

UTLAW



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LESSER PRAIRIE CHICKEN
West Texas



LAST YEAR THE LAW school undertook a strategic-planning exercise. We formed a committee, held meetings with students, faculty, staff, and alumni, and thought hard about how we might improve. I'd like to tell you about a few of the conclusions. (If you would rather read something more frivolous, I'm happy to oblige with a candidate for a Latin motto; see page 44.)

We want our students to succeed at the highest levels of the legal profession and to have great opportunities in whatever fields they pursue. In many ways we already do this as well as anyone, and better than most. Your accomplishments as alumni are the proof. But the legal profession is changing and the job market has become tighter, so we have to ask whether the

strategies that worked well a generation or two ago are still the best we can do.

In certain respects the answer is yes.

The rigors of the first-year classroom, for example, are still widely seen as the best training a student can get in how to think like a lawyer. Most find their habits of mind change a lot during those initial semesters; they learn how to reason carefully, how to argue on their feet, how to distinguish cases that seem similar, and all the rest of the habits that you know well. They become terrors at the dinner table. This is good.

But in other areas we have improving to do. Some of them involve numbers. I know, I know: most law students hate numbers. They come to law school to avoid them, and naturally would prefer not to learn how to read a balance sheet or an income statement. But later they will wish they had. Students discover when they enter the world of practice how hard it is to give advice without understanding a client's (or an adversary's) financial position.

We also will be augmenting the transactional side of our enterprise. I find it astonishing that students can graduate from most any law school without ever having seen a contract. They hear *about* contracts in their Contracts class, of course, and they read *Hadley v. Baxendale*, but that's different. By graduation day, many of them still haven't sat down with a legal instrument meant to accomplish a serious purpose and considered why



Read Latin translation of "Hook 'em Horns" on page 44.

it is written as it is, or how its language allocates risk between the parties. It's time to fix that.

Someday law school may be shorter — that is a conversation for later — but for now it is three years. It ought to be possible over that period to train students both ways: to help them become highly sophisticated and also highly skilled. In the coming years we will improve our offerings in the areas just described, and might even require modest doses of them.

Let me end, then, with a question: What would *you* require of today's law students? Drop me a note about it. We're thinking hard about our curriculum, and I would be grateful to hear from you.

Hook 'em,

Ward Farnsworth
Dean

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IN CAMERA



“As I begin the study of law, I recognize the inherent privileges and responsibilities ...”

Chief Justice Wallace B. Jefferson, '88, leads the Class of 2017 in The University of Texas School of Law Professionalism Oath. PHOTO BY ANTHONY TAMAYO



Alumni NEWS

Alumnus Rises Through Ranks

From Assistant U.S. Attorney to U.S. District Court Judge, Gregg Costa takes Fifth Circuit Bench

BY MARIA ARRELLAGA

IN A UNANIMOUS VOTE (97-0), THE U.S. SENATE CONFIRMED in May loyal Longhorn Gregg Costa, '99, to the U.S. Court of Appeals for the Fifth Circuit. The second youngest judge currently serving on a federal court of appeals bench, Costa brings unique perspective to his new role. His formative learning experiences have spanned from serving as a teacher with Teach for America in the Mississippi Delta, to prosecuting Allen Stanford in a massive \$7 billion Ponzi scheme that resulted in a 110-year prison sentence.

When did you know you wanted to go to law school and why Texas Law?

I wanted to be a lawyer since I was at least 10 years old. Not quite sure why; there weren't any lawyers in my family. I think I just thought it would be fun to battle it out in the courtroom. I was right.

In terms of attending Texas, it was the only law school to which I applied. That was one of the best decisions I'd ever made. Texas Law afforded me opportunities beyond what I could have imagined. And the comparatively low cost of attending allowed me to spend a good part of my career in public service.

What was one of your biggest takeaways from being a teacher with Teach for America in Sunflower, Miss.?

That teaching is a heckuva lot harder than practicing law, and also more important, especially in under-resourced areas such as the Mississippi Delta. As doubts grow about the vitality of the American Dream, there are few, if any, challenges more important than providing all of our children with the opportunity to obtain an excellent education.

Share one of your biggest challenges while clerking for U.S. Supreme Court



Judge Gregg Costa, '99, stands in the courtroom at the Galveston Federal Building.

PHOTO BY BRUCE BENNETT

Justice William Rehnquist. What was one of the biggest rewards?

The biggest challenge had nothing to do with the cases the Court heard. Rather, it involved my driving ability. The Chief played doubles tennis with his three clerks every Thursday. Although he could have used the court limousine, consistent with his remarkable lack of pretentiousness, he instead had one of the clerks drive. That

task typically fell to me. One day, after stopping at an intersection, I looked away from the traffic light because I was engrossed in the conversation we were having with the Chief. In what was probably the sharpest criticism I received during the clerkship, the Chief looked at me and said, "Gregg, the last time I checked, green meant go."

In terms of the biggest rewards, it was the relationships I formed on two levels. First, getting to



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know the Justices, especially the Chief. In many ways, I model the way I run my chambers and use clerks after his practices, including an annual charades game with my clerks and their spouses. Second, the friendships I made with the other clerks — the 34 of us remain close. Just 12 years after clerking, five of us have already become federal judges, including the one federal court of appeals judge who is younger than me (Judge Michelle Friedland on the Ninth Circuit, who was born about two weeks after me).

What was it like to be an Assistant U.S. Attorney?

Being a federal prosecutor was the best job I have ever had. I tried more than 15 cases and argued a number of appeals in the Fifth Circuit. But probably even more valuable than that courtroom experience was the daily challenge of making difficult judgment calls in important matters. There are a lot of smart lawyers out there. The rarer qualities are to have sound judgment and the ability to tell clients things they might not want to hear, and it takes experience making tough decisions to develop those qualities.

Before becoming an AUSA (Assistant U.S. Attorney), I thought a lot about prosecuting cases in court once charges are brought. I did not give a lot of thought to the prosecutor's role in deciding if charges should be brought. A challenging part of that is declining to bring certain cases investigated by federal agents, either because the evidence is not there or because the federal interest in prosecution is not strong enough. The prosecutors I tried to emulate struck the right balance: they were not afraid to bring a righteous case, even if the ultimate outcome was uncertain, but they also had the courage to decline a case when prosecution was not justified.

The 2012 prosecution of Ponzi schemer Allen Stanford was career defining for you. Was there ever a point in that case when you were ready to give up?

The two-month trial was the easy part of that saga. The challenge was the three years leading up to it. Part of that challenge was organizational. We gathered millions of documents and interviewed well-over 100 witnesses. Through diplomatic channels with at least five foreign countries, we obtained documents, interviewed witnesses and froze hundreds of millions of dollars.

The other challenge was that so many people had some

involvement in the matter and were scrutinizing everything the prosecution did. As usual, we had to deal with the court and defense lawyers (and Stanford had more than a dozen during the case), but we also had to deal with the Securities and Exchange Commission; the receiver appointed in the United States; the Antiguan receiver; an insurance lawsuit involving Stanford's D&O policy; forfeiture litigation in the UK, Canada and Switzerland; victim groups; plaintiff lawyers; and higher ups at DOJ in Washington, D.C. There were times when it seemed the case was never going to get to trial, but I never thought of leaving. It was too important to try to bring some sense of justice to the victims in what I described in my closing argument as one of the greatest thefts in history. I'll never be more proud of any professional accomplishment than I am of what our team — which included Texas Law grad Vanessa Walther, '92, as a lead FBI agent — accomplished.

What advice can you offer young attorneys?

Make career decisions based on what you are going to enjoy and excel at, not what is going to impress other people.

You have offered clerkships to many Texas Law students. What is one general observation you have made over the years about your clerks?

As one of my colleagues says, the two best things about being a fed-

eral judge are 1) not having to bill time, and 2) the relationships you develop with your law clerks. The young lawyers who make the best clerks and get the most out of the experience have a good bit of legal nerd in them. Federal judges are among the last generalists in the law, so you want clerks who will relish the challenge of figuring out legal issues they may have never imagined, let alone studied, before the case comes in the door.

Do people comment on your Longhorn-spirited judges chambers? Is there a piece of memorabilia of which you are most proud?

Yes. In terms of my Longhorn memorabilia, the most cherished is my autographed Earl Campbell UT helmet. Campbell is one of the first athletes I remember watching as a kid. I've still never seen a more powerful running back.

What do you like to do in your free time?

Work and time with my three kids fills up just about my entire week. The thing I look forward to most each week is my kids' sporting events; I help coach some of the teams. **T**

Gregg Costa, '99

United States Circuit Judge for the U.S. Court of Appeals for the Fifth Circuit

Age: 42

Hometown: Richardson, Texas

Education: Bachelor's degree, '94, from Dartmouth College; law degree, '99, from Texas Law.

Favorite book: There are two books that had a huge impact on my career: "Savage Inequalities" by Jonathan Kozol led me to join Teach for America, and "Den of Thieves" by James Stewart made me want to be an AUSA, prosecuting white-collar crime.

First job: Soccer referee. Sports officiating is great training for being a judge, according to Chief Justice Roberts.

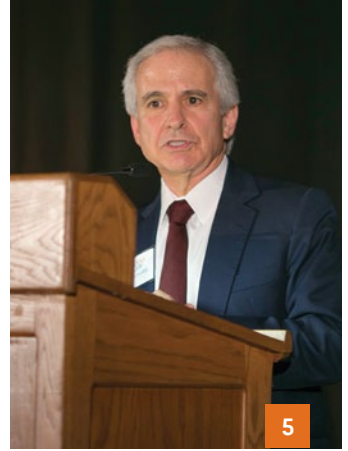
Favorite Austin haunt: During law school, Crown & Anchor.

Alumni Awards Dinner

Recipients of the 2014 Alumni Awards were honored at a dinner Sept. 5, hosted by the Texas Law Alumni Association.



1. The Honorable Kay Bailey Hutchison, '67, speaks with a guest at dinner. **2.** Alumni Award winners with Dean Ward Farnsworth. From left to right: Jack Balagia, '76; Harris Kerr, '75; Dusty Burke, '68; Rob Walters, '83; Nicole Cásarez, '79; John B. Connally IV, '97; Terry Tottenham, '70; and Dean Farnsworth. **3.** Former Chief Justice Wallace Jefferson, '88, (left) with Associate Dean for Academic Affairs Robert Chesney.



4. Mark McLaughlin, '54, applauds the award recipients.
5. President of the Texas Law Alumni Association Bruce Broillet, '74, welcomes guests.
6. UT President and former Texas Law Dean Bill Powers gives remarks to dinner guests.
7. From left to right: Arleas Kea, '82; Joseph Callier, '80; and Daniella Landers, '96.
8. Joe Jamail, '52, (left) with Jack Balagia, '76.

State Bar of Texas Annual Meeting Reception

Alumni gathered for a reception following the State Bar of Texas Annual Meeting held in Austin June 26-27.



1. Mason Hester, '06, (left) with Bill Mahomes, '72. 2. From left to right: Terry Tottenham, '70; Jo Anne Christian, '62; and Talmage Boston, '78. 3. From left to right: Michelle Gomez, '13; Rachael Jones, '13; and Aisha Hagen, '99.

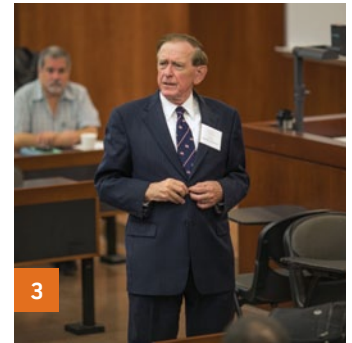


Sunflower Ceremony 2014 Students from the Class of 2014 raise their "Hook 'em Horns" in a final salute to Texas before graduating in May.



2014 Reunion Weekend

The annual Texas Law Reunion was held in Austin in April honoring classes ending in "4" and "9" from 1964 to 2009. Guests enjoyed barbecue at the Four Seasons and music by Asleep at the Wheel.



1. Bruce Broillet, '74, (left) and Scott Atlas, '75, president and vice president of the Texas Law Alumni Association, greet guests during dinner. **2.** Alumni and guests enjoy live music during Friday night's kickoff dinner. **3.** Professor Stanley Johanson speaks to alumni during a Continuing Legal Education lecture. **4.** Ray Benson performs with his band, Asleep at the Wheel. **5.** From left to right: Dean Ward Farnsworth, John Massey, '66, and wife Libba Massey, and UT President and former Texas Law Dean Bill Powers.

CWIL Fifth Anniversary Celebration and Awards Luncheon

The Center for Women in Law celebrated its fifth anniversary with a luncheon that featured keynote speaker Arianna Huffington, founder of The Huffington Post.



1. From left to right: CWIL President Nina Cortell, '76, keynote speaker Arianna Huffington and Immediate Past-President Linda L. Addison, '76. 2. Fifth Anniversary Celebration & Awards Luncheon Co-Chair Linda Brooks, '78, delivers the opening remarks. 3. CWIL leaders (from left to right): Hilda C. Galvan, '93; Charolette Noel, '91; and Daniella Landers, '96. 4. CWIL Founder Sandra L. Phillips, '91, recognizes the center's growing Circle of Leaders.



Parents Leadership Group Spring Dinner

Parents and students from Texas Law's Parents Leadership Group attended the spring dinner March 28. The group sponsors the Parents Leadership Scholarship, which is presented annually to current students. From left to right: Professor Stanley Johanson, Marcus Schwartz, '73, and Craig Smyser, '80.

THE UNIVERSITY OF TEXAS AT AUSTIN

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Alumni Association

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Featuring

JERRY JEFF WALKER



Ten Years and Counting

Two centers celebrate a decade of growth and service | BY SAMANTHA YOUNGBLOOD



Left: The 2014 summer and fall Rapoport Center Fellows. **Top:** Bill Powers and “B” Rapoport at the Rapoport Center inauguration event in 2005 (photo: Dave Mayfield). **Above:** Rapoport Center Co-Directors Karen Engle (middle) and Daniel Brinks (far right) are presented a plaque in 2011 by the Historic National Police Archive of Guatemala (photo: Jorge Villagrán).

Bernard and Audre Rapoport Center for Human Rights and Justice

THE BERNARD AND Audre Rapoport Center for Human Rights and Justice is a true example of an organization upholding the university’s motto: What Starts Here Changes the World.

For 10 years, the Rapoport Center has facilitated dialogue among academics, advocates and policy-makers on pressing human rights and justice issues. Its programs are interdisciplinary and regularly draw a large audience from inside and outside the law school. In addition to its own research and advocacy projects, the center also funds law students who intern with non-governmental and international organizations that promote social justice both locally and globally.

“The Rapoport Center is unique

in its approach to human rights — intentionally interdisciplinary, committed to empirical work and always open to critiques of how human rights has been and is being done,” said Rapoport Center Co-Director Daniel Brinks.

The Rapoport Center has been at the forefront of a range of pedagogical, curricular, archival, advocacy and intellectual human rights efforts on the campus in Austin, across The University of Texas System and in the world at large. To sustain such effort for 10 years takes dedication by staff and students.

Founder and Co-Director Karen Engle, the Minerva House Drysdale Regents Chair in Law, said the quality and commitment of students have helped shape the center. “They have always been

substantively involved in our work and in the development of our mission,” Engle said.

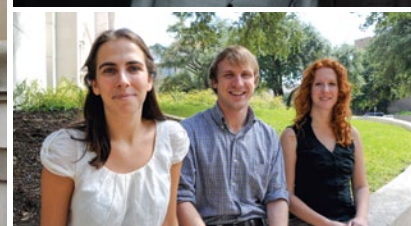
One of those students, Melina de la Garza, ’06, said her Rapoport Center-funded summer internship in Kosovo “paved the way toward my career in human rights and foreign affairs.” She is a foreign affairs officer for the U.S. Department of State and one of countless successful alumni working at nonprofits, international organizations and in government and private practice.

The Rapoport Center has been a defender of human rights for a decade thanks in part to a gift from Bernard “B” and Audre Rapoport. B graduated from The University of Texas at Austin with his bachelor of arts in 1939. The couple has generously donated millions of dollars to the university. The Rapoport Center is one of their legacies.

“Early on, the center was just me with a handful of students and collaborative faculty, funded by a single donor,” Engle said. “Today, we are a full-fledged center with much more administrative capacity, over 200 alumni, 100 affiliated faculty and many dozens of donors.”

The Rapoport Center has hosted over 300 speakers from more than 25 countries on topics ranging from immigration reform in the U.S. to the right to property worldwide. It has funded over 100 students to work in more than 20 countries.

During this anniversary year, the Rapoport Center has organized a fall speaker series on health and human rights and a conference in spring 2015 to celebrate Frances T. “Sissy” Farenthold, ’49. For more information, visit www.rapoportcenter.org. 



Left: The 2014-15 Student Advisory Board for the Justice Center. **Top:** Mary Crouter and Eden Harrington stand with Judge William Wayne Justice at an early Justice Center event. **Above:** Equal Justice Scholars Jordan Pollock, '12; Lawson Konvalinka, '11; and Kyle Marie Stock, '10, in 2009.

William Wayne Justice Center for Public Interest Law

IN 2004, FORMER LAW clerks and other admirers of U.S. District Judge William Wayne Justice led the effort to create the William Wayne Justice Center for Public Interest Law at The University of Texas School of Law to honor this revered giant in Texas history.

“When the law school started reaching out to Judge Justice’s former clerks, we were amazed that every single one wanted to support the fledgling center — and he had more than 65 former clerks,” said Justice Center Director Eden Harrington. “It was a remarkable demonstration of their respect and affection for Judge Justice.”

Justice, '42, received his undergraduate and law degrees from The University of Texas at Austin. During his 41 years on the federal bench, Justice worked coura-

geously to protect civil rights, uphold constitutional freedoms and ensure equal justice for all. The work of the Justice Center for the past 10 years has followed those same ideals and expanded in scope, and now includes the successful school-wide Loan Repayment Assistance Program (LRAP) and Pro Bono Program.

In 2008, the law school provided funding to create the Justice Corps, a groundbreaking program to increase access to legal assistance and help launch the careers of graduates interested in serving the public.

In all, the Justice Center has awarded more than 100 scholarships and fellowships; hosted numerous conferences, lectures and workshops; and involved students, faculty and alumni in pro bono projects with community organizations that assist a

broad range of clients, including veterans, low-income homeowners, hurricane victims, immigrant detainees and Austin-area artists. Students and alumni champion the Justice Center’s efforts to create a community of lawyers who are active public servants.

“The truth is, the Justice Center was my home during law school. I had unconditional support and guidance,” said Jordan Pollock, '12, an Equal Justice Works Fellow at Public Counsel in Los Angeles, Calif. “The center helped structure studies, internships, clinical work, so that I was incredibly marketable and ready to work when I got out of school.”

Both Pollock and Lawson Konvalinka, '11, were recipients of Equal Justice Scholarships (administered by the Justice Center), which cover full tuition and fees for three years of legal study.

“My career has been colored and enriched by the Justice Center,”

said Konvalinka, staff attorney at Colorado Legal Service Migrant Farmworker Division. “I love where I work; I love what I do. I’m not sure I’d have that without the Justice Center, and it certainly would not have come as easily.”

Harrington and Assistant Director Mary Crouter have been with the Justice Center since the very beginning, and work with dedicated colleagues and student leaders to inspire the next generation of lawyers to serve the public.

“It is really gratifying to see our alums go out into the world to do great things,” Crouter said. “They see a lot of need in Texas and elsewhere, and they want to give back. I know Judge Justice would be very pleased by this.”

The Justice Center will celebrate its anniversary and achievements with a gala this winter. For more information, visit www.utexas.edu/law/centers/publicinterest. **T**

ESSAY



Two Steps Forward, One Step Back

*Reflections on the impact
of the Civil Rights Act 50 years later*

BY RANJANA NATARAJAN

GROWING UP IN THE 1980s AS A first-generation immigrant in the Houston suburbs, I had friends whose families hailed from many different parts of the world, and I assumed that was normal. Only later, as I learned about the history of the U.S. Civil Rights Movement, did I realize that the America I grew up in had undergone a profound, radical transformation in the 1960s, which was crucial to both my family's immigration and our multi-cultural society. Today, as I reflect on the successes of the Civil Rights Movement and the challenges we still face, I feel deeply grateful that my law degree allows me to train the next generation of lawyers who will advance the civil rights causes of our time.

The Civil Rights Act of 1964 was a monumental achievement. It made the American Dream of opportunity attainable for African Americans, other racial minorities and women. One of the Act's chief accomplishments was to end legally-enforced racial hierarchy and separation in public accommodations. American public spaces and institutions — schools, parks, hospitals, restaurants, libraries, airports, hotels — began the process of

racial integration as a result of Title II of the Act. The Act fundamentally improved our society by desegregating public institutions and dismantling the racial caste system.

No less important was Title VI. That portion of the Civil Rights Act forbids discrimination on the basis of race or national origin in

any state programs receiving federal financial assistance. Title VI continues to be a valuable tool in addressing racial discrimination. For example, the U.S. Department of Education has resolved complaints against state and local educational agencies relating to harassment of public school students based on race and inadequate services provided to limited English proficient public school students.

Perhaps the most well known provision of the law today is Title VII, the law that prohibits discrimination based on race, religion, sex or national origin in employment. That provision has enabled great gains in economic opportunity for African Americans, other racial minorities as well as white women.

The Civil Rights Act also set the stage for many laws that followed, each of which further dismantled barriers to opportunity for historically disadvantaged individuals and groups. The first was the Voting Rights Act, which dismantled barriers to voting for African Americans and Latinos imposed after the Civil War and maintained through violence and intimidation. Congress also passed laws outlawing racial discrimination in housing, gender discrimination in federally funded programs, discrimination on the basis of pregnancy and discrimination against the disabled.

However, despite the passage of numerous civil rights laws, racial disparities in opportunities and achievement persist today. For example, the U.S. Department of Housing and Urban Development reports white homebuyers and renters learn about, are encouraged to apply for,



To commemorate the Civil Rights Act on its 50th anniversary, the Lyndon B. Johnson Library and The University of Texas at Austin hosted a summit in May 2014 that brought to campus four living U.S. presidents along with an impressive list of speakers and panelists. PHOTO COURTESY OF LBJ LIBRARY



Lyndon B. Johnson, the 36th president of the United States, signs into law the Civil Rights Act in 1964 as Martin Luther King Jr. and others look on. PHOTO COURTESY OF LBJ LIBRARY

and receive more favorable treatment in buying or leasing available housing when compared to equally qualified racial minorities. The U.S. Department of Education reports black and Latino public school students disproportionately lack access to core and college preparatory courses, but receive more in-school and out-of-school discipline than their white counterparts. According to the Bureau of Labor Statistics, blacks and Hispanics are more likely to be unemployed than whites at every level of education, and they are more likely to be employed in lower-paying occupations. Recent studies show that residential segregation by race and ethnicity also persists, further influencing racial disparities in educational achievement, health, exposure to pollution and access to public transit.

What are the lessons to be drawn from these mixed results 50 years later?

First, it is undeniable that ending the formal legal racial hierarchy of Jim Crow laws was a necessary and crucial step in forming our “more perfect union.” Removal of formal legal barriers to opportunity was nothing less than required by our democratic ideals and our constitutional principles. Second, there is still a lot of work to be done to make the promises of equal opportunity a reality for all Americans. Some of that involves eliminating formal legal barriers, such as those facing LGBT indi-

Despite the passage of numerous civil rights laws, racial disparities in opportunities and achievement persist today.

viduals and families, as well as the adoption of deliberate institutional and community strategies to promote racial integration. And some of the work involves eliminating informal barriers that continue to block progress and growth for the disadvantaged in our society.

Having benefitted from the Civil Rights Movement, I feel privileged that I can shape the civil rights causes of today through my law practice and teaching. At the Civil Rights Clinic at Texas Law, I try to show students how lawyers can work for social justice and the advancement of rights through various means, with diverse partners, on issues that are personally meaningful to us.

The Civil Rights Clinic engages in litigation and advocacy on behalf of low-income clients in a range of civil rights matters. This past year, clinic students helped represent a U.S. citizen who was subjected to excessive force by U.S. Customs and Border Protection during a search of her vehicle in Brownsville;

prisoners who are subjected to extreme heat in Texas prisons; and a man who was unlawfully detained for more than three weeks in a Dallas-area county jail. Students also compiled public education materials relating to constitutional rights at the border, and researched how best to provide for the mental health needs of juveniles in delinquency proceedings. Through the clinic seminar and cases, Texas Law students are learning about contemporary civil rights challenges, and how they can play a role in advancing civil rights during the next generation through their law practices.

While there is no question that in these past 50 years we have come a long way on the civil rights front, recent events remind us that our country continues to struggle. Two very different examples are the violence and conflicts in Ferguson, Mo., and the invalidations ruled by the U.S. Supreme Court last year to parts of the Voting Rights Act of 1965. Protecting one’s civil rights is about ensuring that everyone has the same opportunities in life. At the law school’s Civil Rights Clinic we continue to do our small part. **T**

Ranjana Natarajan is a clinical professor and director of the Civil Rights Clinic at The University of Texas School of Law.

Striking a Balance

Experts examine the relationship between energy production and environmental protection

BY MELISSA GASKILL

ILLUSTRATIONS BY PAM WISHBOW

RECORD-LOW NATURAL GAS PRICES, INCREASED national security and economic growth. Those benefits come from recent surges in drilling, the result of technological advances in hydraulic fracturing and horizontal drilling that opened up vast reserves of previously inaccessible oil and gas in shale formations across the country. ¶ According to the American Petroleum Institute, oil and natural gas industry operations directly and indirectly supported 8.4 million jobs in 2011 and the industry's capital investment resulted in an additional 1.4 million jobs. Wages associated with both totaled an estimated \$597.6 billion and the industry's total value-added national impact was \$1.2 trillion that year.

The environmental picture is not so rosy, however. The surge in drilling also brings concerns about water use, potential surface and groundwater contamination, increased seismic activity, air emissions and impacts to wildlife and habitat.

Many experts agree we have the ability to balance a healthy energy industry with appropriate environmental protection. Two areas of focus now are addressing methane emissions and minimizing the impacts on endangered species.

Methane Emissions

OIL AND GAS PRODUCTION IS HARDLY NEW, nor are fracking and horizontal drilling, pointed out by Jeff Civins, a 1975 graduate of, and adjunct

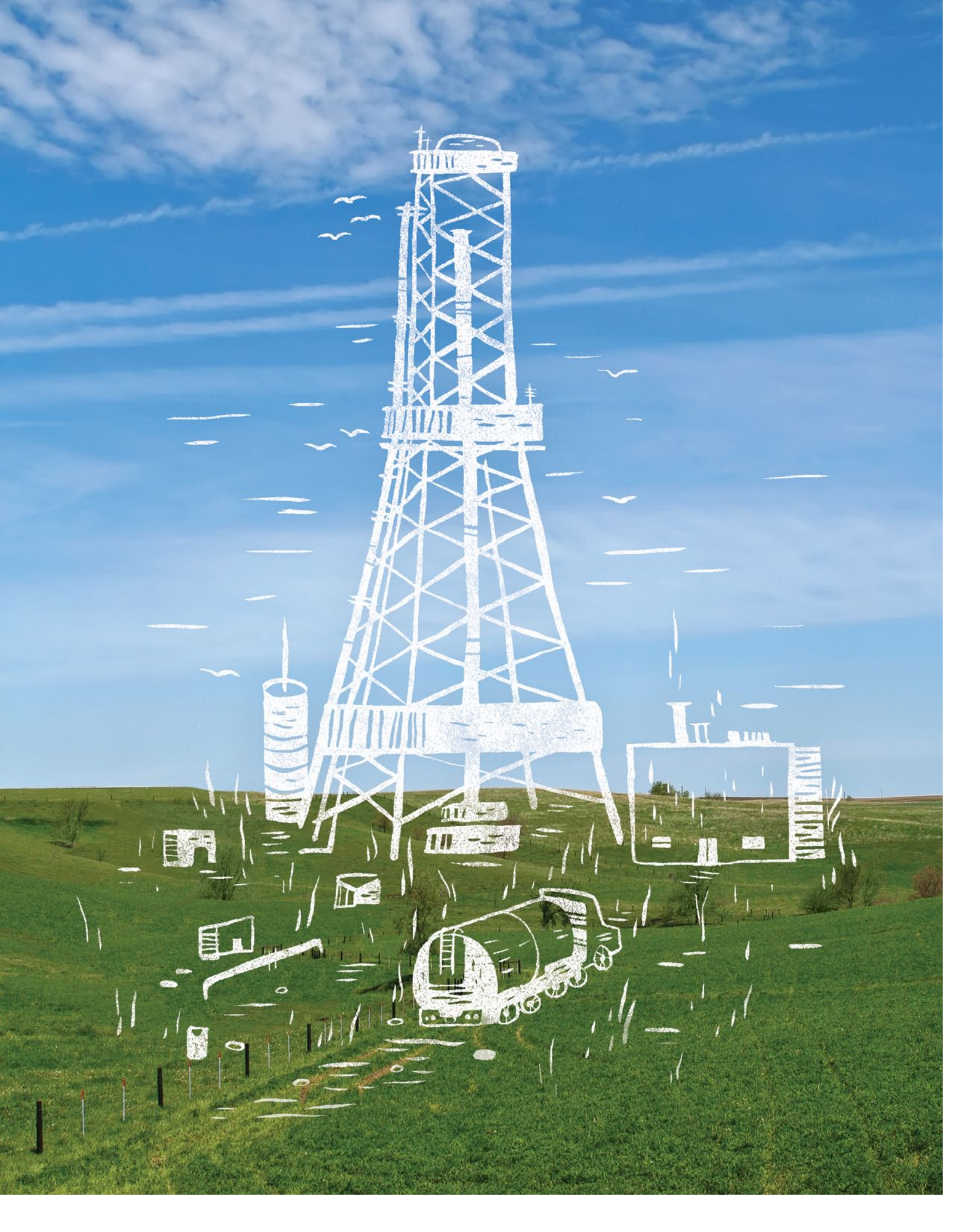
professor at, The University of Texas School of Law, and a partner at Haynes and Boone. But employing them together on a large scale is new, which, in turn, creates new issues.

Fracking recovers oil and gas from formations previously not considered viable for production. But the ramped up production that resulted is responsible, in part, for making oil and gas drilling the nation's single largest source of methane emissions, the second most potent greenhouse gas (GHG).

Drew Nelson, senior manager for natural gas at the Environmental Defense Fund, said recent studies have shown actual oil- and gas-related methane emissions are higher than many previous estimates. "Couple how potent methane is with more methane leaking than we thought and that is very troubling." Controlling methane emissions from oil and gas operations is critical to ensuring that substituting natural gas for coal in power generation creates a net environmental benefit, Nelson said.

Methane escapes during the well completion process and from leaky pipes, valves, pumps and other production equipment. A study¹ jointly funded by EDF and nine natural gas producers measured methane emissions from completion of fracked gas wells. According to principal investigator David Allen, chemical engineering professor at UT's Cockrell School of Engineering, data show that a small

1. Measurements of methane emissions at natural gas production sites in the United States.





subpopulation of devices accounts for the vast majority of emissions. Identifying and controlling these sources would produce maximum results for the investment.

The study produced the first direct emission measurements for many of these sources. “Every energy source has an associated environmental footprint and a key element of understanding that footprint is knowing the emissions associated with any type of production,” Allen said. “The natural gas sector changes quickly and in many cases data are relatively sparse.”

In addition to reducing the environmental footprint of oil and gas production, controlling emissions would also improve the industry’s bottom line. The value of previously-lost product often would cover the cost of reducing emissions, according to Nelson.² “Technology already in use can cut methane emissions by 40 percent at a cost of less than one penny per cubic foot of gas.” Depending on market price, that could add between \$1 and \$5 billion to the industry’s bottom line. On the environmental side, it would eliminate emissions equivalent to 112 million cars or 140 coal power plants.

A Society of Petroleum Engineers study³ also recognized the potential for oil and gas companies to reduce overall GHG emissions and improve efficiency by reducing methane emissions.

One barrier to accomplishing this is lack of infrastructure, particularly in areas with little previous or recent production. Texas’ Eagle Ford shale, for example, produces more than 4,000 barrels of oil per day, and pipeline and storage capacity are inadequate to manage the natural gas from those oil wells. That necessitates flaring of the gas, which results in significant emissions.

“We are in a transitional phase,” said Kinnan Goleman, president of Austin-based regulatory and legislative services firm KG Strategies. “We have to build infrastructure in order to control assets from an environmental standpoint.” Emissions associated with shale development will continue to decrease as infrastructure increases, he said.

2. ICF methane cost curve report.

3. Development of a profitable greenhouse gas emissions reduction strategy.



Not everyone agrees the market will solve the emissions problem, however. Smaller companies don’t always have the resources to invest in appropriate technologies, Nelson pointed out, which he sees as an argument for using government regulation to drive emission reduction.

“Regulation can be an incredibly effective tool,” he said. Allen’s work, for example, showed new EPA well-completion regulations led to techniques that capture 99 percent of emissions previously vented to the atmosphere. “Many folks say we can’t do this regulation, it’s too costly and won’t work, but we now have proof that it does work and pretty well.”

Thomas McGarity, Texas Law professor of environmental and administrative law, stressed that reducing overall emissions from oil and gas wells needs to happen. “We’ve had gas wells out there for decades emitting methane because they aren’t 100 percent efficient. Preferably, we would collect it and put it back in the pipeline. It’s certainly something we need to look at.”

Endangered Species & Habitat

ANOTHER ISSUE OF INCREASING CONCERN to scientists and environmentalists is the effect of oil and gas drilling on species listed on the federal Endangered Species Act (ESA). When an activity affects such a species, resulting permit provisions can be expensive and time-consuming.

Drilling rigs, well pads, equipment, roads, ponds, pipelines and other infrastructure destroy and fragment habitat. University of

“Certain species are particularly sensitive to alterations of their habitat. The lesser prairie chicken, for example, will abandon nesting areas if a well is drilled too close.”

Melinda Taylor

DIRECTOR, KAY BAILEY HUTCHISON
CENTER FOR ENERGY, LAW AND BUSINESS

Wisconsin researcher Sara Souther reported⁴ that this cumulative effect on the landscape may represent the most serious threat to plants and animals. “Ecological studies show how habitat fragmentation changes the quality of the remaining habitat,” Souther said. “We have thousands of wells, each contributing to habitat loss, light pollution, sound pollution, air pollution. We can hypothesize the effect of one well, but don’t have any idea of the cumulative effect.”

Melinda Taylor, senior lecturer and director of the Kay Bailey Hutchison Center for Energy, Law and Business, agreed. “Certain species are particularly sensitive to alterations of their habitat. The lesser prairie chicken, for example, will abandon nesting areas if a well is drilled too close.”

In 2013, the lesser prairie chicken population hit a historic low of 17,000, a 50 percent decrease from 2012. In March 2014, the U.S. Fish and Wildlife Service (FWS) listed it as “threatened,” a step below “endangered” and meaning danger of extinction is likely within the foreseeable future. A threatened listing allows more flexibility in regulatory protections than an endangered listing. FWS published a rule under section 4(d) of the Act allowing states where lesser prairie chickens are found “to manage conservation efforts ... and avoid further regulation of activities such as oil and gas development ... covered under the Western Association of Fish and Wildlife Agencies’ (WAFWA) range-wide conservation plan.”

That plan includes recommended measures industry can follow to avoid affecting the bird and mechanisms for mitigating unavoidable impacts. The lesser prairie chicken lives in Texas, New Mexico, Oklahoma, Kansas and Colorado, so oil and gas operators in those states have the option of participating in the range-wide plan to avoid being otherwise liable if their activities affect the species.

“As long as an operator is in compliance with a range-wide plan, FWS will not prosecute for take,” Taylor said, even if their operations harm the bird. Under the ESA, “take” includes harassing, harming or killing an animal. The process is meant to be more streamlined and



Details about reports used in this article are available in the online version of this story.

simpler than a federal permitting program administered by FWS. Environmentalists question whether the FWS’s oversight is sufficient, however. National environmental groups Defenders of Wildlife and The Center for Biological Diversity are challenging the plan in court.

INTERESTS ON ALL SIDES EXPRESS concern about using the ESA to regulate energy production and some question whether Congress intended the law to shut down development. “The concern is whether, and to what extent, the Endangered Species Act is used as a tool to restrict development, to make land use decisions or shut down development rather than protect species,” Civins said.

Goleman calls the ESA “a dysfunctional statute” and said, “Making decisions in Washington on matters that vary greatly by geography and public opinion has always been a fundamental flaw in application of our environmental laws. The way that species get investigated or listed, there is little or no meaningful input or consideration of our nation’s economy in the process.”

The ESA requires that listing decisions be based solely on the best available science, however, without considering economic impacts. “Congress did not make economics part of the equation in listing decisions because the question of whether a species is endangered or not should be entirely based on science; that is, what is known about the status of the species and whether it is at risk of becoming extinct,” Taylor said. Once a species is listed, though, decisions about how to best help it recover can, and should, take economics into account.

Environmentalists express skepticism about the effectiveness of conservation plans as well. David Wolfe, EDF’s director of conservation strategy, sees the piecemeal approach of the regulation as a problem. “One company negotiates some kind of deal for mitigation, than another company comes in later and works out a different deal. There’s no common rule for everyone.” The result is unpredictability for in-

dustry and uneven protection for species.

The ESA has reduced the rate and number of

extinctions, according to experts on the act. “It has been successful in staving off extinction, forcing people to think about the impacts of human activities on species and being more careful to reduce the impact,” Taylor said. She pointed out popular ESA successes, including full recovery of the bald eagle and dramatic increase in the number of whooping cranes, brown pelicans and American alligators, among others.

In general, Americans care about endangered species and industry should find ways to protect them within the framework of the ESA, Taylor said. “People trot out examples that seem extreme on the surface, money spent to protect a bug or a lizard, and taken individually they can seem absurd. But every time Congress has had an opportunity to significantly weaken the act, they have failed to do so. Whether the ESA should be done away with or significantly amended is not the question. It is going to be around. It’s time to shift to making it more effective for species and less burdensome for the regulated community.”

Conflicts between endangered species and energy production are likely to continue. Another rare species affected by oil and gas development is the dunes sagebrush lizard, whose habitat occupies southeast New Mexico and West Texas in the heart of the Permian Basin. Intense, protracted negotiations between the oil and gas industry, FWS and the Texas State Comptroller’s office in 2012 resulted in FWS not listing the lizard in return for the Comptroller implementing a voluntary conservation plan to protect the animal. Environmental groups have challenged the plan in court.

The sage grouse, proposed for a “threatened” listing this fall, inhabits 11 states across 120,000 square miles, much of it targeted for oil and gas drilling. FWS is considering measures to reduce the effect of energy development on the grouse. “The lesser prairie chicken lives in grasslands of the Great Plains and the sage grouse in sagebrush of the American West,” Wolfe said. “These are elements of our natural heritage, and it is important to protect and conserve as much of it as we can. That is

4. *Biotic impacts of energy development from shale: research priorities and knowledge gaps.*

good stewardship. Also, if the birds are doing well, that is a good indication that so are those ecosystems, which we depend on for air and water quality and carbon sequestration, things important to our daily life." Protecting habitat also directly benefits those with a vested interest in a particular ecosystem, such as hunters or outdoor enthusiasts.

There are benefits to the corporate bottom line, too. Companies can point to effective protection of the environment as proof they are responsible corporate citizens, according to a report from Baker Hughes.⁵ Their efforts can also build relationships with communities and other partners.

In an ideal world, society would balance pros and cons before starting a new economic activity. In reality, we seldom do. "In a sense, the dramatic shift in technology and economic viability happened so quickly, and you always have a bit of regulatory lag," said David Adelman, the Harry Reasoner Regents Chair in Law at Texas Law. "Once we do have greater scientific under-

standing of these activities, I think things will get recalibrated."

That understanding doesn't always come easily, though. "Scientists don't all agree on many issues, but there is also the possibility of a conjured scientific dispute that doesn't really exist," McGarity said. "Even when there is consensus, those with interests in the outcome will find someone to say something different. People have a hard time sorting out the science for themselves."

"The current boom likely will last a while," said Ernest E. Smith, Texas Law's energy law legend, "but like past booms, ultimately will come to an end. Until then, the benefits are pretty clear."

"We have tremendous resources compared to before, abundant sources of energy right under our feet in the shale formations," Civins said. "The current boom has changed the world, the country and Texas, and done phenomenal things in terms of making us less reliable on foreign energy and enabling the switch from coal to natural gas."

The key is striking a balance with protecting the natural environment so society can enjoy those benefits now without paying too high a price down the road. ■

"The concern is whether, and to what extent, the Endangered Species Act is used as a tool to restrict development, to make land use decisions or shut down development rather than protect species."

Jeff Civins, '75
ADJUNCT PROFESSOR,
TEXAS LAW

5. *Wetlands and endangered species management.*

Energy, Law and Business Center Opens at UT

The School of Law's Center for Global Energy, International Arbitrations and Environmental Law, founded in 2009, has merged with the McCombs School of Business' Energy Management and Innovation Center to form a new endeavor: the Kay Bailey Hutchison Center for Energy, Law and Business (KBH). A joint project of the School of Law and the McCombs School of Business, it is named for U.S. Senator Kay Bailey Hutchison, a graduate of Texas Law and distinguished alumna of The University of Texas at Austin.

The center's mission is to

provide educational opportunities for the next generation of leaders in the energy field. It will provide critical analyses of legal, business, management and policy questions relevant to energy and the energy industry, both domestic and international, with an emphasis on Latin America.

The official launch of the KBH Center will coincide with a symposium on the Geopolitics of Oil in the Americas, scheduled for Feb. 20, 2015. The symposium will explore the legal and business implications of legislative reforms of the energy sector in Mexico and cur-

rent energy issues facing other countries in Latin America.

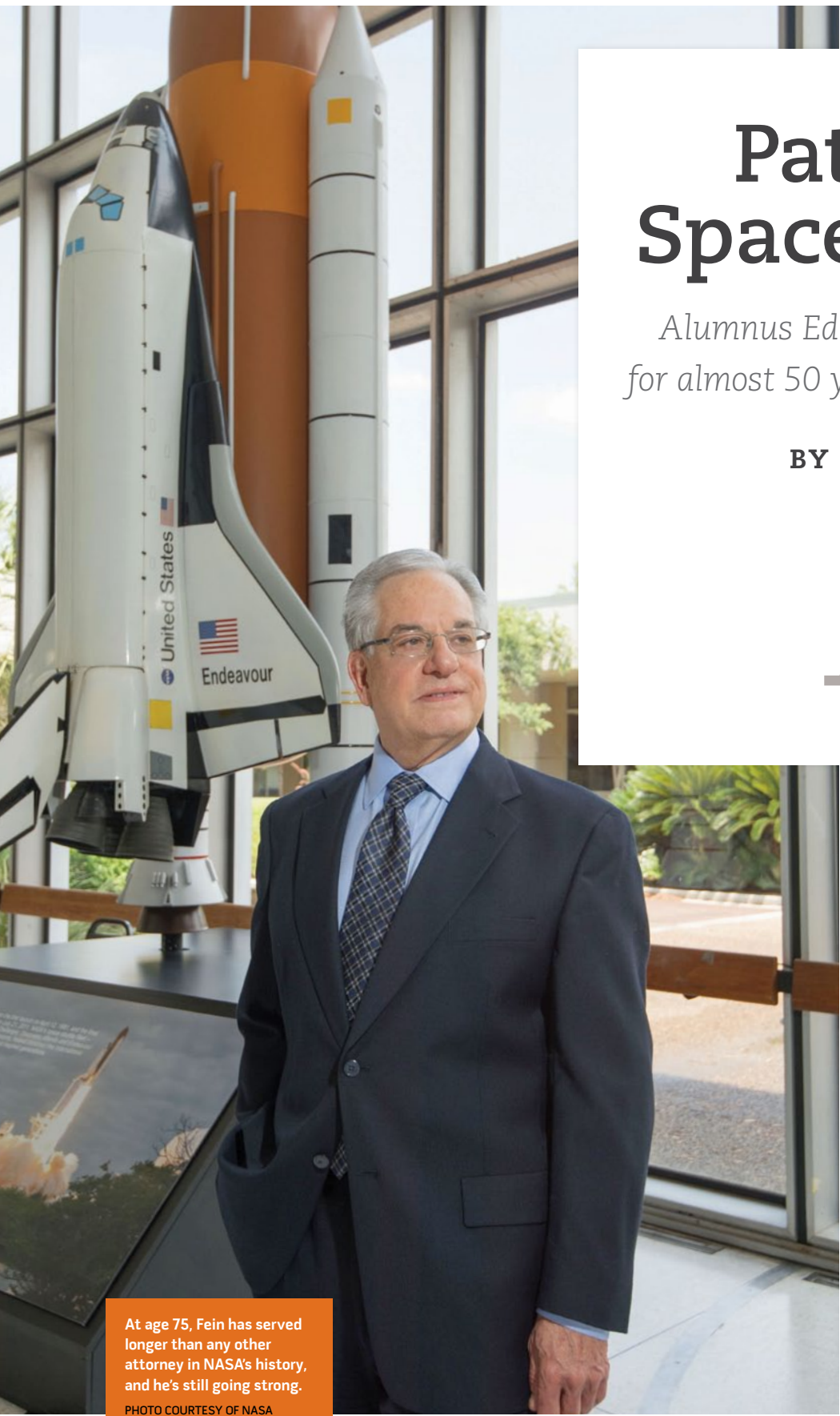
"My goal is to provide our students with the very best educational opportunities in the United States to prepare for a career in energy," said Center Director Melinda Taylor. "One of the most important elements of our program is the chance for students to take classes in disciplines other than their own — MBA, law and engineering graduate students working together, for example. These classes help students learn to work in interdisciplinary teams, a skill they all need to master in order



Melinda Taylor

to be successful in this field."

An in-depth story about the center will be featured in the Spring 2015 issue of *UT Law* magazine. For more information, contact Mauricio Pajon at mpajon@law.utexas.edu or call 512-475-9328.



Patenting Space Marvels

Alumnus Ed Fein has guided NASA for almost 50 years as a patent attorney

BY JENNY BLAIR

AT FIRST GLANCE, ED FEIN'S clients don't seem to have much in common: a legendary cardiac surgeon, a spacewalking astronaut and a billionaire hotelier. ¶ However, each of these clients have patented technology that emerged from the space program, with Fein, '65, guiding them through the process as a NASA patent attorney.

To create space-program marvels like Apollo, Skylab, the space shuttle and the space station, NASA engineers have had to invent countless new technologies from scratch. Many find their way into our daily lives, from hospital operating rooms to biology labs to power plants. For nearly a half-century, Fein has been a part of the spinoff process, protecting and licensing the ideas that were born as NASA engineers worked on Apollo and saw the International Space Station to commercialization. Most recently, he helped patent a technology invented at Johnson Space Center that is expected to make highway barriers safer.

"It was a thrill, working with those guys and the astronauts," Fein said. "It's just been a great ride."

At age 75, Fein has served longer than any other attorney in NASA's history, and he's still going strong.

PHOTO COURTESY OF NASA

At 75, Fein has served longer than any other attorney in NASA's history, and he's still going strong.

"Ed [has] prosecuted patents for generations of NASA's smartest inventors," said Michael Pratt, '03, an attorney with the Office of Chief Counsel at NASA's Johnson Space Center. "He is widely considered the dean of federal patent law for America's space program."

Fein, who is also a past president of the Texas State Bar IP Law Section, helped put Pratt at ease when he joined NASA in 2008.

"If there's a question about IP, he's the one they're going to ask," Pratt said. "He knows the quirks of how it works in the federal contracting system. You get the unique benefit of his deep knowledge, and he's friendly and gregarious on top of it."

A San Antonio native and doctor's son, Fein said he was a "space junkie" and "geeky kid," in love with math and engineering, and fascinated by space exploration. It was 1957 when the USSR launched Sputnik, the world's first artificial satellite. Fein was a senior in high school. He followed that and the subsequent Mercury spaceflight programs in the early 1960s with keen interest.

"As a young man, imagine getting to see something like that!" he recalled.

Fein headed to UT for a degree in mechanical engineering and graduated in 1962. From there, he pursued law school, during which he married Sandy Lusky, a UT education student, '64, and native Houstonian.

Fein graduated from Texas Law in 1965 planning on practicing patent law. He hadn't left his interest in engineering behind and was eager to watch new technologies being born.

The couple headed to Washington, D.C., for Fein's job as a patent examiner at the United States Patent Office (now the United States Patent and Trademark Office). His office building was just steps from the White House, but he dreamt of returning to his wife's hometown and working with the Manned Spacecraft Center there.

One day Fein attended a lecture by a NASA patent attorney.

"Immediately after he was finished, I ran to him and told him, 'If anything ever opens up in NASA, please let me know,'" Fein recalled.

It did. In 1967, 18 months into his D.C. sojourn, Fein and his wife headed to Houston for what he

called his "dream job" at the Manned Spacecraft Center, which had opened only four years earlier and hadn't yet launched a moon mission.

Fein began by patenting design elements from early Mercury spacecraft and shuttles. He went on to shepherd many more advances through the patent and licensure process — including advances in satellite technology, computers, sensors and miniaturization — all while holding a historic front row seat on the space program.

The 1969 moon shot still amazes him.

"They were a bunch of kids that ran that program," Fein said. "And we did it with less computing power than you and I have in our cell phones right now."

There were dreadful times. Fein arrived in Houston shortly after the deadly Apollo 1 launch-pad fire, which asphyxiated three astronauts. He mourned along with his colleagues, too, after the Challenger and Columbia space shuttle disasters.

"It's horrible to lose people you work with and you know," Fein said.

Still, the work has been tremendously rewarding. In 1984, NASA engineer David Saucier needed a heart transplant. He started talking with his surgeon Dr. Michael DeBakey, and learned that DeBakey wanted to develop an artificial heart.

Working with the surgeon and NASA engineers, Fein patented and licensed the pioneering left ventricular assist device (VAD) in 1996. "We took some of the pumping technology that we use to load the fuel into rockets and miniaturized it," Fein said.

Two years later, the first patient received a MicroMed DeBakey VAD, and the device has since transformed the lives of many more patients. It won NASA's Commercial Invention of the Year award in 2002. Fein accompanied DeBakey to the awards ceremony in Washington, D.C.

In the late 1990s, Fein also oversaw the patent process for inflatable spacecraft, during which he worked with a billionaire hotel entrepreneur who was interested in space. The entrepreneur's company, Bigelow Aerospace, is now building an inflatable module that NASA will use to connect to the international space station, as well as planning and marketing a commercial space station of its own.

Along the way, Fein has befriended astro-

"That's a real kick to look back and think that I was friendly with people who ended up walking on the moon."

Ed Fein, '65

nauts, including physician-astronauts Scott Parazynski and David Wolf, each of whom have spent more than 40 hours performing spacewalks. Wolf, who is also an electrical engineer, co-designed a device intended to keep living cells in suspension during lab experiments. Fein helped patent and license the technology, called a rotary wall bioreactor, in 1990.

Ted Ro, a NASA intellectual property attorney, hinted that his friend is as revered as practically anyone at NASA. Ro considers Fein a walking encyclopedia of international property law and NASA policy, as well as a shining example of humility.

"The great leaders are that way," Ro said.

Fein admits there aren't many people at NASA nowadays who were working for the agency in the moon-shot era, as he was. In 1972, he and his wife watched from lawn chairs in a nearby field as Apollo 17 growled skyward in Florida, carrying astronauts to the United States' final moon landing. Their two sons Rick and Cory, who were ages four and six at the time (both UT graduates and Cory graduated from Texas Law in '91), stayed home sick.

"You've got your friends going up, and it's kind of exciting to actually be there and watch them launch," he recalled. "That's a real kick to look back and think that I was friendly with people who ended up walking on the moon." ■

— Contributing writing by Eric Butterman



Going Social

Five practical pointers for litigators using social media

BY JOHN G. BROWNING

IN TODAY'S DIGITAL AGE, INFORMAL DISCOVERY CAN BE accomplished at the speed of a search engine, revealing a treasure trove of information about opposing parties and witnesses with just a few mouse clicks. With 1.3 billion users worldwide posting to Facebook, more than 271 million active users tweeting up a storm on Twitter, and 200+ million Instagrammers posting photos, the amount of content available on social networking platforms is staggering. Trial lawyers simply can't afford to ignore all the posting, commenting, liking and sharing going on around them.

The ABA adopted changes to the Model Rules of Professional Conduct ... now, being competent encompasses being conversant in the "benefits and risks of technology."

But as with any cutting edge area, the impact of social media on the law is constantly evolving, and case law is still developing — leading to uncertainty among litigators about all kinds of issues, such as what to tell a client about "cleaning up" his Facebook page or whether one can re-search social media profiles of prospective jurors.

With that being said, I present to you five practical pointers for litigators on navigating the uncertain waters of social media.

1. Accept the fact that social media is here to stay.

TAKE TIME TO FAMILIARIZE YOURSELF with the features and functionality of social networking sites such as Facebook and Twitter. Regardless of whether you practice civil or criminal law or your area of specialization, social media

content can play a critical role in your cases and you can't afford to simply ignore it.

In August 2012, the American Bar Association (ABA) adopted changes to the Model Rules of Professional Conduct, including a change in what constitutes competent representation; now, being competent encompasses being conversant in the "benefits and risks of technology." This is consistent with a trend in cases nationwide holding lawyers to a higher standard in using technology. Last year, for example, the Ninth Circuit held that a lawyer's failure to investigate the online recantation of an alleged sexual abuse victim constituted ineffective assistance of counsel.

2. Communicate as early as possible with clients about their social media activities.

LITIGATORS ON BOTH THE PLAINTIFF and defense sides of the bar need to communicate as early as possible with clients about their social media activities. Address social media postings in litigation hold/evidence preservation letters, for example. Ethics authorities in New York, Philadelphia and Florida have concluded that attorneys can advise their clients to adopt heightened privacy settings and take other steps to police their online selves so long as applicable rules regarding evidence preservation are not violated. However, you need to know the truth — warts and all — about

what your client may have already posted so that these activities can be addressed within the context of the case (some posts may be embarrassing, but not relevant, for example). Too many lawyers have been taken by surprise when their opposing counsel knows more about their clients' Facebook activities than they do.

3. Know where the ethical boundaries are when it comes to obtaining information.

COURTS NATIONWIDE HAVE HELD THERE'S nothing wrong with viewing the publically accessible online activities of a party or witness. But remember that when it comes to communicating, the same ethical prohibitions against communications with a represented party or being deceptive with third parties still apply in cyberspace. You can't "friend" a represented party (or have your paralegal "friend" them) in order to gain access to their privacy-protected Facebook page, as two civil litigators in New Jersey learned the hard way. And you can't pose as someone else ("false friending") or adopt a fake online identity in order to communicate with witnesses. Not only have ethics opinions in various states addressed this, but litigators have also learned these lessons the hard way.

In Ohio, after a defense attorney's investigator allegedly "false friended" the minor plaintiff in a personal injury case to gain access to her private Facebook page, the result was a separate civil suit for invasion of privacy — naming the lawyer, the investigator and the insurance company that assigned the case to them as defendants. In another Ohio case, an assistant prosecutor caused a mistrial (and was fired) when it was revealed that he had posed as the fictitious "baby mama" of a murder defendant on Facebook in an attempt to persuade two alibi witnesses not to testify for the defense.

4. Remember that existing rules still apply in formal discovery.

WHILE SOME COURTS HAVE GIVEN FAIRLY wide latitude to parties seeking discovery of social media content (in some cases going so far as to compel disclosure of the responding party's Facebook password), the current trend is to deny requests for production of social networking information that are too broad in scope or that seek information that's not

relevant. Litigators are best advised to tailor their discovery requests more narrowly, referencing specific claims or defenses and limiting the requests to pertinent time periods, as much as possible.

5. Remember social media can have an impact on virtually every aspect of a case from start to finish.

COURTS IN A NUMBER OF JURISDICTIONS, including Texas, have examined an out-of-state party's activities on social networking sites as part of the consideration of whether minimum contacts exist such that the court can assert jurisdiction. Service of process is another issue. Courts in at least eight countries, including some federal and state courts in the U.S. (including Texas) have held that serving a party via social networking platforms, like Facebook, is a permissible form of substituted service. And when it comes to jury selection, don't forget about "Facebooking the jury." Courts and ethics authorities across the country (including a recent ABA Formal Opinion) have held there is nothing wrong with poking around the Facebook musings of prospective jurors, so long as lawyers don't cross the line of engaging in actual communication with the panel member.

In at least one state (Missouri), lawyers have an affirmative duty to conduct such jury research. Just be aware of a given site's features, such as auto-notifications to an account-holder by sites like LinkedIn or Twitter that specify an individual has viewed his/her profile or is "following" them. Choosing not to conduct such research when the other side is doing so may put your client at a distinct disadvantage — think of it as the *voir dire* equivalent of bringing a knife to a gunfight.

In short, social media can permeate virtually every aspect of a case. Savvy litigators in the 21st century need to learn the boundaries of using social media to their client's advantage — whether they "like" it or not. **T**

"Social Media and Litigation Practice Guide" is available for purchase at legalsolutions.thomsonreuters.com.

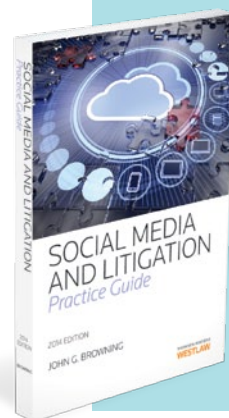
About the Author

John Browning, '89, is a Dallas trial lawyer and administrative partner at Lewis Brisbois Bisgaard & Smith LLP, as well as an adjunct professor in Dallas and Fort Worth, a prolific writer, speaker and die-hard Longhorn.

Browning has written numerous articles on social media's impact on the law and one of the leading books on the subject, "The Lawyer's Guide to Social Networking: Understanding Social Media's Impact on the Law" (Thomson Reuters/West Publishing, 2010). His new book "Social Media and Litigation Practice Guide" (West Publishing, 2014) is an analysis of case law and trends and a manual for lawyers and judges using social media personally and professionally. He has a forthcoming casebook on a similar topic.

His writing and journalism awards include four Burton Awards for Distinguished Achievement in Legal Writing, the 2012 Outstanding Law Review Article of the Year awarded by the Texas Bar Foundation, and the Clarion Award for Outstanding Specialty Newspaper Column for the syndicated column "Legally Speaking" (which he's been writing since 2005), among many more. Browning was recently

named chair of *Texas Bar Journal* magazine's editorial board. He said he has fond law school memories of professors Charles Alan Wright and Michael Tigar as well as Bryan Garner, whom he calls a mentor and friend who nurtured his love of writing.



Small Trucks, Big Business

Students get involved in Austin's food truck boom

BY SAMANTHA YOUNGBLOOD

PHOTOS BY DEVAKI KNOWLES

BY OFFERING A FRESH TAKE ON SAGE LEGAL ADVICE, the Entrepreneurship and Community Development Clinic (ECDC) at The University of Texas School of Law is serving up small business legal solutions so mobile foodies can do what they do best — make delicious street food. ¶ The story starts with Clinical Professor Heather Way, director of the ECDC. She crossed paths with a food truck operator at a community event who introduced her to the Austin Food Trailer Alliance,

an informal group of owners and operators. Way is always on the lookout for community groups, small businesses and potential clients for her clinic students to partner with.

Legal obstacles often stand in the way of starting up a food truck, like many small businesses. Last spring, the clinic had one food truck client, Angry Egg Roll, and it has two new food truck operators on board for the fall.

“There’s something inherently sexy and exciting about food trailers,” Way said. “The innovation and creativity happening around food in Austin draws students in. They seek out that connection to the community.”

The ECDC provides transactional law representation to nonprofits, community groups, low- and moderate-income clients, and entrepreneurs with business, real estate and intel-

lectual property law needs. Students work in teams of two (under attorney supervision) with three to four clients a semester and dive into work the first few weeks of class.

Mobile food establishments are subject to the same food and safety rules as their brick-and-mortar counterparts, plus some. There are ordinances and code requirements to abide by in Austin, but the city has been progressive, Way said. She added that laws have changed in great ways to accommodate vendors.

Keeping Austin Fed

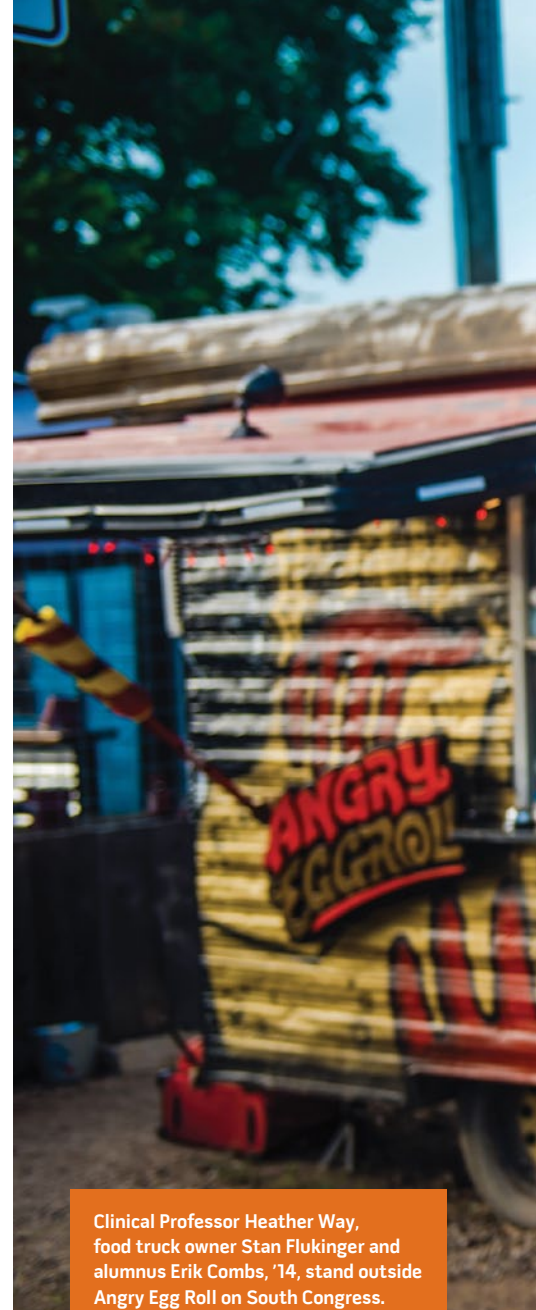
MOBILE KITCHENS DATE BACK TO THE chuck wagons of the 1860s, invented by a Texan rancher, of course, named Charles Goodnight. The food suited the needs of cowboys: hearty and easy to preserve — beans, coffee,

salted meats. There were also the roving “Chili Queens” of San Antonio about that same time, serving up pots of food in open-air *mercados*.

Austin’s food truck culture was born in 2006 with credit typically going to modern-day pioneers, Flip Happy Crepes. The two friends who operated the business, which closed in 2013, cooked crepes out of a vintage Avion trailer near Barton Springs Road.

Could this national trend have an eminent end? Not likely said Tony Yamanaka, who started the Austin Food Trailer Alliance in 2012 and runs the website foodtrailersaustin.com. He is also one of the partners in Trailer Food Tuesdays at the Long Center, a once monthly curated meetup of the finest in Austin’s mobile cuisine.

He said he’s seen new business generated this year and an increased number of food trucks



Clinical Professor Heather Way, food truck owner Stan Flukinger and alumnus Erik Combs, '14, stand outside Angry Egg Roll on South Congress.



turning into brick-and-mortar restaurants or expanding with a national fleet. Success led Franklin Barbecue to a brick-and-mortar with a famously long line and critical acclaim including *Bon Appétit* magazine calling it the “best barbecue in America.”

“Austin is not the first to make street food cool, but it has taken it to the next level because of the quantity,” Yamanaka said. “I think we’re one of the only cities with purpose-built parks (like Midway) with multiple — six to eight — trailers. They’re destinations here.”

In September, the City of Austin’s Environmental Health Services Division had 1,463 active permits for food trucks in Austin and surrounding county areas.

Food trucks have materialized everywhere and the operators are running into legal ob-

stacles. The top three being: leases, trademarks and employment.

The size of the small businesses and scope of their legal needs mean a team of clinic students can resolve a client’s needs in one semester, the average duration students stay in one clinic at Texas Law, Way said. There are also advanced clinic students, such as Samantha Blons, ’14, who, along with a partner, organized a lease workshop for the Austin Food Trailer Alliance in the fall of 2013 in an unlikely location for a legal clinic: a bar.

At the meeting she defined terms often found in leases, types of important provisions to understand, red flags and offered insight from interviews she did with operators in varying stages of business on topics such as lease negotiation. Her team developed a flyer that can be handed out at future alliance meetings as well.

“It was a helpful experience for me because I fear public speaking,” Blons said. “I found it to be invaluable. Being able to present complex legal and business concepts and to interact with clients personally.”

Blons already knew she wanted to pursue a career in corporate law when she signed up for the clinic. She is an associate in Baker Botts LLP’s Houston office in the corporate department.

Anything but Angry Food Truck Owner

WHEN WAY AND HER ECDC STUDENTS presented at an alliance meeting, Stan Flukinger, owner of the food truck Angry Egg Roll, sat in the audience. For Flukinger, the opportunity to receive pro bono legal advice was too good to pass up.

“Legal help was on a list of 18,000 things I needed to do on a paper thin budget,” he said.

Flukinger’s biggest concerns were trademarking his business name and logo, protecting the secrecy of his recipes and hiring an employee. His trailer doesn’t have a menu (but it has a tip jar) because he only makes two egg rolls: meat and no meat.

“I only make these two egg rolls and they’re easy enough to copy,” Flukinger said. “I knew there were ways I wanted to protect myself in terms of recipe and name. But it was a luxury and I wasn’t sure how to prioritize.”

Erik Combs, ’14, and partner Kristen Monkhouse, ’14, were assigned to Flukinger’s case as students in the ECDC. They met at clinic orientation.

“He’s an exciting and very interesting guy,” Combs said of Flukinger. “He’s very passionate about what he does. Before I even knew I was assigned to help him, I was immediately like, ‘I want to work for that guy.’ It’s very interesting and fun to work for someone who cares about what they do.”

Not to mention, Combs likes egg rolls.

Combs and Monkhouse counseled Flukinger on employment laws governing small business employers and assembled a binder addressing a range of legal compliance issues. They developed a confidentiality agreement to protect his recipes, drafted a work-for-hire agreement for his logo artists and filed a federal trademark application for the business.

“My eyes opened pretty quickly to the breadth of things we were going to have to take a look at,” Combs said. “He had a lot of ideas and a grand scheme of where he wanted to take things.”

Flukinger is originally from New York City and Brooklyn. His family moved to New Orleans six months before Hurricane Katrina, after which he briefly moved back to New York before deciding to relocate to Austin in 2006.



Top: Angry Egg Roll features two menu items: meat, no meat. Right: Trying a little or a lot, people sample the latest and greatest mobile food offerings at Trailer Food Tuesdays, held the last Tuesday of the month at the Long Center. Photo courtesy of Trailer Food Tuesdays.

He has had many professions, and mostly high-pressure positions including bartending at busy downtown bars and selling medical devices to brain surgeons, he said. Before starting Angry Egg Roll, he worked for a nonprofit as a technology director, but was laid off last year.

“I’ve done hard, hard jobs and this is the hardest job I’ve ever done,” Flukinger said. “It’s a nine-to-five job that starts at 9 a.m. and ends at 5 a.m.”

His life, like his egg rolls, is full of flavor and more than anything, Flukinger just wants his egg rolls to exist. Flukinger searched the South for the hulk-style Cantonese egg rolls, bursting with meat and veggies remembered from his youth, but to no avail.

“The further from New York I get, the worse they get,” he said. “That’s where the name comes from: I was angry I couldn’t get a good egg roll.”

With some previous restaurant experience under his belt and encouragement from a restaurant owner, friends and family, Flukinger decided to start small (in terms of kitchen size, not egg roll size — his crispy, fried rolls are huge). He imports the egg noodle wrappers, chops carrots, mushrooms, cilantro, bamboo

shoots, garlic and caramelized-garlic roasted cashews or pork and packs it tight into his signature roll before frying and serving with sweet chili dipping sauce and a bite-size York Peppermint Pattie.

“I feel like it’s the perfect food,” he said. “It’s got all four food groups. I never get sick of eating them. I joke, it’s not only the best thing people have ever eaten, it’s the best thing in the history of mankind anywhere in the world, in the universe.”

Hungry yet?

Flukinger’s belief in his product is unwavering and his passion for his startup is contagious.

“[Food trailer operators] are by and large very passionate about their work,” Way said. “That passion rubs off on all of us.”

The clinic’s work paid off when Flukinger was able to open a second food cart on “The Drag” near campus.

“To watch the second trailer go up while we were working with him; to see his sign and know we entered the application for it ... it was a big deal and a great feeling,” Combs said.

Flukinger said the help he received from the ECDC was “fantastic.” He asked Combs to stay in touch, shook his hand and said that maybe some day he’d be able to pay him after Combs starts working as an associate this fall at Pirkey Barber PLLC in Austin in trademark law. ■

Faculty NEWS

Fantasy Homeownership

Professor Mechele Dickerson's book on homeownership points to unfavorable facts in the housing industry | BY SAMANTHA YOUNGBLOOD

IN HER LATEST BOOK, Professor Mechele Dickerson analyzes a pillar of the American Dream: homeownership. Published this summer by Cambridge University Press, "Homeownership and America's Financial Underclass: Flawed Premises, Broken Promises, New Prescriptions" outlines misconceptions of homeownership and the modern realities of the residential housing industry — especially for blacks, Latinos and the lower class. Dickerson's argument: no matter if you rent or own, when it comes to housing, it's anything but affordable and fair. But as the book title suggests and in the Q-and-A that follows, the author provides the reader with solutions to ponder.



What is the Happy Homeownership Narrative you mention repeatedly in the book, and what's the reality your research points to?

The Happy Homeownership Narrative is the "and we all lived happily ever after" story that most Americans hear in their heads when they think of being a homeowner. In the Narrative, all renters can afford to buy homes, all homeowners receive tax benefits, all homes always appreciate in value, you own your home forever

and homeowner stability is an absolute good. The Narrative is no longer true for many Americans, and was never true for most blacks and Latinos. It's not true because renters

need savings and stable income to buy a home with a low-cost loan, and then to

repay the mortgage loan (and pay for routine maintenance) over 15 to 30 years. Wages have been stagnant for most workers for about 30 years, the job market is unsteady and the U.S. workforce has become much more mobile. Workers cannot safely assume they will have steady employment or be in the same city for 15 to 30 years, and it's impossible to know if you will need to move quickly to take a job in another city.

What is the biggest homeownership myth your book debunks?

The biggest myth is probably that homeownership provides the same positive economic benefits to every person who owns a home. That's just not true, as wealthier homeowners receive significantly



Mechele Dickerson is the Arthur L. Moller Chair in Bankruptcy Law and Practice.

more financial and non-financial benefits than all other homeowners. Homeownership is not a one-size-fits-all concept. High-income homeowners receive tax benefits that are not useful to lower-income homeowners (who rarely itemize their deductions), and only wealthy neighbors have the political clout to protect their neighborhoods by fighting for new schools, better parks, etc. Another non-financial benefit of being a homeowner is the ability to band with other homeowners to protect the home values in your neighborhood by, for example, making sure non-desirable but socially beneficial property uses (like homeless shelters, half-way houses) aren't

placed in your neighborhood. Wealthier homeowners band and lobby much more effectively than lower-income homeowners.

Your book offers a lot of historical context including booms and crashes in the U.S. housing market. What was the best decade to be a homeowner?

The "best" decade to buy a home depends a lot on the buyer's demographics, and whether the buyer could buy a high-appreciating home with a low-cost mortgage product. Assuming you could qualify for a low-cost, government-subsidized, 15- to 30-year fixed interest rate loan, the best decade was probably the early 1960s. During that time, suburban neighborhoods were expanding, home prices were soaring, employment options were good for most workers (even those who lacked college degrees) and workers generally were still receiving wage increases. Of course, that wasn't necessarily the "best" decade if you were a black homeowner. Lenders and realtors routinely discriminated against black renters during that period and blacks were shut out of many higher-wage jobs that provided stable income that could be used to qualify for a lower-cost loan (whether or not the bank actually approved it).

What was the most difficult chapter/section to write?

The hardest sections to write were the ones that debunked the myths associated with homeownership. Although I read about economic news (some of it quite dreary) almost every day, it was painful for me to see how many Americans are struggling. And it was shocking to see how few Americans have benefited from the current economic recovery. For example, while the top 20 percent of U.S. households have had income growth since the last recession, income for the bottom 20 percent declined. In addition, writing these sections was painful

The biggest myth is probably that homeownership provides the same positive economic benefits to every person who owns a home.

for me because I learned just how many workers want to work full-time, but instead are “underemployed” because they can only find part-time jobs. Finally, until I started writing this book, I really had not focused on the fact that it is now virtually impossible to live what most people view as the “American Dream” if you do not have a college degree.

How does race influence homeownership? Why does the housing industry need more black and Latino homeowners?

Data recently released by the U.S. Department of Education sums up why race matters to the U.S. housing market. In 1997, white students accounted for almost two-thirds of all public school students in the U.S. This fall, whites will be less than half of public school students. This isn’t because whites are sending their kids to private school (though it’s

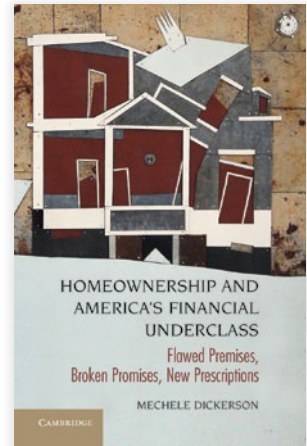
true that private schools overall are disproportionately white). The public school numbers are declining because whites have slower birth rates than non-whites, especially Latinos and Asians. From 2000 to 2012, more than 90 percent of the overall population growth in the U.S. came from minority groups, and white babies are now less than 50 percent of all babies born in the U.S. If we don’t find a way to improve the economic conditions of blacks — and especially Latinos — the housing market will never recover because most of the people who will be in the demographic age group that should be buying homes will be a race other than white.

Will mortgage innovation come to our rescue again?

I have no doubt that lenders will be asked to “innovate” mortgage products to increase housing sales. The toxic products that caused the housing market to collapse will come back in disguise, though. It’s actually started to happen already because subprime loans are now being marketed as “nonprime.” Also, Reuters recently reported that old “liar loans” (where borrowers didn’t have to document their income or assets) are being repackaged as “alternative documentation loans” or “alternative-income verification loans.”

What’s different about Austin when it comes to housing and homeownership?

Austin’s problems are fairly typical of the problems I discuss in the book. Austin neighborhoods are largely segregated by race, which is true for neighborhoods across the country. Whites move back into black and Latino neighborhoods (like East Austin) only when those neighborhoods are gentrifying. As is the case in



“Homeownership and America’s Financial Underclass” is available for purchase on Amazon.com. Image courtesy of Cambridge University Press.

East Austin, when black or Latino neighborhoods re-segregate, higher property taxes almost always follow the newer, richer white neighbors into the neighborhood. This higher cost of living in the newly gentrified area then drives out the lower-income black/Latino homeowners. Austin is fortunate to have a strong economy, and we did not suffer as much as other areas did during the recession. The growth in Austin’s economy has been largely because city leaders have done a good job of recruiting high-tech companies here. But, as recent news reports disclose, high-tech companies (like Google, Yahoo, Facebook, Apple, etc.) are overwhelming male and white. Given this, it is not surprising that the workers Austin attracts most are not black or Latino. If our population growth is non-white, our neighborhoods will become non-white as well. ■

Mechele Dickerson is the Arthur L. Moller Chair in Bankruptcy Law and Practice and a nationally recognized consumer debt and bankruptcy scholar.

NEW FACULTY

Lauren Fielder *Senior lecturer*

DESPITE MISSING the cooler temperatures of Switzerland in the summer, Lauren Fielder, the new director of Graduate and International Programs, could not be more excited to live in Texas again and work at The University of Texas School of Law.

Fielder is an African law expert and is almost finished with a Ph.D. program in Switzerland on African comparative constitutional law with a focus on gender equality. She said she became interested in the subject when she was in the Master of Laws (LL.M.) program at Texas Law.

“Texas Law’s human rights classes set me on the path to a career in

African law,” Fielder said. “I think it changed the course of my life.”

The opportunity to return to Texas and lead the LL.M. program was one Fielder said she could not pass up. Fielder heads up a new department at Texas Law, which unites the LL.M. program with other graduate and international opportunities for students, such as fellowships, internships and study abroad, and research partnerships.

It’s a momentous time to lead an LL.M. program in Texas. The Texas Supreme Court proposed reforms expected to be enacted this fall to the state’s international law practice rules, which will allow eligible foreign lawyers to sit for the Texas Bar.



“It’s one more thing that will improve the quality of the international program and make it one of the finest programs in the U.S.,” Fielder said. “I expect applications to UT will increase and the caliber of the applicant pool will become even more impressive.”

For the past six years, Fielder has lived in central Switzerland serving as assistant director of

the Transnational Legal Studies Program at the University of Luzern, as well as teaching a variety of courses on topics such as African law, U.S. constitutional law, cultural property in times of conflict, international children’s rights, transnational litigation and more. She’s also simultaneously had visiting and adjunct positions at Brooklyn Law School and John Marshall Law School. Previously, Fielder was an adjunct professor at Baylor Law School and a lecturer in Baylor University’s Political Science and International Relations Department. ■

— *Samantha Youngblood*

NEW FACULTY

Andrea Marsh *Lecturer*

ANDREA MARSH IS the new director of the Pro Bono Program, a project of the William Wayne Justice Center for Public Interest Law at The University of Texas School of Law. She’s an experienced civil rights attorney and public policy advocate.

Prior to joining the Justice Center, Marsh served as executive director of the Texas Fair Defense Project (TFDP) for 10 years. She founded the Austin-based nonprofit while working on a fellowship project to improve Texas counties’ compliance with federal and state laws guaranteeing low-income individuals’ right to counsel in criminal cases.

“My career has been devoted to securing the right to counsel

in criminal courts, and I’ve seen firsthand how difficult it is for the clients I’ve worked with to get legal help with the many civil legal consequences that can result from criminal charges,” Marsh said. “There’s a huge amount of need for pro bono legal services and a huge amount of legal talent in this state. There’s a lot of room to develop that further.”

Marsh will teach the nonprofit internship class and organize pro bono projects and legal clinics for students, faculty and alumni while working with student Pro Bono Scholars, Pro Bono in January student leaders and the student board for the Justice Center. Her goal is for students’ pro bono experience in law school to carry forward into their careers.



“I want to make sure the Pro Bono Program continues to respond to the needs and demands of the community and state by harnessing the interests of students,” she said.

Originally from Wichita, Kan., Marsh is a graduate of Tulane University and Yale Law School. From the beginning of her career, she’s made a big impact. Her first

case, *Rothgery v. Gillespie County*, resulted in a U.S. Supreme Court opinion holding that the Sixth Amendment right to counsel attaches almost immediately after arrest, and effectively ended the practice of delaying appointment of counsel for months or years after a defendant was released on bond.

Marsh has been awarded several prestigious public interest fellowships and awards including Texas Lawyer newspaper’s Extraordinary Women in Texas Law Award in 2008 and the State Bar of Texas’ J. Chrys Dougherty Legal Services Award in 2014. ■

— *Samantha Youngblood*

NEW FACULTY

Andrew Kull *Distinguished senior lecturer*

THE UNIVERSITY OF Texas School of Law welcomes Andrew Kull, the nation's leading expert in the area of restitution and an award-winning teacher, to its faculty full-time this fall. Kull was a visiting professor at Texas Law last academic year. He is also a well-known constitutional historian who has previously taught contracts, restitution, commercial law, property law and constitutional law.

From 2002 to 2014, Kull was the Austin B. Fletcher Professor of Law at Boston University School of Law and before that was the Robert T. Thompson Professor of Law at Emory University School of Law. Preceding his career in academia, he practiced law with Paul, Weiss and Cleary, Gotlieb in New York and Paris.

During his time at BU, Kull received the Michael W. Melton

Award for Teaching Excellence (2007), the Metcalf Award for Excellence in Teaching (2008) and the Massachusetts Bar Association Law Professor of the Year Award (2009).

Kull said students like his approach to teaching, which sounds similar to how one might direct theater.

"I want you to set the scene for me," he tells his students as they go through the cases. "I like to ask the students, 'what is going on here in terms of telling a story? What happened from my point of view, your point of view, what's at stake? Facts first always, law afterwards. The curtain rises. What do we see?'"

Kull is quick to point out that this exercise is not just for fun. Once the students get a realistic sense of the factual situations from which the law is created, their intuition prepares them to see what the law is or is not or might be.



He said he appreciates the freedom to pursue his own agenda of legal topics, such as the neglected law of restitution or unjust enrichment. He served as reporter for "Restatement Third, Restitution and Unjust Enrichment" (American Law Institute, 2011), which takes two volumes and approximately 1,400 pages to describe a subject that disappeared from law school curriculum decades ago. He spent 15 years working on it. "It's a very powerful principle," Kull said about restitution and unjust enrichment.

"An example for the first day of class might be 'Bank Error in Your Favor, Collect \$200.' There are important applications through every field of law."

The modern law of restitution incorporates a lot of traditional equity jurisprudence, he said. Restitution is also the place to learn about constructive trusts, equitable liens, subrogation — both what they are and what to do with them. Kull is collaborating on a restitution casebook with Dean Ward Farnsworth in an attempt to fold the subject back into law school curriculum.

New to the state of Texas, Kull's favorite discovery last year was the Livestock Show and Rodeo in Fort Worth. "I plan to be there every year," he said. Kull and his wife just bought a house in East Austin and enjoy traveling the state, county-by-county. ■

— *Samantha Youngblood*

You Can Quote Them **FACULTY IN THE NEWS**



"Families fleeing violence in their home countries, **many of whom are asylum seekers**, should be released whenever possible and as a last resort, housed in home-like facilities, that are not run by ICE [Immigration and Customs Enforcement] nor private for-profit prisons."

Barbara Hines, clinical professor and co-director of the Immigration Clinic *The Texas Tribune*, June 20, 2014



"It is important to remember that, despite their incarceration, **inmates retain an inviolable set of rights**: the rights to dignity, health, life and freedom from cruel, unusual, inhuman or degrading treatment. The heat in Texas prisons continues to violate all of these rights, and there is no excuse for this blatant disregard for fundamental human rights."

Ariel Dulitzky, clinical professor and director of the Human Rights Clinic *Huffington Post*, June 20, 2014

NEW FACULTY

Lisa Eskow Lecturer

LISA ESKOW JOINS THE University of Texas School of Law legal writing faculty this fall after 18 years as an appellate specialist in private practice and public service. She has argued in the United States Supreme Court, Texas Supreme Court and federal and state courts of appeals nationwide.

Last academic year and in 2002, she was an adjunct professor at Texas Law, teaching advanced writing for litigation, legal research and writing for foreign lawyers, and United States Supreme Court advocacy. This year, she'll teach the 1L legal research and writing curriculum, including persuasive brief writing and oral advocacy.

"I enjoy working with students and seeing the transformation in their writing," Eskow said. To her, teaching legal writing is an "intellectual puzzle" that must



be "figured out, piecing together material in a way that's both accessible and enjoyable."

During her decade in the Supreme Court and Appellate Litigation Group at Weil, Gotshal & Manges LLP, she mentored junior attorneys on their writing and witnessed the same skills transformation. Eskow managed appellate and trial-briefing teams representing private and public clients (such as eBay Inc. and the Republic of Austria) before the United States Supreme Court, federal and state appellate courts, arbitration tribunals and district courts.

In 2003, Eskow argued at the U.S. Supreme Court as lead counsel in *Roell v. Withrow*, obtaining a 5-4 victory for petitioners in a case concerning jurisdiction under the Federal Magistrate Act. She called the experience a "rigorous intellectual endeavor that was also amazingly fun."

"When you argue in that court, there's nothing like it," Eskow said. "You're so close to the justices, participating in such an immediate way. It sounds cliché, but it really was a dream come true."

She also recently represented an exoneree pro bono, filing an original writ of mandamus in the Texas Supreme Court against the Texas Comptroller, challenging the Comptroller's denial of statutory compensation under the Texas Wrongful Imprisonment Act. After the court requested briefing on the merits and scheduled oral argument, the Comptroller's office

reversed its position and paid the exoneree's claim in full.

Prior to her time at Weil, she served as Deputy Solicitor General in the Solicitor General Division of the Office of the Texas Attorney General. Before that, she was an associate at Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel LLP and clerked for the Hon. Pamela Ann Rymer on the United States Court of Appeals for the Ninth Circuit.

Originally from Manhattan, Eskow said she loves Austin — where she's lived for almost 20 years — but is a New Yorker through and through. Before graduating from Stanford Law School, she spent six years in book publishing after receiving her B.A. from Harvard University. ■

— Samantha Youngblood



"Unions are already reeling. At a time when workers are losing economic ground, we should be looking for ways to strengthen their ability to join with co-workers and bargain collectively to improve their lot."

Willy Forbath, associate dean for research and the Lloyd M. Bentsen Chair in Law
The New York Times, July 2, 2014



"In recent years, Texas has dramatically reduced the use of **psychotropic drugs in foster care**. And understanding how we successfully tackled this issue may serve as a roadmap for solving other pervasive public policy problems."

Scott McCown, clinical professor and director of the Children's Rights Clinic
Houston Chronicle, Sept. 4, 2014; *Fort Worth Star-Telegram*, Sept. 2, 2014; and *Trib Talk*, Aug. 26, 2014

Class NOTES

1951

FORREST BOWERS was named a Texas Legal Legend by the Litigation Section of the State Bar of Texas. Bowers tried hundreds of jury cases and handled more than 100 published appellate cases during his career. He is also a World War II veteran who flew P-51 fighter planes in the Pacific.

1962

JAMES L. BRANTON received the Texas Bar Foundation's Outstanding 50 Year Lawyer Award. He is a shareholder at Branton Hall Rodriguez Cruz.

1963

DAN NARANJO was selected as a member of the American Bar Association's Standing Committee on Public Education. He will serve a three-year term.



1964

SHANNON RATLIFF was awarded a University of Texas Presidential Citation by UT President Bill Powers. The owner of Ratliff Law Firm, Ratliff also served on the UT Board of Regents from 1985-91.

1966

HARRY TINDALL was honored with the Gay G. Cox Collaborative Law Award from the Collaborative Law Institute of Texas.

1968



TEX MCIVER was ranked in Chambers USA for 2014. McIver is a partner with Fisher & Phillips in Atlanta.

1971

REP. DREW DARBY joined Jackson Walker as of counsel in the firm's real

estate and energy practice groups in San Angelo and Austin. Darby, who has represented District 72 in the Texas House of Representatives since 2007, is also the founder of Darby Law Firm and Darby Title.

JOE A. RUDBERG was a key member of a task force that resulted in the Texas Supreme Court's adoption of new rules designed to encourage international practitioners to become members of the Texas Bar. He is a partner at Thompson & Knight in Dallas.

1975



RICHARD R. ORSINGER received the 2013 Franklin Jones Best Continuing Legal Education Article Award from the College of the State Bar of Texas. He is a partner at McCurley Orsinger McCurley Nelson & Downing.



STEVE WATERS was elected chair of the San Antonio Economic Development Foundation. Waters is general counsel of USAA Real Estate Co.

JACK B. ZIMMERMANN received the Harris County Criminal Lawyers Association's Lifetime Achievement Award in May. He continues to practice as a senior partner in a Houston-based firm focused on state, federal and military defense cases.

1976

LINDA ADDISON was named U.S. managing partner for Norton Rose Fulbright. Addison is a founder of the Center for Women in Law.



JEFF B. LOVE received the National Legion of Merit Award for lifelong dedication to Phi Delta Theta. Love is chairman of the Houston office of Locke Lord.

BRUCE MERWIN joined Thompson & Knight's Houston office as a partner in the real estate and banking practice group.

1977



LARRY A. CAMPAGNA was ranked in the tax litigation section of Chambers USA for 2014. Campagna is a shareholder with Chamberlain, Hrdlicka, White, Williams & Aughtry in Houston.



E.G. "GERRY" MORRIS was installed as president-elect of the

Allan K. DuBois, '70

Taking the helm of the State Bar of Texas

Allan K. DuBois, '70, was named president-elect of the State Bar of Texas in May. DuBois was sworn in as president-elect during the State Bar's annual meeting June 26-27 in Austin, and will serve as president of the State Bar from June 2015-16.

As a solo practitioner at the Law Office of Allan K. DuBois in San Antonio, DuBois focuses his practice on civil litigation and appeals, mediation and arbitration. In addition to serving on the State Bar's board of directors, DuBois has also been an adviser to the bar's Alternative Dispute Resolution and Military and Veterans Law sections, and the Texas Lawyers' Assistance Program and Legal Services to the Poor committees. He is a founding member and volunteer attorney with Texas Lawyers for Texas Veterans and serves on the board of the San Antonio Council on Drug and Alcohol Abuse.

2014 Texas Exes Distinguished Alumni Awards

Two law school alums join legacy of lawyer beneficiaries

H. Scott Caven Jr., '64

DISTINGUISHED ALUMNUS OF THE UNIVERSITY OF TEXAS



H. Scott Caven Jr. is managing director of Atlantic Trust. He was a member of the UT Board of Regents from 2003-09, including service as chairman from 2007-09. During a 32-year career with Goldman Sachs, Caven was a vice president and regional manager.

A longtime UT advocate, Caven has chaired the UT System Chancellor's Council and the McCombs School of Business Advisory Council. He is a founding member of the executive committee of the Texas Coalition for Excellence in Higher Education. Caven has also chaired the board of the University of Texas Investment Management Co. and the Texas Growth Fund Board of Trustees. He is also a member of the Board of Trustees for the Texas State History Museum Foundation.

John H. Massey, '66

DISTINGUISHED ALUMNUS OF THE UNIVERSITY OF TEXAS



John H. Massey is chairman of the Neuberger Berman Private Equity Funds Investment Committee and a member of the Co-Investment Partners Investment Committee. He has been a senior executive and director for many insurance companies, banks, industrial and service companies, and consumer product companies.

He and his wife, Elizabeth Shatto Massey, have created endowments at Texas Law, the McCombs School of Business and the College of Education, as well as the Texas Exes. Massey is a recipient of the UT Presidential Citation and a member of the Texas Business Hall of Fame. He is president of the Law School Foundation and a trustee of The University of Texas Foundation.

National Association of Criminal Defense Lawyers. He has been practicing criminal defense law for more than 35 years.

PAUL PARSONS was recognized by the Austin Chapter of the Federal Bar Association with its Outstanding Community Service Award. He has practiced immigration and nationality law in Austin since 1978.

JAMES C. SMITH'S most recent book is "Property and Sovereignty: Legal and Cultural Perspectives." He serves as the John Byrd Martin Chair of Law at the University of Georgia.

1978



PETE GEREN was elected chairman of the Sam Rayburn Foundation. Geren previously served as a member of the U.S. House of Representatives and as U.S. Secretary of the Army. He also serves as executive director of the Sid Richardson Foundation.



CASSIE B. STINSON was elected shareholder of BoyarMiller in Houston.

1979

SEN. RODNEY ELLIS was honored with the Texas Press Association's Friend of the First Amendment Award for the second time.

1980

CARLOS EDUARDO CÁRDENAS received the Duane A. Baker Professionalism Award from the El Paso Bar Association in May.

1981

ELIZABETH HARDEMAN BEACH was appointed by Gov. Rick Perry as judge of Criminal District Court No. 1 of Tarrant County.

1982



ANN BARNETT STERN was honored with Pi Beta Phi's Carolyn Helman Lichtenberg

Crest Award for distinguished alumnae.

1984

DARRELL TAYLOR joined Jackson Walker as a partner in Houston.

1985

TIM TAYLOR was ranked in the real estate section of Chambers USA for 2014. Taylor is a partner at Jackson Walker in Austin.

JERRY WEBBERMAN was included as a recognized practitioner in the environment section of Chambers USA for 2014. Webberman is a partner at Jackson Walker in Austin.

1986



TOM MELSHEIMER was named the 2014 Trial Lawyer of the Year by the Dallas Bar Association. Melsheimer is managing principal of Fish & Richardson's Dallas Office.

1987



MICHAEL J. BYRD joined Akin Gump Strauss Hauer & Feld in Houston as a partner in the global energy transactions practice.



MERRITT M. CLEMENTS rejoined the San Antonio office of Strasburger & Price as a partner practicing commercial litigation.

TOM FORESTIER was appointed to serve as chairman of the Houston Golf Association and as a member of the Houston Club's board and executive committee. Forestier is a shareholder in Winstead's Houston office.

1988

Former Texas Supreme Court **CHIEF JUSTICE WALLACE B. JEFFERSON** received Texas Appleseed's 2014 J. Chrys Dougherty Good Apple Award.

CLASS NOTES

PATRICK GAAS was selected to join the advisory board of the Litigation Counsel of America. Gaas is director of construction litigation with Coats Rose.

1989



PATRICK KEEL was admitted to the Texas Chapter of the National Academy of Distinguished Neutrals. Keel is a mediator and arbitrator who previously served as judge of the 345th District Court of Travis County. He is also a lecturer at Texas Law.

STEVEN H. THOMAS was elected to membership in the Fellows of

the Texas Bar Foundation. Thomas is a shareholder with McGuire Craddock & Strother.

1991

CYNTHIA DEGITZ BAST was recognized by the Texas Affiliation of Affordable Housing Providers with the Jean W. MacDonald Lifetime Achievement Award. Bast is a partner at Locke Lord in Austin.



LEONARD H. DOUGAL was ranked in the environment section of Chambers USA for 2014.

Dougal is a partner at Jackson Walker in Austin.

SANDRA L. PHILLIPS was named vice president, deputy general counsel of Toyota Motor Sales U.S.A. Phillips is a founder of the Center for Women in Law.

1993

HILDA C. GALVAN was named partner-in-charge of Jones Day's Dallas office. Galvan is a founder of the Center for Women in Law.



SHAUNA WRIGHT received the State Bar of Texas 2014 Pro Bono Coordinator Award and was recognized in June at the Bar Leaders Luncheon in Austin. Wright is a partner at Kelly Hart.

1995

DANA O'BRIEN joined CenterPoint Energy as senior vice president and general counsel.

1996

KELLI HESSE BORBÓN joined King & Sommer in San Antonio.

1997

SHANE KIMZEY was appointed chief compliance officer of CEVA Logistics, a global supply chain management company. Kimzey is based in Houston.

2014 Alumni Association Awards

Honorees' service spans multiple areas of law

Terry O. Tottenham, '70 LIFETIME ACHIEVEMENT AWARD



A partner with Norton Rose Fulbright since 1978, Tottenham previously led the firm's

Pharmaceutical and Medical Device Litigation Practice Group and was partner-in-charge of the Austin location.

During his tenure as State Bar president, Tottenham initiated Texas Lawyers for Texas Veterans, a statewide coalition of Texas lawyers who provide pro bono legal services to needy veterans and their families. The popular program has since been replicated in 14 states.

Tottenham also created a Continuing Legal Education program

for public interest lawyers that is now used throughout the United States and Canada. His many accolades include recognition with the inaugural David Garner Pro Bono Award by the Texas Board of Legal Specialization.

S. Jack Balagia Jr., '76 OUTSTANDING ALUMNUS



Jack Balagia is vice president and general counsel of ExxonMobil, where he has worked since

1998. Previously he practiced with McGinnis, Lochridge and Kilgore.

Balagia has served in a number of capacities with committees of the State Bar of Texas, including several years as chairman of the Bar's Public

Affairs Committee. His service to UT includes positions as a trustee of the Law School Foundation and as a member of the Development Board, the Chancellor's Council Executive Committee and the Littlefield Society. Balagia has also helped lead ExxonMobil's Gulf Coast and North Texas Employee Charitable Giving campaigns, and is a member of the Salvation Army DFW Advisory Board.

Harris E. Kerr, '75 HONORARY ORDER OF THE COIF



Harris E. Kerr has practiced law in Midland since 1975. He practices with the firm of Kerr, McCulloch &

McLaughlin alongside fellow Texas Law alumnus Brian T. McLaughlin,

'86. He is proud to come from a long tradition of West Texas attorneys.

Kerr serves on the Board of Directors of the Texas Law Alumni Association, of which he is a past president (1994-95). He also served on the Board of Directors of the New Mexico Military Institute Alumni Association on two different occasions, once as its president, and has served for many years on the Board of Trustees of the New Mexico Military Institute Foundation.

Nicole B. Cásarez, '79 DISTINGUISHED ALUMNUS FOR COMMUNITY SERVICE



Nicole B. Cásarez is an attorney and communication professor at the University of St. Thomas

(UST), where she teaches journalism and media law. This fall, she is a visiting professor at the University of Houston Law Center. She previously practiced with Vinson & Elkins.

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DEAN HARVEY joined Perkins Coie's Dallas office as a partner in the technology transactions and privacy practice.

2000



JONATHAN S. BLUM joined Polsinelli in Dallas as of counsel for the firm's national nonprofit organizations practice.

SHAARIK H. ZAFAR was appointed as the special representative to Muslim communities at the U.S. Department of State in July.

2001

ELSA MANZANARES was selected to join the 40th class of Leadership Dallas. Manzanares is a partner at Gardere Wynne Sewell.

2003

GARY A. MAGNUSON joined the Alex R. Hernandez Jr. Law Offices in Corpus Christi as an associate.

CHRISTINA E. PONIG was promoted to partner at DLA Piper in Houston.

2004

BEN DE LEON, CHRIS HAMILTON and **ANNE LANGDON HAMILTON**

secured a \$27 million verdict against McDonald's in Brazos County. De Leon practices with De Leon & Washburn in Austin, and the Hamiltons practice at Standly Hamilton in Dallas.

BETH CHEESEMAN KEARNEY joined Kading Briggs in Irvine, Calif., as a partner.



KINDEL ELAM was promoted to executive vice president and general counsel at Mattress Firm.

Cásarez has directed an Innocence Investigations class at UST since 2001. She and her students received national media attention in connection with the case of Texas death row inmate Anthony Graves, whose conviction was reversed by the U.S. Fifth Circuit Court of Appeals in 2006. Graves was exonerated in the fall of 2010 and founded a Texas Law scholarship in honor of Cásarez.

John B. Connally IV, '97 OUTSTANDING YOUNG ALUMNUS



John B. Connally is a partner in the Houston office of Vinson & Elkins. He is co-head of the

Energy Transactions and Projects Practice Group and is the youngest member of the firm's Management Committee.

Connally has spent his entire career with Vinson & Elkins, in both New

York and Houston. He has worked on projects in more than 20 U.S. states and more than 25 countries. His service includes work on the boards of the Association of International Petroleum Negotiators, the Texas Law Review Association, Texas Law's Center for Global Energy, International Arbitration and Environmental Law, the Texas Journal of Oil, Gas and Energy Law, and Bering Omega Community Services.

Miriam "Dusty" M. Burke, '68

MERITORIOUS SERVICE AWARD



Miriam "Dusty" Burke is a partner at Vinson & Elkins, where she has practiced in the

employee benefits and executive compensation group for 25 years. Prior to Vinson & Elkins, she was a briefing attorney for Jim Kronzer at Kronzer, Abraham & Watkins in

Houston. She also taught graduate and undergraduate law courses at the University of St. Thomas in Houston for more than 15 years.

Burke is a frequent speaker at conferences and employee benefits and executive compensation seminars, and has authored and published articles on employee benefits and Employee Retirement Income Security Act (ERISA) litigation. She has considerable experience defending clients in ERISA class action lawsuits involving breach of fiduciary duty claims, claims for pension plan benefits, stock drop claims and anti-cutback claims.


Robert C. Walters, '83

MERITORIOUS SERVICE AWARD



Robert C. Walters is a trial partner with Gibson, Dunn & Crutcher and has extensive

experience in antitrust, securities, class action and business tort

 **Watch videos** that pay tribute to the honorees on YouTube. www.youtube.com/utexaslaw

litigation. He serves on Gibson Dunn's Executive Committee and as partner-in-charge of the firm's Dallas office. He previously held leadership roles at Energy Future Holdings and Vinson & Elkins.

Walters is a member of the American Law Institute and has served as an adjunct professor at Texas Law and Southern Methodist University School of Law. He received the 2005 Burton Award for Legal Writing.

Walters has served on the Dallas Citizens Council, the Dallas Council on World Affairs Board of Directors, as vice chair of Klyde Warren Park and on the Executive Committee of the University of Texas System Chancellor's Council.

CLASS NOTES

2005

CHRIS DODSON was elected to partnership at Bracewell & Giuliani.

MICAH R. PRUDE was elected to partnership at Thompson & Knight.

CHRISTOPHER D. SMITH was elected to partnership at Thompson & Knight.

2006



STEPHANIE GAUSE was named to the Dallas Business Journal's "40 Under 40" list for 2014.

AUDREY MOMANAEE was named a partner at Gardere Wynne Sewell.



ROBERT RUSSELL joined Segal McCambridge Singer & Mahoney in Austin as of counsel.

2007

KATIE COLEMAN joined Thompson & Knight as an associate in Austin.

RICK FLORES and **KELLEY FALCÓN**, '11, were married Dec. 13, 2013, in Austin. Rick works at Minton, Burton, Bassett and Collins and Kelley is with Garretson Resolution Group.



ELIZABETH L. DANIEL joined Osborne, Helman, Knebel & Deleery in Austin as an associate.

MARISSA MARQUEZ is now an attorney investigator with the City of Houston's Office of Inspector General.



BLAKE ROYAL was selected as a fellow of the Houston Young Lawyers Foundation. Royal is a senior associate at BoyarMiller.

2008

ALLISON BILES joined Snell & Wilmer as a staff attorney in Denver.

BRIAN POTTER opened the Law Office of Brian C. Potter in Austin.

2009

BENJAMIN B. HALLMARK joined Thompson & Knight as an associate in Austin.

2010

MARISSA BRITTON joined Davis Graham & Stubbs as an associate in Denver.



BRENT SALDAÑA joined Farella Braun + Martel as an associate in San Francisco.

2012

ELIZABETH L. HUMPHREY opened her own practice in Houston focused on business law, estate planning and tax law.



ADRIANA REYES joined Procopio, Cory, Hargreaves & Savitch in Austin as a foreign exchange lawyer.

2013

JILL CARVALHO joined Thompson & Knight as an associate in Los Angeles.



TEXASLAW

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Dress is business casual

In Memoriam

*In honor of the lives and legacies of our alumni, we pay
tribute to those who died between
Feb. 15 and Aug. 31, 2014 with this list.*

James R. Black Jr., '40
The Honorable Robert S. Strauss, '41
Murray L. Harris, '42
Andrew Z. Thompson, '42
Orrin W. Johnson, '47
James Avery Rush Jr., '47
Tom Burrus, '48
Clarence Everett Kendall Jr., '48
The Honorable H. M. Lattimore, '48
Claude Traweek Allen, '49
Donald A. Buckner, '49
Lawrence Jack Moore, '49
Nelson T. Alter, '50
Marshall Boykin III, '50
Glaydell Frank Brown, '50
Sam W. Davis Jr., '50
The Honorable Charles R. Schulte, '50
John B. Abercrombie, '51
Robert Lee Bradley, '51
Judge William A. Faulk Sr., '51
Lukin Gilliland, '51
James Warren Bowman, '53
Edmund L. Cogburn, '54
Jack Q. Tidwell, '54
Douglas Weitzel, '55
The Honorable Galloway Calhoun Jr., '56
Joe Davis Foster, '56
Robert David McGee, '56
David S. Dale, '57
George Arnold Canon, '59
Edward E. DeWees Jr., '59
Jerry Paul Jones, '59
Everett A. Marley Jr., '59
Joseph L. Tita, '59
George Eulace Dowlen, '60
Jack Hartel, '60
Frank Steve Manitzas, '60
Lucian L. Morrison, '60
Leo Patrick Ferris, '61
Ronald L. Blackstock, '62
Wanda Elaine Creamer, '62
Laurence D. Sikes Jr., '62
Lee W. Henslee III, '63
Jack E. Walter, '63
Charles McDonald White, '63
Jerry Donald Davis, '64
Ken Muldrow, '64
Gary L. Levering, '65
Hal Nelson, '65
David Mira Stiles Jr., '65
The Honorable Patrick A. Tinley, '65
Ralph H. Daugherty, '66
Ronald B. Pruitt, '66
Karl Anthony Wright, '66
Gordon P. Gunter, '67
G. Dwayne Pruitt, '67
Mark A. Chapman, '68
Anthony L. Hodges, '68
The Honorable Kenneth C. Kaye, '68
Edward P. Legg, '68
Carroll C. Bridgewater, '69
Leland Dennis II, '69
Roger N. Simpson, '69
Dr. Richard D. Culbertson, '70
L. Daniel Prescott, '70
Edwin E. Powell Jr., '71
The Honorable Bryan C. Rudy, '72
Thomas T. Hutcheson, '73
John Thomas Anderson, '74
Al Lawton Bradley Jr., '74
Graham Newton Smith, '75
C. Hoyle Sommers, '75
Roger Browning Williams, '96
Kyla L. Sharma, '99

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Financial Innovation: The Transformation of Reality and Foundational Principles



By Henry T. C. Hu

Allan Shivers Chair in the Law of Banking and Finance,
The University of Texas School of Law

Introduction

“You can observe a lot by watching.” — *Yogi Berra*

THE MODERN PROCESS OF FINANCIAL INNOVATION IS CAUSING FUNDAMENTAL CHANGES IN THE real world. Financial innovation now plays a central role in capital markets and financial institutions, in corporate governance and securities practices, and, as we have witnessed with the global financial crisis, in the integrity of the entire international economic system.

Observing this new world against the backdrop of classic, seemingly timeless, theoretical principles and understandings in law and in finance suggests a striking lack of correspondence between theory and the real world. This dissonance has direct consequences for all of us and compels us to rethink long-held foundational principles.

I would like here to briefly touch on examples in two areas, one involving the foundational mechanisms of corporate governance and the other involving the central precepts of mandatory public disclosure. Based on sole or lead-authored articles published in 2006-2009, I discuss how “decoupling” undermines the shareholder vote and other mechanisms of corporate governance. Based on articles published in 2012 and 2014, I discuss how financial innovation and governmental responses to financial innovation both conflict with common understandings as to the means and ends of public disclosure.

Decoupling: Empty Voters, Empty Creditors, and Hidden (Morphable) Ownership

THE BASIC ARCHITECTURE OF CORPORATE LAW and finance — equity and debt — used to be clear.

Ownership of equity conveyed a package of economic rights, voting rights, and other rights. Such ownership also carried with it various obligations, such as disclosure obligations.

Similarly, ownership of debt conveyed a package of rights and obligations. A holder of debt had, for instance, economic rights (such as the right to principal and interest), the control rights given by contract (such as in the bond indenture), and other legal rights (such as those flowing from bankruptcy, corporate, and securities law).

That is, classic understandings of equity and debt contemplated bundled packages of rights and obligations.

A new “decoupling” process has emerged. Because of derivatives, hedge funds, and other factors, one can easily break up these equity and debt packages, quickly and on a massive scale.

Consider, first, the decoupling process on the equity side. Here, I will focus on one type of equity decoupling, which the 2006-2009 articles termed “empty voting.” I leave aside other examples of equity decoupling, including “hidden (morphable) ownership” techniques that seek to game mandatory ownership disclosure rules relating to takeovers.

Corporate governance, at almost all companies, is based on a proportional relationship between the number of shares held and shareholder voting rights. In other words, one share-one vote. Virtually all existing theories of corporate governance are based on this coupling of economic interest and voting power.

Today, however, the voting rights you have no longer need to depend on the economic stake you have. There is a variety of techniques for accomplishing this. One way is to simply buy a lot of shares, and then hedge that exposure. You can buy 1,000,000 shares, and thus have 1,000,000 votes. Simultaneously, you can buy lots of equity derivatives known as put options. You still have 1,000,000 votes, but you may only have the economic equivalent of, say, 200,000 shares. This type of voter can be called an “empty voter,” as the votes have been emptied of a corresponding economic interest.

Or consider an extreme type of empty voter. If you buy enough put options, you may actually have a nega-

tive economic interest. You could literally have a situation where the person who holds the highest number of votes could have a negative economic interest. That person may not use his votes as a monitoring device to make sure that company does well, but may try instead to use his votes so that the company does badly.

Thus, with this instance of equity decoupling, a shareholder who buys equity derivatives can have control rights — the vote — and yet have little, no, or even negative economic exposure. A similar process can occur on the debt side. A creditor who buys credit derivatives can have control rights and also have little, no, or negative economic exposure. In August 2007, I coined the term “empty creditor” to refer to this scenario.

One simple way of becoming an empty creditor is to take the long side of a credit default swap. On the equity side, the most extreme type of empty voter is one with a negative economic interest. A creditor who holds \$100 million in loans or bonds, but has credit default swap protection in the notional amount of \$200 million can be characterized as an “empty creditor with a negative economic interest.”

An empty creditor with a negative economic interest may have incentives to behave in ways directly contrary to the interests of the borrower. As an example, such extreme empty creditors may oppose an out-of-court restructuring of a troubled company because they might actually prefer that the company fail — and thus trigger large payments on their credit default swap positions.

Is there evidence that empty voting, hidden (morphable) ownership, and empty crediting exist? Yes. Worldwide, corporations, judges, legislators, and regulators have been analyzing and, to a degree, started to address these decoupling phenomena.

The Informational Challenges of “Too Complex to Depict” and Parallel Disclosure Universes

FROM THE CREATION OF THE SECURITIES AND EXCHANGE Commission (SEC) in the 1930s, the SEC’s “disclosure philosophy” has been implemented through what can be conceptualized as a “descriptive mode” — a mode of information relying on “intermediary depictions.” An intermediary — such as a corporation issuing shares — stands between the investor and objective reality. The intermediary observes that reality, crafts a depiction of the reality’s pertinent aspects, and transmits that depiction to investors. Securities law directs depictions to be accurate

and complete. “Information” is conceived of in terms of, if not equated to, such depictions.

Modern financial innovation undermines the effectiveness of this classic descriptive mode in two basic ways. First, financial innovation is creating objective realities far more complex than in the past — often beyond the capacity of the English language, accounting terminology, visual display, risk measurement, and other tools on which all depictions must primarily rely. Second, even a well-intentioned and sophisticated intermediary either may not truly understand — or may not function as if it understands — the reality it is charged with depicting. If the intermediary itself suffers from such “true” or “functional” misunderstandings, any depiction it offers will necessarily be flawed.

Is there evidence of such roadblocks? Yes. As one example, both roadblocks played major roles in the JPMorgan Chase “London whale” credit derivatives debacle that started emerging publicly in 2012.

So what are the solutions? One of the solutions is to move to a more eclectic conception of “information.” If complexities related to *financial* innovation are creating problems, *technological* innovation may contribute to a solution. With advances in computer and Web technologies, it is no longer essential to rely exclusively on the descriptive mode. Figuratively, the intermediary need not always stand between the investor and an objective reality, recounting to the investor what the intermediary sees. If the intermediary “steps out the way,” the investor may now be able to see for himself and to download the objective reality in its full, terabyte richness.

Such a “transfer mode” involves “pure information” about objective reality being transmitted directly to investors. A disclosure paradigm that relies on both the descriptive mode and the transfer mode — and the full spectrum of strategies between these extremes (i.e., involving the “hybrid mode” and “moderately pure information”) — is now possible and necessary.

The foregoing public disclosure challenges stem from the nature of financial innovation and of certain “too big to fail” banks heavily exposed to financial innovation. However, governmental responses to informational deficiencies relating to financial innovation themselves require reconsideration of classic disclosure understandings.

Mandatory public disclosure has long been the domain of the SEC. In this longstanding disclosure universe, the focus has always been on the ends of investor protection and market efficiency, and implementation

by means of annual reports and other SEC-prescribed documents.

In 2013, these common understandings became obsolete when a new system for public disclosure became effective, the first since the SEC’s creation in 1934. Today, major banks must make disclosures mandated not only by the SEC, but also by a new system developed by the Federal Reserve and other bank regulators in the shadow of the Basel Committee on Banking Supervision and the Dodd-Frank Act.

The bank regulator public disclosure system is directed not at the ends of investor protection and market efficiency, but instead at the well-being of the bank entities themselves and the minimization of systemic risk. This new system, which stemmed in significant part from a belief that disclosures of the complex risks flowing from modern financial innovation were manifestly inadequate, already dwarfs the SEC system in sophistication with regard to the quantitative aspects of market risk and the impact of economic stress.

This new morphology of mandatory public information spans two parallel regulatory universes with divergent ends and means. In the long run, such a morphology is unsustainable. The regulatory objectives of the two systems not only diverge, but sometimes conflict. A disclosure the SEC system deems essential for investor protection and market efficiency can be contrary to the bank well-being and system stability goals of the bank regulator system.

Conclusion

TWO THEORETICAL PHYSICISTS ARE LOST AT A mountain top.

The first theoretical physicist looks at a map, thinks about it, then turns to the other theoretical physicist and says, “I’ve figured it out. I know where we are.”

“So where are we?”

“Do you see that mountain over there?”

“Yes.”

“Well ... THAT’s where we are.”*

Whether the source is Yogi Berra or a joke about theoretical physics, the importance of observing the real world is paramount. Financial innovation has changed the world in ways that directly implicate some of the central governing principles in law and finance. But observation and analysis are just a start. Helping bring about actual changes in the principles is at least as challenging and rewarding. ■

*See <http://www.theguardian.com/science/2013/dec/29/scientists-favourite-jokes>.

Massey Prize for Research in Law, Innovation, and Capital Markets Awarded to Texas Law Professor Henry T. C. Hu

International Symposium Brings Together Corporate, Banking, and Finance Experts in Honor of Prize

University of Texas School of Law Professor Henry T. C. Hu has been awarded the Massey Prize for Research in Law, Innovation, and Capital Markets in honor of his scholarly body of work. To recognize Hu's receipt of the Massey Prize, a symposium was held on September 26, 2014 featuring a group of renowned corporate, banking, and finance scholars and practitioners from around the world.

The Massey Prize was established in 2009 at The University of Texas School of Law through a generous gift from alumnus John H. Massey and his wife, Elizabeth. This international prize is awarded for a scholarly book, article, or body of work that has made a significant contribution to the understanding of law, innovation and capital markets. Hu is the second recipient. The first Massey Prize was awarded to Robert E. Litan of the Brookings Institution in 2011.

"We're proud and excited to have hosted a symposium that brought together such a spectacular international collection of scholars in the fields of law and finance, and to have done honor at the same time to a towering scholar on our own faculty – Henry Hu," said Ward Farnsworth, dean of The University of Texas School of Law. "A worthier and more intellectually accomplished recipient of the Massey Prize is impossible to imagine."

Robert Charles Clark, Harvard University Distinguished Service Professor (and dean of Harvard Law School, 1989-2003), was the keynote speaker at the symposium, with an address on corporate governance. Hu followed with an address on financial innovation. The two addresses were followed by three panel discussions covering a wide range of corporate, banking, bankruptcy, derivatives, international, securities, and systemic risk matters. The panel members included finance professors from Stanford University and New York University, law professors from Columbia University, ETH-Zurich, the London School of

Economics, University of Texas, Tilburg University, Trinity College (Dublin), the University of Hong Kong, and the University of Pennsylvania, a former Delaware Supreme Court Justice, and a senior partner at Cleary Gottlieb Steen & Hamilton.

"Financial innovation has become central to capital markets and financial institutions, corporate governance and securities regulation, and, as we have all recently witnessed, the very foundations of economies worldwide," Hu said. "I am enormously grateful for the Massey Prize, to the founding donors, Mr. and Mrs. Massey, and for this new inspiration for continuing research."

Hu is the Allan Shivers Chair in the Law of Banking and Finance at the University of Texas School of Law. He is best known for his scholarship and public service relating to the law and economics of capital markets and corporate governance, especially as to the corporate objective, disclosure, financial innovation, investment, and risk.

For more information about Hu and the 2014 Massey Prize Symposium, visit www.utexas.edu/law/faculty/huht/ and www.utexas.edu/law/massey-2014, respectively.



Top: Mr. & Mrs. John H. Massey. Above: Professor Robert C. Clark.

Longhorn Spirit Meets Roman Empire

A classical twist on Hook 'em Horns | BY WARD FARNSWORTH

HON. HARLEY CLARK, '62, our wonderful alum and creator of the *Hook 'em Horns* hand sign, died Oct. 9. What a legacy he created! I offer the following in affectionate tribute to him.

A couple of issues ago, I suggested the law school would benefit from a Latin motto. One suggestion that came over the transom was to seek a Latin equivalent of *Hook 'em Horns!* An excellent idea! Let us consider how the translation might work.

1. The Latin word for “horn” is *cornu*. Thus the word unicorn (“one horn”); and if you combine *cornu* with *copiae*, the root of the English word “copious,” we then have the word “cornucopia,” which means “horn of plenty.” Or pair it with *caper* (goat) and you have the constellation Capricorn — horned like a goat.

In Latin the function of a word depends on its ending. To express the idea that something is being done with horns, we would say *cornibus*.

2. “*Cornua*” is the vocative plural form of the same noun, used when one is addressing two or more of something (in this case, horns). There is a funny story told about Winston Churchill’s efforts to learn Latin in school. He was declining the noun *mensa* (table) — that is, he was learning what its different endings mean. His teacher said the vocative case would be used to say “O Table”; he explained “you would use that in addressing a table, in invoking a table.” To which the young man replied: “But I never do.”



3. Then for the verb: Our investigation of Horace and Virgil would suggest *confodio*, which means “pierce,” “stab,” or “run through.” If we put the verb in its imperative form — a command — it would be *confodite* (four syllables — con-fo-di-tay).

Link these elements together and we have *Confodite cornibus, Cornua!* It literally means *Stick them with your horns, horns!* Or more simply, *Hook 'em Horns!* The shorter *Confodite Cornua!* is more succinct (*run*

them through, Horns!), though the three-word version is more parallel with the three-word English original and it looks better around a seal. In short, either is fine.

This little adventure in translation led me to wonder how the same notion might be expressed in Spanish. The Spanish word for horn is derived from the Latin: *cuerno*. But one must be careful because the most natural starting point, *poner los cuernos*, has the idiomatic meaning *to cheat on one's spouse* — an unpromising candidate for a rallying cry. Better is *Enganchalos!* — meaning, *Hook 'em!*

Confodite Cornua! And long live the memory of Harley Clark. **T**

Inventor of “Hook 'em Horns” Sign Passes

Retired state District Judge Harley Clark, '62, a venerated Texas Ex and Texas Law alumnus who became a part of Longhorn lore by introducing the “Hook 'em Horns” hand sign at a University of Texas pep rally in the 1950s, died Oct. 9 at the age of 78.

“Apart from Judge Clark’s role in helping establish a UT tradition, he was a longtime supporter of the university in other important

ways, including contributing to our legal defense in the Hopwood case and volunteering his time. We’ll miss his good-natured presence on our campus,” said Bill Powers, president of The University of Texas at Austin. The *Hopwood v. Texas* case involved the university’s use of race



UT Yell Leader Harley Clark, '62, (far right) invented the “Hook 'em Horns” hand sign in 1955.

as one of several factors in its admissions process.

After resigning from the court in 1989, Clark spent 10 years working in the Austin office of the law firm Vinson & Elkins before retirement.



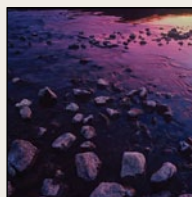
Read more about Judge Clark’s legacy online at bit.ly/1nfJquG.



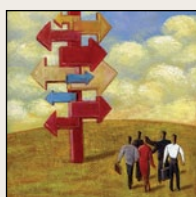
UPCOMING CONFERENCES



38TH ANNUAL PAGE KEETON
CIVIL LITIGATION
October 23–24, 2014
Austin – Four Seasons Hotel



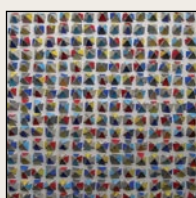
2014
TEXAS WATER LAW
November 19, 20–21, 2014
Austin – Radisson on Town Lake



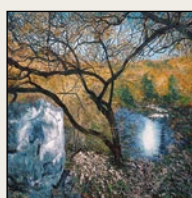
2014
ESSENTIAL EMPLOYMENT LAW
October 29, 2014
Houston – Norris Conference Center
November 12, 2014
Dallas – Cityplace Conference Center



33RD ANNUAL JAY L. WESTBROOK
BANKRUPTCY
November 20–21, 2014
Austin – Four Seasons Hotel



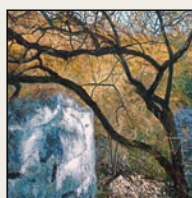
19TH ANNUAL
ADVANCED PATENT LAW
November 6–7, 2014
Austin – Four Seasons Hotel



62ND ANNUAL
TAXATION
December 3–4, 2014
Austin – Radisson on Town Lake



19TH ANNUAL
INSURANCE LAW
November 13–14, 2014
Dallas – Cityplace Conference Center



2014 STANLEY M. JOHANSON
ESTATE PLANNING
December 5, 2014
Austin – Radisson on Town Lake

32ND ANNUAL
NONPROFIT ORGANIZATIONS
January 14, 15–16, 2015
Austin – Four Seasons Hotel

2015
RENEWABLE ENERGY
February 17–18, 2015
Austin – Radisson on Town Lake

10TH ANNUAL
ADVANCED PATENT LAW
March 12–13, 2015
Alexandria – USPTO

41ST ANNUAL ERNEST E. SMITH
OIL, GAS AND MINERAL LAW
March 27, 2015
Houston – Royal Sonesta Hotel

11TH ANNUAL
SPECIAL NEEDS TRUSTS
February 5–6, 2015
Austin – Radisson on Town Lake

30TH ANNUAL
SCHOOL LAW
February 19–20, 2015
Austin – Renaissance Hotel

2015
LAND USE FUNDAMENTALS
March 25, 2015
Austin – Marriott North

36TH ANNUAL
CORPORATE COUNSEL
April 16–17, 2015
Houston – Royal Sonesta Hotel
May 7–8, 2015
Dallas – Marriott Quorum Galleria

37TH ANNUAL
SECURITIES REGULATION AND BUSINESS LAW
February 11, 12–13, 2015
Dallas – Cityplace Conference Center

2015
VALCON
February 25–27, 2015
Las Vegas – Four Seasons Hotel

19TH ANNUAL
LAND USE CONFERENCE
March 26–27, 2015
Austin – Marriott North

27TH ANNUAL
HEALTH LAW
April 29, 30–May 1, 2015
Houston – Four Seasons Hotel

2015
HIGHER EDUCATION TAXATION
March 1–3, 2015
Austin – AT&T Conference Center

2015 FUNDAMENTALS OF
OIL, GAS AND MINERAL LAW
March 26, 2015
Houston – Royal Sonesta Hotel



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