Fall 2007

The Advocate Fall 2007

The University of Tennessee College of Law's Center for Advocacy & Dispute Resolution

Follow this and additional works at: https://trace.tennessee.edu/utk_theadvocate

Part of the Law Commons

Recommended Citation

This Newsletter is brought to you for free and open access by the College of Law Communications and Publications at TRACE: Tennessee Research and Creative Exchange. It has been accepted for inclusion in The Advocate by an authorized administrator of TRACE: Tennessee Research and Creative Exchange. For more information, please contact trace@utk.edu.
Ask America’s top litigators to name their best and brightest and attorney Michael Tigar will be at the top of the list. Known for his mesmerizing courtroom presence and peerless trial preparation, Tigar may be best recognized for his defense of Terry Nichols, Timothy McVeigh’s codefendant in charges arising out of the bombing of the Oklahoma City federal building. However, Tigar has had many notable clients, including Angela Davis, H. Rap Brown, John Connally, Allen Ginsburg, Leonard Peltier, Kay Bailey Hutchison, and Lynne Stewart. In addition to his many successes as a trial lawyer, Tigar has argued seven cases in the United States Supreme Court and almost 100 federal appeals.

Fortunately, Tigar chooses to spend his time not only representing clients but also sharing his wealth of knowledge with others through his teaching and his writing. He has held teaching positions at many prestigious universities and law schools, presently serving as a Visiting Professor of Law at Duke Law School. He believes that the focus of legal education should be to help students see “how law moves from the tableau of ritual rules into the lives of people to whom it is applied.”

His writings have included authorship or co-authorship of ten books, three plays, and scores of articles and essays. Tigar’s Founders’ Lecture, “Does Advocacy Make a Difference?” will be based upon a chapter from a recent book entitled Trial Advocacy Stories. The lecture uses the Vioxx litigation as a backdrop. Tigar will also speak to members of the Knoxville Bar Association while in Knoxville on “Advocates as an Endangered Species,” a topic he confronted in his recent book Fighting Injustice. That presentation, jointly sponsored by the KBA and the Center, will be held on Tuesday, October 30, at 5:00 p.m. at Calhoun’s on the River.

The Founders’ Lecture by Michael Tigar will be held in Room 132 of the College of Law.
New Director of Clinical Programs
Associate Professor Ben Barton

The UT College of Law’s new Director of Clinical Programs, Ben Barton, likes Harry Potter...a lot. He has read each of the books in the Harry Potter series more than once and has written and lectured about how author J.K. Rowling depicts the government and law in the Harry Potter books. He thinks the anti-government thread that runs through the Potter novels is significant because the books have great potential to sway public opinion. "It would be difficult to overstate the influence and market penetration of the Harry Potter series," Barton contends. "Somewhere over the last few years the Harry Potter novels passed from a children's literature sensation to a bona fide international happening." Barton’s take on the Harry Potter books was the topic of a lecture he gave at a "Power of Stories" seminar in Gloucester, England, in July 2005, and an article, "Harry Potter and the Half-Crazed Bureaucracy," that was published in the *Michigan Law Review* in May 2006 and is being reprinted as a chapter in the book, *Harry Potter and the Law* (Carolina Press).

When Professor Barton is not reading Harry Potter, he teaches Advocacy Clinic, Torts I and II, and an introductory class in Case Analysis and Briefing. He has been recognized for both his teaching and scholarship since joining the UT faculty in 2001.

Barton’s remarkable success as both a teacher and a scholar could inform his own empirical research. In a study entitled “Is There a Correlation between Scholarly Productivity, Scholarly Influence and Teaching Effectiveness in American Law Schools?” Barton has undertaken to address an age-old debate in the legal academy: does scholarly productivity help or hurt teaching? The study correlates an index for teaching effectiveness, based on evaluations of all tenured and tenure-track faculty at 19 American law schools, against five exhaustive measures of research productivity. The results suggest no correlation between teaching effectiveness and any of the five measures of research productivity. Professor Barton has been invited to present these research findings at other law schools and has led discussions for other law professors on conducting empirical research.

Barton and his family moved to Tennessee from Arizona and have since become active community members. His wife, Indya Kincannon, is a member of the Knox County School Board, and his daughters, at least Dahlia, are rumored to love UT football.

Melodye Jester, Class of 2008, contributed to this article.
Immigration Law 101

According to a recent Congressional Research Service report, 37 million foreign-born people currently reside in the United States. Of this number, approximately one-third are naturalized citizens, leaving the remaining two-thirds as legal permanent residents and undocumented persons. Given the large number of foreign-born people living in the United States, immigration law has a dramatic impact on many other areas of the law, including employment law, family law, criminal law, and business law. UT College of Law is fortunate to have an adjunct professor who is well-versed and experienced in the many complicated and evolving aspects of immigration law.

Christina Kleiser is an Assistant Knox County Public Defender who has spent much of her career representing clients in immigration matters. In addition to emphasizing immigration law in a private firm, Kleiser served as supervising attorney at two organizations dedicated to immigration law, Community Refugee and Immigration Services in Columbus, Ohio, and Florida Immigrant Advocacy Center in Miami. Her work in Miami was featured in many national publications including the National Law Journal, the New York Times, the Miami Herald, the Chicago Tribune, the Village Voice, and Time magazine.

Kleiser has long been interested in international rights and immigration law. As an undergraduate at St. Joseph’s College, she majored in International Studies with an emphasis in Latin America and spent eight months studying and conducting research in Guatemala. While at DePaul Law School, she was a Sullivan Intern for the International Human Rights Law Institute, where, she spent both summers during law school working on human rights issues in El Salvador with two different human rights organizations. During law school at both the DePaul Legal Clinic and the Midwest Immigrant Rights Center, she served as a student attorney in asylum and deportation cases.

Drawing upon her experience and utilizing her professional contacts, Christina Kleiser integrates creative teaching methods in her class. For example, students conduct a mock removal hearing during the course of the semester requiring them to apply the law they have learned. In addition, Kleiser arranges for an in-class video conference with a panel of immigration judges who give their insights and opinions on the ever-changing issues in immigration law.

Given her specialized background and experience, it is not surprising that the students in Professor Kleiser’s Immigration Law class find the class to be invaluable in preparing them to assist foreign-born clients. As one student put it:

“I feel fortunate to have Professor Christina Kleiser, with her extensive expertise and experience, teaching the class. Professor Kleiser brings a unique perspective to the traditional law school educational experience. Professor Kleiser is able to take a complicated area of law and make it understandable to all students. In addition, she offers many practical practice tips, and the mock removal hearing allows students to test their skills in this complex area of law. I am confident that I will be able to assist foreign-born clients due in no small part to Professor Kleiser’s teaching style and the information she has provided in class. I would highly encourage every student to take this class, because as history has demonstrated immigration law will continue to influence many areas of law for years to come.”

Professor Kleiser’s students and the entire law school community are fortunate that Immigration Expert Kleiser is willing to become Adjunct Professor Kleiser one semester a year.

“Professor Kleiser is able to take a complicated area of law and make it understandable to all students.”

Christina Kleiser
Assistant Knox County Public Defender
Immigration Expert
Adjunct Faculty Member

UT College of Law 2007 Graduates Fermin DeLatore and Ray Johnson contributed to this article.
The newest Tennessee Supreme Court Justice William C. Koch visited the College of Law recently and spoke to a large audience of faculty, students, and alumni. Justice Koch talked about his background and his journey to becoming an Associate Justice, explaining that as a native-born Hawaiian it was his curiosity of the South based largely on his adoration of William Faulkner’s writings that landed him in law school in Tennessee.

Justice Koch told the audience that hard work, not being in the top five percent of the class or graduating from a top ranked law school determined success in the legal profession. And for those interested in judicial clerkships, he emphasized the importance of outstanding letters of recommendation. As one third-year clerk aspirant noted, “It seems to be a popular misconception among aspiring clerks that the cover letter is the avenue through which to let your personality emerge. It was good to hear it straight from someone who knows it well: hope your recommenders have some nice things to say.”

Justice Koch’s message was not only informative, but dynamic and timely given the hectic fall interview season. Many also found it inspiring. “His speech provides a perfect example of why I enjoy being a part of the College of Law so much,” commented another law student. “Our faculty really can (and do) bring some of the region’s most inspiring men and women of the law to talk to us.”

Tennessee’s Newest Justice Speaks About The Tennessee Justice System

Stacy Eckard, Class of 2009; Charles Brandon Hunt, Class of 2008; and Kelly Street, Class of 2008, contributed to this article.

Center Helps With Training for Arson Investigators

For the second year, the Center for Advocacy and Dispute Resolution, UT faculty, and area lawyers have assisted the International Association of Arson Investigators with its southeastern regional training. The training allows local law enforcement officers and private sector employees to become certified in the investigation of arson cases. Utilizing a civil case file, members of the Tennessee legal community, including faculty members Jerry Black, Doug Blaze, and Penny White, played the roles of lawyers and judges while each of the students seeking certification testified as an expert in the case. In addition, some area lawyers provided instruction to the students on matters such as cross-examination, demeanor while testifying, and use of exhibits. After the testimony, each student was critiqued by class members and faculty.

Stacy Eckard, Class of 2009; Charles Brandon Hunt, Class of 2008; and Kelly Street, Class of 2008, contributed to this article.
Each year the Center for Advocacy and Dispute Resolution provides cutting-edge programming for students enrolled in the Advanced Trial Practice course offered in the Advocacy Concentration. This year the Center secured the services of “Act of Communication,” a full service trial consulting firm based in California. Act of Communication has trained more than 30,000 attorneys over the past 30 years and has been a part of the trial team that has brought more than 800 cases to trial. In addition to conducting in-house workshops for dozens of law firms, Act of Communication has served as faculty for NITA, ALI-ABA, the Defense Research Institute, the Attorney’s General Advocacy Institute, AAJ’s Ultimate College, and at many law schools.

The founders of AOC, Katherine James and Alan Blumenfeld, are professional actors who appear regularly in film, television, and theatre around the world. In their workshops they apply the skills of the actor, writer, and director to the work of attorneys to help counsel and witnesses communicate more effectively in and out of the courtroom.

According to Blumenfeld and James:

At UT, the Advanced Trial Practice students will have both a group and private audience with AOC. This will give the students a wonderful opportunity to improve their communication skills as they prepare to enter the profession.

Technology In Today’s Courtroom

A publication of the Federal Judicial Center notes that “[a]ppropriate use of technology to display or play evidentiary exhibits or illustrative aids changes the dynamic in a courtroom in productive and helpful ways. For judges, technology can increase opportunities to control the proceedings, set time limits, and decide matters expeditiously. For jurors, it can increase the sense of participation and improve the understanding of the facts. For lawyers, the faster pace, coupled with the need to respond to visual cues for objections as well as the traditional oral cues, puts a premium on a concise case theory and thorough preparation . . . .” Neil Smith, an Assistant United States Attorney for the Eastern District of Tennessee, is helping Advanced Trial Practice students understand the importance of the effective use of technology. During the fall semester, Smith, who was involved in planning the technology for the federal courtrooms in the Eastern District of Tennessee, will lead a discussion and demonstration at the law school on the availability and use of technology in Tennessee’s federal courtrooms.
Charles L. Becton Speaks on the Fine Art of Advocacy

Before a captivated crowd, Charles Becton visually, physically, and audibly demonstrated how to be an effective advocate and made clear why he is the recipient of the nation’s top three advocacy awards. Becton mesmerized UT law students with his messages about the lawyer’s use of voice, storytelling as an avenue to excellent advocacy, and preparation as the main ingredient to success as a trial lawyer.

Becton, who practices with Becton, Slifkin, and Bell in Raleigh, North Carolina, has taught trial advocacy around the USA, in Canada, and in South Africa. In every presentation, he demonstrates what he describes as he speaks passionately and weaves a tale that captures his audience.

**BECTON ON THE USE OF VOICE:**

“Our voice can be music to jurors’ ear[s] if you speak with passion. . . . Without passion there can be no compassion.”

While accentuating and illustrating how a speaker’s volume, tone, and pace are powerful tools for persuasion, 2L Jennifer Rowlett “found it encouraging that Mr. Becton emphasized [that] eloquence is not a substi-

**BECTON ON THE USE OF STORYTELLING TECHNIQUE:**

The power of storytelling was evident in third-year law student Rachel Park’s reaction to Becton’s presentation:

“I was amazed at how he was able to grab the audience (me included). From the time he started his ‘opening statement’ of the cello teacher, who lost her left hand, etc., etc., etc., I was captivated for the next sixty minutes!”

Maryam Kassaaee, a second-year student agreed:

“Becton’s outstanding presentation highlighted the best way of incorporating law into life: storytelling.” As another student noted, “He taught me that involving your audience in the story, be it judge or jury, is critical. They will remember the details of what you say if you keep your story alive and interesting.”
BEPTON ON PREPARATION:

Drawing upon his love of Shakespeare, Becton advises “[t]hou shalt be a wordsmith. . . . Wordsmithing – choosing the right word – is as important as the way you use your voice. . . .” But neither the perfect voice nor the most eloquent presentation can make up for an absence of preparation.

“Eloquence is no substitute for preparation. If you have not mastered the facts and legal arguments, your voice will not make a difference.”

Despite his years of experience – for 24 years he has been named to “The Best Lawyers in America”—and his recognized excellence – he’s a fellow of both the American College of Trial Lawyers and the American Board of Trial Attorneys -- Charles Becton still writes out his closing argument “like sheet music” complete with pauses, staccatos, and crescendos. This inspired Kelly Randal, a third-year law student, to comment: “As a musician, I especially appreciated how Mr. Becton compared an effective closing argument with examples of musical phrasing, allowing our voices and our bodies to be the instruments and our arguments to be the symphonies.”

STUDENTS ON BEPTON

“I need to make conscious decisions about how I use my voice.”

“If I had not already been attending law school, I might be convinced to do so by Mr. Becton’s address. It was good PR for what lawyers do and how they use the skills we study.”

“As Mr. Becton explained, in trial involving the audience in your story is critical!”

“I found it encouraging that [he] emphasized that each advocate must find her own voice.”

“We must allow our voices and bodies to be the instruments and our arguments to be the symphonies.”
Dumaka Shabazz, a 2002 University of Tennessee College of Law graduate, gave a stirring speech on his experience as a solo practicing attorney in Nashville, Tennessee, representing and counseling clients in all areas of criminal defense. By using the acronym SOLO, Attorney Shabazz illustrated what solo practice demands. He explained that those interested in a solo practice must be Serious and Organized, must Love and Learn the law, and must remain aware of Other Obligations.

“Serious” describes the mindset a solo practitioner must have with regard to the financial demands of a solo practice. These financial demands include the cost of an office, a support staff, and other operating expenses. Shabazz suggested that a solo practitioner might explore alternatives to reduce expenses, such as sharing office space or maintaining a virtual office. The key to combating these financial demands according to Shabazz is to remain dedicated to the overall goal of running a successful solo practice.

While Attorney Shabazz acknowledged the need for “Organization” in a general sense, he used the term to reflect specifically an attorney’s need to find a specific niche in the legal market. In searching for a legal niche, Shabazz emphasized that an attorney should find an area of law that he or she enjoys practicing. This will assist the solo lawyer in achieving a “Love” of the law. A lawyer should search for the area of law that he or she loves, making the practice of law one of the most enjoyable aspects of the lawyer’s life. Once a love for the law is found, it will naturally follow that a lawyer will want to “Learn” more about what they love. In learning the law, Shabazz advised that lawyers should avoid reinventing the wheel by maintaining a list of reliable attorney peers who are willing to share advice. Shabazz sees solo practice as providing continual education, and loving the law makes learning and being a lawyer, more enjoyable.

Finally, Shabazz addressed the importance of remembering “Other Obligations” despite the many demands of a solo practice. One such other obligation is the obligation to remain ethical in all situations. Other obligations include family and community.

Overall, Attorney Shabazz gave the audience an insightful analysis of the responsibilities and dedication required to manage a successful solo practice. Aspiring lawyers who have ambitions of entering a solo practice may want to remember his “SOLO” acronym as a good rule of thumb.

Charles Traughber, Class of 2008, contributed to this article.

Pam Reeves Addresses Students


Following this musical interlude which entertained and amused the audience, Pam Reeves, a 1979 College of Law graduate, shared advice for representing clients during mediations. Reeves, who has forged many trails during her career, including being the first woman president of the Tennessee Bar Association, is one of the area’s premier mediators. Her success as a mediator has earned her the distinguished status of being a member of the Board of Directors of the American College of Trial Mediators.
Death Penalty Clinic

A popular t-shirt worn by (mostly) third-year law students (and detested by those who love to teach) reads: “First Year They Scare You to Death; Second Year They Work You to Death; Third Year They Bore You to Death.” That certainly was not the sentiment of five third-year law students who participated in the Death Penalty Clinic in the Spring Semester 2007. These students, under the direction of Professor and Advocacy Center Interim Director Penny White, did the preliminary research and writing necessary to the filing of a Petition for Certiorari in the United States Supreme Court on behalf of a Tennessee death-sentenced inmate.

In Tennessee, as in most states, almost everyone charged with a capital crime is unable to hire counsel. While the State provides appointed counsel for trial and appeal, that counsel is neither appointed, paid, nor provided resources to request review by the United States Supreme Court. That is the task undertaken by the Death Penalty Clinic.

Following an intensive introduction to federal and state capital law, the students — Noel Halpin, Daniel Headrick, Ellis Lord, Zan- ele Ngubeni, and Bill Reider began to strategize about the case collectively and in pairs. Each student undertook responsibility for researching and writing about potential issues raised by the case. Utilizing the students’ research and drafts, Professor White wrote and filed the Petition in July, 2007, after seeking input from trial counsel, the UT Legal Clinic faculty, and nationally acclaimed death penalty lawyers. The Petition remains pending before the High Court.

Does the failure of the states to apply a uniform clinical definition of mental retardation and to interpret the definition in accord with scientific principles violate the Eighth Amendment and the Fourteenth Amendment to the United States Constitution?

Do the states violate Due Process of Law by using factfinding procedures to evaluate a defendant’s mental retardation that produce unreliable and inconsistent results and that cannot be reconciled with a reasonable interpretation of Atkins v. Virginia?
Educating Lawyers

Preparation for the Profession of Law

The Carnegie Foundation for the Advancement of Teaching conducted a two-year study of legal education. The Study recognized that the challenge for legal education is “linking the interests of legal educators with the needs of legal practitioners and with the public the profession is pledged to serve.”

The Report notes that as “American law schools have developed, their academic genes have become dominant. . . . The dramatic results of the first year of law school’s emphasis on well-honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding. If legal education were serious about such a goal, it would require a bolder, more integrated approach that would build on its strengths and address its most serious limitations.” The Report recommends that law schools would benefit from integrating the approaches of other disciplines, including education, medicine, and engineering.

Students need a dynamic curriculum that moves them back and forth between understanding and enactment, experience and analysis. Law schools face an increasingly urgent need to bridge the gap between analytical and practical knowledge, and a demand for more robust professional integrity.

While legal education is only the beginning of a student’s professional development, the Report suggests that in many law schools the beginning is inadequate. The Report concludes with seven recommendations that include: (1) Offer an Integrated Curriculum; (2) Join “Lawyering,” Professionalism and Legal Analysis from the Start; (3) Make Better Use of the Second and Third-Years of Law School; (4) Support Faculty to Work Across the Curriculum; (5) Design the Program so that Students and Faculty Weave Together Disparate Kinds of Knowledge and Skill; (6) Recognize a Common Purpose; (7) Work Together, Within and Across Institutions.

While all law schools continue to face the challenges identified by the Carnegie Report, students in the Advocacy Concentration at UT currently enroll in:

— integrated Evidence and Trial Practice classes in their 2nd year, which require them to apply evidence and ethics rules while litigating hypothetical cases
— either a Clinic or an Externship, which enables them to represent clients in court or in a dispute resolution proceeding
— 12 hours of other courses, which require them to master lawyering skills (such as Interviewing and Counseling, Negotiation and Dispute Resolution, Pretrial Litigation, Advanced Appellate Advocacy, etc.) or to confront and analyze complex legal subject matter (such as Jurisprudence, Remedies, Conflict of Law, Federal Courts, etc.)

For a full description of the curriculum, visit www.law.utk.edu/CENTERS/
Center’s Year-End Collaboration: A Time for Reflection & Celebration

On May 9, graduates and adjuncts of the UT College of Law Center for Advocacy and Dispute Resolution joined together at the Bridgeview Grill to review the year’s events and share suggestions for the future. The event provided the advocacy grads an opportunity to reflect on their experiences and to thank the many adjunct professors who contributed to their education. In addition, the event provided a forum for two of the newest adjunct professors, Lawyer and Knox County Bar President Ruth Ellis and Tennessee Court of Appeals Judge Sharon Lee to address the audience.

Both Ellis and Lee have extremely successful and busy careers, so they were asked to address the students by answering a simple question: “Why do I choose to teach?” Ellis, who had just completed teaching her first Trial Practice course as an adjunct, explained that at each class she both taught her students and learned from them. Judge Lee, who is teaching Trial Practice this Fall, expressed enthusiasm for the opportunity to be a part of the advocacy faculty and to share what she has learned as a lawyer and judge about the practical aspects of the practice of law.

After recognizing the Center Founders, the graduates were sent off with a message from Atticus Finch in *To Kill a Mockingbird*:

> Atticus Finch said that “in this country our courts are the great levelers.” For the most part, he was right, but it certainly did not hurt that Tom Robinson was represented by a lawyer as skilled as Atticus Finch. It is able, skilled advocates that assure that courts are the great levelers. What I hope for each of you is that the knowledge that you have acquired and the skills that you have obtained as graduates in the advocacy concentration will help your clients only experience level courts.

Graduates are sent off with the words of Atticus Finch.
Director’s Dicta:

Some days just make you proud to be an Interim Center Director, a UT College of Law faculty member, and a UT alum. One such day for me was September 15, as I sat among students, faculty, and community members listening as Professor and Former Director of Clinical Programs Jerry Black described the history of the UT Legal Clinic. The occasion was the 60th Anniversary Celebration of the Legal Clinic, aptly entitled “Looking Forward — the Next 60 Years.”

The day-long event included panel discussions on various topics including Education Advocacy, Clinics and the Community, Legal Representation in Criminal and Civil Cases, and the Future of Clinics and the Law School Curricula. Clinical professors and practitioners from around the country spoke on these and other topics, all of which will be published in a special issue of the Tennessee Law Review. In addition, those in attendance were moved by the keynote address given by Bryan Stevenson, Director of Equal Justice Initiative and NYU law professor, whose message included his conviction that legal clinics and clinical students help to provide hope for many individuals who would otherwise remain hopeless.

That same sentiment was echoed by a panelist who addressed the impact of legal clinics on the community. From her perspective, the zealous advocacy in which legal clinics engage often brings about systemic change. In the case of UT’s legal clinics, that is six decades of systemic change.

What was altogether an ideal day for feeling proud of UT ended with an even greater source of pride: recognition of individuals who had contributed immeasurably to the Clinic’s success, long-time supporters Bob Ritchie and Art Stolnitz and former Director of Clinical Programs and of the Center for Advocacy and Dispute Resolution Doug Blaze. Now Associate Dean, Blaze was awarded the Bernstein-Ritchie Award for his extraordinary service to the Legal Clinic. It is because of individuals like these that we are able to look forward to the next 60 years with pride and anticipation.

Penny White
Interim Director
UT Center for Advocacy & Dispute Resolution

“One of the biggest impacts of legal clinics on the community is the kind of systemic change that naturally flows from zealous advocacy on behalf of clients.”