The Advocate Fall 2008

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

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Center To Host First Summers-Wyatt Symposium: 

Asking Jurors To Do The Impossible

In 2008, the law firm of Summers-Wyatt created an endowment which, among other things, allowed the Center for Advocacy and Dispute Resolution to host seminars and symposia focusing on the right to trial by jury in the United States. This year’s symposium will be held on March 27th, 2009, and will focus on jury trials in civil cases.

The keynote speaker for the Symposium will be Professor Peter Tiersma. Professor Tiersma is a nationally-renowned expert in writing comprehensible jury instructions. As Professor Tiersma has noted, the right to trial by jury “has little meaning if jurors do not properly understand the law that governs their decisions. . . . This is the function of jury instructions. Jury instructions must communicate the law to jurors [but] communication requires not just that you speak or read to someone but also that the audience actually understand what you intended to communicate.” The goal of the 2009 Summers-Wyatt Symposium is to address the concern of how we may be “Asking Jurors To Do The Impossible” when we fail to equip them with meaningful instructions about the law. Professor Tiersma’s address will be followed by responses from a panel of experts from various disciplines including linguistics, law, and psychology.

The Symposium’s luncheon keynote speaker will be Mr. G. Thomas Munsterman, Founder and Director Emeritus of the National Center for State Courts’ Center for Jury Studies. Mr. Munsterman received the 2008 ABA Jury System Impact Award, an award honoring those who have made tremendous efforts toward the improvement, preservation, and strengthening of the American jury system, for his more than thirty year dedication to improving the process of trial by jury. Mr. Munsterman has led thirty-one states in implementing jury trial innovations aimed at making jury service more productive and meaningful.

In the afternoon, Tennessee judges will lead a discussion about current jury instruction issues in Tennessee. The workshop format, which will be facilitated by Professor Tiersma and Mr. Munsterman, will allow law students, lawyers, and citizens to provide input which can then be considered in drafting problematic instructions. The Symposium proceedings will be published in the Spring 2009 volume of the Tennessee Journal of Law and Policy.

Those interested in attending the Symposium may contact either the Center Office at (865) 974-1477 or Micki Fox, the College of Law CLE Director, at (865) 974-4464. Details are available on the Center’s webpage at: www.law.utk.edu/advocacy/symposia.shtml
Chief Justice Janice Holder Visits Law School

On September 3, 2008, the day after she took the oath of office as Tennessee’s first female Chief Justice, Chief Justice Janice Holder talked to a large audience of law students, lawyers, and local media at the College of Law. Chief Justice Holder told the crowd that she was slowly becoming accustomed to the title: “I called my office this morning, and they answered, ‘Chief Justice Holder’s Chambers.’ It sounded so odd, I had to stop for a second before I could continue.” The Chief Justice directed her remarks to the students in the audience, urging them to strive throughout their career to keep balance in their lives. “Balance is the essence of your life,” she warned. "Do not ever fool yourself that practicing law twenty-four hours a day [will make] you happy, even if you serve your clients well.”

Chief Justice Holder has served as a member of the Tennessee Supreme Court since 1996, when she was appointed by then-Governor Don Sunquist. Before serving on the Supreme Court she was a Shelby County Circuit Court Judge. She holds a B.S. degree from the University of Pittsburg and a J.D. degree from Duquesne University School of Law.
Center Welcomes Kyrgyzstan Judges

In conjunction with the Rule of Law Open World Program, the Center for Advocacy and Dispute Resolution hosted a luncheon and panel discussion for a delegation of judges from Kyrgyzstan. The Open World Program was designed to bring emerging federal and local Russian political leaders to the United States to meet their American counterparts and gain first-hand knowledge of how American civil society works. The Open World Program is the first and only exchange program administered by the legislative branch of the U.S. Government.

Included in the Kyrgyzstani delegation visiting the Law School were Nurgul Moldobekovna Asanova, Judge, Leninskiy Municipal District Court, Bishkek City; Dastanbay Abdirashitovich Ayzhigitov, Chairman, Military Court of Kyrgyz Republic; Ranat Abdyldayevna Karimova, Judge, Osh Oblast Court; and Aida Jenishbekovna Salianova, Head of the Department of Constitutional Law, Kyrgyz Republic Parliament.

Center Hosts American Board of Trial Advocates’ Masters In Trial

This fall, the Center for Advocacy & Dispute Resolution hosted the American Board of Trial Advocates’ Masters In Trial program. Students and program participants witnessed the trial of Lydia Carroll v. ABC Motor Company and John Jackson, a products liability action. The Masters in Trial program was billed as Tennessee versus Florida, as Tennessee’s finest trial lawyers represented the plaintiff against a team of Florida trial lawyers representing the defendant. Three Center Founders, Sidney W. Gilreath, Robert E. Pryor, and John T. Milburn Rogers were part of the plaintiff’s team. In the end, actual jurors from the Knox County jury pool found for the defendant, and the Florida defenders prevailed.
Students who graduate from the College of Law with a concentration in advocacy must participate in one of the Law School’s legal clinics or in the Law School’s Externship Programs. For a number of years, the College of Law has served the state and federal courts by providing students to work directly with members of the Knox County District Attorney’s Office, the Knox County Public Defender’s Office, and the Federal Public Defender’s Office for the Eastern District of Tennessee. These students work under the direct supervision of a full-time member of the office staff and appear in court pursuant to the Student Practice Rule. Below is a summary of observations made by students who have recently had the opportunity to participate in the externship programs.

Public Defender Externship

The Public Defender Externship program is an excellent opportunity for law students to experience hands-on training from experienced defenders. I have had the opportunity to participate in this wonderful program this past semester and the experience has been one of the most fulfilling during my time in law school. The unique hands-on training exposes the student to courtroom procedure and etiquette, while allowing the student to develop his or her own personal advocacy skills and courtroom presence. The program has been a tremendous boost to my confidence. It has allowed me to overcome the initial anxiety that most people feel when they do something for the first time.

— Adam Holland, Class of 2009

Mark Stephens, the Public Defender for Knox County, has made it his goal to provide externs with a transition from student to attorney, and he has succeeded. While law school did a good job of teaching us how to do research and prepare motions and memoranda, classes cannot teach us how to be a lawyer or how to deal with real client situations. Every situation and every client is unique. The externship is an opportunity to work with experienced attorneys and begin to learn how to deal with those unique situations. Each of my supervisors has his own unique style, and it has been eye opening to me to see how each style can be successful. Working at the public defender’s office is enlightening. It is easy to see the world, crime included, as black and white. The externship proves that this is not so. Life is full of grey areas. Defendants are real people with families, financial troubles, and health concerns. Many defendants have mental health issues or alcohol and drug problems. I have enjoyed working at the public defender’s office, because the Public Defender has worked so hard to incorporate social work into the practice. The office focuses on the whole individual, not just on legal problems. In my mind this is the right way, and the only way, to truly make a difference both for the individual and the system. This externship has helped me decide what I want to do in my legal career.

— Amanda Cox, Class of 2009
Prosecutorial Externship

Because of the Prosecutorial Externship I will graduate with more litigation experience than most junior associates gain in their first several years of practice. If you want to be in the courtroom, you’ll want to be in an externship. As an extern you don’t just carry a briefcase for a partner, you handle your own cases and you make your own arguments.

— Sean McDermott, Class of 2009

While law school classes have a tendency to remain in the theoretical, the externship is entirely practical. In providing for active participation in the justice system, the externship allows law students to put their knowledge into practice in a way that classes cannot. In my mind there is no better preparation for actually being an attorney than actually practicing law under the supervision of an experienced trial lawyer.

— Chris Robinson, Class of 2009

During my Prosecutorial Externship, I served as an acting District Attorney General in Knox County Juvenile Court. Juvenile courts differ from criminal courts mostly in procedure and terminology. The docket moves quickly in juvenile court, so I had the opportunity to witness many initial appearances, preliminary hearings, and trials. I have gained invaluable professional experience. The most obvious, wonderful aspect of the Prosecutorial Externship is that I got to stand up in court, in front of a judge, and actually practice law. I was ecstatic when I won my first hearing. The Prosecutorial Externship has also helped me learn more about effective negotiations and interviewing skills.

On a personal note, I have been deeply troubled by the horrific circumstances that some juveniles in our community endure. The Prosecutorial Externship helped me learn to practice law using my head and my heart. Yes, there are juveniles who blatantly defy court orders to attend school or to refrain from using or selling drugs or the like. But there are also children who live in squalor, who are abused, whose parents abandon them, and whose families are wrested apart by drug or alcohol addiction. It is these children whose circumstances tug at my heartstrings—they have little chance to rise above the brutal conditions in which they are forced to live. By the time these children end up in juvenile court, they usually have exhausted whatever meager resources—social, emotional, and financial—they had. As a member of the legal profession, we can make a huge difference in these children’s lives.

— Kenlyn Foster Spence, Class of 2009

“As a member of the legal profession, we can make a huge difference in these children’s lives.”

Students in the Externship Programs discuss their cases.
New Professor Leaving Lasting Impressions

Since Maurice Stucke joined the faculty of UT College of Law in the fall of 2007, students have the special opportunity to learn from a professor who brings a dynamic combination of experience and expertise to his instruction. Professor Stucke’s background makes him an invaluable resource to the law school community. His work includes a range of experiences as a litigator and a scholar.

Before joining UT College of Law, Professor Stucke gained 13 years of litigation experience, including experience in the government and private sectors. Working as a Special Assistant U.S. Attorney in the Eastern District of Virginia, he prosecuted a variety of offenses and ran a weekly docket before the Honorable Thomas Rawles Jones, Jr. A unique aspect of Professor Stucke’s career is that he has worked as a government prosecutor and a private attorney in the realm of antitrust. For instance, he successfully challenged anticompetitive mergers and restraints in numerous industries as a trial attorney at the U.S. Department of Justice, Antitrust Division. As a private attorney, Professor Stucke represented some of the largest global corporations. During his time as an associate at Sullivan & Cromwell, he assisted in defending Goldman Sachs, CS First Boston, and Microsoft in civil antitrust litigation.

Beyond his experiences as a litigator, Professor Stucke’s is an up and coming scholar in the area of competition policy. Professor Stucke’s articles appear in numerous publications, and policymakers rely on his observations. For example, his article, Better Competition Advocacy, 82 St. John’s Law Review 951 (2008), has been cited in congressional testimony and his article Behavioral Economics at the Gate: Antitrust in the Twenty-first Century, 38 Loyola University Chicago Law Journal 513 (2007), received the Jerry S. Cohen Memorial Fund Award for the best antitrust article. Professor Stucke’s expertise in competition policy is evidenced by the number of advisory panels on which he continues to serve. Specifically, in 2007, he was elected to the Advisory Board of the American Antitrust Institute, an independent Washington, D.C.-based non-profit education, research, and advocacy organization devoted to competition policy. Additionally, Professor Stucke is chairing a committee on the media industry that will draft a transition report for the next administration.

Professor Stucke teaches courses in Evidence, Business Torts, Competition Policy, and Consumer Protection. As a student in Professor Stucke’s Evidence course, I experienced first-hand his enthusiasm for teaching, which motivated me to excel because I felt that he was invested in my success. Professor Stucke’s ability to translate complicated concepts into manageable parts highlights his intellect and mastery of many subjects. His expansive experience animates his teaching and illuminates the material for students.

As UT College Law expands its curriculum to keep up with expanding areas of the law, Maurice Stucke is a professor at the forefront. Professor Stucke’s background exemplifies the perfect intersection of the two curricular concentrations offered by the law school––an advocate with business savvy. Professor Stucke’s presence in the law school serves as a constant reminder that a career in law is boundless.

―Ashonti Davis, Class of 2009
The UT College of Law’s Center for Advocacy and Dispute Resolution is pleased to welcome a new faculty member – Professor Karla M. McKanders. Professor McKanders joins the College of Law from Villanova University School of Law, where she was a Reuschlein Clinical Teaching Fellow. As a Fellow, Professor McKanders taught in Villanova’s Clinic for Asylum, Refugee, and Emigrant Services, supervising students as they handled asylum cases before immigration judges, asylum officers, and the Board of Immigration Appeals.

Professor McKanders interest in serving immigrant and refugee populations began years before when she was an undergraduate at Spelman College. As a college student, Professor McKanders studied abroad through Syracuse University’s Maxwell School of Public Policy and worked at the Centre d’Insertion des Refugies in Strasbourg, France. There she provided much needed social, legal, and other services to refugees from many countries. She vividly remembers one of her first clients, a young boy named Chakib, who was forced to flee Afghanistan after Taliban members killed others in his family. Professor McKanders was profoundly impacted by her work with Chakib, who was treated as an outsider through no fault of his own and lived in a constant state of fear. She vowed then and there that she would work on behalf of such individuals when she returned to the United States.

As a law student at Duke University, Professor McKanders kept her promise, working on human and civil rights issues at the Federal Defender’s Office in Detroit, Michigan and later at the Center for Death Penalty Litigation in Durham, North Carolina. Following graduation, she worked as an associate in the labor and employment department at a Detroit law firm. Professor McKanders went on to clerk for the Honorable Damon Keith on the United States Court of Appeals for the Sixth Circuit, where she further developed her interest and expertise in immigration law. Working on many of the judge’s asylum appeals fueled her passion and sparked her desire to help develop best practices in the area of immigration and refugee representation.

Professor McKanders brings this passion and spark with her to UT, where she teaches primarily in the Advocacy Clinic – the law school’s in-house law firm. Indeed she has already expanded the offerings for the Clinic’s student attorneys by adding a number of immigration matters to the office’s caseload. Professor McKanders also has begun collaborating with students and others, like Professor Christina Kleiser, on local immigration outreach efforts. For instance she is presently working with East Tennessee’s BRIDGE program to plan and offer Know Your Rights presentations to local refugee populations.

Professor McKanders also explores the immigrant experience in the United States in her scholarship, exposing inequities in the law and calling for solutions. Last year her article Welcome to Hazleton! (“Illegal” Immigrants Beware): Local Employment Immigration Ordinances and What the Federal Government Must Do About It, was published by Loyola University Chicago Law Journal. Her current writing compares historic Jim Crow laws with current local anti-immigrant ordinances, drawing parallels and suggesting that constitutional equal protection analysis might be used to address immigration discrimination, like race-based discrimination, at the hands of localities.

In addition to hitting the ground running at the College of Law with her important work and scholarly contributions, Professor McKanders often runs with friends and colleagues in the Knoxville area. She recently completed a local 5K race and plans to run more races in the future. We are thrilled to have Professor McKanders join us here at the COL and warmly welcome her into the UT family.

—Professor Mae Quinn
Act of Communication Returns for Command Performance for UT Advocacy Students

This presentation was informative and unlike anything I’ve attended in law school. It was a good reminder that the rest of the world doesn’t think like lawyers and that we should try to understand our audience so that we can communicate more effectively.

The program provided a unique perspective on the importance of connecting with an audience.

This has moved into a tie for the best program of my law school career.

These were but a few of the comments that advocacy students shared about Katherine James’ recent visit to the College of Law. Katherine James is co-founder of Act of Communication, an organization that helps lawyers apply the theatrical skills of communication and storytelling to legal settings.

For the second year in a row, James presented workshop sessions to students enrolled in Advanced Trial Advocacy. In a large group setting, James demonstrated how lawyers can tell the client’s story to a jury in a persuasive manner which will have a lasting impact. Students were “volunteered” to try their hand at applying the principles that were discussed. Following the group exercise, every Advanced Trial Advocacy student received a near-private audience with James. In these sessions, students delivered a brief opening statement or closing argument and received individualized guidance and critiques. Most students relished the small group opportunity, with one commenting that the time “went by really fast. Wish we could have more time.” And the students had a bit of advice for their trial practice professors and members of the practicing bar: More than one suggested that “this should be mandatory for any trial lawyer and for all trial practice professors.”

— Joshua Dougan, Class of 2009

contributed to this article
Communications consultant Katherine James gives personal instruction to UT advocacy students.
Of the many important issues affecting our criminal justice system today, the death penalty is one of the most controversial. Each capital case raises a number of significant and controversial debates—from who is subject to the death penalty, to questions of procedure, costs, constitutionality, and ultimately, the purpose and legitimacy of capital punishment itself. Exploring the many different views surrounding these questions is crucial to understanding the broad implications of the death penalty.

To further an understanding of the issues surrounding the death penalty and to enhance academic and public dialogue, the Tennessee Law Review at the University of Tennessee-College of Law will be hosting a Colloquium, The Past, Present, and Future of the Death Penalty, on Friday and Saturday, February 6th and 7th, 2009, at the University of Tennessee College of Law. Distinguished scholars and practitioners in law and capital litigation will address important issues within the context of past, present, and future reflections on government-sanctioned death. Such issues will include mental competency, the influence of race, the states’ administration of capital punishment, due process and the innocence issue, and the constitutionality of the methods of execution.

The Colloquium will feature two keynote speakers, Stephen B. Bright of the Southern Center for Human Rights and Judge Gilbert S. Merritt of the United States Court of Appeals for the Sixth Circuit. Panelists will include UT College of Law’s Penny J. White and Dwight Aarons in addition to other notable scholars and practitioners: John Blume, Hugo A. Bedau, Deborah Denno, Lyn S. Entzeroth, Stephen R. Johnson, Bradley L. MacLean, and Pamela Wilkins. The Tennessee Law Review will publish articles written by the Colloquium speakers in a special Spring 2009 Symposium Issue on the Death Penalty. In addition, on Friday night, February 6th, the University of Tennessee’s Theater Department will present “The Exonerated” in conjunction with the Colloquium.

Lawyers, students, professors, and the public are all invited and welcomed to attend. CLE credit is pending. To request more information regarding the Colloquium and registration, please email Lane McCarty at lanemccarty@gmail.com. You can also check www.law.utk.edu for more information.

— Lane McCarty, Class of 2009

### Friday, February 6th

**Opening Remarks – 2:00 PM**

**Panel One - 2:30 – 5:00 PM**

- **Hugo Bedau**
  - Racism, Wrongful Convictions, and the Death Penalty

- **Bradley MacLean**
  - An Independent Authority System for Defense Counsel in Capital Cases in Tennessee

- **Stephen R. Johnson**
  - Due Process and the Innocence Issue

**8:00 PM:**

University of Tennessee’s Theater Department’s Showing of The Exonerated

### Saturday, February 7th

**Panel Two - 8:30 – 11:00 AM**

- **Pamela A. Wilkins**
  - Competency for Execution: The Implications of a Communicative Model of Retribution

- **Dwight Aarons**
  - Adjudicating Claims of Innocence for the Capitaly Condemned in Tennessee

- **Deborah Denno**
  - The Eighth Amendment Backdrop of Baze v. Rees

**Key Note - 11:30 AM**

- **Steve Bright**
  - New Jersey’s Reconsideration of the Death Penalty, Justice John Paul Stevens, and the Implications for the Future of Capital Punishment

**Lunch - 12:30 PM**

**Panel Three - 1:30 – 4:30 PM**

- **John Blume**
  - An Empirical Look at Atkins and its Effect on Capital Cases

- **Penny White**
  - Treated Differently in Life, But Not In Death: The Execution of Those with Severe Intellectual and Developmental Disabilities After Atkins v. Virginia

- **Lyn Entzeroth**
  - The Death Penalty and Medicating the Mentally Ill for Execution

**Key Note - 4:30 PM**

- **Judge Gilbert Merritt**
  - The Death Penalty in the Federal Courts

**Closing Remarks- 5:15 PM**
Professor Gary L. Anderson has announced his plans to retire. Professor Anderson has long been identified with the University of Tennessee Legal Clinic, serving there since he came to UT in 1973, but for the last few years he has spearheaded the College of Law’s Public Defender Externship. This year, Professor Anderson also took over the supervision of the Prosecutorial Externship. (See “Students Gain Valuable Experience in College of Law Externships”, pages 4-5). Working with the externs has enabled Professor Anderson to utilize his broad experience in criminal law.

Prosecutorial extern Ashley Musselman marvels at the depth and breadth of Professor Anderson’s knowledge of criminal law. “Professor Anderson can answer just about any question you can think of in the area of criminal law. His wealth of knowledge, from his personal experience and legal scholarship, makes him a tremendous asset to the students here at the University of Tennessee.” Her colleague Sean McDermott agrees: “Professor Anderson was always willing to share his sound tactical advice which was based on his many years of service and advocacy. As a clinic professor, his dedication to his students and clients is unmatched.”

Professor Anderson joined the UT faculty after engaging in private practice and serving as a county attorney in Iowa. In addition to his teaching and externship duties, Professor Anderson has also remained active in practice, representing clients primarily in state post-conviction and federal habeas corpus cases. Professor Anderson has demonstrated a life-long commitment to indigent defense. He served as reporter for the Tennessee Indigent Defense Commission from 1995-1998 and was awarded the 1994 Lionel R. Barrett, Jr. Award from the Tennessee Association of Criminal Defense Lawyers for his service on the Criminal Justice Funding Crisis Group. Professor Anderson has also received the Bass, Berry & Sims Award for Outstanding Service to the Bench and Bar.

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**Devoted UT Law Professor Gary Anderson Retires After Long Career**

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**Center for Advocacy and Dispute Resolution Spring 2009 Programs**

- January 21, 2009
  - 12:20 Practice Series
  - Howard Vogel
  - ADR in Tennessee
  - (Open to all, focus on Negotiation & Dispute Resolution sections)

- January 27, 2009
  - All day
  - Tennessee Court of Criminal Appeals Docket Day

- February 18, 2009
  - Time TBA
  - Rhonda Bentzen
  - The Basics of Structured Settlements
  - (Open to all, focus on Pretrial Litigation & Negotiation & Dispute Resolution sections)

- March 5-9, 2009
  - 2009 Ray H. Jenkins Trial Competition

- March 25, 2009
  - 12:20 Practice Series
  - Judge Camille McMullen
  - Tennessee Court of Criminal Appeals

- March 27, 2009
  - All day
  - Summers-Wyatt Symposium: Asking Jurors To Do The Impossible

- April 6-7, 2009
  - 2009 Advocates Prize Competition

- April 23, 2009
  - 5:30
  - Advocacy Graduates End-of-Year Collaboration
According to a University of Tennessee study, one of six Tennesseans lives below the poverty level; seventy percent of those individuals have unmet legal needs. These disturbing facts have not gone unnoticed by College of Law Class of ‘80 George T. Lewis, III (Buck), the president of the Tennessee Bar Association. President Lewis has outlined an initiative for his presidency which includes a “Justice 4All” Program, an initiative which focuses on meeting the unmet legal needs of Tennessee’s citizens.

While legal services organizations strive to provide legal assistance to low-income families, recent surveys conclude that Tennessee’s legal aid programs are able to meet only five to twenty percent of Tennessee’s legal need. The goal of Justice 4All is to encourage other members of the profession to help with efforts to ease the problem of the denial of access to justice in Tennessee.

Many lawyers begin their pro bono efforts during law school. UT Pro Bono is an umbrella organization that oversees many different kinds of volunteer efforts which law students perform while in law school. This year, UT Pro Bono is led by third-year law student Daniel Ellis. Ellis has been working with the faculty Pro Bono and Public Interest Committee, which I chair, to coordinate these efforts. Our major goal is to find sufficient funding through UT’s Loan Repayment Assistance Plan (LRAP) to aid two deserving graduates working in public interest law.

The purpose of UT LRAP is to provide annual loans to graduates of the law school who obtain employment in public interest law and who need assistance in repaying education loans. The program originated in 2008 when two grants were awarded.

Chloe Akers, one of last year’s recipients, summed up the importance of the award in this way:

Receiving the LRAP has allowed me to utilize the legal education I received at UT the best way I know how; by providing greater access to equal justice for indigent criminal defendants. As an assistant public defender for the city of Philadelphia I see on a daily basis the struggles that the unrepresented may face and I am privileged to have the opportunity to alleviate that burden through my representation. The LRAP award has allowed me to focus on what is truly important, my clients, instead of worrying about loan payments. For this I am truly grateful.

If you are a supporter of pro bono and public interest but often find yourself unable to donate in-kind services to the effort, I want to encourage you to think about making a gift to UT LRAP. Through your gift, some young lawyer may be able to follow a career path in public service and help meet some of the unmet legal needs in our communities.

— Penny J. White