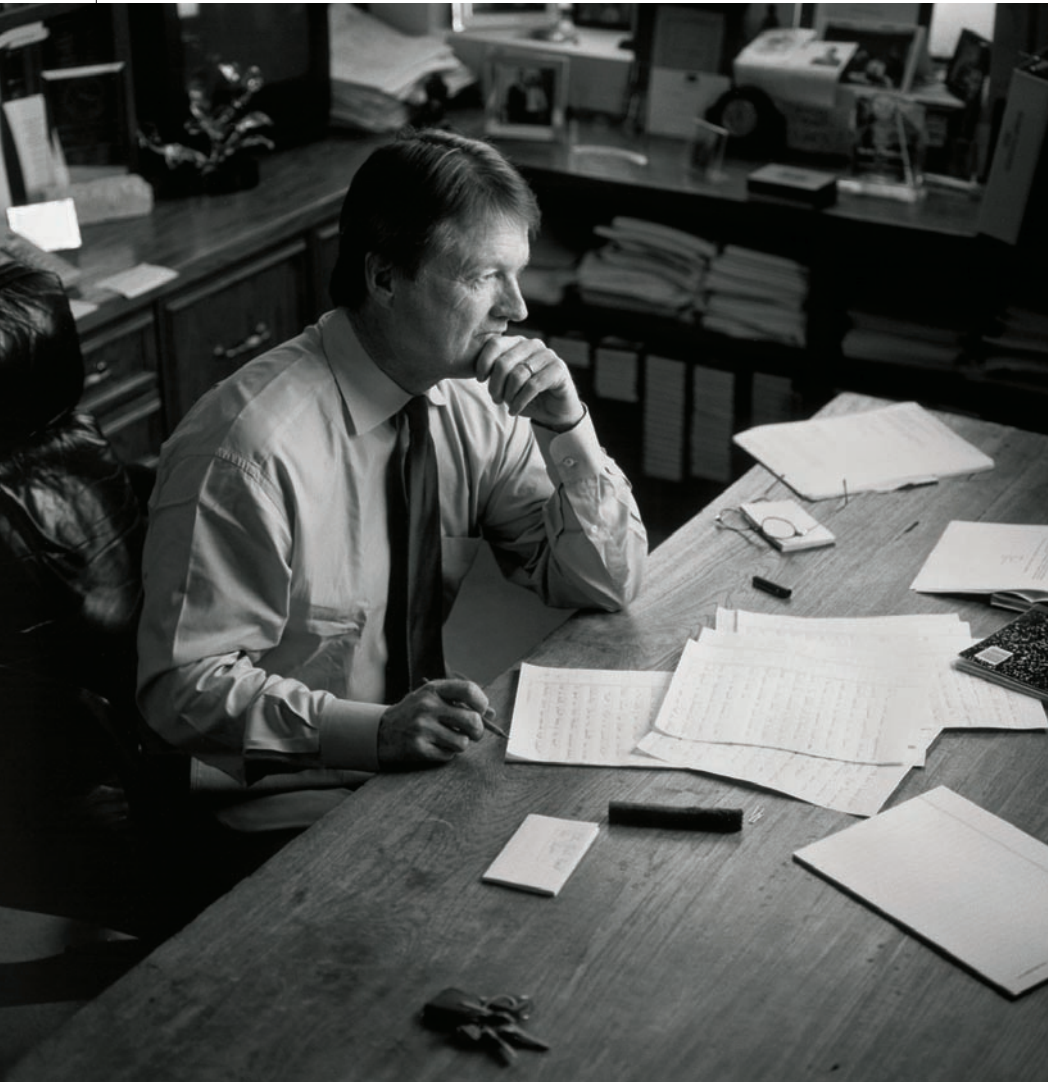


The Chancellors, inducted in March, include Grand Chancellor Lisa Ewart, who will clerk on the U.S. 1st Circuit Court of Appeals.

RESEARCH, DUTY, AND
THE RESTATEMENT

*Today's tort reform debate reflects
differences first articulated at UT Law*

Bill Powers



“background” (i.e., normal) rule was that we all have a general duty to use reasonable care not to cause injury to others. Against this background rule, courts have developed “special” no-duty or limited-duty rules to forgive what otherwise would be “unreasonable” conduct. Thus, we don’t have a general duty to rescue, to protect others against pure economic harm or emotional harm, to protect undiscovered trespassers on our land, and so on. It is actually much more complicated than that—each of these rules has complicated exceptions—but you get the general picture. The “normal” duty is one of reasonable care, with a complex set of exceptions.

Green had a different vision. Roughly, he thought the trial judge should survey the situation—the type of activity, the type of injury, the type of causal connection, the relationship of the parties, and so on—and then determine quite specifically what the actor’s duty required. There was no general background duty of reasonable care. Whereas Keeton would say that an electric company has a general duty

Powers is widely considered one of the nation’s leading authorities on torts and products liability.

LIKE TORT LAW. I LIKE TEACHING IT. I like talking about it. I like arguing cases involving it. And I like writing about it.

Coming to UT in 1977 was a great moment for me. Page Keeton was here. Leon Green was here. John Sut-

ton, David Robertson, David Anderson, and Guy Wellborn were here. It was like being a kid in a candy store.

One of the great debates in tort law is about the concept of duty. Keeton and Green had dramatically different views. Keeton thought the

relationship of the parties, and so on—and then determine quite specifically what the actor’s duty required. There was no general background duty of reasonable care. Whereas Keeton would say that an electric company has a general duty

to use reasonable care in delivering electricity—and then leave to the jury to decide whether using uninsulated wires in a particular situation was reasonable—Green would have the trial judge determine under the circumstances whether the electric company has a duty to insulate the wires.

These competing models have four salient differences: (1) For Keeton the “normal” background rule imposed a duty of reasonable care; for Green the trial judge had to “find” a duty. (2) For Keeton the “no-duty” rules were broad and categorical; for Green the “duty” rules were more case specific. (3) For Keeton the jury did more of the normative work in determining what was “reasonable”; for Green the trial judge did more of the normative work in fashioning the specific duty. (4) For Keeton the question of scope of liability in cases of attenuated injuries (“proximate cause”) was an entirely separate issue; for Green it was just part of the case-specific inquiry about the actor’s duty. For Green the words “proximate cause” were an anathema. Keeton always used the term “proximate cause” in his speeches—such as “The alumni are a proximate cause of our Law School’s greatness.”

All of this is way too oversimplified. Keeton recognized that duties can change as circumstances change, such as when the plaintiff is a social guest rather than a trespasser. And Green recognized that general rules about duty would emerge in recurring situations. But the differences were significant, and they had significant effects on litigation.

Basically, Keeton’s position prevailed. Prosser, who was one of the Reporters (authors) of the *Second Restatement of Torts*, was on Keeton’s side, and that helped. In any event, in the second half of the twentieth century, the Keeton-Prosser model was dominant. That is not to say Green was wrong. The more I have read of his work over the years, the more impressed I have become with the

depth of his intellect, as I always have been with Keeton’s. But for a variety of intellectual and sociological reasons, the Keeton-Prosser model did gain dominance. Even so, Green had his adherents, especially in Texas, and the debate never subsided entirely. In the last decade the debate has resurfaced, both in Texas and around the country, although not entirely in the same terms used by Keeton and Green.

The stakes of the debate are substantial. The two biggest issues are deciding whether the “normal” background rule is one of duty or no duty and deciding whether a judge’s decisions about duty must be broad and categorical or can be specific to the facts of an individual case. Thus a court (or an individual judge) might fall into one of four cells in the following matrix:

| | CASE-SPECIFIC | BROAD RULES |
|--------------------|---------------|-------------|
| BACKGROUND DUTY | (1) | (2) |
| BACKGROUND NO DUTY | (3) | (4) |

Judges in cell (2) would disrupt a jury verdict only if they could find a broad, categorical no-duty rule, such as no duty to protect an undiscovered trespasser or no duty to warn about obvious dangers. Judges in cell (4) would uphold a jury verdict only if they could find a broad categorical duty rule, such as a duty of automobile drivers to use reasonable care. Judges in cells (1) and (3) would be more willing in certain cases to disrupt or uphold a jury verdict by balancing all of the facts in the record, including facts like the foreseeability of risk, the magnitude of risk, the burden of preventing the risk, and so on. They might just say that there is (or is not) a duty “on this record.” Obviously, cells (1) and (3) blur the line between the role of the judge and the role of the jury. Interestingly,

you can actually read opinions and identify judges in each of these cells (although the difference between cells (1) and (3) is sometimes difficult to recognize).

I have been blessed to be part of this debate over the last decade, both as an author of articles and as a Co-Reporter for the *Third Restatement of Torts*. At first I was Reporter for the volume dealing with apportionment of liability (comparative responsibility, joint and several liability, and the like). Then I began work on the volume dealing with the basic rules of negligence, including duty. The debate about duty at the American Law Institute has been reminiscent of Keeton and Green. We ended up choosing Keeton (actually cell (2)).

One of the great pleasures in my life was when our volume on apportionment of liability was given final approval by the American Law Institute. The frosting on the cake was that my colleague and dear friend, Charles Alan Wright, was sitting beside me as president of the ALI. My work on the current volume is still ongoing, and it too has been a great joy. It is a pleasure to be working on the current debate about duty. It is

a special treat to realize that this debate goes back fifty years in the halls of our Law School to a similar debate between Page Keeton and Leon Green.

That is what is so rewarding about scholarship. We on the faculty are blessed to spend our time teaching wonderful students and writing about some of the most interesting issues that currently confront our profession. And, as a bonus, sometimes debates about those issues go back half a century in the halls of our own great Law School.

I still feel like a kid in a candy store. 🍬

Powers is a member of the American Law Institute and serves as a Co-Reporter for the Restatement (Third) of Torts: Liability for Physical Harm.

Law and War

CAPT. BRYAN TAYLOR, '01
2ND LT. DAN FEATHER, '2L

Views of Iraq from two

UT Law soldiers on duty

WITH THE FIRST BLAST I looked up from the labor contract I was reviewing. *Hmm . . . that one sounded a little closer than usual.* With the second blast, I leapt! No sooner had the five-ton military “expando-van” quit shaking than I threw open its heavy metal doors, lunged from the rear of the truck,

explosions and then—it all stopped just as suddenly as it had started. Voices hummed through the radio in the TOC, transmitting reports accounting for every one of the some 1,200 soldiers in the brigade. Fortunately there were no fatalities. Still, it was my first close encounter in Iraq. And to think, at any other place and time this could have been casual Friday.

The short version is this: there is a law of war, and judge advocates are the keepers of it. To reasonable people, “law of war” is a contradiction. War is, after all, a state of utter lawlessness, is it not? As paradoxical as it sounds, the answer is an emphatic no. The law of war—or, to employ the legal vernacular of an age in which the formal declaration of war is but a relic, the law of armed conflict—has been practiced as a matter of custom for centuries and is today regulated by an immense body of international law, both customary and conventional. There is a law of conducting war, *jus in bello*, but there is also a law of going to war, *jus ad bellum*, which is concerned with the legal justifications for resorting to armed conflict to begin with—a particularly timely point given the controversy swirling around President Bush’s at least partial reliance on a doctrine of preemption to justify going to war in Iraq (a doctrine that, by the way, is neither new nor all that extraordinary to those familiar with this field of law).

If there is any doubt about the intersection of law and war, consider how many major war-related headlines since 9/11 have centered on some overarching legal issue. Are the suspected Al Qaeda terrorists being detained at Guantanamo Bay “prisoners of war”? Is the broadcasting of images of Saddam Hussein’s dead sons—or for that matter a captured Saddam Hussein—a violation of the Geneva Convention’s mandate that prisoners of war be “protected against



Recruits for the new Iraqi Security Force engage Captain Taylor in an impromptu discussion.

and darted for the relative safety of the small concrete building that housed the brigade’s Tactical Operations Center (TOC). Soldiers raced in from all directions as several more Chinese-made 107-millimeter rockets slammed down around us. We donned our Kevlar helmets and flak vests, hunkered down in the hallway, and waited. A few more earth-pounding

This is not the kind of story most people expect to hear from an Army lawyer (or “JAG” as we are called, from “Judge Advocate General’s Corps”). Actually most people are surprised to learn that judge advocates deploy to the battlefield at all. “What do they need lawyers in Iraq for?” is a question for which all JAGs have developed a boilerplate response.

insults and public curiosity"? Who will prosecute former Iraqi regime members for war crimes, and in what venue? Who defines what a "war crime" is? Does the "inherent" right of national self-defense preserved in Article 51 of the UN Charter include the right to wage a preemptive war?

Most of the deployed judge advocate's time, however, is not spent philosophizing over the theory of the "just war," as much as we enjoy that. The fact is, we're here, the war has begun, and we have a job to do. And our job, first and foremost, is to help our units accomplish the mission within the confines of the law.

At various levels of command, judge advocates do very different things. At the highest levels in Iraq, some JAGs have worked almost exclusively on getting the new Iraqi justice system up and running. Others are helping draft Iraq's new fundamental law.

But my own experience has been that of the judge advocate as a special staff officer to a combat brigade commander in the Sunni Triangle. At this level, judge advocates grapple with the nuts and bolts of international and U.S. law that regulate the day-to-day conduct of military and civil-military operations and the expenditure of taxpayer dollars in support of those operations. Essentially, I am the commander's legal advisor, his guide through the legal thicket as he plans and executes the mission. The deployed judge advocate at the brigade level is not a specialist (except in the law of military justice, which is only one of many facets of his job); rather, his practice,

VIEW FROM FALLUJAH

AFTER A YEAR AND A HALF OF LAW SCHOOL, in January 2003 I was called from the inactive reserves to serve in the U.S. Army in the Iraq War. My reserve unit and I are under the 82nd Airborne Division in Fallujah, Iraq, where I've spent the vast majority of my time here in Iraq.

Fallujah is a hardscrabble city of 450,000 people densely packed into 6.5 square miles of territory on the banks of the Euphrates River. It is a hotbed of the radical, Saudi-sponsored branch of Islam known as Wahabism. The city benefited greatly from Saddam's regime, but now suffers from a male unemployment rate exceeding 90 percent. This volatile cocktail of social factors has apparently led to its being a center of Iraqi resistance.

My job is to look for roadside booby traps (IEDs), the insurgents' favored weapon. IEDs are generally a series of artillery shells, hidden along roads, that can be remotely detonated with a pager, cell phone, or car alarm as U.S. troops pass by. Looking for them is nerve-racking and dangerous. We're also ambushed regularly with assault rifles and rocket-propelled grenades. At night our base is shelled with mortars and rockets. Fallujah's population density, the massive complicity of its people, and the insurgents' clever tactics make capturing or killing our attackers very difficult. Out of my platoon of thirty, one has been killed and nine wounded.

Corruption is rampant here. Dealing with the tribal sheikhs who run this region is just like a scene out of *The Godfather*. None of us can trust the police because we regularly capture weapons from insurgents that are registered to the police. It's still unclear who the insurgents really are and how they're organized.

This past year has been quite an experience. I'm proud of my men for treating the Iraqi people with the utmost respect and dignity under trying circumstances. Of course, I'm also proud of their bravery. We're all eager to return home, and I'm eager to resume law school in August 2004.

2nd Lt. Dan Feather, a second-year student and a member of the Texas Law Review, is from Menard, Texas. He returned to Texas safely in March.



COURTESY OF DAN AND CINDY FEATHER

body of law with which he has little or no previous experience. When we were negotiating the handoff of our brigade's contract with Iraqi laborers to an incoming civilian contractor to dispose of explosive ordinance, the sheikh representing the laborers asked whether a death benefit would be paid to the families of any laborers who might be killed on the job. The contractor blinked. The sheikh blinked. The commander blinked. And all three looked at the only lawyer at the table. In the next 48 hours, I became an "expert" on something called the Defense Base Act, which extends the benefits of a federal workers' compensation program to U.S. contractor and subcontractor employees, regardless of nationality, working on any lands used by the United States for military purposes anywhere in the world. (You learn something new every day.)

But the most rewarding part of this job is not the challenge of delving into unfamiliar areas of law. The great reward is getting to work so closely with the soldiers, knowing that I am contributing in some way to helping our soldiers fight, my unit succeed, and my country win the war, all with honor. The rules of

called operational law, is amorphous. It requires some familiarity across a broad swath of law woven from threads of international, fiscal, contract, environmental, administrative, property, and criminal law. He must be, well, a JAG of all trades.

Often he is required to become a self-taught "expert" on a particular issue that pops up at the most unexpected moment and implicates a

engagement (ROE) are the code by which we accomplish this. They are derived from international law-of-war principles and regulate our use of force against the enemy and with civilians on the battlefield. It is one thing for the commanding general's judge advocate to draft the ROE in the abstract, like the requirement that there be a "demonstrated hostile intent" before engaging an individual

who may pose a deadly threat. It is quite another thing for the JAG at the tactical level to sit down in the sand with a group of weary soldiers and engage them about whether the 14-year-old boy they saw earlier that day on a convoy, brandishing an AK-47 and screaming at them in a strange, harsh-sounding alien tongue, constitutes a "demonstrated hostile intent" that would justify shooting him before he shoots you. The soldiers know that one mistake that results in the death of innocent civilians can have geopolitical ramifications. The incident will be reported in the world news and exploited by America's critics, adding fuel to the international debate over the propriety of the entire operation and perhaps costing America some precious credibility. The soldier weighs these considerations against the possibility that he is about to be killed and, in the blink of an eye, makes a decision. The judge advocate's job of teaching the ROE is an art; it involves identifying with the soldiers, earning their respect, stepping into their dilemma, and then boiling down the ROE to a set of practical standards that they can recall and apply instinctively in an infinite number of possible threat situations.

In addition to training our own soldiers, judge advocates have been called upon to help train Iraq's new military and security forces. Our brigade was tasked with standing up an Iraqi security force to take over one of our facility-protection missions. In doing so, our commander took an innovative approach; working with a former Iraqi Army colonel, we established a private security company, the first of its kind in Iraq, composed mostly of former Iraqi soldiers and Republican Guard. As part of their training program, I was assigned to instruct them on the law of war, the rules of engagement, and human rights. It was amazing how foreign some of these concepts seemed to these men, yet how enthusiastically they were received. The reward was knowing that I was imparting values of human dignity to men who were starving to hear somebody speak of


them. The great hope is that these values will take root here in a land where the people have known nothing but indignity, oppression, and injustice for decades.

The judge advocate's traditional role as a criminal lawyer remains a key component of the job. Whether the courtroom is a great hall inside one of Saddam's former palatial compounds or a fest tent stood up in the sand of a forward operating base, we continue to conduct courts-martial for criminal offenses. At the time of writing this article, I was prosecuting two soldiers for getting drunk on Christmas night and burglarizing the Post Exchange store on a U.S. base in Iraq (no small offense considering they almost made off with \$20,000 worth of morale items from CDs to digital cameras). JAGs in Iraq have prosecuted and defended cases ranging from alcohol consumption to mistreatment of prisoners. The command's judge advocate typically prosecutes the case while another JAG, detailed from the Army's independent Trial Defense Service, zealously represents the accused soldier at the Army's expense. (If the soldier desires, he can also hire his own civilian attorney, and some have.) Unfortunately, the occasional serious case is often sensationalized in the media as a "startling trend," unfairly casting aspersions on our troops. The vast majority of our men and women serving in uniform truly are heroes; they are the embodiment of the Army values: leadership, duty, respect, selfless service, honor, integrity, and courage.

On any given day, I also advise soldiers in my unit on a wide array of personal legal issues, from divorce and child support, to citizenship and naturalization, to credit reporting and debt collection. Unfortunately for the soldier, the legal world does not stop turning just because he has deployed. The soldier continues to receive notices from debt collectors and summonses to appear in court. The Servicemembers' Civil Relief Act provides some legal protections for deployed soldiers, but what does Private Smith do when he receives divorce papers instead of a love letter from his

wife back home? The ability to seek immediate counsel from a lawyer who has been deployed to the field of battle with the troops is an invaluable asset to the command—who needs soldiers to be 100 percent focused on the mission—and to the soldiers, among whom distractions can cost lives.

There are no casual Fridays out here. There are no weekends, for that matter. Every day is a work day, and every night you are on call. Some days you find yourself riding shotgun in a Humvee with a locked-and-loaded M-16, perhaps on your way to a village to investigate or pay a local's claim against the United States for property damage. Other days you are behind the desk reviewing a contract for the purchase of 200 air-conditioning units for the troops' tents. And sometimes you take on responsibilities at the commander's request that have little, if anything, to do with the law, such as public affairs, because your education and skills make you the suitable candidate for such other individual missions key to a unit's success.

As the Pentagon begins to examine the efficiency of maintaining a corps of uniformed attorneys and considers contracting out to civilians, the work of judge advocates deployed around the world today should leave no doubt about the value of having full-time, active-duty JAGs on the field of battle. Despite the whisperings of a downsized JAG Corps, uniformed lawyers are sure to continue proving indispensable as long as we live in this complex age in which the enemy goes about cloaked as a civilian and the international community increasingly scrutinizes American intervention. But most important, uniformed judge advocates are essential to the mission because the men and women on the front lines trust us. They trust us because we, too, are soldiers—wearing the uniform, waging the war, and working alongside our fellow troops in the great common cause of freedom to which we have been called. 

Capt. Brian Taylor, of Amarillo, Texas, is Brigade Judge Advocate/Trial Counsel with the 17th Field Artillery Brigade.

DEEP IN THE HEART OF TEXAS

Austin

Beijing

Dallas

Dubai

Houston

London

Moscow

New York

Singapore

Washington, D.C.

Texas is deep in our hearts. Hiring graduates from The University of Texas School of Law has been a V&E tradition for almost 90 years.

With over 250 graduates, V&E is proud to support the UT Law School.

www.velaw.com

Vinson&Elkins
Vinson & Elkins L.L.P.

ARE YOU A UT LAW GRAD NOT PRACTICING LAW?



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

Dean Bill Powers and Lorne Bain (J.D. '69) have formed an alumni advisory council comprising non-practicing alumni. The advisory council focuses on a variety of projects, including ways to involve non-practicing alumni in the life of the Law School and to provide mentoring services to students and alumni who are considering alternatives to the traditional practice of law.

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

Fran Chapman

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

E-mail:

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

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

G R E A T L E G A L M I N D S

120 years of scholarship at UT Law BY ALLEGRA J. YOUNG

THE TEXAS FACULTY IS WIDELY CONSIDERED one of the top legal faculties in the country in both scholarly impact and teaching quality. Last fall, *Science Watch* ranked the law faculty fifth in the United States for scholarly impact. A study published in the *Chicago-Kent Law Review* found that articles by Texas faculty were cited more often by the courts than articles by any other law faculty in the country. And a study in the 2000 *Journal of Legal Education* identified Texas as the nation's top producer of articles and books for practitioners and judges.

Legal scholarship—an analysis of what law is, what the law will be in the future, what the law should be, events and behaviors that the law regulates, what causes the law to change, and more—is the single most important determinant of a law school's worldwide reputation. Scholarship can be rapidly disseminated to a world audience. A scholar wrestling with difficult legal issues becomes a more knowledgeable teacher. And great legal scholarship can help society resolve difficult choices and think through hard problems. Judges, lawyers, politicians, other scholars, and many

PORTRAITS BY WYATT McSPADDEN

everyday citizens find the work of the UT Law faculty extremely valuable.

"We have had one of the nation's leading law faculties for more than a century. Our current faculty is extremely strong. I am very proud of the scholarship they produce," said Dean Bill Powers. "I am also deeply grateful for all the help we get from our generous alumni to attract the very best faculty to UT and support their work."

Building intellectual capital

ONE OF THE CONTINUING ISSUES facing the Law School is how to create and sustain an environment that encourages high-quality scholarship. In his 32 years at UT, Professor Lucas A. "Scot" Powe, Jr., has devoted considerable thought to that question. A prolific scholar, Powe is also a longtime member of the Law School's budget committee, a group that shapes the Law School's scholarly culture by reviewing each faculty member's scholarship and then tying that work to the individual's compensation. Powe believes that the school's incentive structure and scholarly community create an important competitive advantage for the Law School.

SCOT POWE'S
history of the
Warren Court
was called "one
of the most
important legal
histories of
the decade."



“Historically, Texas’s size gave our law school natural advantages: we work with a large audience, and we have the resources only a large university can provide,” said Powe. “But several good law schools have similar resources. Our law school is dramatically different in its approach to scholarship. It took more than a century to build this culture with the right mix of abstract and concrete incentives. It’s not something many other institutions can easily replicate.”

Powe’s own successful scholarship on the broadcast industry reflects how the Law School supports the right mix of people, resources, and incentives to encourage a sustained, serious inquiry into difficult issues. His books and articles significantly influenced the Federal Communications Commission (FCC), journalists, and lawyers to acknowledge that First Amendment protections and criticisms applied to the medium. In fact, the FCC’s opinion repealing the Fairness Doctrine (a requirement that broadcasters provide roughly balanced time and content) used nearly the same outline as Powe’s 1985 article in the *Duke Law Journal* on the subject (coauthored with Thomas G. Krattenmaker). Once the Fairness Doctrine

was repealed, the talk-radio industry emerged.

“Ideas that challenge or repair the fabric of our society don’t appear because a budget committee calls, although that helps,” said Powe, “and they don’t come from one particular place or person, although [UT Law professor] Sandy Levinson has actually had the kernels of several good ideas that I turned into books.

“Our culture works for my purposes because all of the elements are there. I’ve taught and read for decades. I debate my colleagues at lunch and colloquia. I’ve worked on interesting problems, and I’ve been given uninterrupted time to complete my thoughts,” said Powe. “It takes a scholarly climate to produce good work, and such a climate doesn’t occur by chance.”

Today 92 tenure and tenure-track faculty, lecturers, and professors from across campus serve the Law School, a number complemented by the ranks of emeritus, visiting, and adjunct faculty. Their scholarly interests (list begins on facing page) cover more than two hundred subjects and include such diverse topics as Inga Markovits and Basil Markesinis’ comparative legal studies, William Forbath’s



Members of UT's distinguished comparative law faculty (left to right): Regular Visiting Professor DAGMAR COESTER-WALTJEN, Professor HANS W. BAADE, Regular Visiting Professor ANTONIO BENJAMIN, Professor BASIL S. MARKESINIS, Professor INGA MARKOVITS.

work in legal history, Wendy Wagner's work on environmental regulation, Tony Reese and Neil Netanel's work in intellectual property, Mark Ascher and Robert Peroni's work in tax, and David Robertson and Michael Sturley's work in Admiralty law.

"Our law school has a large faculty with diverse interests," said Professor Doug Laycock, who serves as UT Law's associate dean of research. "We have the best balance of theory and practice of any law school I know. Theoretical and interdisciplinary work raises our sights and poses new questions. Doctrinal and empirical work keeps our feet on the ground and helps us think about what could be implemented in a real legal system. Our breadth of scholarship—breadth of subject matter, methodology, and genre—is an important asset to our school and for our society."

The work of generations

IN AN 1884 ADDRESS, Governor O. M. Roberts described a legal system riddled with error and incompetence during and after the days of the Republic: "The proceedings in the courts not infrequently exhibited a gross want of legal capacity in the litigation of important interests, by which the rights of the people were jeopardized and sometimes lost." Roberts helped reform the State Bar and signed into law the bill creating The University of Texas at Austin, a university with two components: a Law School and a college.

The Law School saw many of its faculty members become legal giants through their textbooks, casebooks, and treatises. Publishers, interested in reaching the large Texas market, eagerly promoted this scholarship. In 1937 Charles McCormick wrote his landmark treatise, *Texas Law of Evidence, Civil and Criminal*. (Today Steven Goode, Michael Sharlot, and Guy Wellborn carry on this scholarly tradition with their *Guide to the Texas Rules of Evidence*.) Leon Green and Page Keeton established their divergent views of tort law (see page 14 for Dean Powers' discussion of their contributions to the field). A.W. Walker, Jr., was the national authority on oil and gas law for many years; George W. Stumberg, a Rhodes Scholar, was the leading authority on conflicts of laws, succeeded by the incomparable Russell Weintraub. Of Robert W. Stayton, Dean Page Keeton said he "did as much and probably more to modernize court procedure and judicial administration in Texas than any person living or dead." And in 1969 Charles Alan Wright began his definitive treatise, *Federal Practice and Procedure*, a multivolume collection that occupies the shelves of nearly every federal judge in America.

The prominence of the faculty, combined with the emergence of a more national market for legal scholars, created a problem. Other schools recruited the Law School's professors, often offering much higher salaries than UT. As a result, the Law School faced a serious financial challenge.

In 1952 Dean Page Keeton founded the Law School Foundation to provide loans, salary supplements, and scholarships. It had a profound impact. By the time Keeton

SCHOLARLY PURSUITS

Faculty areas of scholarly interest

THE UNIVERSITY OF TEXAS SCHOOL OF LAW FACULTY provides the breadth of scholarly interest that only a large law school can support. Its 92 tenured and tenure-track faculty, lecturers, and interdepartment professors at UT-Austin holding appointments at the Law School research more than two hundred topics of scholarly interest, ranging from the intricacies of securities regulation to the broader vision of moral philosophy.

Emeritus, visiting, and extended faculty members also make important scholarly contributions to the Law School. For a complete list of all UT Law faculty, please go online to www.utexas.edu/law/faculty/profiles.

ALEXANDRA ALBRIGHT Trial procedure, appellate procedure

WILLIAM ALLISON Actual innocence claims, uses of DNA in criminal cases, Franz Kafka and the law

DAVID ANDERSON Mass media law, torts, communications torts, defamation, privacy

MARK ASCHER Estates and trusts, estate planning, income taxation of trusts and estates

HANS BAADE International law, comparative law, international business transactions, international comparative oil and mineral law, public land and resources, international and comparative art law, Texas and Southwestern legal history

LYNN BAKER Professional responsibility, state and local government law, federalism

MITCHELL BERMAN Criminal law, constitutional law, philosophy of criminal law, legal theory

LYNN BLAIS Environmental law, property law, administrative law, law and economics

PHILIP BOBBITT Constitutional law, international security and history of strategy

KAMELA BRIDGES Legal research and writing, appellate advocacy

BREE BUCHANAN Children's rights, domestic violence, child abuse and neglect, family law, public policy advocacy

SARAH BUEL Domestic violence law, tort law, poverty law, juvenile justice

NORMA CANTÚ Civil rights, education, disability rights

LOFTUS CARSON Corporate and commercial law, securities regulation, alternative dispute resolution, professional responsibility, employment law

CHARLES CHILDRESS Family law, civil appellate law, international family law—especially Mexican civil law and international child abduction

MICHAEL CHURGIN Criminal procedure, immigration and citizenship, mental health law

SARAH CLEVELAND International human and labor rights, foreign affairs and the Constitution, federal civil procedure

JANE COHEN American property law, comparative property law, water law, feminist theory, women and the law, law and philosophy, anti-discrimination law and norms, genetics law and policy, law and literature

FRANK CROSS Judicial decision making, economics of law and literature, administrative and environmental law

ROBERT DAWSON Criminal law and procedure, juvenile justice

JOHN DEIGH Moral and political philosophy

GEORGE DIX Criminal law, criminal responsibility

JOHN DZIENKOWSKI Professional responsibility of lawyers, property, natural resource taxation, international energy law

SCHOLARLY PURSUITS

KAREN ENGLE Identity politics, international law, human rights, and employment discrimination

LEE FENNEL Property, land use, local government, social welfare law, tax policy, law and economics

WILLIAM FORBATH Constitutional law, legal and constitutional history

MARK GERGEN Contracts, torts, restitution, federal income taxation

JULIUS GETMAN Labor law, law and literature, legal education

STEVEN J. GOODE Evidence, professional responsibility, criminal law

LINO GRAGLIA Constitutional law, antitrust

DAGMAR HAMILTON Impeachment

ROBERT HAMILTON Corporation law, securities law, governance of publicly held corporation, Sarbanes-Oxley, the current scandals in mutual funds management

PATRICIA HANSEN International trade and investment, regional economic integration, environmental protection

EDEN HARRINGTON Community development, public interest law

BARBARA HINES Immigration law

HENRY HU Corporate finance, corporate governance, corporate law, derivatives and other new financial products, hedging and risk management, international banking and securities markets, investing and investor behavior (including, e.g., Warren Buffett), mutual funds and hedge funds, securities regulation, the stock market

STANLEY JOHANSON Wills and estates, estate planning

CALVIN JOHNSON Federal income tax, accounting, history of the Constitution

SUSAN KLEIN Criminal procedure, federal criminal law and ethics, Supreme Court

JONATHAN KOEHLER Probability and statistics in the law, jury decision making, scientific evidence (including DNA evidence)

KIMBERLEE KOVACH Mediation and arbitration, dispute resolution, negotiation

DOUGLAS LAYCOCK Remedies (including damages, injunctions, restitution, declaratory relief, punitives, enforcement of judgments), religious liberty, constitutional law

TERESA LECLERCQ Judicial rhetoric, plagiarism, prisoner litigation, plain-English revision of class-action notices, English as a second language (ESL), writing across the curriculum, business, technical, and professional writing, teaching pedagogy, the politics of race, elements of persuasion, writing for nonfiction publications, American literature, Southern and Gothic literature and folklore, folklore for children, ready-writing competition

BRIAN LEITER Jurisprudence and legal philosophy, moral philosophy, law of evidence, German philosophy

SANFORD LEVINSON Constitutional law, professional responsibility, jurisprudence, political theory, American constitutional history, comparative constitutional law

KATE LITVAK Corporate and commercial law, venture capital and private equity, law and economics

JEANA LUNGWITZ Family law, domestic violence and the law, gender issues

RONALD MANN Commercial law, electronic commerce, intellectual property

BASIL MARKESINIS Foreign law, comparative methodology, tort law

INGA MARKOVITS Comparative law, socialist legal regimes, law reform in Eastern Europe, family law, legal history

RICHARD MARKOVITS Antitrust, law and economics, constitutional law, jurisprudence

TRACY MCCORMACK Advocacy skills, appellate, trial and non-jury, nonverbal behavior and communication, civil procedure, evidence

THOMAS MCGARITY Administrative law, environmental law, food safety law, occupational safety and health law, science, technology and law

ROY MERSKY U.S. Supreme Court history, legal research, law library administration, and architecture

ROBIN MEYER Legal research and writing

retired in 1974, foundation funds accounted for 15 percent of the school's expenditures, including funds for attracting top-ranked faculty to the school and providing scholarly support. In later years Keeton said, "I think it's perhaps the greatest contribution I made to the law school—namely, to get fund-raising started, and to get it recognized as an important way to go about getting excellence."

Today the foundation's support stands at nearly one third of the Law School's budget. It funds 39 chairs, 71 professorships, and 17 endowments for scholarly research. Today every tenured and tenure-track professor receives foundation support in some form.

"Our alumni and the Law School Foundation have made an indelible imprint on our school," said Dean Powers. "They are our partners in educating the next generation."

Compensation reform

WHILE HIGHER SALARIES allowed the school to compete for talent, many faculty members point to the budget committee reforms under Dean Mark Yudof as a critical element in setting the stage for the Law School's surge in scholarly reputation during the past quarter century.

When Yudof, now chancellor of the UT System, became dean in 1984, he selected Scot Powe to become chair of the budget committee, a group that advises the dean and enables him to give merit-based pay increases on the strong basis of real information and peer evaluation. According to Powe, "That year I sent around a one-sentence memo: 'Please provide me with a copy of your publications from last year.' It sent a shock through the faculty. The memo implied that we were going to read each other's work and back our commitment to scholarship with money. It helped focus our scholars, and it indicated that scholarship was just as important as teaching."

Two years later the school took the additional step of adding an associate dean of research to review and comment on scholars' work, especially that of the younger members of the faculty. Jack Getman served as the first associate dean, followed by Doug Laycock. "It's a wonderful and rare luxury to have someone like Doug reviewing everything you write," said Ernest Young, a recently tenured member of the faculty and a federalism expert. "Not a lot of other junior faculty members at other law schools receive such a high caliber of support so early in their career."

The Law School also expanded its research leave policy and the funds available for summer research for certain scholarly projects. Today this policy represents a major investment of Foundation funds and is a key factor of scholarly productivity. The school also supports several speaker series at which faculty members and visitors present their work. And Dean Bill Powers instituted, among other reforms, the highly popular practice of a weekly faculty lunch, where the faculty can share ideas and visit with each other.

The Law School's extensive law library also furthers scholarship, through its publications, international con-

ferences, and support services. In the library's liaison program, professional lawyer-librarians work with individual faculty members to ensure that the resources needed for their scholarship are available and that faculty members are aware of new materials in their areas. Librarians undertake in-depth faculty research projects, coordinate with other libraries for the delivery of unusual materials needed for faculty research, and support faculty teaching by providing legal research instruction and developing bibliographic materials.

And to help the next generation of scholars, Professor Richard Markovits created the Law School's nationally recognized course "Legal Scholarship" to prepare future law teachers. Markovits' work is complemented by many on the faculty who help young scholars, including Professor Brian Leiter, whose Web site, "Information and Advice for Persons Interested in Teaching Law," is widely considered the first stop for any student seriously pursuing a career in academia.

Solitary pursuits

SCHOLARLY WORK REMAINS in many ways a solitary pursuit, largely hidden from students. But the resulting books, treatises, articles, speeches, and faculty exchanges create a lasting legacy of excellence admired throughout the world.

For instance, the University of Tulsa School of Law recently held the symposium "Celebrating the Scholarship of Sanford Levinson." Members of Congress asked Teresa Sullivan and Jay Westbrook to help them sort out the debate over personal bankruptcy laws. Gerald Torres serves as president of the American Association of Law Schools. Securities regulation expert Henry Hu is sought daily for comment by the business media. Others, such as Brian Leiter and John Deigh, span the worlds of philosophy and law, where they work primarily with other scholars around the world. Bioethics experts John Robertson and Jane Cohen are known for their articles about heated public policy issues. And our faculty members have authored some of the leading legal treatises in their areas, including trusts, evidence, oil and gas, criminal procedure, Texas civil procedure, Texas criminal procedure, conflicts of law, and numerous others.

In this issue of UTLAW, we celebrate scholarship with a glimpse into selected examples of scholarship from nine of our many excellent scholars. In subsequent issues of our magazine, we will replace our *For the Record* listings with similar profiles. We will also provide a bimonthly newsletter with a spotlight on faculty scholarship so our alumni will be more easily able to share in the scholarship of the School of Law and so that you too may understand why the UT Law faculty is considered one of the best in the world when it comes to a serious inquiry into the nature of the law.

For up-to-the-minute information about faculty scholarship, go online to <http://www.utexas.edu/law>.

SCHOLARLY PURSUITS

LINDA MULLENIX Class-action litigation, mass tort litigation, federal practice and procedure, federal courts, conflicts of law, transnational procedure

NEIL NETANEL Copyright, media, First Amendment, international intellectual property, intellectual property theory

CHRISTY NISBETT Legal writing, legal drafting, plain English

ROBERT PERONI Federal taxation, international taxation, natural resource taxation, professional responsibility/legal ethics

H.W. PERRY Constitutional law, the U.S. Supreme Court, law and politics, American politics

SCOT POWE The U.S. Supreme Court, First Amendment, sports law

WILLIAM POWERS Torts, products liability, jurisprudence, legal process, civil procedure, contracts

DAVID RABBAN Higher education and the law, legal history, constitutional law, labor law

STEVEN RATNER International law, United Nations, war crimes, ethnic conflict

ALAN RAU Contracts, alternative dispute resolution, arbitration

ANTHONY REESE copyright law, intellectual property law, law and cyberspace, sexual orientation and the law, Russian legal history

DAVID ROBERTSON Admiralty law, torts

JOHN ROBERTSON Law and bioethics, biotechnology, genetics, medicine

LARRY SAGER Constitutional law

JOHN SAMPSON Family law, Texas community property, child abuse and neglect, litigation

WAYNE SCHIESS Legal writing, legal drafting, plain English

THOMAS SEUNG Ethics, political philosophy, philosophy of literature

MICHAEL SHARLOT Criminal law, evidence, affirmative action

PAMELA SIGMAN Juvenile law

CHARLES SILVER Complex litigation, class-action lawsuits, professional responsibilities of lawyers involved in civil lawsuits, health care law and policy

ERNEST SMITH Oil and gas law, environmental law, property, wind energy

DAVID SOKOLOV Contracts, corporate law, entertainment law, art law

JANE STAPLETON Products liability, torts and obligations in general, comparative law, causation

JORDAN STEIKER Constitutional law, criminal law, death penalty

MICHAEL STURLEY Admiralty (a.k.a. maritime law), commercial law, property, appellate advocacy, Supreme Court practice

TERESA SULLIVAN Consumer bankruptcy, sociology of work

JOHN F. SUTTON, JR. Professional responsibility, evidence

GERALD TORRES Agricultural and environmental law, Indian law, water law

WENDY WAGNER Environmental law, torts, law and science

LOUISE WEINBERG Constitutional law, Supreme Court history and biography, federal courts, judicial federalism

RUSSELL WEINTRAUB International litigation and arbitration, conflict of laws

OLIN GUY WELLBORN Evidence

JAY WESTBROOK Bankruptcy, secured credit, international and comparative bankruptcy, international dispute resolution, including commercial arbitration and international litigation

ZIPPORAH WISEMAN Commercial law, feminist legal history

PATRICK WOOLLEY Class actions, civil procedure, conflict of laws, federal courts, constitutional law

ERNEST YOUNG Constitutional law, federal courts, administrative law, admiralty, foreign affairs, comparative, and international law, legislation

MARK YUDOF Constitutional law, freedom of expression, education law, gender discrimination, contract law, behavioral law and economics

Thomas McGarity

On “de-ossifying” the informal rulemaking process

AS THE “RULEMAKING ERA” DAWNED in the early 1970s, courts, commentators, and federal agencies all agreed that informal rulemaking under section 553 of the Administrative Procedure Act (APA) offered an ideal vehicle for making regulatory policy. Professor Kenneth Culp Davis, a giant of the field (who began his teaching career at the University of Texas School of Law), called informal rulemaking “one of the greatest inventions of modern government.”

Three decades later, the bloom is definitely off the rose. Although informal rulemaking can still be an effective tool for making regulatory policy, it has not evolved into the flexible and efficient process that its early supporters originally envisioned. Instead, the rulemaking process has become increasingly rigid and burdensome. An assortment of analytical requirements have been imposed on the simple rulemaking model, and evolving judicial doctrines have obliged agencies to take greater pains to ensure that the technical bases for rules are capable of withstanding judicial scrutiny. Donald Elliott, former General Counsel of the Environmental Protection Agency, refers to this troublesome development as the “ossification” of the rulemaking process, and many observers from across the political spectrum agree that it is one of the most serious problems currently facing regulatory agencies.

It was probably predictable at the outset that the same forces that turned administrative adjudication into an exceedingly time-consuming and resource-intensive activity would be brought to bear on informal rulemaking as soon as its potential to facilitate public regulation of private conduct became apparent to affected economic interests. Yet as advocates of regulatory relief learned during the first Reagan Administration and are learning once again in the George W. Bush Administration, the same inertial forces that slow down the process of formulating and implementing new rules can impede rulemaking to achieve deregulatory goals. The informal rulemaking process of the twenty-first century is so heavily laden with additional procedures, analytical requirements, and external review mechanisms that its superiority to case-by-case adjudication is not as apparent now as it was before it came into heavy use. Perhaps of even more concern to regulators and the general public is the fact that agencies are beginning to seek out alternative, less participatory regulatory vehicles to circumvent the increasingly stiff and formalized structures of the informal rulemaking process.

What has happened to the simple decisionmaking model under which the agency puts the public on notice of the nature of the issues to be resolved, gives interested persons

an opportunity to submit written comments, and explains the final rule in a concise general statement of basis and purpose? First, informal rulemaking is so efficient in forewarning stakeholders about the agency’s plans that powerful political constituencies have ample opportunity to mobilize against individual rulemaking initiatives. Second, until very recently informal rulemaking has evolved in an institutional context in which Congress and the President have been vying for control over this important policymaking tool. Third, modern informal rulemaking must often resolve extremely complex scientific and economic issues in the midst of daunting uncertainties. Fourth, the modern rulemaking process has evolved in a political context of unprecedented public distrust of the federal bureaucracy.

What can be done to revive informal rulemaking as an effective tool of good government? Some of the more important reforms that I have suggested include the following. The most obvious, and least likely to be implemented, reform is to give regulatory agencies more resources to comply with the additional analytical and procedural requirements that Congress continues to impose on them. Alternative decision-making tools, like regulatory negotiation (a specialty of the Law School’s Center for Public Policy Dispute Resolution), offer a promising way to promulgate uncontroversial rules. Congress and the Office of Management and Budget could work together to eliminate many of the overlapping analytical requirements contained in several Executive Orders and statutes, like the Unfunded Mandates Act and the Regulatory Flexibility Act, that force agencies engaged in major rulemaking initiatives to prepare extensive analyses of the costs and benefits of regulatory proposals and a range of possible alternatives. Congress should repeal silly statutes like the appropriations rider that forces agencies to respond to demands that the information they use or disseminate meet vaguely articulated standards for “information quality.”

Perhaps the single most useful reform would be for the courts that review agency rules under the “substantial evidence” and “arbitrary and capricious” tests provided for in the APA and specific agency statutes to respond less enthusiastically to “blunderbuss” attacks on agency reasoning and response to comments in the preambles to final rules. Since it is difficult to think of more deferential words than “arbitrary and capricious” (perhaps “damned arbitrary and capricious” would work), I have, only half-facetiously, suggested that reviewing courts use a “pass-fail prof” test in exercising their review function.

Under that test, a professor must determine whether a

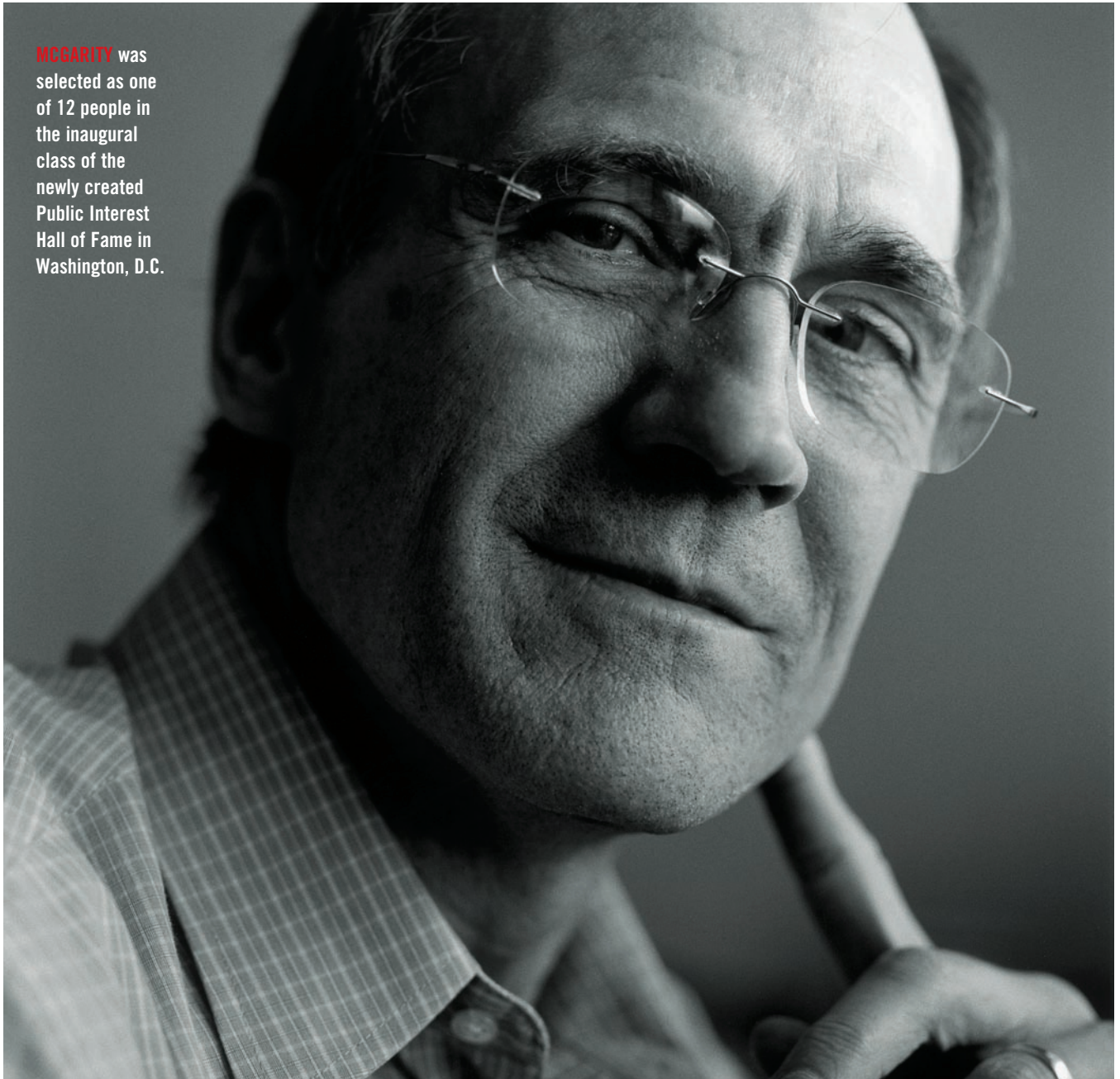
paper on a topic with which he is vaguely familiar meets the minimum standards for passable work. Her disagreement with the paper's conclusions will certainly not cause her to flunk the student. Even a poor analysis will not cause the paper to fail, if it is at least plausible. A check of the citations may reveal that the student could have found more sources or that he may have mischaracterized one of the cited sources, and still the paper will pass. Only where there is an inexcusable gap in the analysis, an obvious misquote, or evidence of intellectual dishonesty, will the pass-fail prof give the student an "F" and order the student to try again. When the courts engage in substantive judicial review, they should, like the pass-fail prof, see their role as that of screening out bad decisions, rather than ensuring that agencies reach the "best" decisions.

The informal rulemaking model of the early 1970s is in danger of becoming a mere reminder of the fate of a "good government" idea in a world dominated by powerful inter-

est groups. To some degree, externally imposed constraints on informal rulemaking were an inevitable product of the tension between innovation and accountability that must always exist in a democracy that aspires to the rule of law. But to a larger degree, the ossification of the rulemaking process was an avoidable consequence of unrealistic expectations about the ability of resource-starved regulatory agencies to identify, analyze, and resolve exceedingly complex regulatory issues on the cutting edge of science, technology, economics, and psychology. Because society needs the services that the agencies are attempting to provide, they should be free to provide those services through an efficient and effective informal rulemaking process unburdened by undue fears of judicial or political reversal.

A former articles editor of the Texas Law Review, Professor McGarity is a leading scholar in the fields of both administrative law and environmental law.

MCGARITY was selected as one of 12 people in the inaugural class of the newly created Public Interest Hall of Fame in Washington, D.C.



Linda Mullenix

Resolving mass tort litigation: The World Trade Center Victim Compensation Fund and possible lessons for the tort reform movement

AS OF MIDNIGHT DECEMBER 22, 2003, which was the final deadline for applications to the World Trade Center Victim Compensation Fund, 2,833 people had filed preliminary applications with the Fund. This number represented 95% of eligible relatives of the victims of the September 11th tragedy at the World Trade Center. It is impossible to talk about the WTC Compensation Fund without referring to numbers. At the time the deadline for final filing had arrived, the Fund had paid out approximately \$1.5 billion, with an average payment of \$1.8 million per family and a high payment of \$6.9 million. The Fund will spend approximately \$3-4 billion in payouts to claimants.

As had been widely reported for well over two years, the Victim Compensation Fund has not been without very public and emotional controversy. The *New York Times*, which has been particularly extraordinary in its coverage of both the events at the World Trade Center and the Victim Compensation Fund, noted:

When Congress hastily passed legislation in the days after the terror attacks to create the fund as part of an airline bailout package, officials hailed the plan as a fast and straightforward alternative that would ease the trauma of thousands of families. In exchange for waiving their right to sue—which some lawyers believed could be a protracted and even risky option—families were promised an average payment of about \$1.5 million, within four months of their complete filing.

But from the outset, the fund was beset by controversy and confusion over its rules, giving it the texture of a malleable work in progress, responsive to public pressure and subject to frequent clarifications.

Notwithstanding all the controversy, confusion, and the traumatic delay on the part of claimants, it nonetheless remains very impressive that when the final deadline arrived—and potential claimants were put to the ultimate choice—95% opted to receive compensation for their injuries and grief through the Victim Compensation Fund. By implication only 5% chose not to.

And, it is not completely certain that the remaining 5% of non-Fund claimants will choose to seek relief through the ordinary tort litigation system. Some may choose not to seek any relief at all. Thus, in the end, it may turn out that fewer than 5% of eligible claimants will seek redress through the ordinary tort litigation system.

My thesis is a simple one: I believe that the experience of

the Victim Compensation Fund may contain some possible lessons—either useful or not—to the debate over tort reform. In essence, the Victim Compensation Fund provides us with an example of an alternative to the tort litigation system as a means for seeking redress for tortious injury. In addition, the Fund (quite accidentally) provides us with an interesting empirical experiment upon which to consider what rational (or irrational) people might choose, if given different alternatives for seeking relief.

Moreover, my further thesis is that the Victim Compensation Fund mimics many tort reform proposals in its crucial characteristics. It is one thing to talk about tort reform in the abstract, but it is another thing to actually implement tort reform through legislation or judicial construction. The Victim Compensation Fund asks us to consider the real-world question: what if we actually gave people tort reform and offered them a choice: would they show up and choose it? Or would they reject tort reform and hew to the prevailing culture of take-no-prisoners, spare-no-cost and time, maximize-damages adversarial tort litigation?

My tentative conclusion, based on the overwhelming percentage of claimants who chose remediation through the Victim Compensation Fund, is that rational people would choose a modified regime (i.e., some aspects of tort reform), if they believed that such a regime would fairly and expeditiously compensate them for their injuries. And, they would choose this regime even at the cost of foregoing potentially greater compensatory damages, windfall exemplary damages, and a jury trial.

No doubt this is a semi-audacious and overbroad conclusion, but it is worth mulling over, at least. It seems especially worth mulling, precisely because the Victim Compensation Fund was so beset with controversy, confusion, and successive modifications. Perhaps one of the many lessons of the Victim Compensation Fund is that while tort reform may be easy to conceptualize in theory, tort reform is not the least bit easy to implement in practice. The Victim Compensation Fund teaches that legislative or judicial tort reform may require constant tinkering at the margins to achieve the precise calibration of fairness, efficiency, catharsis, and justice.

I ATTEMPT TO DRAW SOME BROAD LESSONS from the comparison of tort reform proposals to the Victim Compensation Fund. This is concededly a highly imperfect exercise. On the one hand, the events of the World Trade Center tragedy and



MULLENIX is a leading expert in mass tort, complex, and class action litigation.

the Victim Compensation Fund may be so idiosyncratic, unique, and *sui generis* that they can teach us nothing about tort reform. On the other hand, the struggle of special master Kenneth Feinberg to achieve justice, fairness, and closure for victims of these events—however imperfect those efforts were—may provide us with valuable insights concerning what measures and means of justice are acceptable to reasonable, albeit traumatized victims of disaster.

In the end it is sobering to realize that every World Trade Center claimant could have chosen the tort litigation system, but 95% did not. Also, given the two-year period in which claimants had to make this decision, coupled with the barrage of information relating to the Fund, it is difficult to make the case that 95% of claimants were subjected to overweening pressure or undue influence to seek redress through the Fund.

The fact that fewer than 5% of World Trade Center claimants will ultimately choose to litigate their claims through the tort system must mean something. The debate over what these numbers mean is worth exploring, although we cannot draw any ultimate conclusions. One can be certain that

there will be vast disagreement over permissible inferences.

What we cannot know at this point—and it is fundamentally crucial information—are the actual reasons why claimants made the decision to opt into the Fund, and to forego the tort litigation system. In absence of this information, we may only hypothesize about the rationales and motives of the claimants. Recognizing this, there can be little doubt that the best piece of empirical research concerning the Victim Compensation Fund would be to interview the claimants concerning their decision-making process, their evaluations of their options, and the reasons for their decision to forego the tort system. Perhaps a day will come, with sufficient time and distance from these events, that a researcher will be able to conduct such a study.

Excerpted from The Future of Tort Reform: Possible Lessons From the World Trade Center Victim Compensation Fund, to be published in the Emory Law Journal as part of the Randolph W. Thorer Symposium "The Future of Tort Reform: Reforming the Remedy, Re-Balancing the Scales" (February 19, 2004).

Philip Bobbitt

Winning the war on terrorism

If all goes well, Knopf will publish a new book of mine this coming winter. A title has yet to be settled, though in my working drafts I currently call it: All Leave is Cancelled Tonight: The War Against Terror. Suggestions for a better title are welcome.

The book is structured around four basic themes. First, that we must redefine what we mean by warfare, by terrorism, and by victory if we are to understand how the war on global terrorism is different from past conflicts, and how it can be won. Otherwise, the phrase "war on terrorism" is little more than a speech writer's metaphor, like the war on drugs or the war on crime. Second, that our current domestic debate on the constitutional limits on the Executive in such a war both understates the threat of terrorism and overstates the Executive's authority to deal with this threat. Third, that international law, though at present inadequate to cope with the challenges presented by global terrorism, can be reformed to provide indispensable assistance in this war. And fourth, that the indicia of winning and losing must be carefully defined, because the traditional measures of success in war are largely unavailable to us.

Each of these themes introduces one of the four parts of the book and each part concludes with particular recommendations—a mix of policy prescriptions and some effort to rethink the fundamentals of how we might actually win a war against global terrorism. Here is an excerpt from the Introduction. It follows a discussion of some ideas in my last book (the decay of the nation-state, the emergence of market-states).

THE FIRST OF THESE UNFORESEEN DEVELOPMENTS was the commodification of weapons of mass destruction. There arose a market, though a clandestine one, in these weapons, which grew ever cheaper. States no longer had to be rich to develop WMD and thus need not be great powers, rendering the great power consensus of less significance. Indeed, it was no longer necessary for a state to develop its own nuclear or biological weapons at all—which might require years of sophisticated technological and scientific effort—or to leave evidence of such development for UN inspectors to detect. It will soon be possible for WMD to be bought in the marketplace. A lucrative trade may already exist between North Korea, which supplies ballistic missile technology, Pakistan, which supplies fissionable material, and Iran, which needs both and will soon be able to supply both to others. [Written in 2003 before the Khan arrest and disclosure.]

The second unforeseen development was the emergence of a global terrorist network that in many respects more closely resembled the multinational corporation than it did a government. I draw attention to this resemblance for an important reason: only if it is appreciated can we connect

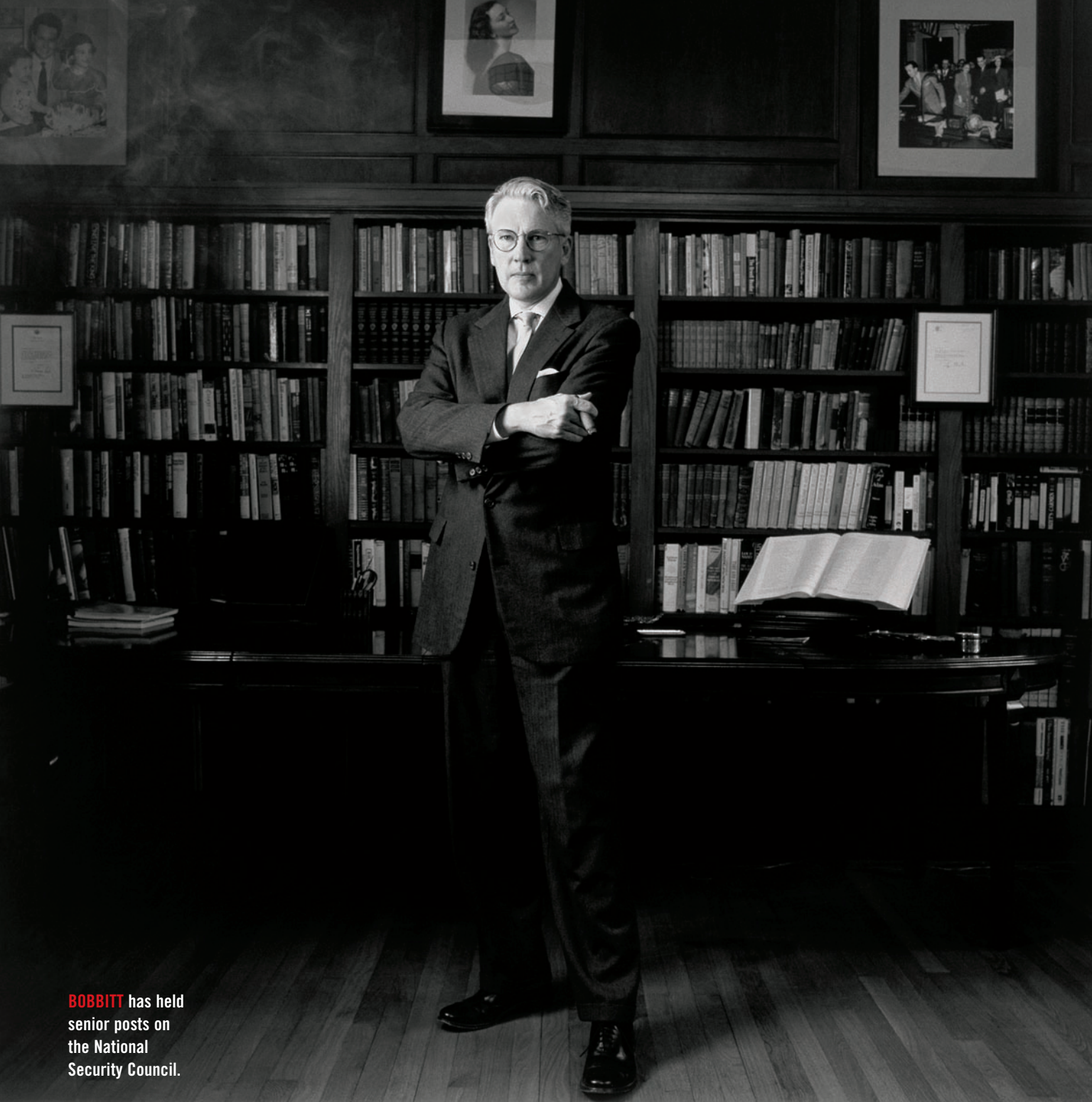
the changes in terrorism (which many commentators, especially in Europe, are at pains to deny) with the changes in the constitutional order of the State.

Unlike the terrorist groups with which we are familiar, Al Qaeda does not mimic the nation-state. The IRA, ETA, the PLO all are organized as tiny parodies of the hierarchical, militarized, ideologized nation-state. This is hardly surprising as each is engaged in a struggle for national liberation. By contrast, the multinational mercenary terror network that Usama bin Laden and others have assembled is a new and mutated version of the market-state. It resembles the organizational structure of VISA or MasterCard, with their radical decentralization more than the usual national government (or the usual 20th century national corporation, like Air France or Krupp or IBM, for that matter). It is not located in any particular place, though it had training facilities in Afghanistan. It provides logistical support, financing and some leadership to the ad hoc coalitions—coalitions of the willing, if you like—it pulls together for operations, often drawing these fighters from local groups that have fought each other for years.

The third unforeseen development was the greater vulnerability that emerged as a concomitant of the dramatic growth in wealth and productivity during the last half-century. In World War II, it required the resources of the wealthiest nations to develop the weapons that enabled them to destroy the industrial plant of their adversaries. Perhaps only the United States could have been the first to produce nuclear weapons. Certainly it would be idle to suppose that a teenager, sitting in his parlor in a suburban home, could have destroyed the tank manufacturing plant run by General Motors. But today, and increasingly tomorrow, just such a boy (or girl) will be able to hack into the computerized supervisory systems that control gas pipelines, phone networks, electrical grids and electronic banking at a cost to the society of amounts of wealth not dissimilar to the destruction of an industrial plant by aerial bombing.

This new vulnerability should not be confused with that arising from the spread of WMD. The atrocities on September 11th were not perpetrated by persons using sophisticated weapons; rather they were made possible because we had assembled an immense array of talent and capital and put this glittering assemblage inside a few large buildings. The vulnerability I have in mind is a direct consequence of the steps we have taken to link parts of the economy, to increase productivity by relying on computerization, and to bring persons into efficient proximity.

These three developments are outside the frame of refer-



BOBBITT has held senior posts on the National Security Council.

ence of the popular theories of international relations that circulated at the end of the 20th century, but they are quite consonant with the decay of the nation-state (of which they are important drivers) and the emergence of the market-state (which they reflect). Moreover, they have the potential to interact: lucrative targets such as we have assembled in every post-industrial society will soon be vulnerable to anonymous attack including crude radioactive or biotoxic attacks. It is not hard to imagine the public reaction if, for example, an ordinary fertilizer bomb were detonated on Wall Street, spreading nuclear isotopes bought on the black market. Few would be killed, but who would want to work there again? The anthrax attacks of 2001 shut down postal services and gov-

ernmental facilities with a few letters; it is not inconceivable that hundreds of such letters could be mailed rather than a handful, with proportionately greater effect. We have as yet even to identify the author of the original attacks.

But by far the most important consequence of these three unforeseen developments in the wake of the end of the Long War is their potential effect on our understanding. And, as far as I can tell, we have much to learn.

*Bobbitt, one of the nation's leading constitutional theorists and an expert in international security and the history of strategy, is the author of six books, including the internationally acclaimed *The Shield of Achilles: War, Peace, and the Course of History*.*

Mark Gergen

The fallacy of efficient breach

The excerpt is largely drawn from a forthcoming essay, "The Regulation of Exit and Loyalty in Contract Disputes," which will appear in a collection on Comparative Contract Remedies to be published in England. The point made in the excerpt is of interest to foreign scholars for they have been told that American contract law promotes efficient breach. The essay also examines the law's response to exit and loyalty when there is a bona fide dispute regarding the scope of the performance due or the adequacy of the performance tendered. I argue that what may seem a hodgepodge of rules can be organized around what I call the goal of efficient performance. Generally the law treats performance or acceptance of performance in a dispute as final, foreclosing later assertion of an inconsistent legal position, unless the performance or acceptance of performance avoids a loss. When a contract is unclear the interest in finality (and the goal of remedial simplicity more generally) gives way to the goal of efficient performance.

MY OLD CONTRACTS CASEBOOK, like many others, uses *Rockingham County v. Luten Bridge Co.*, and *Parker v. Twentieth Century-Fox Film Corp.*, to introduce the mitigation doctrine. Their familiarity makes them good vehicles for illustrating a fundamental point about American contract law. It permits a party to act in response to breach to avoid suffering an uncompensated loss though the action imposes a disproportionate loss on the defaulter. In a nutshell, the theory of efficient breach is poppycock.

Shirley MacLaine Parker had a contract with Twentieth Century-Fox to play the female lead in "Bloomer Girl," a musical about gender and racial conflict in the antebellum south with a precociously progressive female lead. The studio cancelled plans for "Bloomer Girl" and offered MacLaine as a substitute the female lead in "Big Country, Big Man," a dramatic western, with the same base compensation, \$750,000 for fourteen weeks work. MacLaine turned down the second part and sued for the base compensation. In its answer, the studio argued that MacLaine failed to mitigate damages by not taking the second role. The trial court rejected this defense on a motion for summary judgment. The fighting issue in the case was whether the question of the comparability of the roles (framed as whether the second role was "different and inferior" to the first) should have gone to the jury. The California Supreme Court said no, affirming the trial court.

Allowing MacLaine to refuse the second role is costly. She was idled for fourteen weeks when she "was one of the biggest female stars in Hollywood." Awarding her the base



salary may well have given her a windfall at the studio's expense. She was paid for fourteen weeks while she took what may have been a much-needed break. But the disposition saved her from suffering what would otherwise have been an uncompensated loss. There is good reason to believe that MacLaine genuinely preferred the role in "Bloomer Girl" to the role in "Big Country, Big Man." The court could not compensate her loss with damages had she taken the second role because it was too speculative. Appar-

ently the judges thought it better that a defaulter suffer a large loss than an aggrieved party suffer a smaller uncompensated loss.

The answer is the same in American law when the question is whether an aggrieved party must halt performance in response to default when he thinks it is in his interest to continue and collect the contract price. American law students are taught otherwise for a case often used to teach the mitigation doctrine, *Rockingham County v. Luten Bridge Co.*, holds that a contractor acted inappropriately in completing a bridge after the contract was cancelled. The treatment of *Luten Bridge* in the casebooks and teaching manuals suggests most teachers do not appreciate how exceptional the result is. There are only a handful of cases like *Luten Bridge* in which a person hired to do work that is uniquely of value to the defaulter continues to do work after repudiation and then sues for the contract price. The aggrieved party will recover the contract price if he can show he had to continue work to avoid suffering an uncompensated loss. Indeed, an aggrieved party may continue work to avoid an uncompensated loss even if this imposes a disproportionate loss on the defaulter. As in *Parker*, courts do not try to balance interests except in the grossest sense.

Bomberger v. McKelvey illustrates. McKelvey bought a lot from Bomberger agreeing to pay Bomberger \$3,500 to demolish a building on the lot. McKelvey planned to build a large drug store on several lots. McKelvey decided to delay construction of the store and ordered Bomberger not to proceed with demolition. Bomberger demolished the building anyway claiming that he needed skylights salvaged from the building, which were worth around \$540, to fulfill another construction contract. The demolished building was worth around \$26,000 and was generating \$300 monthly rent. The case holds that Bomberger acted reasonably because getting substitute skylights may have delayed completion of his other project by several months. The court made no effort to quantify or to balance the parties' respective losses.

Of course, the right to perform and collect the contract price in the face of repudiation is not absolute. English judges, who start from the premise that there is a right to perform and collect the contract price upon repudiation, have struggled to define when this right gives way. One judge summed it up this way: "How one defines that point is obviously a matter of some difficulty, for it involves drawing a line between conduct which is merely unreasonable and conduct which is *wholly* unreasonable." This seems to me an apt description of the balance the courts struck in *Parker v. Twentieth Century-Fox* and *Bomberger v. McKelvey*. In countenancing "merely unreasonable" behavior the English judge is saying that an aggrieved party may act to avoid an uncompensated loss though his action imposes a significantly larger loss on the defaulter.

Mark Gergen's recent private law scholarship broadens to include other common law systems; his tax work focuses on tax shelters, partnership tax, and financial innovation.

GERGEN, the Joseph P. Hutcheson Professor in Law, has taught at UT Law since 1985.

120 YEARS *of* SCHOLARSHIP

Ronald Mann

A multi-country study investigating how governments regulate consumer credit cards



MANN has argued nine cases before the U.S. Supreme Court, three in the field of bankruptcy.

SINCE THEY FIRST APPEARED in the middle of the last century, card-based payment systems—credit cards, debit cards, charge cards, etc.—have transformed the practice of retail payment. Their growth throughout the developed world has raised widespread policy concerns. For example, many in this country argue that widespread use of credit cards can contribute to excess consumption, and ultimately to an undue incidence of financial distress. Regulators in other countries have not focused on that problem, but instead have focused on features of retail pricing to consumers. Specifically, they have been concerned that a system in which consumers pay the same price whether they use cash or a credit card forces consumers that do not use cards to subsidize those who do, producing an increase in retail prices for all.

In many respects, of course, sharply different patterns of usage in various countries suggest that each country's payment card is a creature of its local environment. On the other hand, the breadth of a growth trend that has altered customary practices in so many countries suggests that much can be learned from a careful analysis of the various cultural, legal, and institutional factors that affect their use and can contribute to a nuanced understanding of how they affect economic activity. My research takes up the challenge of that more optimistic perspective. In my current work, I conduct three broad inquiries: the causes of failure and success of payment cards, the effects of payment cards when they succeed, and potential policy responses to those effects.

On the first point, I take advantage of a substantial body of existing historical work and public data. I also rely on a great deal of proprietary data, information I collected during substantial stays in Japan (at the Bank of Japan's Institute for Monetary and Economic Studies) and in Great Britain (with assistance from the Bank of England), and private data provided to me by central banks in a number of other countries. Using that data, I can provide a general story, rife with examples from numerous countries, of the factors that are (and are not) relevant to the success and failure of credit cards. My basic theme is that the most important single factor in the rise of the credit card is the deployment of information technology capable of sophisticated analysis of information about the creditworthiness of particular cardholders. Much of the timing and variation of growth in credit cards can be traced to the availability of that technology. Thus, to discuss only the most obvious manifestations, credit cards are most successful in the United States, where that technology is most widely available. They are much less successful in the continental EU and in Japan, where various legal constraints limit the availability of the relevant information.

My work also considers the effects of credit card use. Most importantly, I have collected time-series data from four countries (Australia, Canada, the United Kingdom, and the United States) to analyze the relation between credit card use, on the one hand, and bankruptcy on the other. The purpose of that analysis is to examine whether there is something special about borrowing with credit cards that is more likely to result in prodigal spending than other types of bor-

rowing. The data generally support the notion that credit card debt is uniquely likely to contribute to a higher rate of financial distress. Specifically, controlling for the general level of consumer debt, an increase in credit card debt is related to a cognizable rise in consumer bankruptcy filings. To put the point simply, bankruptcies will rise substantially after an increase in credit card debt, even if the overall level of consumer borrowing remains unchanged.

I then consider the possibility that credit card spending's effect on a nation's economy is so pervasive that it can affect the legal system that governs creditors' rights. Specifically, I present data showing a high correlation between credit card spending, on the one hand, and a more lenient bankruptcy discharge on the other. The data suggest that countries in which heavy credit card spending develops are led to alter their bankruptcy systems so as to provide a relatively lenient discharge to consumers.

My final area of inquiry is to consider a variety of policy responses to card use. The problem is a difficult one because of the important beneficial features of card use—as an inexpensive device both for making payments and for obtaining unsecured credit. The best policy responses will be those that are most likely to stem the prodigal behavior that causes the adverse effects discussed above and least likely to prohibit or render impractical the value-increasing borrowing transactions that make credit cards valuable to so many businesses and consumers. Two different classes of proposals are important: regulation of the various prices charged at the various stages of a credit card transaction, and regulation of information provided to potential users. On the first point, I reject the regulation of interchange fees currently underway in several other countries, preferring instead initiatives that would directly validate credit card surcharges by merchants. More ambitiously (and tentatively), I also suggest a ban on affinity programs (cash-back and airline-miles programs being the most obvious), because they give cardholders an unduly large incentive to use credit cards.

On the second point, I recommend a flat ban on marketing to minors and college students, extending a similar ban that already exists in UK law. Finally, and most importantly, I recommend a general reorganization of the disclosure regime in the Truth in Lending Act. The current disclosure system focuses on disclosures at the time of the application or the time the cardholder reads the monthly bill. The analysis discussed above, however, suggests that the point of the problem is the point at which cardholders borrow. Accordingly, I recommend regulations requiring issuers to disclose *at the point of sale* the balance, available credit, and any applicable overlimit fees. I think those particular reforms best balance the goal of limiting prodigal behavior against the possibility of imposing prohibitory or impractical constraints on the valuable aspects of card transactions.

Ronald Mann is one of the most influential commercial law scholars of his generation. He serves as the American Law Institute reporter for amendments to Articles 3 and 4 of the Uniform Commercial Code.

Lynn Baker

Facts about fees: lessons for legal ethics

The following is excerpted from an essay in the Texas Law Review that examines the “agency problems” inherent in both hourly rate and contingent fee compensation arrangements for attorneys, and their implications for rules of professional responsibility.

AS WE HAVE SEEN, both the contingent fee and the hourly rate include various incentives for attorney misbehavior of a particular sort: misbehavior that stems from a lack of alignment between the attorney’s financial incentives and the best interests of the client (i.e., what economists call “agency problems”).

Given the problems inherent in these two popular fee arrangements, it should not be surprising that every state’s ethics rules contain a provision explicitly addressing fees. What is something of a puzzle, however, is why the ethics rules focus almost exclusively on the size of the fee. The ethics rules concerning fees require that the fee be “reasonable” (according to various indicia) and that the attorney provide the client certain information about the fee “before or within a reasonable time after commencing the representation.”

As the preceding analysis suggests, however, the most noteworthy incentives toward attorney misbehavior inherent in the two most popular fee structures involve agency problems and do not involve the size of the fee or the client’s lack of knowledge of the fee to be charged. Thus, the existing ethics rules regarding fees seem unlikely to deter any of those forms of attorney misbehavior.

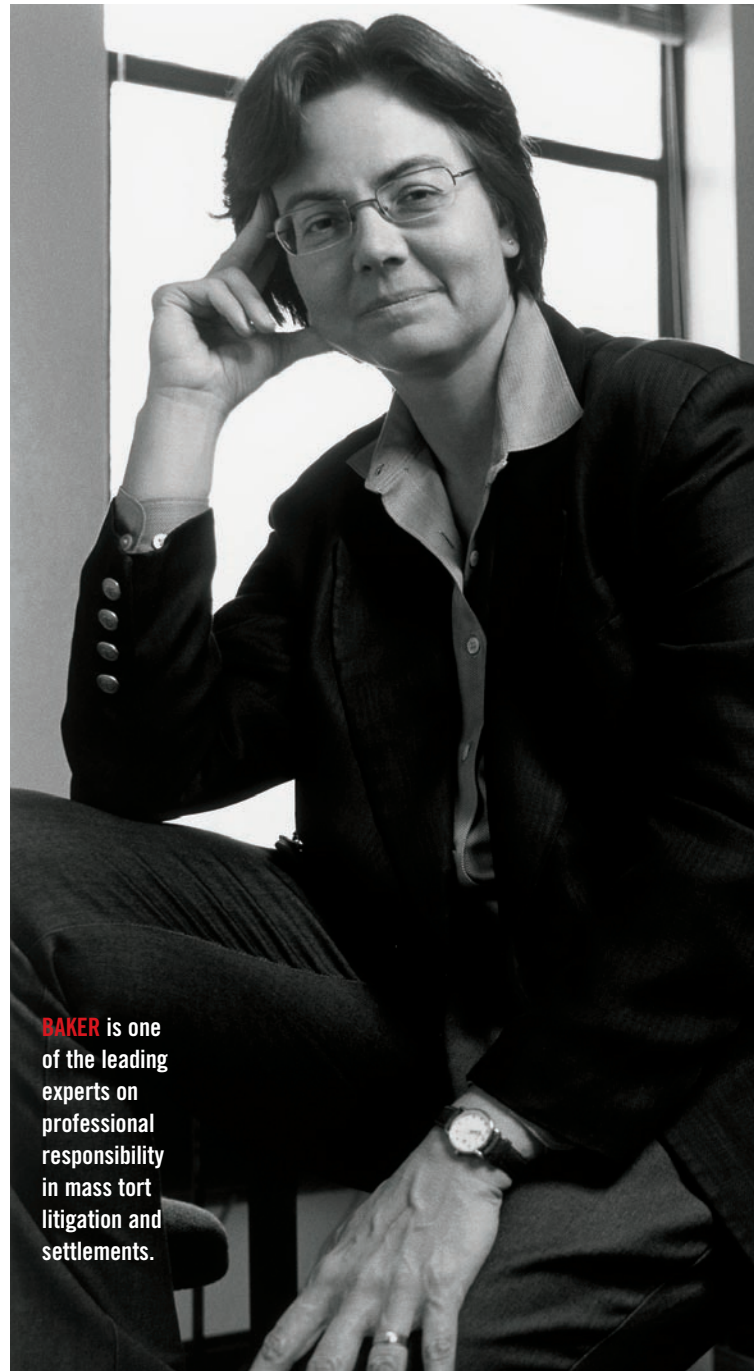
Moreover, price is the characteristic of goods and services that is easiest for inexpert, lay consumers to monitor. Therefore, it is presumably the characteristic of legal services that least requires regulation to protect consumers appropriately from attorney malfeasance.

All this suggests that there is no obvious a priori logical basis for the existing ethics rules regarding fees. Nor is there any published empirical evidence to suggest that regulation of fee size along the lines of the existing rules is beneficial to clients. This lack of supporting data is significant because the existing rules provide an additional basis for administrative and judicial review of the attorney-client relationship and, therefore, an opportunity for administrative and judicial error and the attendant social costs.

The likelihood and costs of administrative and judicial error are often overlooked in normative discussions of regulations, particularly in the area of legal ethics. Any regulation gives the adjudicating body the opportunity to decrease individual and aggregate social welfare by invalidating a beneficial agreement or terminating a beneficial practice or enterprise. Thus, the ethics rules’ requirement that fees be “reasonable”

provides the opportunity for Bar Disciplinary Committees and courts to interfere with fee arrangements in ways that may or may not increase the aggregate welfare of the contracting parties or society. The opportunity to “do good” that the ethics rules provide decisionmaking bodies is merely an opportunity—and harm will sometimes (perhaps often) be the result.

In addition, the existing rules may impose another impor-



BAKER is one of the leading experts on professional responsibility in mass tort litigation and settlements.

tant cost. The mere existence of the rules—with their unambiguous and seemingly comprehensive heading of “Fees”—might persuade us that we have solved (or at least mitigated) an important set of problems, when in fact we have not. That is, the rules governing the size of fees may cause us to ignore the various incentives toward misbehavior inherent in different fee structures that are not at all affected by the existing rules. The rules may also misdirect our attention, causing us simultaneously to focus on a relative non-problem (the size of fees), and to ignore the many real concerns about, and costs imposed by, attorney misbehavior that are ultimately traceable to different fee arrangements.

The existing rules governing fees raise at least one other interesting question deserving of further study and empirical examination. Why do the existing rules explicitly treat contingent fee arrangements differently—as more deserving

of regulation—than other fee arrangements?

Many of the requirements imposed only on contingent fee arrangements seem eminently reasonable and likely to minimize misunderstandings between the attorney and client regarding the actual cost of the attorney’s services. One therefore wonders why the rules do not impose similar requirements on lawyers working under alternative fee arrangements. There are no published empirical data suggesting that such information is useful only to clients under contingent fee arrangements, or that lawyers employed under alternative fee arrangements are less likely than contingent fee attorneys to engage in the sorts of attorney misbehavior at issue.

Why, then, does the rule treat contingent fee attorneys (and their clients) as if they were more in need of regulation and professional oversight than attorneys (and their clients) under the hourly rate and other fee arrangements? One possibility is that the contingent fee client may be more in need of protection from his attorney if he is more likely than the hourly fee client to be an individual (rather than a corporate or other entity) and therefore also a less sophisticated consumer of legal services. But if the true concern is the unsophisticated client, why does the heightened regulation of the rule apply only if he is a contingent fee client and not if he is an hourly rate client? And, similarly, why does the rule therefore provide for heightened regulation of the contingent fee relationship even if the client involved is a sophisticated consumer of legal services? Finally, if the true concern is mitigating the special agency problems that may inhere in fee arrangements involving unsophisticated clients, is the sort of heightened regulation present in the existing rule likely to be an effective means toward that end?

THE ABOVE ANALYSIS leads me to three lessons for the drafters of rules of legal ethics. First, the goal of ethics rules should be to solve real problems. And the rules ultimately adopted should in fact mitigate the identified problems. Whether there is a problem in need of solving is in large part an empirical question, and the effectiveness of the relevant rule is also subject to empirical verification over time.

Second, ethics rules that are merely aspirational and not aimed at solving identified problems, or that do not mitigate the problem they purportedly exist to solve, may well have costs that exceed any benefits. These costs may include the costs of administrative and judicial errors, and the possible misperception by policy makers that a problem has been solved when it in fact has not.

Third, discriminatory ethics rules should never be adopted without empirical support. All categories of attorney-client relationships should be presumed to require similar degrees of regulation and levels of professional oversight absent systematic empirical evidence to the contrary. And any such categories ultimately deemed in need of heightened regulation should be delineated as precisely and narrowly as possible.

Baker holds the Frederick M. Baron Chair in Law and is codirector of the Center on Lawyers, Civil Justice, and the Media.



Lawrence Sager

Adding strength to strength, UT captured this constitutional law luminary on the eve of the publication of his most important work.

Sager, a constitutional theorist who joined the faculty of The University of Texas after a prominent career at New York University, holds the Alice Jane Drysdale Sheffield Chair. This spring, Yale University Press published his book Justice in Plainclothes: A Theory of American Constitutional Practice. In this excerpt from the penultimate chapter, Sager defends the constitutional judiciary against the charge that it is undemocratic. This charge, raised by groups on both ends of the political spectrum, threatens to unravel the faith of citizens that their judiciary represents an accountable and deliberative body. Sager argues here that the judicial process itself is in an important way democratic.

ONE WAY in which a member of a political community can participate as an equal in the process of resolving disputes over what rights members of that community have is by being equally entitled to vote for political representatives, who will in turn make decisions about rights. This is certainly not an unimportant way to participate in rights contestation, but it is in some respects a thin way and a dangerous way. It is thin and dangerous because elected political representatives are inevitably drawn in some not insubstantial degree to respond to the power of votes or of dollars as opposed to the force of an individual's or group's claim that they have right on their side. To be sure, the competition among electoral contenders for support will often push the powerful to include the interests of the less powerful in their political agendas. Driven in part by their location at the margins of power, "discrete and insular minorities" may through coordination of their determined energy acquire substantial political muscle. But this is a function of what is expedient in shifting political circumstances, of the wavering hand of a process that is not accidental, but which proceeds far more readily by the logic of accumulated power than by that of reflective justice. No one can demand to be heard or to have their interests taken into account unless they can make themselves strategically valuable. In the real world of popular politics, power, not truth, speaks to power.

The second way that a member of a political community can participate as an equal in the process of rights contestation is to have her rights and interests—as an equal member of the political community and as an equal rights holder—seriously considered and taken account of by those in deliberative authority. Any member of the community is entitled, on this account, to have each deliberator assess her claims on its merits, notwithstanding the number of votes that

stand behind her, notwithstanding how many dollars she is able to deploy on her behalf, and notwithstanding what influence she has in the community. Implicit in this form of equal participation is the right to be heard and to be responded to in terms that locate each person's claim of rights against the backdrop of the community's broad commitment to and understanding of the rights that all members have.

Legislatures, obviously, are preferred venues for the first mode—the electoral mode—of participating as equals in the process of choosing among conflicting views of what rights we should all have. Less obviously, perhaps, courts are preferred venues for the deliberative of participating in that process. Any person injured in the right sort of way is entitled to be heard by courts, entitled to present her claims and the arguments on their behalf, and, at worst, entitled to a reasoned statement of why her claims were not deemed by a majority of the judges to be persuasive. Judges may well be flawed deliberators, of course, and the very independence that makes them impartial also makes them relatively impervious to electoral correction. But when a constitutional protagonist turns to the courts, she can be anyone; she can represent a minority of one or be a member of a group that is widely ridiculed or deplored. Much of what is good in constitutional law, in fact, has been provoked by the claims of such groups. What matters is the strength of her argument in the eyes of the judges, and, failing her success, she is entitled to an explanation of why her claim was found wanting.

COURTS, OF COURSE, ARE FAR FROM PERFECT, and I do not mean to invite the comparison of the real world of popular politics—its blemishes made prominent—with a Pollyannaish vision of the constitutional judiciary at its best. The point, though, is this: popular politics and constitutionalism represent fundamentally different faces of democracy, different democratic modalities. In an important sense, these two institutional arrangements aspire to different democratic virtues. To be sure, no society without a robust place for popular politics can be counted as democratic or just. And it may be



Courts, argues
SAGER, promise
an important
form of demo-
cratic process,
not merely
justice-favoring
outcomes.

sensible to speak of trade-offs between these democratic virtues in the course of institutional design. But it is a mistake to think that there is a blunt opposition between process and outcome—between the fair and democratic process of popular politics and the potential for just results offered by constitutional practice in the United States.

Constitutional adjudication embodies a distinct process that is itself fair and democratic, fair and democratic in a way that popular political institutions cannot realistically be.

Lawrence Sager is regarded as one of the leading constitutional scholars of his generation.

Louise Weinberg

Defending Marbury when its new critics unknowingly put substantive constitutional rights at risk

SOME TIME AGO my colleague Mitch Berman alerted me to the fact that current criticisms of *Marbury*—not of judicial review, but of *Marbury* itself—were becoming received wisdom. Yet these criticisms were unpersuasive to me. They were also disturbing, since they were too often accompanied by disrespectful assessments of Chief Justice Marshall. I decided to see what I could do to help preserve from its critics what I believe is our greatest case. Working with the history of the case, the background of the election of 1800, and the conflict between Chief Justice Marshall and President Thomas Jefferson, I began to uncover distortions in the evolving tellings of the story. *Marbury* increasingly was described as Marshall's frightened retreat from political confrontation, and Marshall accused not only of cowardice but of intellectual dishonesty. Yet these assessments, however fashionable, were utterly at odds with the John Marshall who emerges from any close study. Even more implausible to me were the technical critiques of Marshall's reasoning in *Marbury*.

I laid a basis for my challenges to *Marbury*'s technical critics by making a preliminary inquiry into Marshall's purposes and conduct. Probing that history, I was surprised to find that much of the conventional narrative framework for the teaching of *Marbury* was simply invented. It turns out that there is no evidence that Chief Justice Marshall thought he was confronted with the alleged "dilemma" described in the conventional story. He probably did not care about effecting the "strategic coup" for which commentators on *Marbury* either praise or blame him. Manipulativeness and dishonesty were certainly no part of Marshall's character. It is almost as though Jefferson's fans were trying to project onto John Marshall the deficiencies of Jefferson's own character. (In fact, working closely with materials of that period I became, to my regret, somewhat disillusioned with Jefferson.) It became clear to me that in *Marbury* Marshall should not be understood as engaged in some inglorious retreat from adjudication. Rather, *Marbury* was the unanimous Court's insistence on adjudication. The Court was clear that the government could and should be made to answer for its misconduct in any court with jurisdiction. The Court's denial of its own jurisdiction was its principled bow to the rule of law, which, as Marshall explained, applies to the judicial branch no less than to the political branches.

At the center of my concern, though, remained the technical critiques of Marshall's reasoning. I attacked those, in

two detailed and extended sets of technical arguments. First, there was a popular critique of Marshall's statutory construction as manipulative and disingenuous. Second, there was another popular critique of Marshall's constitutional interpretation as preposterous.

The thing I like best about my article is that it completely demolishes each of these critiques for good and all (I hope). Larry Tribe e-mailed me that he was amazed that he could have believed all that. Jeff Powell wrote that it was "a truly great article." Sandy Levinson cited it as "the best defense of *Marbury* ever written." Philip Bobbitt thought it would displace the current critique. Tony Lewis wrote me that nothing on *Marbury* had "a tenth" of the article's "illumination."

As I worked through the current statutory critique I came to see that what Marshall's critics were carelessly reading as "statutory construction" was a very different feature of judicial process. *Marbury*'s statutory critics were inattentive to the basic requirements of jurisdictional analysis in the greatest case in which it occurs. Moreover, the critique of Marshall's constitutional interpretation turned out to be not only pointless, but wrong, and not only wrong, but subversive and actually dangerous. It rested entirely on a perverse reading of Article III that finds no support in constitutional history, text, or precedent. If this perversion of Article III were ever taken seriously, it would put at risk our substantive constitutional rights.

Marbury's critics were sure that Article III gives Congress power to vest in the Supreme Court an original jurisdiction over cases like *Marbury*—that is, cases against government officials. They have argued this although they must have realized that a more burdensome trial docket would crowd out *pro tanto* the Justices' important appellate work. They failed to notice that the asserted power, as they described it, vanishes if the Supreme Court also retains appellate jurisdiction. Thus, Congress can vest in the Supreme Court—according to the critics' own proposal—original jurisdiction over officer suits if, but only if, that jurisdiction is exclusive, mandatory, and *en banc*. Yet cases against government officials will necessarily include a good chunk of our constitutional litigation. The exclusivity of the jurisdiction the critics think so obviously within Congress's power to confer upon the Court would not only strip the Supreme Court of its appellate power in those cases—their essential role in the constitutional plan—but would also strip original jurisdiction in those cases from state and federal trial courts all over the country. With only

one forum for that kind of constitutional litigation, the Constitution would become virtually unenforceable against the executive branch as a practical matter. There would be an inevitable shift in power to the executive branch.

Yet accountability for this disaster would not necessarily attach to the legislators who voted for it, since the public might perceive Congress as having created a better, more distinguished forum for constitutional cases, and as having enhanced, rather than diminished—reinforced, rather than attacked—the authority of the Supreme Court. Moreover, armed with such a power, Congress need not actually vest any such onerous and destructive jurisdiction in the Supreme Court. Congress could simply brandish that power to bully and threaten the Court. The independence of the

Supreme Court could be fatally compromised.

What *Marbury*'s critics were proposing, in short, was little short of a junking of our enforceable Constitution—Chief Justice Marshall's greatest legacy. This was a not-so-subtle way of taking up the cudgels against judicial review even of government misconduct. Because the attack was framed as a merely technical one, those who were engaged in it probably did not understand it, and certainly would not have seen the need to argue the merits of what was in fact an extremist position.

Weinberg's historical and technical analysis defending Marbury v. Madison was first published in the Virginia Law Review. She is presently developing the concept into a book.



WEINBERG is a leading authority in both federal courts and the conflict of laws, and increasingly influential in the field of constitutional law.

Douglas Laycock

*Religious liberty: not for religion or against religion,
but for individual choice*

I WORK ON A BROAD RANGE OF ISSUES in constitutional law and in remedies (damages, injunctions, restitution, etc.). I rarely see a legal problem that doesn't interest me. But what I find most interesting, and most rewarding, is my work on religious liberty. The American experiment in religious liberty is a way for people with deeply incompatible views on some of the most fundamental questions to live together in peace and equality in the same society.

Some scholars in this field, and nearly all the activists, come to the field because of their religious commitments or their anti-religious commitments. Some of these folks seem to think that religious liberty means whatever is good for religion or whatever is good for secularism.

I call this the Puritan mistake. The Puritans came to Massachusetts for religious liberty, but they meant religious liberty only for themselves. Quakers, Baptists, and Catholics had only the liberty to go somewhere outside Massachusetts. We are not so blatant today; nearly all Americans defend the religious liberty of others in principle. But on both the religious side and the secular side, many Americans think their side should win all the cases that are the least bit arguable, and that the other side should bear all the costs of living in a pluralistic society.

My own approach is different. Religious liberty is a guarantee of *liberty*, not a guarantee of religion or of secularism. Religious liberty does not view religion as a good thing to be promoted, nor as a dangerous force to be contained. Within the liberty guaranteed by our Religion Clauses, the American people may experience a Great Awakening of Christianity, a total loss of religious faith, a diffusion into cafeteria religion (picking beliefs from diverse traditions around the world), or any other possibility you can imagine. The reality is that some Americans will do each of these things.


The Religion Clauses do not guarantee either side a win, or even an advantage, in this competition of ideas about religion. Anyone who claims that his side won the contemporary culture wars 200 years ago, when his views about religion were conveniently written into the First Amendment, is engaged in self-delusion.

The long-running battle over religion in schools illustrates the different approaches. The Supreme Court holds that school officials may not sponsor any religious observance in the public schools. Many religious Americans object to this rule, but the Court has recognized no exceptions in more than fifty years.



The Court also holds that student prayer clubs can meet on school premises on the same terms as other clubs, and that students have full rights of religious free speech on campus (as long as they are not speaking at an official school function to an audience captured by the school itself). Many secularists object to religious free speech, fearing that their children will be pressured by student proselytizers in the public schools. But the Court has never allowed schools to censor private speech on the ground that it is religious.

There is a separate but related issue of government funding for private religious schools. Here the Court gradually



In addition to his scholarship, **LAYCOCK** testifies frequently before Congress about issues of religious liberty, and has argued many appeals, some of them in the U.S. Supreme Court.

changed its mind; it now permits government to issue vouchers that can be used to pay tuition at a broad range of private schools and unconventional public schools, including private religious schools.

From the perspective of who's winning, the secular side is winning the school-sponsored prayer cases and the religious side is winning the private speech cases and the voucher cases. But from a perspective of religious liberty, all these cases are consistent. In the view of the swing votes, Justices Kennedy and O'Connor, all these cases are about individualizing religious choice.

School-sponsored prayer commits a whole set of religious questions to the government—whether to pray, when to pray, how long to pray, in what religious tradition to pray. Should we pray in Jesus' name, or not? These choices are imposed on everyone at the school event where the prayer is offered. Permitting after-school prayer clubs leaves all these choices to the individuals who choose to attend, and their choices are not imposed on anyone else.

Similarly with vouchers. Vouchers go to parents, and parents decide whether to use them at a religious school or a secular school. If they choose a religious school, they can choose which religious tradition and how intensely religious. Their choice is not imposed on others who choose to go elsewhere.

This year we might get the first-ever exception to the ban on school-sponsored religion. The Court might uphold "under God" in the Pledge of Allegiance, even though that phrase represents government's choice for a brief religious affirmation every morning. The residual protection for individual choice would be each child's right not to say the Pledge, or not to say the parts he doesn't believe.

We also got an exception to individual choice on the funding question. The Court recently considered state scholarships that could be used at any college in any major—except theology. The Court held that the state could have included theology—each student would choose a major individually—but the state could also choose to exclude theology. Funding any major except theology was open discrimination against religion, which would normally be unconstitutional. But funding the training of clergy was special, in the Court's view, because of long tradition and because no one has a right to government funding.

This decision, and a possible decision upholding the Pledge, illustrate a dose of legal realism. The Court's center will not carry its principle of individual choice to what it considers extreme results. But individual choice explains a lot of cases. The religious liberty question is not whether religion is winning or losing, or whether church and state should be more separate or less. True religious liberty means minimizing government's influence on the religious choices and commitments of the American people. The more religious choices that are left to individuals, the healthier the state of religious liberty.

Douglas Laycock is one of the nation's preeminent authorities on the law of religious liberty.



Albany
Austin
Brussels
Chicago
Dallas
Houston
London
Los Angeles
Moscow
New York
Philadelphia
Riverside
San Antonio
San Francisco
Washington, D.C.
1.866.AKIN LAW
akingump.com

Akin Gump Strauss Hauer & Feld LLP

is a proud sponsor of the

University of Texas Alumni Association

Law School Spring Reunion

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

SUPPORT THE LAW SCHOOL'S ANNUAL FUND!

DID YOU KNOW THAT THE SUPPORT OF UT LAW ALUMNI ACCOUNTS FOR ONE THIRD OF THE LAW SCHOOL'S OPERATING BUDGET?

Alumni support of the Annual Fund makes it possible to:

- ★ Recruit and retain a nationally-recognized faculty
- ★ Recruit the brightest students from around the United States
- ★ Underwrite faculty- and student-sponsored symposia
- ★ Provide students with expanded services, such as a well-staffed career counseling center
- ★ Assist student organizations with expenses related to attending regional and national conferences and hosting programs for the benefit of UT Law students
- ★ Expand the number and availability of the Law School's clinical programs



In short, UT Law alumni make UT Law School one of the best in the nation.

If you haven't already done so, please give to the Annual Fund today!

Checks should be made payable and mailed to: The University of Texas Law School Foundation, 727 E. Dean Keeton Street, Austin, Texas 78705

For more information about the Annual Fund, including special donor recognition categories, call the Alumni Association Office at (512) 232-1118, or visit us online at http://www.utexas.edu/law/depts/alumni/annual_giving.html

TOWNE NOTES



46 NOTEWORTHY

Norma V. Cantú
The Capital Punishment Clinic
 The Hon. James DeAnda, '50
 Beatriz de la Garza, '78
 Bernard O. Dow, '56
 The Hon. Royal Ferguson, Jr., '67
 The Hon. Bruce Gibson, '78
 The Hon. John L. Hill, Jr., '47
 James D. Hornfischer, '01
 Lee and Joseph Jamail, '52
 The Hon. Edith H. Jones
 Sanford V. Levinson
 The Hon. Eldon B. Mahon, '42
 Basil Markesinis
 Harry Reasoner, '62
 Lawrence Sager
 Ernest Young

52 CLASS NOTES

63 IN MEMORIAM

JUSTICE CIRCLE OF JACOPO SANSOVINO, ITALIAN, 16TH CENTURY, CARVED AND POLYCHROME WOOD. JUSTICE GRASPS A SWORD, AN EMBLEM OF POWER, AND HOLDS AN ORB, SYMBOLIZING DOMINION OVER THE WORLD AND THE DIGNITY OF HIGH OFFICE. ON DISPLAY IN THE JAMAIL CENTER FOR LEGAL RESEARCH. COURTESY OF MICHAEL HORN, CURATOR, AND THE ELTON M. HYDER, JR. COLLECTION.

Lee and Joseph Jamail

RECENT DONATION REFLECTS DESIRE TO KEEP UT LAW A PREMIERE INSTITUTION

ON NOVEMBER 13, 2003, LEE and Joseph Jamail, famed Houston trial lawyer and UT Law alumnus, presented the Law School with a check for \$1 million, to be used at the dean's discretion in support of the Law School's academic mission.

The Jamails announced the gift in response to state budget cutbacks. The donation reflects their desire to help maintain UT Law's position as one of the nation's premier centers of legal education. "The University of Texas and our University of Texas Law School are a very critical part of my success and a large part of Lee's and my life. It is an honor and a pleasure to be able to help one of the finest educational institutions on the earth," Jamail said. He continued, "Lee and I are merely giving back money—you who teach and administer education here give your lives to it. We are indebted to all of you."

Jamail and his wife, Lee, are longtime and generous benefactors of The University of Texas. Their philanthropy extends across the campus—from men's and women's athletics to the Colleges of Communication, Education, Fine Arts, Liberal Arts, and Natural Sciences, Nursing, and Law.

In accepting the gift, Dean Powers said, "Joe Jamail is simply the best trial lawyer in the world. And he and Lee are UT's very best friends. I can't thank them enough for their support and generosity."



WYATT MCPHADEN (3)



Top: Joseph Jamail, Darrell K. Royal, and Lee Jamail at the announcement. Bottom: Dean Powers thanks Jamail for his gift to the Law School.

Harry Reasoner and Joe Jamail

In the Law School's Jamail Pavilion, Dean Bill Powers, along with alumni, friends, and faculty, attended the unveiling of the life-size, bronze statues of Texas legal legends and alumni Joseph D. Jamail, '52, and Harry M. Reasoner, '62. UT System Chancellor Mark Yudof, Chairman of the Board of Regents Charles Miller, UT President Larry Faulkner and Law School Foundation President David Beck were among the



guests and speakers at the unveiling and dedication ceremony. "Joe Jamail and Harry Reasoner are truly great trial lawyers. More important, they are great friends of the Law School," said Powers. "These statutes will remind us, and remind generations to come, just what good and dear friends these two wonderful men have been."

Macey and Harry Reasoner at the statue unveiling.

BRIEFS

Last November the Fort Worth federal courthouse was officially renamed to honor U.S. district judge **Eldon B. Mahon, '42**, a prominent desegregationist. Mahon was nominated to the federal bench by President Nixon in 1972, took senior status in 1989, and retired in 2002.



On April 2 the Law School formally established the John L. Hill Trial Advocacy Center in honor of **Judge Hill, '47**, who, in addition to being a nationally

known litigator, also served as Texas secretary of state, attorney general, and chief justice of the Texas Supreme Court. The center oversees the practical training of UT Law students in trial and appellate advocacy. It also houses the John L. Hill Teaching Courtroom, along with three additional teaching courtrooms named in honor of other distinguished UT Law alumni. It was made possible by generous grants from Judge Hill, Locke Liddell & Sapp, and the Kayser Foundation.

Basil Markesinis



Professor Basil Markesinis, QC, LL.D. (Cantab.), DCL (Oxon.) and Jamail

Regents Chair in Law at UT, has been elected a Corresponding Fellow of the French Academy (Institut de France: Académie des Sciences Morales et Politiques), the highest academic honor and recognition in France. He is the only law professor in the United States to be elected to membership in the French Academy.

Norma V. Cantú and Judge Royal Furgeson, Jr.

ABA RECOGNIZES THEIR WORK ON RACIAL AND ETHNIC DIVERSITY

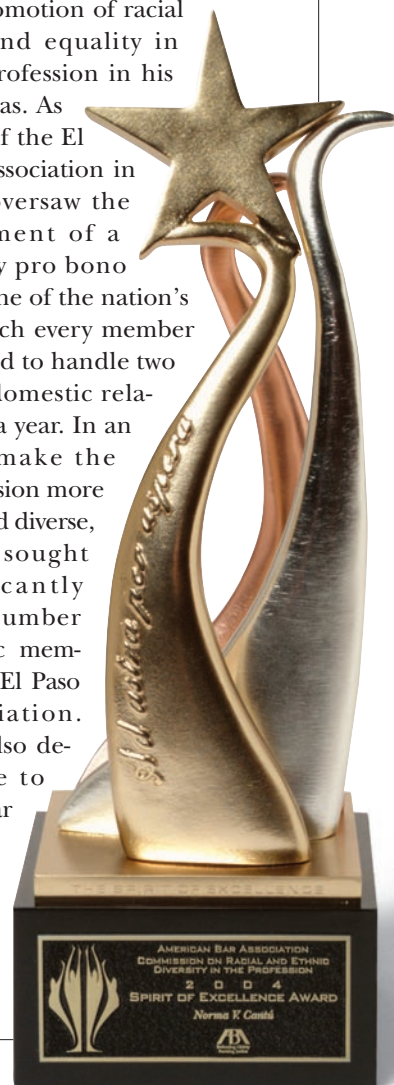
THIS SPRING THE AMERICAN Bar Association Commission on Racial and Ethnic Diversity in the Profession awarded its 2004 Spirit of Excellence Awards to Norma V. Cantú, professor of education and law at UT, and Judge Royal Furgeson, Jr., '67, of the U.S. District Court for the Western District of Texas.

Instituted in 1996, the awards recognize recipients for their achievements in the advancement of lawyers from diverse backgrounds, as well as for their contributions in the area of professional excellence.

Cantú has focused her civil rights advocacy efforts on increasing educational opportunities for minorities, women, and the disabled. During her 8 years of service as assistant secretary for civil rights in the U.S. Department of Education during the Clinton administration, she implemented national educational policies, created new educational guidelines, and resolved cases with positive impact for more than six million students annually. Before her work with the Department of Education, Cantú served for 3 years as the U.S. representative to the International Commission on the Child. She also worked for 14 years as regional counsel and education director of the Mexican American Legal Defense and Educational Fund. In this capacity she litigated numerous class-action civil rights cases at the state and federal levels to help minority women and low-income children. Cantú grad-

uated summa cum laude from Pan American University in Edinburg, Texas, at the age of 19 and received her law degree from Harvard Law School in 1977.

Furgeson has served on the federal bench for nearly 10 years and has dedicated his career to public service and the promotion of racial diversity and equality in the legal profession in his area of Texas. As president of the El Paso Bar Association in 1982, he oversaw the establishment of a mandatory pro bono program, one of the nation's first, in which every member was required to handle two pro bono domestic relations cases a year. In an effort to make the legal profession more inclusive and diverse, Furgeson sought to significantly raise the number of Hispanic members of the El Paso Bar Association. Furgeson also devotes time to the State Bar of Texas' Judicial Relations Committee, which he chairs.



Ernest Young

TEXAS EXES HONOR YOUNG FOR TEACHING

THE STUDENT SELECTION committee for the Texas Exes' Faculty Teaching Award selected Professor Ernest Young, a constitutional law expert, to be the recipient of the 2003-04 award. Chelsea Davenport was the recipient of the teaching assistant award. Young, who

McCormick, chairman of the student selection committee. He noted that Young took extra steps to help new students master complex issues, including distributing an outline of his lecture before every class. "There was a general consensus among students that Professor Young's sense of humor has made learning difficult material an enjoyable experience. Professor Young has assumed several extracurricular responsibilities designed to improve the law school experience for students, including serving as a faculty coordinator of the judicial clerkship program," McCormick said.

"I'm very proud to be listed alongside the great teachers who have won this award in the past," Young said. "The key to being a good teacher is to have students that you like and who challenge you intellectually, and I've been blessed with both at Texas."

In 2002, Young, who holds the Judge Benjamin Harrison Powell Professorship

in Law, also won the Robert Murff Excellence Award of the Texas Campus Career Council, along with Professor Tony Reese, for serving as judicial clerkship advisors at UT Law.

This fall UTLAW will profile the winner of the Massey Teaching Excellence Award, a new Law School award that honors faculty teaching excellence (see cover story Winter 2004).



WYATT MCSADEN

Professor Young teaches federal courts and constitutional law.

is in his fifth year of teaching at the Law School, was the overwhelming favorite among students during the nominating process. They selected Young for being an outstanding mentor to students, both inside and outside the classroom.

"He brings a passion for the law and youthful energy to the classroom that is reflected in his lectures," said Ryan

BOOK 'EM

Prominent constitutional legal scholars receive praise for their new books' elegant and original observations.

Professor Sanford V. Levinson



"Diversity" has become a mantra within discussions of university admissions policies and many other arenas of American society. In the nine essays

presented in this volume, Sanford Levinson, a leading scholar of constitutional law and American government, wrestles with various notions of diversity. He begins by explaining why he finds the concept to be almost useless as a genuine guide to public policy. Discussing affirmative action in university admissions, including the now famous University of Michigan Law School case, he argues both that there may be good reasons to use preferences—including race and ethnicity—and that these reasons have relatively little to do with any cogently developed theory of diversity. Through discussions of religious diversity, school vouchers, and whether it is desirable, or even possible, to subordinate merely "personal" aspects of one's identity—religion, political viewpoints, gender—to the impersonal demands of professional roles, *Wrestling with Diversity* is distinguished by Levinson's characteristic open-mindedness and willingness to tease out the full implications of various claims.

Professor Lawrence Sager

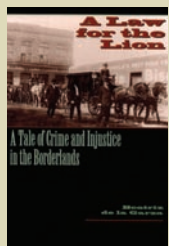


In Justice in Plainclothes: A Theory of American Constitutional Practice (Yale

University Press, 2004), Lawrence Sager, one of the nation's most prominent legal constitutional theorists, offers a lucid understanding and compelling defense of American constitu-

tional practice. Sager treats judges as active partners in the enterprise of securing the fundamentals of political justice and sees the process of constitutional adjudication as a promising and distinctly democratic addition. According to Georgetown law professor Louis M. Seidman, "This book is elegantly written, subtly argued, and full of interesting asides and original observations." (For an excerpt, see pages 38–39.)

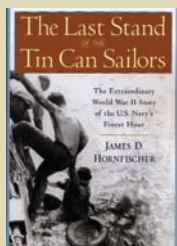
Beatriz de la Garza, '78



UT Press published Dr. Beatriz de la Garza's third book, *A Law for the Lion: A Tale of Crime and Injustice in the Borderlands*. The book details the

1912 trial of Alonzo W. Allee, an unauthorized tenant who was accused of murdering his landlord and his landlord's son. The story sheds new light on the interethnic struggles that defined life on the border a century ago. Former Texas Supreme Court justice Raul A. Gonzalez, B.A. '63, said the work "can serve as a gauge of the progress we've made in society and in our legal system. I strongly recommend it."

James D. Hornfischer, '01



This spring Austin author and literary agent James Hornfischer published *The Last Stand of the Tin Can Sailors*, the first full narrative

account of the Battle of Samar in World War II, which documents the legendary two-and-a-half-hour battle, fought during the Leyte Gulf campaign on October 25, 1944, in which ordinary sailors fought off an overwhelming force of Japanese warships and then struggled to survive a three-day ordeal adrift at sea amid sharks, starvation, and madness. *Booklist* called it "Magnificent . . . one of the finest World War II volumes to appear in years."

The Capital Punishment Clinic

STUDENTS, FACULTY ARGUE AT U.S. SUPREME COURT

FACULTY AND STUDENTS IN THE LAW SCHOOL'S CAPITAL PUNISHMENT Clinic and class spearheaded a Texas death penalty case that was argued in the U.S. Supreme Court on March 22. Professor Jordan Steiker and clinic director and Adjunct Professor Robert Owen were co-counselors in *Tennard v. Dretke*, No. 02-10038, with Owen presenting the oral argument in a case that could have important ramifications for significant numbers of Texas death row inmates.

In *Tennard*, Steiker and Owen joined lead counsel Richard Burr, a nationally respected capital defense specialist, in challenging the fairness of defendant Robert Tennard's trial. Their brief contends that the punishment-phase jury instructions prevented the jury from giving meaningful consideration to Tennard's extremely low IQ of 67. In their view, a properly instructed jury might well have concluded that Tennard did not deserve to die.

"*Tennard* calls on the Court to enforce the vital constitutional principle that a sentencing jury's verdict must represent the jury's reasoned moral response to all the circumstances of the case, including any mitigating evidence," Owen said.

The clinic has been involved in several other Supreme Court cases since Owen and Steiker arrived at UT in 1989 and 1990, respectively, although this is the most substantial involvement the clinic has had. Law students conducted legal research and drafted arguments for Tennard's opening brief in the Supreme Court, which was filed last December. A number of clinic students also participated in a practice argument at the Law School by playing the part of judges and asking Owen questions about the case before his oral argument in Washington D.C., which a number of students attended.



L to R: Steiker, Owen, and Burr (in back) and students Carter, Rauen, Thorne, and Fraley at the Supreme Court.

"Only eighty-five to ninety-five cases are accepted by the Supreme Court each term for argument, so it's a significant achievement to have our clinic litigating one of them," Steiker said. "This is very high-level litigation requiring extraordinary research and care. Not only are the stakes higher for the particular client, but the resulting decisions are going to have much broader ramifications than decisions in lower courts," he added.

Steiker is also involved this spring in *Haley v. Dretke*, a non-capital inmate erroneously sentenced to a 16-year term even though the statutory maximum was 2 years.

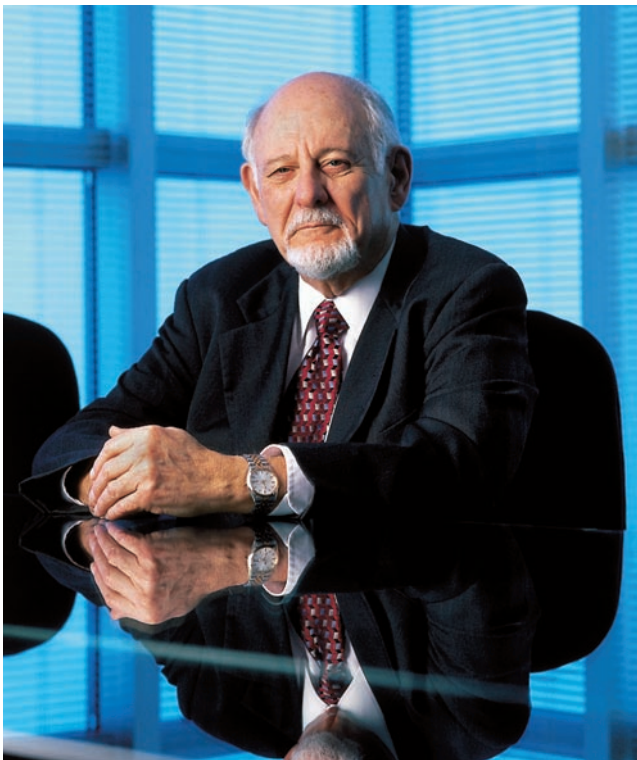
Professors Lynn Blais, Sarah Cleveland, Douglas Laycock, Thomas McGarity, Lawrence Sager, and Michael Sturley are currently involved in litigation before the U.S. Supreme Court, and Dean Bill Powers and Professors Steven Goode, Ronald Mann, and Russell Weintraub are involved in cases before the Texas Supreme Court.

Alumni Awards

2004 LAW ALUMNI ASSOCIATION AWARDS AND HONORARY ORDER OF THE COIF

THIS SPRING THE LAW ALUMNI ASSOCIATION honored four members for their outstanding work. Bernard O. Dow, '56, received the Lifetime Achievement Award; the Honorable Edith H. Jones, '74, was named Outstanding Alumnus of the year; the Honorable James DeAnda, '50, was awarded the Distinguished Alumnus Award for Community Service; and the Honorable Bruce Gibson, '78, was awarded Honorary Order of the Coif.

"We are delighted to honor Bernie Dow, Judge Jones, Judge DeAnda, and Bruce Gibson. Their professionalism, talent, and good work have made an important difference for Texas and for our school. We are justifiably proud of these graduates and their accomplishments," Dean Bill Powers said.



ROCKY KNUTEN

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 U.S. Supreme Court extended for the first time *Brown v. Board of Education* to Mexican Americans. In 1979 President Jimmy Carter appointed DeAnda to the U.S. District Court for the Southern District of Texas. The judge became only the second Mexican American appointed to the federal bench. Since retiring from the bench in 1992, DeAnda has continued to practice law with the Houston law firm of Solar & Associates and to be involved in the struggle to secure civil rights for all citizens.

Bernard O. Dow

BERNARD O. "BERNIE" DOW IS A PARTNER IN THE HOUSTON LAW firm of Dow Golub Berg & Beverly. He graduated with honors, Phi Beta Kappa, from The University of Texas and received his LL.B. from the Law School in 1956. Before beginning his practice, Dow served in the U.S. Air Force as an instructor in military law. He then joined his father and brother in the real estate law firm of Dow, Cogburn & Friedman. He is a well-recognized authority in real estate mortgages and leasing, has been board certified in commercial real estate law since the inception of the certification program, and has published more than one

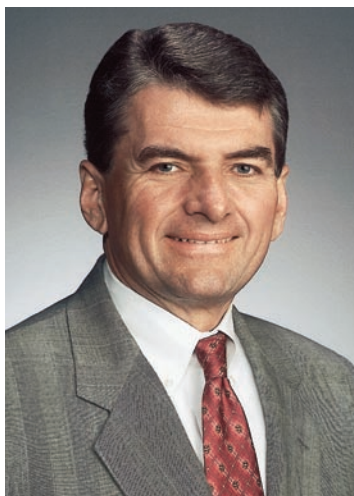


James DeAnda

JUDGE JAMES DEANDA GRADUATED FROM UT LAW IN 1950, WHEN there were only a handful of Hispanic law students. Before law school, DeAnda attended Texas A&M and served with the U.S. Marine Corps in the Pacific theater during World War II. After graduation from the Law School, DeAnda began practicing 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, he became

hundred outlines and articles on a wide range of real estate topics. Dow received the Lifetime Achievement Award to a Distinguished Real Estate Attorney from the State Bar's Real Estate, Probate, and Trust Law Section, and the First Annual Award for Texas Lawyer Professionalism from the College of the State Bar of Texas. For twenty consecutive years he was listed in *The Best Lawyers in America*. He is a member of the American Law Institute, a life fellow of the American Bar Foundation, a fellow of the Texas Bar Foundation, and a life fellow of the Houston Bar Foundation.

Bruce Gibson



AFTER GRADUATING FROM UT Law School in 1978, Gibson returned to his hometown of Godley to practice law and engage in farming and business pursuits. In 1980 he was elected to the Texas House of Representatives, where he served six terms. During his twelve years in the Texas House, Gibson served on the Conference Committee on Tort Reform, Workers' Compensation

Reform, and School Finance. He authored and passed legislation establishing the Texas Ethics Commission, and the Finance Commission of Texas reform legislation. He also authored the Texas Department of Mental Health and Mental Retardation sunset legislation, Texas interstate and branch banking legislation, and legislation requiring timely reporting of last-minute campaign contributions. Gibson served as chair of the Texas House Committees on Government Organization and Financial Institutions, and as co-chair of the Joint Committee on Judicial Reform, the Joint Committee on Deceptive Trade Practice Act, the Ways and Means Committee, and the Commerce Committee. *Texas Monthly* named Gibson to its "Ten Best Legislators" list in 1987 and 1989, and he received an Honorable Mention for his legislative service in 1985. He was named one of the "Seven Best Legislators" by the *Dallas Morning News* in 1991, one of the "Ten Best Legislators" by the *Dallas Morning News* in 1985, and "one of the most diligent, capable members of the Legislature" by the *Fort Worth Star-Telegram* in 1985. In 1992 Gibson was appointed executive assistant to Lieutenant Governor Bob Bullock. In 1994 he returned to the business world, first as president and chief executive officer of the Texas Chamber of Commerce, then as vice president of Houston Industries, and finally as senior vice president of Reliant Energy. In 2003 Gibson reentered public service as chief of staff to Lieutenant Governor David Dewhurst.

Edith H. Jones

JUDGE EDITH H. JONES, CIRCUIT JUDGE OF THE UNITED STATES Court of Appeals for the Fifth Circuit, is widely recognized as an outstanding jurist and one of the nation's leading experts on bankruptcy law. Jones, a 1974 graduate of the Law School, served as an editor of the *Texas Law Review*. Upon graduation, she joined the law firm of Andrews, Kurth, Campbell & Jones, L.L.P. (now Andrews & Kurth, L.L.P.), where she was the first woman to make partner in the history of the firm. Nominated by President Ronald Reagan to become a judge on the Fifth Circuit, she was confirmed by the U.S. Senate on April 3, 1985. During her 18 years on the bench, Jones has written nearly six hundred opinions. She has served as a member of the Advisory Committee on Bankruptcy Rules for the Judicial Conference of the United States and, in 1995, was named by Chief Justice William Rehnquist to the National Bankruptcy Review Commission. Appointed by President George W. Bush to the President's Commission on White House Fellowships, Jones is deeply involved in the selection process for White House Fellows. Jones has authored or coauthored more than 15 publications on the topics of bankruptcy law, mass tort litigation, arbitration, religion and the law, judicial workloads, and the judicial selection process. Jones serves on the executive board of the Texas Law Review Alumni Association, and on the board of directors of the Sam Houston Area Council of the Boy Scouts of America. In 2003 the council awarded her its highest honor for her years of service to scouting. She has worked for many years with the mock trial team at St. Thomas Episcopal High School in Houston, and she is an active member of the Garland Walker Chapter of the American Inns of Court. In 1998 the *Texas Review of Law and Politics* honored her with its inaugural Jurist of the Year award. ✍



C L A S S N O T E S

THROUGH FEBRUARY 2004

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

Nancy Brazzil

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

Fran Chapman

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

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

Tom Henninger, '92

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

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

Suzette Molina

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

1931

Judge Byron Skelton, 98, Temple, Texas, retired on April 30, 2003 from his position as senior judge of the U.S. Court of Appeals for the Federal Circuit. Skelton, reputed to be the oldest federal judge in the country, was appointed by

President Lyndon Johnson to the U.S. Court of Claims in 1966.

1942

Judge Eldon Brooks Mahon of Fort Worth is one of five recipients of the 2003 Outstanding Fifty Year Lawyer Award from the Texas Bar Foundation. Nominated to the federal court of the Northern District of Texas by President Nixon, he served as a U.S. district judge from 1972 until his retirement in 2002.

1947

Beale Dean, a partner in Brown, Herman, Dean, Wiseman, Liser & Hart in Fort Worth, is listed in the 2003-04 edition of *The Best Lawyers in America*. Attorneys are elected to this honor by their peers nationwide. Dean focuses his practice on business and general litigation. He is a fellow of the prestigious American College of Trial Lawyers.

1950

Tom Davis received a 2003 Travis County Bar Association (TCBA) Distinguished Lawyer Award in May 2003. He cofounded the Austin firm of Byrd & Davis in 1959, where he served as managing partner until leaving to start the Austin firm of Slack & Davis in 1993. Davis made his career in aviation law.

Joe A. Moss was named by the Texas State Bar in January 2001 as one of the Outstanding Lawyers in the State for the past fifty years. He retired as vice president, secretary, and general counsel of Fina, Inc., in 1990, became Of Counsel to the Dallas office of Vinson & Elkins, and served as general counsel to Nimir Petroleum Company until 1996.

1952

Joseph D. Jamail is one of five recipients of the 2003 Outstanding Fifty Year Lawyer Award from the Texas Bar Foundation.

Wales H. Madden is one of five recipients of the 2003 Outstanding Fifty Year Lawyer Award from the Texas Bar Foundation.

1954

The Honorable Sam J. Day of the Second Court of Appeals in Fort Worth retired in November 2003. He will retain senior status and serve as a visiting judge when called upon, as well as handle arbitration matters.

1955

Texas governor Rick Perry has appointed **Charles L. Sowell** of Houston to the Texas Racing Commission for a term to expire February 1, 2009. The commission oversees pari-mutuel wagering on horse and greyhound racing. Sowell is an attorney and vice president of the McNair Group.

1957

George Allen Day has retired as judge advocate for the U.S. Army with the rank of colonel.

1958

Richard O. Jones, who retired in 1994 as the Federal Highway Administration's regional counsel for Region 8 (Denver, Colorado), was the featured speaker at the 2004 Thomas B. Deen Distinguished Lectureship, sponsored by the Trans-

portation Research Board (TRB). His lecture—"Context-Sensitive Design: Will the Vision Overcome Liability Concerns?"—was presented at the TRB's annual meeting in January.

1959

Fulbright & Jaworski's corporate partner, **Howard Wolf**, has been appointed to the Texas Sunset Advisory Commission by Texas lieutenant governor David Dewhurst. Wolf will serve until August 31, 2005. The appointment was based on Wolf's lifelong background in both business and law.

1960

John L. Lancaster III, a partner with the Dallas office of Jackson Walker, was named a 2003 *Texas Monthly* Texas Super Lawyer.

1962

Broadus Spivey received a 2003 Travis County Bar Association (TCBA) Distinguished Lawyer Award in May 2003. He is a former president of the State Bar of Texas and a partner in the Austin firm of Spivey & Ainsworth.

1964

Irwin H. Steinhorn taught agency, partnership, and limited liability corporate law at Oklahoma City University School of Law during the 2003 fall semester. He is also teaching there as an adjunct professor this spring. Steinhorn is a shareholder and director of Conner & Winters in Oklahoma City.



Thomas H. Watkins of Brown McCarroll has been appointed by the Texas Supreme Court to serve as chairman of a task force assigned to review the Texas Disciplinary Rules of Professional Conduct. Watkins was recently recognized by *Law & Politics* magazine as a Super Lawyer in the area of business litigation.

1965

U.S. Supreme Court chief justice William Rehnquist appointed **David J. Beck** to the prestigious Judicial Conference

Standing Committee on Rules of Practice and Procedure. Beck is a founder of Beck, Redden & Secrest in Houston and serves as president of the UT Law School Foundation.

Pike Powers, a partner in the Austin office of Fulbright & Jaworski, was honored this year with the first-ever *Austin Business Journal* Lifetime Achievement Award for his contributions to the economic development of Austin and Central Texas.

1966



Julius Glickman of Glickman and Hughes in Houston received the Houston Bar Association Auxiliary's 2004 Leon Jaworski Award at a luncheon on March 9 at the Houston Club. The award is given in recognition of an individual's commitment to public service. One of Glickman's greatest passions is public television. He recently completed a two-year term as president of the Association for Community Television (ACT) and is chairman of the ACT Board of Directors.



D. Dudley Oldham, a litigation partner in the Houston office of Fulbright & Jaworski, has been appointed committee chair of the American Bar Association's Standing Committee on Judicial Independence by ABA president Dennis Archer. He is a member and former chair of the firm's Litigation Management Committee.

Bob Wachsmuth has joined Glast, Phillips & Murray in San Antonio. Wachsmuth's practice is concentrated in business litigation, construction law, antitrust matters, intellectual property, sports and entertainment, and arbitration and mediation.

1967

The Texas Supreme Court reappointed Arlington, Texas, attorney **Frank Gilstrap** on March 5, 2003, to a three-year term on the Supreme Court Advisory Committee, which advises the Supreme Court on civil procedure in Texas courts. He is a director of Hill Gilstrap in Arlington.

Donald W. Griffis, partner with Jackson Walker in San Angelo, has been named as a 2003 *Texas Monthly* Texas Super Lawyer.

1968

Bruce W. Bowman, Jr., joined the Dallas office of Godwin Gruber as a partner in the commercial litigation section.

Robert G. Croyle was elected vice chairman and chief administrative officer of Rowan Companies, Inc., in Houston.

The Honorable Lynn N. Hughes of Houston, U.S. district judge for the Southern District of Texas, recently concluded thirty years as an adjunct professor at the South Texas College of Law. His lecture "Realism Intrudes: Law, Politics, and War" has been published by the *Houston Journal of International Law*. And his lecture titled "Metaphysics of Courses in Legal Writing" was published by the *Journal for the Legal Writing Institute*. Judge Hughes has completed five years on the Judicial Advisory Board of the Law and Economics Center at George Mason University in Arlington.

Judge Pete Lowry received a 2003 Travis County Bar Association (TCBA) Distinguished Lawyer Award last May. He retired as the judge of the 261st District Court in Austin in 1998 and currently has an arbitration practice in association with Judge James R. Meyers, often serving as a visiting judge.

Andrew L. Monson is a sole practitioner in Raymond, Washington, where his practice includes litigation in the areas of civil, criminal, and family law, as well as real estate, probate, and business law.



Knox D. Nunnally, a partner in the Houston office of Vinson & Elkins, received the 2003 Ronald D. Secrest Outstanding Trial Lawyer Award from the Texas Bar Foundation. The award honors a trial lawyer who, by his or her practice, has demonstrated outstanding trial and advocacy skills, high ethical and moral standards, and exceptional professional conduct.

Robert Wilson is a partner in the Austin office of Jackson, Sjoberg, McCarthy & Wilson.

1969

Edward H. Carrette, Jr., recently opened a RE/MAX office in Guatemala. His Web site is www.realestateguatemala.com.

The Honorable Elizabeth Lacy, a justice on the Virginia Supreme Court, has been elected chairperson of the ABA Section of Legal Education and Admissions to the Bar. She is a director of the American Judicature Society and an adjunct professor at the University of Richmond T. C. Williams School of Law.

1970

Kelly Frels, partner in the Houston office of Bracewell & Patterson, has been serving a one-year term as president-elect of the State Bar of Texas. Frels will assume the one-year-term presidency in June 2004. He and his wife, Carmela, were chairs of the 2003 State Bar Annual Meeting in Houston last June.

Pam Giblin was recognized with the 2003 Travis County Bar Association (TCBA) Distinguished Lawyer Award last May. The first female to receive this award, she is a partner in the environmental practice and trial section of Baker, Botts.

Claiborne B. Gregory, Jr., a partner with the San Antonio office of Jackson Walker, has been selected as a *Texas Monthly* 2003 Texas Super Lawyer.

Larry Macon, a partner in the San Antonio office of Akin, Gump, Strauss, Hauer & Feld, completed his 83rd successful marathon in October 2003. He has run marathons in all fifty states.

Fulbright & Jaworski has named **Terry Tottenham** partner-in-charge of the Austin office. A partner with the firm since 1978, he heads the firm's pharmaceutical and medical device litigation practice and most recently chaired the firm's Litigation Management Committee.

1971



Berry Ponton Crowley of Austin was selected as the 2003 recipient of the Lola Wright Foundation from the Texas Bar Foundation. She was the first female president of the Texas Young Lawyers Association and is the executive director of the Texas Center for Legal Ethics and Professionalism in Austin. In May 2003 Crowley also was named recipient of the Travis County Bar Association Regina Rogoff Award for outstanding service in the nonprofit sector. She has recently been named chairman of the ABA TTIPS Professionalism Committee for 2004-05.

1972

William Allen, a faculty member at New York University Schools of Law and Business, was elected a 2003 Fellow of the American Academy of Arts and Sciences in the public affairs, journalism, and communications category.

George B. Butts was inducted as a fellow of the American College of Trial Lawyers in March 2003. He is a partner in the Austin office of Brown McCarroll.

Norman L. Grey was appointed special district judge for Garfield County, Oklahoma, as of September 1, 2003.

The Honorable Edward Charles Prado joined the U.S. Fifth Circuit Court of Appeals in May 2003 and was sworn in on August 28, 2003. He previously served as a U.S. district court judge in San Antonio for almost two decades. See UTLAW, Winter 2004, p. 6.

1973

Robert M. Cohan, partner with Jackson Walker in Dallas, was named a 2003 *Texas Monthly* Texas Super Lawyer.

Robert B. McGehee became chief executive officer of Progress Energy (formerly CP&L) on March 1, 2004. He had been serving as president and chief operating officer of the diversified energy company, which is based in Raleigh, North Carolina. Before that, McGehee was

chairman of Wise Carter Child & Caraway in Jackson, Mississippi.

Chris Phillips has joined Austin-based Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend as Of Counsel. He has more than thirty years of experience in the areas of construction, banking, corporate, and real estate litigation. He also serves as a mediator and arbitrator in legal disputes.

Scott H. Thompson has been working as a counselor and psychotherapist since 1986, when he stopped practicing law. He works with adults and young people to help treat alcoholism and drug abuse and with people suffering from depression and anxiety. Thompson works in a federally funded rural primary-care clinic.

1974

J. Elliott Beck became assistant Travis County attorney and director of the Tax Collections Division on January 1, 2002.

David G. Dunlap, a partner with the Houston office of Jackson Walker, was named a 2003 *Texas Monthly* Texas Super Lawyer.

Coyt Randal Johnston has been elected president of the Dallas chapter of the American Board of Trial Advocates for 2004.

After 18 years of running his own firm, **Stephen R. Knox** has left his 8-lawyer group for a full-service international 640-lawyer firm. In September he joined the Newark, New Jersey, office of Wilson, Elser, Moskowitz, Edelman & Dicker as a partner. He continues to practice in the areas of commercial litigation, employment liability, environmental law, and professional malpractice.

John H. Martin, of Thompson & Knight in Dallas, has been appointed secretary-treasurer for DRI—The Voice of the Defense Bar. DRI is the national organization of more than 21,000 defense trial lawyers and corporate counsel.

Thomas O. McGarity, a professor at The University of Texas School of Law, was inducted into the Public Interest Hall of Fame in Washington, D.C., on October

9, 2003. He was one of 12 people selected for the inaugural class by OMB Watch, a Washington D.C.-based public interest organization. The honor recognizes McGarity for his "three decades of championing justice in areas such as environmental policy, worker health and safety, bioengineering, and drug safety." (See cover story.)

1975

The Honorable Woodie Jones, a former justice on the Texas Third Court of Appeals in Austin, has formed Alexander Dubose Jones & Townsend, with offices in Austin and Houston. The firm will be engaged in the practice of civil appellate law and complex litigation support and strategy.

The Fort Worth office of Winstead Sechrest & Minick announced that **Michael A. McConnell**, a shareholder in the firm's Bankruptcy and Business Restructuring Practice Groups, was elected to membership in the American Law Institute.

Josh R. Morriss III, formerly with Atchley Russell Waldrop & Hlavinka in Texarkana, is now chief justice of the Texas Sixth Court of Appeals in Texarkana.



Paul J. Van Osselaer is founding partner of Van Osselaer, Cronin & Buchanan. The seven-lawyer Austin-based firm was founded in June 2003 and focuses on complex civil litigation. Van Osselaer was most recently a partner at Hughes & Luce. He is a former president of the Law Alumni Association.

1976

R. Brent Keis has been the judge of Tarrant County Court at Law No. 1 since 1989.

Jeff B. Love, managing partner of Locke Liddell & Sapp in Houston, has been named the vice chairman of the firm's management committee. He was also appointed by Senators Kay Bailey Hutchison, '67, and John Cornyn to the Federal Judiciary Evaluation Committee, which interviews candidates seeking federal judicial appointments. Love and his wife, Kathy, served as the honorary

chairs of the Family Services Centennial Benefit honoring the George H. W. Bush family in February 2004.

Reid L. Phillips, a partner with Brooks, Pierce, McLendon, Humphrey & Leonard in Greensboro, North Carolina, has been named a fellow of the American College of Trial Lawyers. The induction ceremony was held during the 2003 annual meeting of the College in Montreal, Canada.

1977

Austin attorney **Paul Parsons** has been appointed chairman of the State Bar of Texas Committee on Laws Relating to Immigration and Nationality.

Lucinda Schumm Watson is a senior attorney for Clean Air Act Counseling, U.S. Environmental Protection Agency, in Dallas.

1978

Paul Conner has been elected president-elect of the Tarrant County Criminal Defense Lawyers Association for 2004.

Judge Jim Coronado, a Travis County District Court magistrate and immediate past president of the Travis County Bar Association, has been appointed a minority director of the State Bar of Texas for a three-year term.

Timothy M. Sulak, of Morris, Craven & Sulak in Austin, was honored for his service as chair of the board of trustees of the Texas Bar Foundation. He has also been selected as a fellow of the American Bar Foundation. Sulak is board certified in personal injury trial law by the Texas Board of Legal Specialization.

1979

Karen J. Cook is working on her doctorate at the University of Alabama College of Communication and Information Sciences.

Beatriz E. de la Garza's first nonfiction book, *A Law for the Lion: A Tale of Crime and Injustice in the Borderlands* was published by UT Press in November 2003. She was also a panelist at the November 2003 Texas Book Festival in Austin. Her previous books are *The*

Candy Vendor's Boy and Other Stories and *Pillars of Gold and Silver*.

Businessman **Bill White** became the mayor of Houston after winning a runoff election on December 6. White, a former chairman of the Texas Democratic Party, has been the president and CEO of Houston-based WEDGE Group, Inc., since 1997. White was once the U.S. deputy secretary of energy and a partner at Susman Godfrey. In 2001 he received the Distinguished Alumnus Award for Community Service from the UT School of Law Alumni Association.

1980

Michael L. Kaufman, partner with Jackson Walker in Dallas, was named a 2003 *Texas Monthly* Texas Super Lawyer.

Ken Ramirez, partner with Bracewell & Patterson, has been appointed to the Environmental Protection Agency's advisory committee on environmental matters along the Texas-Mexico border.

1981

C. Wade Cooper, partner with Jackson Walker in Austin, was named a 2003 *Texas Monthly* Texas Super Lawyer.

C. Benjamin McCaleb has joined Glast, Phillips & Murray in its new San Antonio office. His expertise is in real estate transactions, lending work, and other corporate or general business transactions. Before that, he served as general counsel for Commerce Savings Association in San Antonio.

Steven M. Philley has lived in Australia for the past three years, where he is CEO and managing director of TXU Australia, an energy firm. He is also the chairman of the American Chamber of Commerce in the state of Victoria. He and his wife, Cathy, live in Brighton Beach with their three children and dog. He reports that Australia is a great place to live, but they miss Tex-Mex, BBQ, Blue Bell, and Longhorn football.

Patrick F. Thompson, formerly with Vinson & Elkins, has joined Graves, Dougherty, Hearon & Moody in Austin as a shareholder.

1982

Kim Brightwell and Beverly Reeves, '88, celebrated the first anniversary of their firm, Reeves & Brightwell, on February 1, 2004. To mark this occasion, they will host birthday parties for each child who spends his or her birthday this year at the Austin Children's Shelter.



James W. Cannon, Jr., a partner in the Austin office of Baker Botts, was named one of America's Top Black Lawyers by *Black Enterprise* magazine at an awards reception on October 15, 2003, at the Union League Club in New York City. Cannon has extensive experience with intellectual property cases.

Jeb Hensarling of Dallas was elected to the U.S. House of Representatives in 2002 and is serving his first term in Congress representing the Fifth District of Texas. He is a member of the House Budget and House Financial Services Committees and founded a congressional working group called the "Washington Waste Watchers." Previously, he worked as a small businessman in Dallas for ten years. He and his wife, Melissa, live in Dallas with their two-year-old daughter, Claire Suzanne, and newborn son, Travis Jeb.

J. F. "Jack" Howell III has joined the Amarillo firm of Sprouse Shrader Smith as shareholder in the Tax and Business Transactional Law Sections.



The Honorable Debra Herman Lehrmann of the 360th District Court in Fort Worth has been recognized by the Texas Bar Foundation for her article "The Child's Voice: An Analysis of the Methodology Used to Involve Children in Custody Litigation," which appeared in the *Texas Bar Journal* in November 2002. She was recognized at the annual banquet meeting of the Texas Bar Foundation in Houston on June 13, 2003.

1984

Bryan Collins, partner with Jackson Walker in Dallas, was named a 2003 *Texas Monthly Texas Super Lawyer*.

Martha Hardwick Hofmeister has

been elected president of the William "Mac" Taylor, Jr. 112th American Inn of Court in Dallas. She will serve as president through the summer of 2005. In April 2003 Hofmeister was elected governor of District Nine of Altrusa International, Inc. She was also named a 2003 *Texas Monthly Texas Super Lawyer*.

Steven R. Martens, a partner with the Austin office of Jackson Walker, was named a 2003 *Texas Monthly Texas Super Lawyer*.

Harris Allen Maynord has formed the firm of King Maynord in St. Louis, Missouri. He continues to specialize in advanced estate planning.

Jose Angel Moreno returned to the U.S. Attorney's Office for the Southern District of Texas in April 2002 and was promoted to deputy criminal chief in charge of drug enforcement programs and prosecutions. Previously, Moreno spent one year at the U.S. Embassy in Colombia as the Department of Justice and Department of Treasury program manager for the Justice Sector Reform Program under Plan Colombia.

1985

Russ Coleman is general counsel of the media company Belo Corp. in Dallas.



Texas governor Rick Perry has appointed **Joseph B. C. Fitzsimons** as presiding officer of the Texas Parks and Wildlife Commission. He has served on the commission since 2001 and is founding director of the Natural Resources Foundation of Texas. A third-generation South Texas rancher, he is also an attorney representing mineral owners, primarily in the areas of natural resources, oil and gas, and water law.



Eric Groten of Austin, a partner with Bracewell & Patterson specializing in environmental law, was named one of the state's leading legal innovators in *De Novo* magazine for his work on behalf of El Paso Electric Company. The quarterly magazine, published by *Texas Lawyer*, recognized Groten for securing Texas Commission on Environmental Quality (TCEQ) approval of an international emission control program that dramatically

reduced pollution in the air basin shared by El Paso and Ciudad Juárez, Mexico.

Maria Teresa "Tessa" Herr is currently state district court judge for the 186th District Court in San Antonio.

Carl Johnston's firm, Johnston & Associates, celebrated its five-year anniversary. The Atlanta firm specializes in corporate and technology matters and now consists of four attorneys.



David S. Peterman has joined Fulbright & Jaworski in Houston as a corporate law partner. Peterman has more than 19 years of experience involving numerous acquisitions and corporate finance transactions. Previously he was a partner at Locke, Liddell & Sapp.

Judith W. Ross has joined Baker Botts as a partner in the bankruptcy group of the Dallas office. She was a partner in the Dallas office and practice leader of the Houston and Dallas bankruptcy departments at Thompson & Knight.

Timothy C. Taylor, partner with Jackson Walker in Austin, was named a 2003 *Texas Monthly Texas Super Lawyer*.

Constance Courtney Westfall was elected chair of the Environmental and Natural Resources Law Section of the State Bar of Texas. She is a partner with Strasburger & Price and represents industrial and institutional clients in a wide range of environmental matters.

1986

Edward Burbach, partner with Strasburger & Price in Houston, has been appointed Texas deputy attorney general for civil litigation.

William H. Hornberger, partner with Jackson Walker in Dallas, was named a 2003 *Texas Monthly Texas Super Lawyer*.

Aimee Bagnetto Jorgensen is senior counsel with Hewlett-Packard in Palo Alto, California.

Mollie C. Nichols has been appointed associate director for research and professional education of the Courtroom 21

Project, which has spearheaded courtroom technology research and implementation for more than a decade. The appointment was announced September 11, 2003, in Williamsburg, Virginia. Nichols is formerly the director of litigation training for the Attorney General's Office in Texas.

1987



Steve Benesh, managing partner of the Austin office of Bracewell & Patterson, has been named one of five "Attorneys to Watch" in Central Texas by the *Austin Business Journal*. Benesh focuses on commercial and technology litigation in the firm's trial practice. He serves as director of the Travis County Bar Association and received the 2003 TCBA President's Award for being the outstanding director of the TCBA.

Dennis Miles Campbell is chief investment officer for a money management and financial planning firm located outside Washington, D.C.

Albert Navarro has joined the Jones Law Firm in Bryan, Texas, as an associate. He will have a general practice emphasizing family law. He was a staff attorney with the Gulf Coast Legal Foundation for 12 years.

Hector R. Rodriguez has opened the law office of Hector R. Rodriguez and Rodriguez Consulting Group in Austin.

1988

Robert Pitman was sworn in as U.S. magistrate judge by Judge Sam Sparks, the senior U.S. district judge, in an investiture ceremony in Austin on November 21, 2003. Judge Pitman was the U.S. attorney in the Western District of Texas and served as the chief federal law enforcement officer for San Antonio, El Paso, and Austin.

Beverly Reeves and Kim Brightwell, '82, celebrated the first anniversary of their firm, Reeves & Brightwell, on February 1, 2004. To mark this occasion, they will host birthday parties for each child who spends his or her birthday this year at the Austin Children's Shelter.

Luther J. Rollins, Jr., became senior associate chief counsel for Sara Lee

Bakery Group in September 2003. He provides legal counsel to Sara Lee's Fresh Western Division, Store Brands Division, and refrigerated warehouse facilities.



Jay Rutherford, a partner in the Labor and Employment Section of Jackson Walker, has been elected as chairperson of the Labor and Employment Section of the Tarrant County Bar Association. His practice consists primarily of representing management in labor, employment discrimination, wrongful termination, and civil rights litigation. Rutherford was also named a 2003 *Texas Monthly* Texas Super Lawyer.

1989

Brian Baird, general counsel and corporate secretary of Pantellos Corporation, was elected vice president of the company. Pantellos provides services and tools to the electric utility industry. Baird was a shareholder of Houston-based Boyar & Miller.

John A. Cogan has joined Partridge Snow & Hahn's Health Care Practice Group as an associate in Boston and Providence. He will focus his practice on health care regulatory compliance. He was an assistant regional counsel for the U.S. Department of Health and Human Services. Cogan lives in Pawtucket, Rhode Island.



William "Bill" Kroger, a trial partner in the Houston office of Baker Botts, was named one of five 2003 Outstanding Young Texans by the Texas Jaycees. Kroger's trial practice focuses on commercial litigation. Kroger was also a recent recipient of the 2003 Five Outstanding Young Houstonians Award, presented by the Houston Junior Chamber of Commerce.

1990

Scott D. Eads was named partner at the international law firm of Perkins Coie in Portland, Oregon. His practice focuses on intellectual property litigation. Before joining the firm in 2001, he practiced with Washington, D.C., and Houston firms. He and his wife, Susan, have two daughters, Abigail, 1, and Hannah, 4.

Beth Fancsali has joined Wildman, Harrold, Allen & Dixon as a partner in Chicago. She has significant experience in complex business litigation and anti-trust matters. Previously, she worked for Haynes and Boone in Dallas.

David H. Herrington was appointed counsel at Cleary Gottlieb in New York. His practice includes securities and derivatives litigation, securities and broker dealer investigations, and intellectual property litigation.

Wendy Parker joined the law faculty at Wake Forest University in Winston-Salem, North Carolina, last July. She will teach torts and remedies. Parker was on the faculty at the University of Cincinnati College of Law for seven years and twice won the student-voted teacher of the year award. Her scholarly publications and presentations have been in the areas of school desegregation and judicial remedies.

1991



Ramon "Mick" Cantu has been named senior vice president and chief legal officer for the Methodist Hospital in Houston. He coordinates corporate legal services and advises senior management on legal issues. Previously, he served as a partner at Vinson & Elkins, where he practiced in the health industry group.

Charles S. Kelley is partner with Mayer, Brown, Rowe & Maw in Houston. He and his wife, Maria Karam Kelley, have two children, Stephen Ray Kelley and Christopher Francis Kelley.

Martin Schexnayder has been named managing partner of the Houston office of Wilson, Elser, Moskowitz, Edelman & Dicker. He and his wife, Myra Schexnayder, '90, have two daughters adopted from China, Emma, 3, and Grace, 1.



Laura Lee Stapleton, partner with Jackson Walker in Austin, has been named an associate editor of the American Bar Association's journal *Litigation*. She is currently a co-editor for *Communications Lawyer*, a quarterly publication of the American Bar Association's Forum on Communications Law. Ms. Stapleton was also

named a 2003 *Texas Monthly* Texas Super Lawyer.

The Small Business Administration (SBA) appointed **Jeff Turner** to a two-year term as the Washington state representative to the National Advisory Council, which advises the SBA on issues affecting small businesses. Turner is the president of Praxis HR, a Seattle consulting company and a director for the Seattle Society for Human Resources Management.

The Honorable **Andrew L. Wambsganss** was elected mayor of Southlake, Texas, in May 2003. He previously served as an alternate municipal court judge and on the city council in Southlake. Wambsganss continues to practice as a partner with Brown Pruitt Peterson & Wambsganss in Fort Worth. He and his wife, Leigh, celebrated the birth of their first child, Walker, during the May campaign.

1992



Jay Aldis was recently elected partner at Bracewell & Patterson in Houston. He has long been board certified in labor and employment law.



Elizabeth Ann Copeland and her husband, Brad Wilder, are proud to announce the birth of their second child, Preston Avery Wilder, born July 5, 2003. Their first child, Alexis Ann Wilder, was born December 13, 2000. Copeland has practiced in San Antonio for Oppenheimer, Blend, Harrison and Tate since 1994.

Teresa I. Ford opened the Law Offices of Teresa Ford in April 2003. The firm is located in Houston, and practice areas include health law, wills and estates, and general corporate matters.

In July, **Harlan Hentges** joined the Oklahoma City law firm of Mulinix Ogden Hall Andrews & Ludlam. He provides estate and business planning, agricultural law, civil litigation, endangered species, eminent domain, oil and gas, and appellate law services to his agricultural clients.

Lynn B. Roberts was elected partner at Strasburger & Price in Dallas. She specializes in tax issues.

Elizabeth P. Volmert was elected partner at Strasburger & Price in Houston. She specializes in toxic tort, products liability, and commercial and appellate litigation.

Stephen Westermann recently formed the law firm of Lanter Westermann in Fort Worth.

1993

David Coale, partner with Carrington, Coleman, Sloman & Blumenthal in Dallas, was elected to membership in the American Law Institute.

Kenneth H. Holt and **Gerald D. Higdon, '90**, both formerly with the Houston firm of Locke, Liddell & Sapp, formed their own firm, Higdon & Holt, on January 16, 2003.

Christine Hurt has joined the faculty of Marquette University Law School as an assistant professor of law. She will specialize in corporate law.

Victoria Lewis-Dunn is director and owner of the Peace Dispute Resolution Center in Austin.

1994

Cindy Olson Bourland was named 2003 Austin Young Lawyers Association (AYLA) Outstanding Young Lawyer and winner of the 2003 "Austin Under 40" award in law. She is founding partner in the firm of Merica & Bourland in Austin and a former adjunct professor at UT Law.

Scott Cole was named principal at McKool Smith. Cole, a member of the firm's Austin office since March 2001, practices commercial trial litigation.

Lars Danner is manager of tax planning at BP Exploration, Inc., in Anchorage, Alaska.



Law professor **Christopher Fairman** received the Alumni Award for Distinguished Teaching, the highest university-wide teaching honor at Ohio State University, at a March 30 presentation. Fairman was recently promoted to associate professor with tenure at Moritz College of Law at Ohio State University.

Last July, he was also named 2003 Outstanding Professor by the graduating class of Moritz College of Law. He teaches civil procedure, professional responsibility, and legal writing.



Vanessa Clem Griffith was elected partner at Vinson & Elkins in the Houston firm's Employment and Litigation Section.

James A. Martinez was named chief administrative officer of the City of El Paso.

In May 2003 **David McAtee** became president-elect of the Texas Young Lawyers Association (TYLA), a 20,000-member organization. McAtee will become president in June 2004. He is a partner in the Dallas office of Haynes and Boone, specializing in complex litigation and fraud investigations. He currently serves on the TYLA board of directors and received TYLA President's Award of Merit in 2002. He has also been serving as president of the Dallas Association of Young Lawyers.



David McDowell has joined Bracewell & Patterson as partner in the Houston firm's Trial Section. He was deputy general counsel of litigation for a major life insurance and financial services company in Houston.

Angela B. Styles will return to Miller & Chevalier as a member of the government contracts practice group. Her practice is concentrated in the area of federal procurement law and litigation. Styles has served as the administrator of the Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget (OMB) since May 2001.

1995

Ryan A. Botkin and **Desiree Durst Botkin** announce the arrival of Robert Buford "Bobby" Botkin on July 24, 2003, at 1:32 p.m. at Seton Hospital in Austin. He weighed seven pounds, ten ounces.

Anne VanBuskirk Cappella was selected as one of the "Most Influential Women in Business" by the *Silicon Valley/San Jose Business Journal*. The award honors Bay Area women who exemplify

professionalism and influence among their peers.



Douglas A. Daniels has been elected a partner in the Houston office of Bracewell & Patterson. He has significant experience in diverse litigation areas, including complex commercial litigation.



Kyle K. Fox was elected associate with Vinson & Elkins in the firm's Corporate Finance and Securities Section in Austin.



Daniel Guerra, formerly with Gjerset & Lorenz, has joined Brown McCarroll as an associate. Guerra has assisted health care providers with regulatory reimbursement issues and represented real estate clients involved in commercial litigation, corporate, and transactional matters.

Zack Harmon has returned to King & Spalding's Washington, D.C., office as counsel with the special matters group. His practice will include corporate fraud and compliance matters, criminal tax matters, internal corporate investigations, grand jury practice, federal criminal trials, and criminal trials in the D.C. superior courts. Harmon joined the firm in 1996 as an associate and left in 1998 to become a trial lawyer with the U.S. Department of Justice.

Lauren Kalisek, an associate with Austin-based Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend, became partner on January 1, 2004. Kalisek is a member of the firm's Water and Land Development Groups, practicing in the areas of water quality and water utilities. She is also a frequent speaker on water utility issues.



Mirjam S. Kirk was elected partner with Vinson & Elkins in the firm's Corporate Finance and Securities Section in Dallas.

David G. Luetzgen was promoted to partner at Foley & Lardner in Milwaukee, Wisconsin, where he practices intellectual property law. He and his wife, Shelley, have three children.

Christie Newkirk was named partner at Hughes & Luce. A labor and employ-

ment specialist, Newkirk balances her practice between client counseling and litigation. She currently serves as the vice chair of the Dallas Bar Association's Employment Law Section.



Michael L. Peck was named partner in the Fort Worth office of Brown, Herman, Dean, Wiseman, Liser & Hart. Peck, who joined the firm in 1995, practices in the areas of civil litigation, health care, medical malpractice, personal injury, construction, and commercial litigation.

Catherine N. Fuller Pellegrino has been living in Hiroshima, Japan, with her husband, Sean Pellegrino, who is managing an engineering project for ChevronTexaco. Before moving, she was the managing director for Kelly Law Registry in Houston. Also, the Pellegrinos proudly welcomed their first son, Shane Patrick Pellegrino, born November 1, 2003.



Bryan Pollard joins Brown McCarroll in Dallas as an associate. He was previously with McCauley, Macdonald & Devin. Pollard's general civil litigation practice focuses on products liability, toxic torts, and personal injury defense.



Brian E. Robison was elected partner with Vinson & Elkins. He practices in the firm's Litigation Section.



Aaron P. Roffwarg has been elected a partner of the Houston office of Bracewell & Patterson. He focuses on projects related to the acquisition, development, finance, and divestiture of commercial and industrial properties.



Thomas M. Tomlinson was elected partner with Bracewell & Patterson in Houston. He concentrates on complex financial transactions in the energy sector.

Fred Weber is assistant district attorney with the Travis County District Attorney's Office.

David Yarden, formerly a construction attorney with Zimmerman & Ka-

hanowitch, has joined Amcal Multi-Housing, Inc., in Westlake Village, California, as general counsel and acquisitions manager.

1996

Beth W. Bivans was named partner at Hughes & Luce in Dallas. Bivans represents clients in complex commercial litigation matters in federal, bankruptcy, and state courts. In 2002 she was named one of the Best Lawyers Under 40 in Dallas in a *D* magazine peer survey.

Elizabeth Colvin was recognized with the Founders' Award from Meals on Wheels and More for her work as a director of that organization. She was also awarded the Travis County Bar Association President's Award for Outstanding Committee Chair for her work with the People's Law School. In 2001 she was named a partner at Wiseman, Durst, Owen & Colvin and continues to practice labor and employment law.

Brayton Dresser was named partner in the Corporate Section of Baker Botts in New York. Dresser represents clients in public and private securities offerings, mergers and acquisitions, joint ventures, bank financing, and intellectual property licensing arrangements.

Robert Keith Dugger and Ashley Polk Dugger are proud to announce the birth of their third son. Harrison Boone Dugger was born February 26, 2003, and joins four-year-old twin brothers, Jackson Riley and Carson Davis Dugger. Keith practices health care law with Stewart & Stimmel in Dallas, and Ashley serves as a part-time adjunct professor of criminal justice studies for the Dallas County Community College District.

Catherine Kemp joined the philosophy faculty at Pennsylvania State University in fall 2003.

David W. Lauritzen was elected shareholder at Cotton, Bledsoe, Tighe & Dawson in Midland in January 2003.

Christopher W. Peterson was elected to the Bryan Independent School District Board of Trustees and took

office on May 21, 2003. Peterson practices law and mediates through his own practice. He serves as Of Counsel to Mueller, Vacek & Kiecke in Austin. In addition, Peterson began a political consulting firm running campaigns in Central and East Texas. He and his wife, Debbie, have two children, Bethany, 5, and Caleb, 2.

Lance J. Ramsey has joined the law firm of Gjerset & Lorenz in Austin.



Michelle R. Rencoret was named partner with Lowndes, Drosdick, Doster, Kantor & Reed, practicing in Orlando, Florida. She is a commercial real estate attorney specializing in real estate acquisition, development, finance, and leasing. Her experience includes multi-site sale-leaseback acquisitions and securitized lending transactions.

David S. Schwartz is senior counsel with the U.S. Securities and Exchange Commission in Washington, D.C.

Kristen Lee Silverberg was appointed deputy assistant to the president for domestic policy by President Bush. Silverberg recently served as a senior advisor to Ambassador L. Paul Bremer in Baghdad, Iraq. Until May 2003 she served as special assistant to the president in the White House Office of the Chief of Staff.

Ana C. Ward was promoted to general counsel of Ambion, Inc., and is registered to practice before the U.S. Patent and Trademark Office. Before joining Ambion in February 2003, she was senior intellectual property counsel at YUM! Brands in Dallas.

1997

Betsy Biffi was promoted in spring 2003 to domestic violence division chief with the State Attorney's Office of the 20th Judicial Circuit in Fort Myers, Florida. She has been an assistant state attorney with this office since August 1997 and has prosecuted domestic violence cases for the past five years.

James H. Combs was elected partner in the tax, estate planning, and probate

department of Detroit-based Honigman Miller Schwartz and Cohn.

Lisa Hardie has joined Heller Ehrman in Seattle as an associate.

Laura Hidalgo has joined the Bronx County District Attorney's Office in New York as an assistant district attorney. Previously, she was an officer in the U.S. Army.

Shayne Hurst Newell and her husband, David Newell, are pleased to announce the birth of their second child, Jacob Christopher, on November 18, 2003. Jacob's big brother, Peter, turned two on December 21, 2003. Shayne is a bankruptcy associate with Weil, Gotshal & Manges in Houston and has spent a significant amount of time working on the Enron case. David is an assistant district attorney in Fort Bend County.

Charles Brannon Robertson and his wife, **Laura Mayer Robertson, '98**, welcomed their first child, John Whitfill "Whit" Robertson, on February 24, 2003. They are both litigation associates at King & Spalding in Houston.

Amy Sladczyk, former director of attorney development with Baker Botts, has joined the Houston office of Fulbright & Jaworski as manager of attorney development.

David S. Woodruff, senior associate with Kennedy & Christopher in Denver, was selected to serve as a representative of the Denver Bar Association to the Colorado Bar Association Board of Governors. He represents physicians and hospitals in medical malpractice suits. David and his wife, Andrea, have two daughters, Britten, 4, and Emory, 6 months.

1998

Jennifer Utter Heston will serve on the Michigan Public Service Commission. She practices energy and telecommunications law. Previously she

worked for the Ohio Consumers' Counsel, Ohio's residential utility advocate.

James Mills has opened his office in Alameda, California, where he counsels businesses and litigates cases as a trial lawyer.

Angela Miranda-Clark manages the Foster Care Court program for the State of Texas. The program consists of 15 courts covering 125 counties. She reports that the experiences she had at UT Law's Children's Rights Clinic proved to be invaluable. She still interacts with attorneys and judges she met through the clinic including then supervising attorney Andy Hathcock, '84, who is now one of the Foster Care Court judges.

Royce Poinsett married Hawley Shaw in July 2003 in Cuernavaca, Mexico. In attendance were UT Law classmates Layne Grinda, John Milton Black, Victoria (Parish) Skinner, Alex Barlow, Darrell Cockcroft, Jennifer Williams, and Prescott Caballero. Poinsett is an attorney for Texas governor Rick Perry and recently became the governor's counsel for budget, planning, and policy. Hawley is beginning a career as a dietitian and college professor.



Trio celebrates five-year reunion in Mexico.

For their five-year reunion, **Katrina Price, Kandace Richardson, '97**, and **Elissa Heinrichs** took a cruise to Cozumel, Mexico.

1999

In July 2003 **Jae Ellis** left his four-year law practice to work as an attorney for Applied Discovery, Inc. Ellis's responsibilities include managing and develop-

ing relationships with law firms in Texas and the Southwest. Jae's e-mail address is jae.ellis@applieddiscovery.com.



Alison L. Gardner joined the Austin office of Brown McCarroll from the Travis County Attorney's office. Gardner's practice includes litigation for various asbestos, toxic tort, and products liability cases, as well as criminal prosecution.

Karolyn Ann Knaack joined Warner, Stevens & Doby in Fort Worth. She will specialize in corporate and bankruptcy law.

Lisa Primosic Williams has joined the Litigation Section of Chamberlain, Hrdlicka, White, Williams & Martin in Houston as associate. She was formerly with Adams & Coffey.

2000

Kristen C. Allan joined Kirby, McInerney & Squire in New York.

Revaz Javelidze joined Baker & McKenzie CIS Ltd. in Moscow as an associate.

Raegan Lambert was named the family court liaison for the Bronx County District Attorney's Office in New York.

Kathleen M. McPartlin joined the water practice group of the Austin-based law firm Lloyd, Gosselink, Belvins, Rochelle, Baldwin & Townsend. McPartlin specializes in environmental and water law.

Adrian Stewart, an associate with Allen & Overy, has relocated from London to New York, where he will continue to practice international capital markets and securities law with the firm and work on corporate restructuring/bankruptcy cases.

2001

Thomas M. Boyce joined Pizzeys Patent and Trademark Attorneys in Australia.

Amanda C. Ellis joined Mirick O'Connell DeMallie Lougee in Worcester, Massachusetts, as an associate.



Laura Judith (Walton) Grabouski moved to Van Oselaer, Cronin & Buchanan in Austin, joining several of her colleagues from Hughes & Luce in starting the firm. Previously, she was a briefing attorney for the Austin Court of Appeals.



Wendy M. Hall joined the Nashville firm Bass, Berry & Sims in the litigation practice area as an associate. Previously she served as a law clerk to the

Honorable C. Ray Mullins of the U.S. Bankruptcy Court for the Northern District of Georgia.



Elsa Manzanarez joined Jackson Walker in Dallas as an associate in the Litigation Section. Previously, she served as law clerk to Justice Ann C. McClure of the Eighth District Court of Appeals from 2001 to 2002 and as law clerk to the Honorable David Briones, '71, U.S. district judge, Western District of Texas,



Austin
3700 Bee Caves Rd.
Suite 102
Austin, Texas 78746
512-328-3939

Farm & Ranch
15 Houston Street
Westoff, Texas 77994
830-236-5330

Lakeway
900 RR 620 South
Suite B-112
Austin, Texas 78734
512-263-7997

"When Only The Best Will Do"



Becky Bell
512-327-1285



E. H. "Bubba" Breazeale
512-517-4247



Mary Briggie
512-658-8705



Leslie Cartwright
512-695-1912



Jeannette Cook
512-422-0989



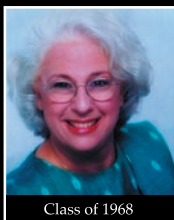
Mona Crum
512-426-1341



Amy DeMaio
512-657-0513



Mary Ann Kuhlmann
512-785-8852



Sara Madera
512-750-5536



Janice Stoley
512-431-0143



Jenny Tynes
512-415-9303



Mary White
512-750-0886

www.TurnquistPartners.com

from 2002 to 2003. Manzanares has conducted research in Nicaragua, Guatemala, South Africa, and the Pine Ridge Indian Reservation in the areas of human rights, labor, and workforce development.

Howard Slobodin, former assistant attorney general with the Natural Resources Division of the Texas Attorney General's Office, joined Hazen & Terrill in Austin as an associate. His practice will focus on environmental and natural resources law.

2002

Eric Opiela married Lara Davidson on July 12, 2003. In August 2003 the couple relocated to Washington, D.C., for his federal clerkship with Judge Mary Ellen Coster Williams at the U.S. Court of Federal Claims.

Susanne Sabine Mora Romero is working as chief counsel for the Democratic National Committee in Washington, D.C.

Tracy Hilton Schoettelkotte joined Beck, Redden & Secrest in Houston as an associate.

David Sirna joined Drew, Eckl & Farnham in Atlanta, Georgia, as an associate.

Christian Southwick is a law clerk in the chambers of the Honorable Andrew S. Hanen in Brownsville.

2003



H. Stanford Adams, Jr., joined Bass, Berry & Sims in Nashville as an associate in the firm's health care industry practice area.

Omar J. Alaniz joined Neligan, Tarpley, Andrews & Foley in Dallas as an associate.

Virginia Alverson joined Jackson Walker in Houston as an associate in the Health Care Section.

Andrea Beleno is a staff attorney with Texas Rural Legal Aid in Austin.

Brian Stephen Carter joined Clark

Thomas & Winters in Austin as an associate.



Jessica C. Coe joined Bass, Berry & Sims in Nashville as an associate in the litigation practice area.

Heather Davis joined Haynes & Boone in Houston as an associate.

Rebecca Davis joined Strasburger & Price in Dallas as an associate.

Luis Figueroa is an Esther Peterson Fellow with the Consumers Union in Washington, D.C.

Heidi Frahm joined Hughes and Luce in Dallas as an associate.

Mary Anne Harden is judicial clerk for the Court of Appeals for the Tenth Circuit in Tulsa, Oklahoma.

Juan Irraragorri is working as an associate at Ritch, Heather y Mueller in Mexico City.

Rebecca K. Jackson joined Baker & Hostetler as an associate in Houston.

Gretchen Jeffries joined Vorys, Sater, Seymour & Pease in Columbus, Ohio.

Sharmila Chatterjee Kassam joined Wilson, Sonsini, Goodrich & Rosati in Palo Alto, California, as an associate.

Thomas Kelton joined Fulbright & Jaworski in Dallas as an associate.

Adam Loewy joined Neligan, Tarpley, Andrews & Foley in Dallas as an associate.

Christopher M. Lopez joined Weil, Gotshal & Manges in Houston as an associate.

Jennifer L. Miscovich joined Baker & Hostetler in Houston as an associate.

Jeff Nadalo joined Fulbright & Jaworski in Houston as an associate. He specializes in general commercial litigation and energy litigation.

Scarlet Oh joined Hughes & Luce in Dallas as an associate.

Dina A. Osborn joined Baker Botts in Washington, D.C., as an associate.

Jennifer O'Sullivan joined Fulbright & Jaworski as an associate. She will focus on litigation.

Kevin Poli joined Porter & Hedges in Houston as an associate.

Hilary Lovett Preston joined Vinson & Elkins in New York as an associate.

Aimee Reneau joined Clark Thomas & Winters in Austin as an associate.

Sarah P. Santos joined Fulbright & Jaworski in Austin as an associate.

Gabrielle A. Sitomer joined Susman Godfrey in Houston as an associate.

Lisa Ann Smith joined Winstead, Sechrest & Minick in Houston as an associate.

Jeremy Thomas Stillings joined Jenner & Block in Chicago as an associate.

Alexander M. Szeto joined Andrews & Kurth in Dallas as an associate.

Amy Tabor joined Baker Botts in Houston as an associate.


Shannon Clark Thorne joined Germer & Gertz in Houston as an associate.

Joshua Voight Van Hoven joined Varnum, Riddering, Schmidt & Howlett in Grand Rapids, Michigan. Van Hoven is a member of Varnum's Trial Practice Group.

Rajkumar Vinnakota joined Andrews & Kurth in Dallas as associate.



Amanda Williams joined Jackson Walker in Fort Worth. She will be working in the firm's Litigation Section. Williams is the author of "The History of *Daubert* and Its Effect on Toxic Tort Class Action Certification," 22 Rev. Litig. 181 (2003).

Travis Wohlers joined Fulbright & Jaworski in Austin as an associate. 

IN MEMORIAM

THROUGH FEBRUARY 2004

KENNETH D. SCHUBB, '78

UT Law Clinical Professor and Criminal Defense Clinic director Kenneth D. Schubb, J.D., '78, died on November 19, 2003, after a brief illness. He was 52 years old. During his twenty years of service Schubb helped supervise more than 1,200 students in their work on criminal defendants' cases. Those students handled more than 7,200 cases.

Conner Sivells Scott, '30, died November 17, 2003.

Joe Kelton Wells, '36, died July 5, 2003.

Ralph Langley, '37, died October 16, 2003.

Victor W. Ravel, '38, died December 6, 2003.

Maurice Jacob Hoffman, '39, died October 14, 2003.

Edgar O. Weller, '39, died April 23, 2003.

J. Waddy Bullion, '40, died January 2, 2004.

Whitfield James Collins, '40, died October 24, 2003.

F. Wilbert Lasater, '40, died October 2, 2003.

Leonard Stolaroff, '40, died in 2003.

Albert Stone, Jr., '40, died January 1, 2003.

Bernard John Mackin, '41, died December 6, 2003.

William Joseph McGowan, '42, died July 6, 2003.

William R. "Bill" Niblack, '42, died May 18, 2003.

Brantley Ross Pringle, Sr., '42, died September 2, 2003.

Rex G. Baker, Jr., '47, died on March 21, 2004.

Silas James Maxwell, '47, died July 23, 2003.

Emanuel Jake Jacobsen, '48, died June 30, 2003.

The Honorable Calvin V. Milburn, '48, died September 19, 2002.

William Coldwell Collins, '49, died March 19, 2003.

Charles Robert Leslie, '49, died December 26, 2003.

Alan Fehrman Lippman, '49, died March 17, 2003.

Harold W. Ochsner, '49, died May 13, 2003.

Travis D. Shelton, '49, died July 11, 2003.

Harold H. Young, Jr., '49, died April 28, 2003.

Jacob H. Carruthers, Jr., Ph.D., died on January 4, 2004.

William Nicholas Finnegan, III, '50, died June 23, 2003.

Lanvil L. Gilbert, '50, died November 21, 2003.

Rex Lee McEntire, '50, died May 5, 2003.

Charles Miller Babb, '51, died May 9, 2003.

William Jackson Knight, Jr., '51, died November 6, 2003.

Clifford G. Campbell, '52, died August, 2003.

William Weldon Byrd, '53, died September 29, 2003.

Roger Irwin Daily, '53, died October 1, 2003.

Pat Henry Gardner, '54, died September 8, 2003.

Walter Vere Fraker, '55, died November 4, 2003.

John Charles McClain, '55, died May 25, 2003.

William Albert Penn, '55, died July 11, 2003.

The Honorable James D. Baskin, '56, died August 10, 2003.

Eduardo Idar, Jr., '56, died October 11, 2003.

Robert Clifton Howell, '57, died May 23, 2003.

Malcolm McGregor, '57, died May 12, 2003.

Earl Edward "Ed" Simpson, '57, died November 10, 2003.

Benjamin Dudley Tarlton III, '57, died May 29, 2003.

Judge George T. Ellis, '59, died September 21, 2003.

Jerry Hugh Roberts, '59, died December 11, 2003.

Fred M. Sullivan, '59, died April 10, 2003.

Perry Wesbrooks, '59, died March 17, 2003.

John Frederick Ensle, '60, died October 2, 2003.

Hilliard Dudley Chambers, '61, died June 6, 2003.

Gorby C. Mason, '61, died December 26, 2003.

Cleburn Mills, '61, died October 26, 2003.

Donald Love, '62, died January 3, 2004.

Judson Hiram Phelps, Jr., '63, died September 14, 2003.

Tannie Lucas Pizzitola, Jr., '63, died July 8, 2003.

Donald R. Black, '65, died April 3, 2003.

Donald Joseph Shaw, Jr., '65, died July 29, 2003.

John N. McCamish, Jr., '66, died August 12, 2003.

Charles Arthur Sage, '66, died July 22, 2003.

Lawrence Merritt Dwyer, '69, died October 10, 2003.

Thomas P. Earls, '69, died December 8, 2003.

Robert Nathan Rule, Jr., '70, died May 18, 2003.

Carl Andrew Brenner, '71, died March 30, 2003.

Stafford Hutchinson, '71, died February 28, 2004.

Paul Cooper Pearson III, '72, died in August 2003.

Larry Macha, '73, died August 16, 2003.

John William Berkel, '75, died November 24, 2003.

Harold Joseph "Tex" Lezar, Jr., '77, died January 5, 2004.


David Walter, '77, died August 31, 2003.

J. Michael "Mike" Bradford, '78, died September 8, 2003.

Jeffrey Lynn Wood, '79, died June 30, 2003.

Tommy Frederick Thomas, Sr., '97, died August 1, 2003.

Caroline Wiess Law, philanthropist, died December 24, 2003.

Charles L. Spears, 3L, died October 10, 2003. 

Because of the length of Class Notes in this issue, the In Memoriam section has been abbreviated to the name, class, and date of passing. The full listings are available online at <http://www.utexas.edu/law/depts/alumni>.



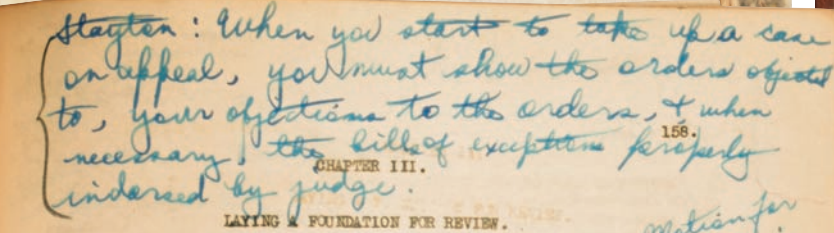
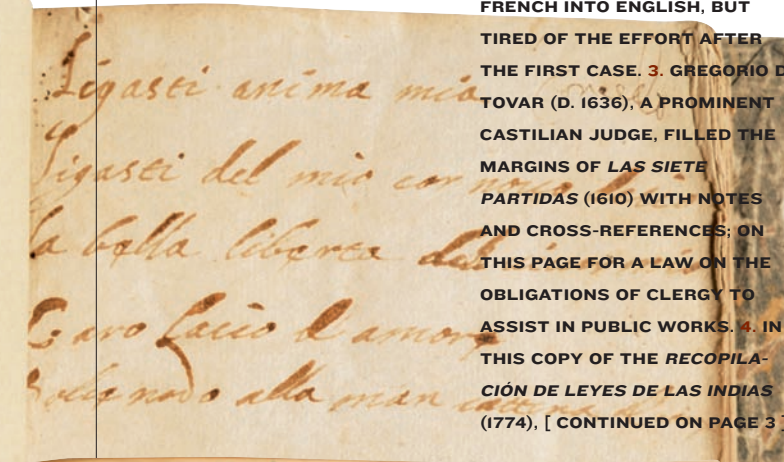
Book Marks

BY MICHAEL WIDENER IN 1902 RUSSELL SAVAGE drew the most famous UT Law class doodle of all time, the Peregrinus, in the margins of his real estate law textbook. The image on his page leapt into the fabric of our history, taking on a life the illustrator could not have predicted. In this edition UT Law presents some of the other marginalia found in our library's rare books room, illustrating the long-silenced voices of students and lawyers struggling with the law and the demands of legal education.

Michael Widener, a Jmail Fellow, has managed the rare book and archive collections at the Tarlton Law Library in the Jmail Center for Legal Research since 1991.

(CLOCKWISE FROM UPPER LEFT)

1. THE PEREGRINUS BY RUSSELL SAVAGE, LL.B. 1902, IN *LECTURES ON REAL ESTATE: DELIVERED BY YANCEY LEWIS TO SENIOR LAW CLASS*. 2. A READER (A LAW STUDENT?) TRANSLATED LENGTHY PASSAGES OF PLOWDEN'S *REPORTS* (1578) FROM LAW FRENCH INTO ENGLISH, BUT TIRED OF THE EFFORT AFTER THE FIRST CASE. 3. GREGORIO DE TOVAR (D. 1636), A PROMINENT CASTILIAN JUDGE, FILLED THE MARGINS OF *LAS SIETE PARTIDAS* (1610) WITH NOTES AND CROSS-REFERENCES; ON THIS PAGE FOR A LAW ON THE OBLIGATIONS OF CLERGY TO ASSIST IN PUBLIC WORKS. 4. IN THIS COPY OF THE *RECOPILACIÓN DE LEYES DE LAS INDIAS* (1774), [CONTINUED ON PAGE 3]



Case 60. R. S. 1925.

Art. 2232. (2019-20-23-25) *Motion*.—Now trials may be granted and judgments arrested or set aside on motion for good cause, on such terms as the court shall direct. Each such motion shall:

3. Specify each ground on which it is founded, and no ground not specified shall be considered.

Art. 2247. (2075) *Time to file conclusions*.—When demand is made therefor, the judge of a district or county

minerals." The Le all of the "other mi "of" in the original at least doubtful, so of the very member Act, enacted the am

The foregoing ve tation of the captio tirely sufficient.

But what is the e interpretation of th pretation be accepta tive. If the captio unlimited" reservat shows a reservation and gas, then the cap and therefore decept down the entire Rep of titles that have b allege in the answe have been repurcha tion is deceptive an these titles are void

The Court cannot the caption. If the urge, for an unli

REUNION 2004
THANKS TO OUR SPONSORS FOR THEIR SUPPORT

SILVER SPONSORS



AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

CITIZENS 1ST BANK

FULBRIGHT & JAWORSKI, L.L.P.

LOCKE LIDDELL & SAPP LLP

VINSON & ELKINS L.L.P.

BRONZE SPONSORS



ATLAS & HALL, L.L.P.

BRACEWELL & PATTERSON, L.L.P.

KING & SPALDING, LLP

MR. JOHN M. PADILLA

RODRIGUEZ, COLVIN & CHANEY LLP

SUNBELT REPORTING & LITIGATION SERVICES

MR. STEPHEN L. TATUM

R E C R U I T U T .



R E C R U I T
T H E B E S T .



For more information about recruiting opportunities, please contact:

David Montoya, Assistant Dean for Career Services ★ The University of Texas School of Law
727 East Dean Keeton Street ★ Austin, Texas 78705 ★ (512) 232-1150 ★ Fax (512) 471-6790
www.utexas.edu/law/career