Alumni Headnotes (Spring 1996)

University of Tennessee College of Law

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The photograph on the cover is taken from an artist's rendering of the inside of the rotunda in the new College of Law building, which is currently under construction.
Dean's Corner

Not long after my wife and I settled here with our girls in 1974, Peggy's parents came to visit us. Peggy's mother was a strong, resolute Irish woman, born and raised in New Jersey. She had high standards for everyone (including herself) and never hesitated to pass judgement. She came to the law school and sat in on some classes. The students amazed her. I asked why. "Well," she said, "they're so polite."

Our students are a lot of things. They are (on the whole) smart, resourceful, diverse, capable, decent, and committed. They have the potential to be first-rate professionals. One of the things that has held a very good faculty together here over the years is the opportunity to teach these students.

This issue of Alumni Headnotes includes a story about what we call the "transition" and how the students have responded to its rigors.

For most of the problems discussed in the story, the move to the new building early next year will provide the solution. But we'd like to be doing more for our students than building a good building.

No qualified Tennessean should be prevented from attending law school by virtue of financial need. We should be able to assure every applicant in need that through scholarships and loans in some combination, plus what they can reasonably earn by working, the cost of a legal education at the University of Tennessee can be met.

Scholarship funds should also be available to recruit students to the College whose qualifications indicate high academic ability and exceptional promise for the practice of law. A fund for this purpose has been established to honor Professor Emeritus Forrest Lacey. The scholarships made possible through donations to this fund will bear his name.

Public service is part of every lawyer's responsibility. In the history of this law school, the man preeminently associated with that conviction is Professor Emeritus Charles Henderson Miller. To further Charlie's ideals, a fund has been established in his name. Proceeds from the fund will be used to support students in their public service work, through Charles Miller Fellowships during law school, and loan repayment assistance for graduates who take lower-paying public service jobs.

In helping us maintain a sense through the "transition" that the law school is still here, the leaders of the student organizations have done an outstanding job. A list of the active student organizations appears on page 31.

These organizations need and deserve our support. The vehicle for that support in the Cornerstone Campaign is the Toxey E. Sewell Fund for Student Organizations. Contributions can be designated either for the Sewell Fund generally, or for the support of a specific organization.

This has not been an easy time. As Sarah Hardison says in the story: "It's tough now, but it will be good for the future of the law school." That pretty much says it all.

Richard S. Work
UT earns national ACTL award for the training of trial attorneys

The University of Tennessee College of Law has been honored by a national organization of lawyers for the way in which it trains trial attorneys.

UT is the winner of the American College of Trial Lawyers' 1996 Emil Gumpert Award for Excellence in Teaching Trial Advocacy. The award is given annually by the ACTL to a law school in the United States or Canada deemed to have achieved a superior level of excellence in the teaching of trial advocacy. In the U.S. alone, 178 law schools are accredited by the American Bar Association.

Previous winners of the award include Harvard, Yale, New York University and UCLA. The Gumpert Award was established in 1975 to honor the late Emil Gumpert, chancellor-founder of the American College of Trial Lawyers.

Criteria for the award include an institution's clinical programs, teaching methods, intraschool and interschool mock trial competitions, student clerkships, and special programs in which trial advocacy are taught.

"This is an exceptional honor," said UT Law Dean Richard S. Wirtz. "It isn't as sexy as the U.S. News & World Report rankings, but in a real sense it means more."

"The award is very competitive. It is based on a thorough on-site review of the school's program -- almost an audit -- done by members of the College of Trial Lawyers and reviewed by the Selection Committee and then the College itself.'

The UT College of Law was ranked No. 47 nationally in the 1996 U.S. News & World Report survey of American Law Schools published in March.

"The award is very competitive," Wirtz said. "It is based on a thorough on-site review of the school's program -- almost an audit -- done by members of the College of Trial Lawyers and reviewed by the Selection Committee and then the College itself."

The UT Legal Clinic, founded in 1947, is the oldest continually operating clinic in the United States. Students receive hands-on training in criminal and civil advocacy and mediation techniques. Just recently, the college adopted a new concentration in advocacy and dispute resolution that uses advanced teaching methods and technology to train students in the full range of techniques for solving disputes.

UT moot court teams have been very competitive over the years, twice winning the ABA national competition and also capturing the 1993 National Association of Criminal Defense Lawyers' trial competition. The college also sponsors two intramural competitions each spring for second- and third-year law students.

"We have an outstanding program in advocacy and dispute resolution," Wirtz said. "The award is a tribute to everyone who teaches in the program, including the lawyers and judges from the community who make a contribution that is absolutely indispensable."

Founded in 1950, the American College of Trial Lawyers is a national honorary organization that limits membership to outstanding U.S. and Canadian trial lawyers with more than 15 years of experience. Total membership cannot exceed 1 percent of the practicing attorneys in each state or province and candidates for membership must be nominated by state/province committees and approved by the College's Board of Regents.

UT will officially receive the Gumpert Award at a ceremony planned for this fall. Robert A. Young, executive director of the ACTL, will make the presentation on campus.
Joel A. Katz funds law scholarships

Joel A. Katz ’69 of Atlanta, founding partner of one of the world’s largest music entertainment law firms, has made a gift of $100,000 to the University of Tennessee College of Law as part of the University’s 21st Century Campaign.

The gift will fund the Katz Family Scholarships, which will be awarded annually to UT law students with demonstrated financial need and an interest in entrepreneurial or business law. The first scholarships will be awarded for the 1996-97 academic year.

A special clause in the scholarship agreement allows for the recipient to be a student in the lower half of his class academically who is struggling because of financial or family obligations.

“There are always some students who have the ability to excel but have a hard time because they have families to support while they are in law school,” Katz said. “This will take some of the burden off of them so they can concentrate on their legal studies.”

“The College of Law is breaking ground with a field of concentration in business transactions that will graduate students well prepared to represent entrepreneurs,” said UT Law Dean Richard S. Wirtz. “Joel Katz’s generous gift will provide essential financial aid to students who want to represent small and intermediate-sized businesses and grow as their clients grow.”

Katz started his own firm in 1971. Today, Katz, Smith & Cohen is one of the three largest firms in the world specializing in music entertainment law.

The firm represents over 75 recording artists, as well as numerous television and motion picture actors, producers, production companies, record label executives, concert promoters, and authors. Clients include Willie Nelson, Kris Kristofferson, Lorrie Morgan, Toni Braxton, George Strait, and Jimmy Buffet.

Katz, Smith & Cohen also represent a number of special institutions and companies, such as Farm Aid, Inc., The Atlanta Committee for the Olympic Games, the Coca-Cola Corporation, the National Academy of Recording Arts and Sciences, Home Depot, HealthSouth, and the Gaylord Companies.

Cornerstone Campaign total reaches $4.6M

Recent gifts and pledges to the College of Law’s Cornerstone Campaign have raised the total to $4.6 million. The campaign goal is $6 million.

Gifts have been designated for a variety of purposes, including support for the Centers for Advocacy and Entrepreneurial Law, funding endowed professorships and student scholarships, expanding the services of the Law Library and the Legal Clinic, and providing state-of-the-art educational and technological resources in the new building.

The most recent gifts and/or pledges of at least $50,000:

- Anonymous, $100,000
- Karen G. and Roger L. Gilbert ’85, Knoxville, $50,000
- Estate of John F. Schrankel ’54, $226,535 (Schrankel Scholarship Fund)
- W. Allen Separk ’69, Marietta, Ga., increased pledge bringing his new cash commitment to $100,000
- R. Lee Winchester ’49, Memphis, $51,266
- Woolf, McClane, Bright, Allen & Carpenter, $100,000 (Entrepreneurial Law Fund)

During the Cornerstone Campaign, Alumni Headnotes will be spotlighting individuals and groups who make substantial gifts to the campaign. The College of Law is grateful to everyone who has made a gift or pledge to the College. With your help, we are building the law school of the future!
Prewitt children make pledge in honor of father

The children of University of Tennessee law graduate Thomas Ryan Prewitt Sr. '47 of Memphis have honored their father with a pledge of $100,000 to the UT College of Law.

The gift, part of the University of Tennessee's $250 million 21st Century Campaign, makes Prewitt a founder of the College's new Center for Advocacy, which will train lawyers in the full range of techniques for dispute resolution.

Making the gift are Thomas R. Prewitt Jr., Thurston Hall Prewitt, Julian Jones Prewitt and Mary Louise Carrick, all of Memphis.

A native of Bolivar, Prewitt Sr. received a law degree from UT in 1947. He has been a partner in the Memphis firm of Armstrong Allen Prewitt Gentry Johnston & Holmes since 1950 and is now a senior partner. Prewitt is a former president of the Memphis Bar Association and is a fellow of the American College of Trial Lawyers, the International Academy of Trial Lawyers, and the American and Tennessee Bar Foundations. He flew 50 missions over Germany, Austria, Romania, Hungary and Poland during World War II as a navigator with the U.S. Army Air Force.

"My family decided that the best way to honor Dad was to make a gift to the College of Law," said Prewitt Jr., a 1973 UT law graduate who is also a partner in the same Memphis firm. "The practice of law has always been our father's biggest passion, and we are delighted to honor him by supporting the institution that he attended and that has made so many important contributions to the practice of law in Tennessee."

"The law school is extremely fortunate that the children of Tom Prewitt Sr. chose to commemorate his distinguished career as an advocate in this particular way," said Richard S. Wirtz, dean of the UT College of Law. "The hope of all of us involved with the Center for Advocacy is that it will embody the high professional ideals reflected in Tom Prewitt's life and work."

We thank the individuals and groups listed above for their generous support of The University of Tennessee College of Law, and we are grateful to everyone who has made a gift or pledge to the College.

If we have overlooked anyone, please forgive us and give us a chance to correct our records by letting us know. Write or call the Office of Development and Alumni Affairs, UT College of Law, 2222 Dunford Hall, 915 Volunteer Boulevard, Knoxville, TN 37996-4070, (423) 974-6691.
The Transition:  
All parties making the best of a difficult situation

Camille Kirk was well aware of the construction project that was underway at the UT College of Law when she enrolled as a first-year student in August 1995. After all, she received an undergraduate degree from the University of Tennessee in May 1995 and her brother (Liddell, a member of the Class of '96) has been a law student here since 1993.

But Camille didn’t really stop and think about what the construction of a new building and renovation of the old law building would mean for her. She quickly found out, however, what “transition period” means. During the 1996 spring semester, for example, Camille begins each week like this:

On Monday morning, after the usual scramble to find a place to park, Camille rushes to the Nursing Building for an 8 a.m. class in Legal Process. When class is dismissed at 8:50, she has 15 minutes to get to the Health Physical Education and Recreation Building, where Civil Procedure begins at 9:05. No problem -- yet. The distance from Nursing to HPER is easily covered in 15 minutes.

Camille’s next stop, however, is Buehler Hall. HPER is on the west side of the campus, between the Presidential complex and Tom Black Track; Buehler Hall is located on east side of The Hill. Civil Procedure is supposed to last until 9:55. According to the university class schedule, the next period begins at 10:10. Getting from HPER to Buehler in 15 minutes is tough enough under normal circumstances, but when you add a backpack full of legal books to the mix it becomes almost impossible.

“The professor has to let us out early so we can make it,” Camille said.

After Civil Procedure, Camille is free until 2:30 p.m., when she returns to the Nursing Building for Contracts. If she decides, during her free time, to check her mail box she must walk to the second floor of Aconda Court, at the corner of Cumberland Ave. and 16th Street. Maybe she needs something at the Law Library. In that case, she must hustle to the White Avenue Annex behind the old Taylor Law Center. No matter which way she goes, Camille must walk around the construction site to enter the library.

Camille’s marathon trek across campus is not unusual. For the past two years, the most physically fit students on campus have been law students. Construction of the new law building and the renovation of the old have left law students without a permanent home. Because classrooms are scarce, law classes are routinely scheduled from one end of the campus to the other. Since the fall of 1994, classes have been held in 23 different buildings on campus -- from Dougherty Engineering to Stokely Athletics Center to Hoskins Library to the Health and Physical Education Building. Only the agriculture campus has been spared an invasion by law students.

While just finding an empty classroom has been a monumental challenge for transition chief Mary Jo Hoover, who also serves as the Associate Dean for student affairs in her spare time, the problem doesn’t end when one is located. Law classes containing “x” number of students have frequently been assigned to classrooms containing “y” number of chairs -- and “x” is greater than “y.”

Many of the rooms assigned to the law school have individual desks with small writing tops instead of tables where students can spread out law books. In some rooms not all students even have a desk. They must sit in chairs and take notes on their laps.

Many classes have to be scheduled either very early in the day or very late because that is the only time rooms are available. Availability of space for meetings of student groups and organizations has been a big problem. Rooms large enough to hold audiences for guest speakers and lecturers also have been difficult to schedule.

And classrooms are not the only challenge. Interaction among students and faculty has suffered because of the geography imposed by the transition. Faculty offices are in three different buildings.

"Some faculty members say they enjoy walking to class because it gives them a chance to talk with students," Dean Hoover said. "I’ve heard students
say they feel more like a part of the university because they are out in the campus every day.”

Nobody said the three-year transition period was going to be easy, but students, faculty and staff have adopted a positive attitude about the turmoil and upheaval caused by the closing of the Taylor Law Center.

“We have had minimal complaints,” said Dean Hoover. “The student body and faculty have adapted splendidly.”

“We’re all in this together -- that’s the attitude everybody has,” says 2L Fred Dodson. “The faculty has to walk across campus to get to class, just like we do. They have to put up with classrooms that aren’t just right.”

3L Sarah Hardison said students have tried to stay focused on the primary objective -- getting an education. “It’s tough now, but it will be good for the future of the law school,” she said. “Dean Wirtz has been fantastic. When 3Ls were upset because not enough room was available for Commercial Law, he did everything within his power to make it possible. The faculty and administration have been very supportive.

“I know the value of my diploma is going to increase because of all of this.”

Some students say having the law school spread around campus has been a positive thing.

“It’s been nice to see other parts of the campus,” Dodson said. “We’ve been able to see students other than law students and interact with them. I know a lot of law students who say even when the new building is completed we should try to find ways of maintaining communication with other parts of the campus.

“It’s so easy to stay in the law school building for your entire three years and never come out. I think we need to come out more.”

2L Craig Hargrow said the image of law students has improved on campus because of the transition. “It seems like the perception of a lot of undergraduate and graduate students was that law students are kind of aloof,” he said. “When we were in our own building we never interacted with anybody else. This gives us the opportunity to be seen around campus.”

Most do agree, however, that relationships within the college have suffered.

“We definitely have lost some sense of community,” said Dean Hoover. “Normally, the first-year class gets to know each other very quickly because they get together in the student lounge or the library to talk. Now they have to go to different places in smaller groups.”

CONTINUED ON PAGE 31
Nominees to the Order of the Barristers for 1996 (pictured with Dean Richard S. Wirtz [center]) are (left to right) Sarah Hardison of Nashville, Willie Smith of Rogersville, Jason Long of Knoxville, Rick Carl of Knoxville, Penny Barton of Kingsport, and Daniel Puryear of Gallatin. Camille Reese of Nashville and David Weidman of Knoxville were not at the banquet.

Robin Repass (left) of Kingsport and Sarah Hardison of Nashville were the first recipients of the Gunn, Ogden & Sullivan Brief Writing Award. A third member of the Constitutional Law Moot Court team, David Weidman, was not at the banquet.

Nikki Pierce of Greeneville (left) is the recipient of the Judith Turcott Special Service Award. Jason Long of Knoxville (right) was honored with the McClung Medal/Phi Delta Phi Outstanding Attorney Award.

Dr. Otis Stephens (right), a UT professor of political science who also teaches in the College of Law, was honored with the 1996 Forrest W. Lacey Award for his contributions to the Moot Court program. Jason Long makes the presentation.
Attorney Steve Oberman '80 (left) of the Knoxville firm of Daniel & Oberman receives the 1996 Moot Court Special Service Award from Moot Court Chairman Jason Long.

Penny Barton of Kingsport was honored with the Dennis Parkhill Memorial Achievement Award in memory of a 1978 UT law graduate who was tragically killed in an automobile accident. Dean Richard S. Wirtz makes the presentation.

1996 Ray H. Jenkins Competition

Arnice Hall Adams of Nashville and Willie Smith of Rogersville (right) were the winners of the 1996 Ray H. Jenkins competition. Second place went to Maurice Briere of Maryville and Tucker Carrington of Chattanooga. Smith was named Best Oralist of the competition. The judges were (center, left to right) Olen G. Haynes, Esq., of Knoxville, the Hon. Robert Leon Jordan of the U.S. District Court for the Eastern District of Tennessee, and David E. Rodgers, Esq., of Knoxville.

1996 Advocates Prize

Kim Watson of Jackson and Jeffrey Taylor of Knoxville (right) were the winners of the 1996 Advocates Prize competition. Todd Kelley of Nashville and Leif Jeffers of Oneida (left) were second. Kelley was named Best Oralist of the competition. The judges were (center, left to right) the Hon. Martha Craig Daughtry of the 6th Circuit Court of Appeals, the Hon. Kenneth F. Ripple of the 7th Circuit Court of Appeals, and the Hon. David H. Welles of the Tennessee Court of Criminal Appeals.
Hazen Moore enjoys Japanese connection

Hazen Moore ’81 has had a lifelong interest in Japan and Japanese culture. It goes all the way back to 1953 when he was born in the Land of the Rising Sun. His father was in the U.S. Air Force and stationed in Japan at the time. Even though the family left the country when Hazen was barely four months old, it was just a matter of time before he would return to his birthplace.

“As I was growing up, I always said someday I would go back and see where I was born -- and I did,” Moore said recently, speaking long distance from his office in Tokyo, where he has lived and worked since May of 1995.

Moore is an associate with the New York law firm of Hughes Hubbard & Reed, which has an affiliation with Nishimura & Sanada in Tokyo. He describes his work as finance related to banking and securities. Because he is not licensed to practice law in Japan, Moore serves as a consultant on financial matters between American and Japanese parties.

Moore is well-suited and well-trained for his current position. He recalled his early years when the family was moved frequently by the Air Force. “When we came back to the U.S. we were at four different bases,” he said. “People in the military tend to ask where your last assignment was, where you were born, things like that. Whenever I would say I was born in Japan, adults would react rather strongly. That made me think, for whatever reason, Japan must be something special.”

As he grew older, Moore took special interest in articles and books about Japan. “I read everything I could find,” he said.

As a University of Tennessee undergraduate, Moore majored in political science with a concentration on Asian studies. His focus was China, India and Japan. At the time (early 1970s), UT didn’t offer classes on campus in Japanese language, but Moore did take courses in politics, history and religion.

Moore began thinking about going to law school while a student at DuPont High School in Nashville. “I didn’t have any solid plans then for linking law and Japan, but I was interested in both areas,” he said.

Moore enrolled in law school at UT in 1975. In 1977, he received a W.K. McClure Fellowship for the Study of World Affairs and spent a year in Japan studying the country’s culture and language. “It was during that year that I began to think about a career linking the two,” he said. “But I knew I needed stronger language skills.”

Moore returned to Japan during the 1979-80 academic year under the auspices of the Stanford University Language Program. “That gave me two years of language and a very solid base,” he said.

Moore returned to UT and finished law school in 1981. “During my last year in law school I thought it would be good to have at least some background in Japanese law,” he said. Moore received a Monbusho Scholarship from the Japanese Department of Education and spent the next two years earning a master’s degree in law at Kyoto University. Over the next three years, he completed the coursework at Kyoto for a doctorate, but has yet to write a dissertation.

Moore returned to the U.S. in 1986 and went to work for Hughes

Hubbard & Reed. With his background, Moore was involved immediately with Japanese clients. “I never did get disconnected from Japan,” he said. “I used my Japanese every day. Having a background in Japanese law and culture really speeds up the process of getting a business deal done.”

Moore said headhunters called numerous times offering him jobs in Japan, but he didn’t begin thinking about returning until sometime in 1994. “I always thought there was a strong possibility I would go back because the work I did in New York was mostly with Japanese clients,” he said.

Hughes Hubbard & Reed does not have an office in Japan at present, although that could change, Moore said. Moore is technically on leave now from the New York firm and will return in the spring of 1997. “If they opened an office here, I might be interested in coming over on a permanent basis,” Moore said. “But that’s not a goal of mine right now.”

For the moment, Moore, who is single, enjoys moving between both worlds. “When I came back to Japan after being gone for over seven years, it was interesting to see how things had changed,” he said. “Markets are opening here -- sometimes at a slow pace and at other times with a jolt. The young people are changing -- they are less career oriented and more focused on their private lives. They are maybe a little more individualistic than they used to be.”
Class of '36  
Judge L. CLURE MORTON of Cookeville, a federal judge since his appointment by President Richard Nixon 26 years ago, plans to retire this summer and move back to his hometown of Knoxville. Judge Morton is best known for his 1971 order desegregating Nashville schools.

Class of '41  
Judge FRANK W. WILSON, who served as federal district judge in Chattanooga from 1961 until his death in 1982, was honored April 3 with the dedication of the Frank W. Wilson W.S. Courts (Law) Library, located on the second floor of the Joel Soloman Federal Building in Chattanooga.

Class of '48  
JOHN SMARTT has been chosen as one of the individuals who will carry the Olympic flame on its way to Atlanta for the opening ceremony of the 1996 Olympic Games. He was named a "Community Hero" during a ceremony at the United Way of Greater Knoxville.

Class of '57  
ROBERT F. WORTHINGTON, JR has been elected President of the Nashville-based Tennessee Business Roundtable, an organization formed to create a superior quality of life in Tennessee.

Class of '64  
COL. ROBERT L. ECHOLS assumed his new role as the Tennessee National Guard's Deputy State Area Command Commander and leader of the 80th Troop Command Oct. 21, 1995. He will also be promoted to brigadier general at a later date. Col. Echols was one of the founders of the law firm Dearborn & Ewing in 1972 and served as a partner until April 1992, when President George Bush appointed him as U.S. District Judge of Middle District of Tennessee.

Class of '66  
GUY R. DOTSON, SR. retired June 30, 1995, as District Attorney General. He is now practicing law at 102 South Maple Street, Murfreesboro, TN, with his son, Guy R. Dotson, Jr.

ROBERT W. KNOLTON, formerly of McNees, Knolton & Hayes, is now with the law firm of Kramer, Rayson, Leake, Rodgers & Morgan located at First Tennessee Plaza Suite 2500, 800 S. Gay Street, Knoxville, TN 37929.

Class of '69  
TERRY L. WILSON of Knoxville, Iowa, is now a District Associate Judge. His new address is P.O. Box 497, Knoxville, IA 50138.

Class of '70  
GENE HALLWORTH, HARRY L. WEDDLE III ('95), and LORI L. WILLIAMS ('94) announce the formation of Hallworth & Associates in Columbia, Tenn.

Class of '72  
GORDON BONNYMAN of Nashville has resigned after a 23-year career with Legal Aid of Middle Tennessee. Bonnyman is joining with another legal services attorney to open a private practice dealing with legal services issues.

Class of '74  
CHARLES P. DUPREE has been board certified as a Criminal Trial Specialist by the National Board of Trial Advocacy and is a Diplomat of that organization. Charles maintains a practice in Chattanooga that focuses on civil rights and criminal trial practice in state and federal courts.

AMY YARBRO McCOIN recently completed the 1994-95 term as president of the American Association for Paralegal Education.

Class of '75  
HARRY W. LAUGHLIN III of Memphis was hired as corporate

In Memorium
Hugh William Anderson '50, Jacksonville, Fla.
Thomas Moore Boyd '51, Athens, Tenn.
Harry Britton Brown '29, Jellico
James R. Carter, Sr. '61, Johnson City
Steven L. Festinger '73, Lake Village, Ark.
William B. Griffith '70, Cookeville
Ben W. Kizer '52, Maryville
William C. Morrell '53, Knoxville
William C. Wilson '33, Knoxville
Suzanne Davenport Wicker, Knoxville, wife of former UT College of Law Dean William H. Wicker

MARTIN J. SCHULMAN was elected a Justice of the New York State Supreme Court for a 14-year term in November 1994.
attorney and chief financial officer of Software Earnings, Inc. He will remain a principal in Rossie, Luckett, Parker & Laughlin, P.C., handling primarily tax and estate planning matters.

**Class of ’77**

BETH FORD is an assistant community defender with Federal Defender Services of Eastern Tennessee in Knoxville.

MARY ANNE REESE of Cincinnati, Ohio, was one of eight finalists selected from over 100 applicants for the 1996-97 Judicial Fellowship Program administered by the U.S. Supreme Court.

**Class of ’78**

ROBERT M. BAILEY and N. DAVID ROBERTS JR. (’86) of Knoxville announce the formation of the law firm Bailey, Roberts & Bailey, P.L.L.C., a Professional Limited Liability Company located in Suite 218, Court Square Building, 600 Cumberland Avenue, P.O. Box 2189, Knoxville, TN 37901.

BILL HALTOM of Memphis has written a book, *Daddies: An Endangered Species*.

JERRY SMITH of Nashville was appointed by Gov. Don Sundquist to the Tennessee Court of Criminal Appeals in November 1995. Smith had worked in the state attorney general’s office since 1980.

**Class of ’79**

PATTI JANE LAY announces the opening of her new law office at Cambridge Court, 5908 Toole Dr. Suite A, Knoxville, TN 37919.

STEWART STALLINGS of Memphis has joined the law firm of Shuttleworth Wilkinson & Wilson.

**Class of ’80**

C. PAUL HARRISON has formed a new firm, Harrison & Howard, P.C., in Knoxville.

**Class of ’81**

IMOGENE KING of Knoxville, a partner with Frantz, McConnell and Seymour, has been named chairwoman of Knoxville’s Metropolitan Planning Commission.

**Class of ’82**

The Hon. TODD J. CAMPBELL has been confirmed by the U.S. Senate as a federal district judge for Middle Tennessee. Campbell was nominated by President Clinton June 27. He was a former counsel to Vice President Al Gore.

JUDITH R. WHITFIELD has become a partner in the Oak Ridge law firm of Mostoller and Stulberg.

**Class of ’83**

FLOYD S. FLIPPIN of Humboldt, Tenn., has been inducted into the Tennessee Bar Foundation.

THOMAS R. FRIERSON II was appointed as Chancellor of the 3rd Judicial District in March 1996 by Gov. Don Sundquist.

M. THOMAS JURKOVICH of Arlington, Va., is the Democratic staff director of the Committee on House Oversight for the U.S. House of Representatives. The responsibilities of the committee include directing the operations of the House and legislative jurisdiction over all election and campaign finance laws.

MICHAEL S. PINEDA of Chattanooga announces the formation of Samples, Jennings & Pineda, a professional limited liability company for the practice of law.

LARA WOMACK SHORT of Murfreesboro spent March 1996 teaching International Business Law at the French-American Center for International Management. The Center is part of the University of Caen, located in Caen, France.

**Class of ’84**

AMY HUSKINS and husband Jerry announce the birth of their daughter, Emily Temple Huskins, Oct. 29, 1995.

**Class of ’85**

STEVEN H. ELMORE is now working for the Oregon Water Resources Department located at 158 12th St. NE, Salem, OR 97310-0210.

JILL MORGAN HARRISON and RICHARD E. LADD, JR. have become directors and shareholders of the Abingdon, Va., law firm of Penn Stuart. Ms. Harrison’s practice primarily involves employment law and mineral law. Mr. Ladd practices in the fields professional liability defense, products liability defense, and general insurance defense litigation.

ROCKFORDE “ROCKY” D. KING of Knoxville and wife LINDA (’81) are the proud parents of their second child, Ryan Taylor King, born Jan. 4, 1996. Rocky became partner that same month at Egerton, McAfee, Armistead & Davis, P.C. He is also among the first attorneys certified by the Tennessee Commission on Continuing Legal Education and Specialization as a civil trial specialist. Rocky is currently serving a three-year term on the board of directors of the Consumer Credit Counseling Service of Greater Knoxville, Inc.
JAMES E. WAGNER has become a member of the firm Frantz, McConnell & Seymour, LLP, in Knoxville.


Class of '86

BEN A. BURNS has joined the legal department of Columbia/HCA Healthcare Corporation. He is located at the Legal Department, One Park Plaza, Nashville, TN 37203. Ben is currently serving on the board of the Nashville Area Junior Chamber of Commerce and the Young Lawyers Division of the Tennessee Bar Association and is a former member of the Alumni Advisory Council for the UT College of Law.

CHARLES J. FLEISCHMANN, JR. has been elected president of the Chattanooga Bar Association.

DEBORAH HAYES has accepted a position as assistant vice president and corporate counsel with Willis Corroon Corporation at its U.S. headquarters in Nashville. Her husband, Terrell, will receive a doctorate from Vanderbilt in August, and the couple's son, Alexander, recently celebrated his fourth birthday.

RICHARD A. JOHNSON has been elected to the board of directors of Averitt Express, a trucking company. He is an attorney with Trabue, Sturdivant and Dewitt in Nashville.

FRED E. (SKIP) JONES of Memphis has joined the firm of Shuttleworth Wilkinson & Wilson.

THOMAS LAURIA of Coral Gables, Fla., has been named a partner of Weil, Gotshal & Manges L.L.P., one of the nation's largest law firms. He concentrates his practice in complex corporate restructurings and finance. Lauria represents clients such as Greyhound Lines, Uniroyal Plastics, Jamesway Corporation, and Lonestar Steel.

EVA M. LEMEH of Nashville recently opened The Law Office of Eva M. Lemeh. Prior to opening her own firm, she was the first African-American lawyer hired by Farris, Warfield and Kanaday. She has also written a book, For the Love of Money, which will be published this year.

J. ALFRED SOUTHERLAND of Houston, Texas, has become a partner in the firm of Hutcheson & Grundy, L.L.P. He practices all aspects of labor and employment law.

Class of '87

LYNN BERGWERK of Knoxville opened a solo practitioner office at 713 Market Street. She handles worker's comp, personal injury, social security disability, and medical malpractice. Lynn served as secretary for Tennessee Trial Lawyers from 1993 through '95.

J. MARK DEBORD of Richmond, Va., has been named a partner in the firm of Hunton & Williams. He practices labor law, and he and his wife, Patti, are expecting their second child in July. Their first child, Lauren, will be three in May.

Class of '88

TERRILL L. ADKINS of Knoxville has become a member of the firm Frantz, McConnell & Seymour, LLP.

LAURA H. WALTER of Washington, D.C., has become a partner in the firm of Glass, McCullough, Sherrill & Harrold. She has practiced with the firm's litigation group since 1992 and will continue to concentrate in employment and labor litigation.

Class of '89

MICHAEL CHANCE of Memphis and wife Betsy EINSTMAN CHANCE announce the birth of their first child, Morgan Rosemary Chance, April 25, 1995. Michael recently joined the firm of Black, Bobango & Morgan and continues to practice in the area of real estate, bond and corporate transactions.

TIMOTHY L. WARNOCK (left) and JOHN R. JACOBSON ('90), have formed the Nashville law offices of Bowen Warnock & Jacobson. Their practice involves issues related to the entertainment industry, including copyright and trademark matters and other intellectual property rights. They currently represent clients such as BMG Music, Arista Records, Polygram Music, and Turner Broadcasting.

ERIC J. MORRISON and wife, Kathie, announce the birth of their son, John Atticus Morrison, June 11, 1995.
SCOTT KIRK of Jackson was named a partner in the firm of Hardee, Martin & Jaynes P.A.

MARK A. PINKSTON of Asheville, N.C., became partner at Van Winkle, Buck, Wall, Starnes, Davis in February 1995.

JEFFREY A. WOODS of Knoxville and wife Judith announce the birth of daughter Rachel Elaine Woods on July 25, 1995. Jeffrey was also named partner in the law firm of Robertson, Ingram & Overby.

Class of '90
T. SCOTT JONES of Knoxville and wife Victoria announce the birth of their first child, Kristen Abigail Jones, Feb. 13, 1996. T. Scott has also been named partner in the law firm of Wm. R. Banks & Associates, where he practices primarily as a trial lawyer throughout East Tennessee.

Class of '91

ELIZABETH M. "ROY" LEWIS of Knoxville was married Aug. 19, 1995, to DAVID T. LEWIS ('84). She works as a consultant with attorneys on medical/legal issues. David is an attorney with Woolf, McClane, Bright, Allen & Carpenter.

Class of '92
JOHN M. BRYANT, JR. of Nashville, and wife KARYN CRIGLER, are pleased to announce the birth of daughter Katherine Grace on Oct. 26, 1995.

Class of '93
DONNA TATE GOODMAN of Riverdale, N.Y., and her husband, Hubert, announce the birth of a daughter on Oct. 7, 1995.

DEBRA POOLE is the membership chair of the 1996 Board of Directors of the East Tennessee Law Association for Women. Also, LUCINDA ALBISTON is president, HEIDI BARCUS is newsletter editor, and VICTORIA BOWLING is historian.

JEFFREY M. WARD of Greenville, Tenn., has been made a partner in the law firm of Milligan & Coleman.

DONNA BROWN WILKERSON of Crossville recently joined the firm of Gamble & Associates. She has also been elected secretary of the Upper Cumberland Trial Lawyers Association.

Class of '94
BARBARA W. JOHNSON of Knoxville has opened her own general practice with an emphasis on estate planning.

JOHN KEA II of Nashville has opened the law firm of Scott & Kea. He was previously a law clerk for the Hon. Jerry Scott.

CYNTHIA M. RICHARDSON has joined the firm of Ogle, Wynn & Rader. The law office is located at Ogle Building, 103 E. Bruce Street, P.O. Box 5365, Sevierville, TN 37864.

Class of '95
JOHN B. DUPREE of Knoxville has become an associate of the firm Frantz, McConnell & Seymour, L.L.P.

VICKI FRYE-FOWLKES of Winchester passed the bar in October 1995. She works for Morrison & Davis in Tullahoma, Tenn.

JAMES H. NIXON III has joined the Nashville law firm of Waller Lansden Dortch & Davis as an associate in the Corporate Department.
Building Project in High Gear for Fall '96 Completion

The Law College Building Committee enjoyed a tour of the new building project during April. The progress is evident, and the splendid shape of things to come is now manifest. The roof is complete on the new portion, and the sky lights are installed in the Rotunda and along the length of the Gallery which connects the Rotunda to the White Avenue entry. Even though most interior walls are not yet installed in those areas, the sense of light, space, and order are unmistakable. The contrast to the dark and rather chaotic hallways and circulation areas of the old facility could not be more stark.

We could also see the shape of the classrooms and courtrooms, and it is already evident that they will be comfortable, graceful and exceptionally functional places in which to discuss the law. We are now wrestling with the challenge to conceive, design, and pay for audio-visual and computer equipment as good as the rooms themselves. If we succeed, we will have classrooms not surpassed by any other American law school.

This is an exciting moment at the College. All of us have started to realize, in very specific ways, that we will soon take a giant step forward. Faculty members are considering their choices of offices. Staff members are reflecting about furniture and equipment and considering new ways of working in more efficient spaces. Slowly, our students are beginning to comprehend being back in a law school that exists in one place, with its own classrooms and study lounges, with a commons area for work, rest, and socializing, and with ample room in the library and throughout the facility for all of the activities that lively law students generate.

We plan to occupy the new quarters by the start of the 1997 spring semester. We are grateful to all of our alumni/ae who have worked, and are working, to make that happen.

Patrick Hardin
Professor of Law
Chair, Law College Building Committee
CAREER INFORMATION FAIRS PROVE POPULAR

Information booths staffed by alumni and other practitioners were featured at two law career fairs hosted recently by Career Services. Students enjoyed one-on-one conversations with those who have "crossed the bridge" into legal and law-related positions.

"So this is what networking is all about," third-year student Eric Ebbert remarked. "I learned that I've been marketing myself all wrong for the kind of employer I want."

While no job interviews were conducted, practitioners answered students' questions regarding job qualifications and duties, hiring criteria, working hours and conditions, helpful law school classes and undergraduate degrees, how to find out about job openings and volunteer opportunities, and the potential for later career changes.

Professionals and students alike considered the occasions worthwhile. "As I realized how much work I had to do, I wished I hadn't made this commitment," commented Wade Davies of Ritchie, Fels & Dillard in Knoxville. "But it was great! I had no idea how much I would enjoy the two hours I spent talking with students."

Participants in the November event included attorneys from Baker, Donelson, Bearman & Caldwell; Bernstein, Stair & McAdams; Davis, Arnold, Haynes & Sanders; the District Attorney's Office; Dunn, McDonald & Coleman; Hodges, Doughty & Carson; Knoxville Legal Aid Society; Lockridge & Becker; London & Amburn; McCampbell & Young; Pitts & Brittain; the Public Defender's Office; Ritchie, Fels & Dillard; Shepperd & Swanson; Sobieski, Messer & Associates; the Social Security Administration; Tennessee Court of Criminal Appeals staff attorney; Union Planters Bank; the U.S. Attorney's Office; and the UT General Counsel's Office.

Representatives from the following were present for the March career fair: Ailor, Andrews & Hudson; Bass, Berry & Sims; Bosch, Silvey & Lusk; the City of Knoxville Attorney's Office; Cyberflix, Inc.; the District Attorney's Office; the Federal Bureau of Investigation; Goody's Family Clothing, Inc.; Guyton & Frere; Lewis, King, Krieg, Waldrop & Catron; McCord & Troutman; Montgomery & Thompson; Piper & Witt; Rural Legal Services of Tennessee; Tennessee Supreme Court Commission on Mediation and Alternative Dispute Resolution; the U.S. Attorney's Office; the U.S. Department of the Interior; the UT Dean of Students; Wagner, Myers & Sanger; Wimberly & Lawson; and Woolf, McClane, Bright, Allen & Carpenter.

If you or your organization would like to have a representative participate in the next career fair planned for early November, please call Career Services at 423/974-4348.

FALL ON-CAMPUS DATES SET

Career Services will remain in its transition location in
Interviewing dates are Friday, Sept. 13, through Friday, Nov. 22. If your firm or organization has not yet scheduled an interview date, please contact us at 423/974-4348.

Employers who have confirmed a fall on-campus date so far include: Armstrong, Allen, Prewitt, Gentry, Johnston & Holmes of Memphis; Baker, Donelson, Bearman & Caldwell for all Tennessee offices; Bass, Berry & Sims of Nashville; Boult, Cummings, Connors & Berry of Nashville; Cornelius & Collins of Nashville; Dennis, Corry, Porter & Gray of Atlanta; Farris, Warfield & Kanaday of Nashville; Grant, Konvalinka & Harrison of Chattanooga; Hill, Boren of Jackson; Hunter, Smith & Davis of Kingsport; Kullman, Inman, Bee, Downing & Banta of New Orleans and Memphis; Miller & Martin of Chattanooga; Powell, Goldstein, Frazer & Murphy of Atlanta; Smith, Currie & Hancock of Atlanta; Spears, Moore, Rebman & Williams of Chattanooga; Waller, Lansden, Dortch & Davis of Nashville; Waring Cox of Memphis; and Wyatt, Tarrant & Combs of Memphis and Nashville.

21st SOUTHEASTERN LAW PLACEMENT CONFERENCE SCHEDULED

For the 21st year, employers nationwide will be offered an opportunity to interview students from 12 Southeastern law schools on the same day, in the same location. The 1996 Southeastern Law Placement Consortium (SELP) conference is scheduled for Friday and Saturday, Sept. 27-28, at the Marriott Suites Midtown Atlanta. The employer registration deadline is Aug. 15.

"Many of our alumni through the years have found their out-of-state jobs through SELPC," Joann Rothery, director of Career Services, said recently. "I hope these graduates will encourage their firms and organizations to participate again to recruit the outstanding students we have today."

Law schools sponsoring the consortium, in addition to Tennessee, are Alabama, Cumberland, Emory, Florida, Georgia, Kentucky, Memphis, Miami, South Carolina, Washington & Lee, and William & Mary.

For more information and registration materials, contact Ms. Rothery, who is chair of the 1996 SELPC conference.

CAREER SERVICES STAFF NOW ON-LINE

In addition to telephoning, you may also contact Career Services staff by e-mail:

Director Joann Rothery at rothery@libra.law.utk.edu
Assistant Kay Brown at brown@libra.law.utk.edu
Assistant Jane Eppes at eppes@libra.law.utk.edu
Admissions Report

In the Fall 1995 issue of Alumni Headnotes, Director of Admissions and Financial Aid Karen R. Britton reported on law school application activity nationally and here at the College of Law. In this issue, she will report on the admissions process for the 1996 entering class.

In December 1995, applications for the 1996 entering class were coming in at a slightly faster pace than they had for 1995. Then the Feb. 1 priority date for files to be completed was met with one of the largest snowstorms Knoxville has ever experienced. Even worse weather in Pennsylvania delayed processing and mailing of candidates' reports from the Law School Data Assembly Service. The University and the Admissions Office were closed for three days around the priority deadline, making an already tense and busy time even more unnerving for candidates and the admissions staff.

As of April 17, the University of Tennessee was pleased to be one of the U.S. law schools with an applicant pool of comparable size to its 1995 pool. As of April 17, the Admissions Office had processed 1,120 applications for admission, compared with 1,128 on the same date in 1995. Nationwide, applicants are down 10.4%. In the Southeast, applicants are down 7.7%. Not only are fewer individuals applying to law school but applicants are applying to fewer schools. Application volume is down 13.8% in the Southeast, according to the most recent statistics available from Law Services.

Members of the UT Admissions Committee spent approximately 10 weeks from the end of January through early April reviewing application files. Of the 1,120 applications received through April 17, 515 are residents of Tennessee and 605 are residents of other states and foreign countries. The College of Law aims, as always, for an entering class composed of 80% Tennessee residents and 20% residents of other states or countries. The College of Law aims, as always, for an entering class composed of 80% Tennessee residents and 20% residents of other states or countries. Since law school admission is a mutual selection process, we must make more offers of admission than the ideal size of the entering class to allow for candidates who will choose other law schools instead of The University of Tennessee. As of April 17, 352 offers of admission had been made and 203 candidates had indicated tentative plans to enroll. This number is right where UT needs to be at this point in the process. Other law schools are still making offers, and we will see attrition from this number throughout the spring and summer months as candidates who may be on waiting lists at other highly regarded law schools finalize their plans. The University of Tennessee does not require a monetary deposit until July 1 of each year, and it is at that time that we are able to get an accurate count of the entering class.

ATTRACTION HIGHLY QUALIFIED CANDIDATES

When applications are declining nationally, every law school must adjust for increased competition for the most highly qualified candidates, and the UT College of Law has responded to that challenge this year with a plan to encourage top candidates to accept our admissions offer. Between the time that our top candidates are admitted and they choose a law school, each will receive a personal phone call from a current law student, be invited to campus for a Law Preview Day, receive a letter of welcome from Dean Wirtz, and receive several other communications to provide information they need and to let them know that they are welcome here. For the first time this year, we involved our alumni in contacting admitted students to encourage their acceptance of our offer of admission. This effort has been extremely well-received by our admitted candidates, and we plan to continue and expand this joint effort between our alumni and the Admissions Office next year.

OUR ADMISSION CRITERIA

Admission to the UT College of Law is competitive. In making selections, the Admissions Committee places substantial emphasis on the undergraduate grade point average (UGPA) and the Law School Admission Test (LSAT) score. Undergraduate academic performance is a significant indicator of potential success, both as a measure of general ability and as an indication of factors that will hold one in good stead in law school -- motivation, persistence, organizational skills, and work ethic. Similarly, the LSAT is designed to measure some of the qualities that are needed for successful law study. Although no single factor standing alone can predict with absolute certainty the ability to succeed in law school, members of the Admissions Committee have judged that the LSAT score, when combined with other assessments, is very helpful as a starting point in making comparisons among applicants for admission.

Every application file is read in full by at least one, and usually more, member of the Admissions Committee regardless of how high or low the UGPA and LSAT. The Admissions Committee also considers a variety of other factors in its review and evaluation of each applicant’s file. Among the factors considered are:

Academic factors, such as improvement in undergraduate grades, strength of the undergraduate institution, difficulty of the academic discipline..
pursued, and success in graduate or professional studies;

Employment, both while enrolled as an undergraduate and/or since the undergraduate experience, including military service;

Activities and service, including extracurricular activities, honors in college, community, civic or professional service, demonstrated leadership abilities, exceptional talents, and other accomplishments;

Economic, social or cultural background, including success in overcoming social or economic disadvantages;

Evidence of maturity, responsibility and motivation; and Circumstances that may have affected an applicant's UGPA or LSAT score, including illness, disabilities, and work or family responsibilities.

The Admissions Committee also evaluates two writing samples and relies upon the evaluation of candidates from two sources of recommendation, usually submitted by former faculty members or employers who are familiar with the candidate's work.

The College of Law has many new things to look forward to in the next few months, and we are eager to welcome the first class that will enjoy the new facilities and programs that make our College an increasingly appealing choice.

In the Fall 1996 issue of Alumni Headnotes, the Fall 1996 entering class will be profiled. Who are they? Where are they from? Why did they choose the University of Tennessee College of Law? And what do they hope to accomplish while they are here?

Alumni groups enjoy March building tour

Members of the Dean's Circle and Alumni Advisory Council were able to tour the new College of Law building during their combined meeting in Knoxville March 29-30. The photo at left looks down the hallway from the Rotunda to classrooms in the rear of the new building. Alumni enter through the old main entrance of the 1950s building in the bottom left photo. The group stops to listen to a description of the new building in the bottom right photo.
Dean Richard S. Wirtz announced in February that the faculty voted to recommend Professors Gregory Stein and Steven Thorpe for tenure and that Prof. Thorpe was recommended for promotion to the rank of associate professor. The faculty also recommended that Professors Frances Ansley and Glenn Reynolds be promoted to the rank of full professor.

The UT Community Partnership Center, of which Fran Ansley is co-director, will supervise (along with the Center for Neighborhood Development) several VISTA volunteers who will be working in the Knoxville area over the next year. Six local neighborhoods will receive VISTA volunteers. Prof. Ansley was a presenter at “Justice in the Coalfields: Place, Collective Politics, and Social Justice in Contemporary America” March 3-5 at Emory University in Atlanta. Prof. Ansley was co-author of an account of the UMW takeover over the Pittston Coal Company facilities in 1989, “Singing Across the Dark Spaces,” which was published in Fighting Back in Appalachia.

Kelly Browne's article, “TBAlink: The Tennessee Bar Association’s Link to the 21st Century,” appeared in the Winter 1996 issue of Southeastern Law Librarian. Prof. Browne has also been named to the Editorial Board of TBAlink, the Tennessee Bar Association's web site. She has been appointed editor of the “Legal Resources” page of TBAlink and will be selecting the content and designing the format of that page.

Kelly Browne and Steven R. Thorpe have been invited to present a program, “Teaching Legal Research to Adult Learners,” at the Legal Writing Institute’s annual conference in Seattle this July.

The third edition of Tennessee Law of Evidence has been published by Michie Co. The book was co-authored by Neil Cohen, Sarah Sheppeard and Donald Paine.

Grayfred Gray served on a panel on “Perspectives on Rule 31” at the UT Conference Center as part of a day-long Tennessee Bar Association CLE program. Prof. Gray represented the UT Mediation Clinic and Community Mediation Center perspective. Approximately 150 persons attended the program.


Bob Lloyd's article, “Consumerism in Legal Education,” appeared in the December 1995 issue of the Journal of Legal Education. Prof. Lloyd’s self-teaching computer program on priorities under Article Nine of the Uniform Commercial Code has been accepted for distribution by the Center for Computer-Assisted Legal Instruction (CALI). This is Prof. Lloyd’s third CALI program; the first two dealt with fixtures and with attachment and perfection of security interests under Article Nine.

Glenn Reynolds’ article, “Is Democracy Like Sex?,” was the subject of a column by George Will in the Washington Post. In February, Prof. Reynolds appeared on “Talk of the Nation,” a nationwide NPR talk show hosted by Ray Suarez. The topic was the Second Amendment. Reynolds is serving as a consultant to the Discovery Channel regarding its forthcoming series on guns, crime and politics entitled “Gunpower.”


Greg Stein has been invited to serve as a member of the Editorial Advisory Board of the Real Property, Probate and Trust Journal. The board will help to select articles for the Journal, an ABA publication with approximately 35,000 subscribers.
UT professor spends semester in DA's office

UT Professor of Law Neil Cohen and Knox County prosecutor Robert Jolley swapped jobs during the 1996 spring semester.

Cohen, a member of the UT faculty since 1972, joined the Knox County district attorney general's office, while Jolley, an assistant district attorney general since 1982, became a full-time faculty member for a semester. The assignments lasted through the end of May.

While each expected to learn something about the other's working environment, the greatest beneficiaries will be Tennessee's future lawyers.

"For me, it's a wonderful learning experience that I'm going to use for a long time," Cohen told the Knoxville News-Sentinel, which did a feature story on the two in January. "This will be of great benefit to my classes."

Cohen, who practiced law in Knoxville early in his career, teaches criminal law and procedure and evidence at UT. With the prosecutors' office, he worked in various venues ranging from General Sessions Court to the grand jury. Cohen especially enjoyed the grand jury work, because the process is secret and most lawyers never get a chance to observe it firsthand, he said.

Cohen also had the chance to work alongside some of his former students. "I take great pride in watching my students flourish and am very comfortable sitting at their feet," he said.

Jolley has taught criminal procedure and trial practice at UT in the past as an adjunct member of the faculty. The veteran prosecutor welcomed the opportunity to interact with students and share some of his first-hand knowledge.

"Students are amazing in the way their different approaches help you think about what you're doing," Jolley said. "We get shortsighted sometimes, and students bring a different perspective to that."

District Attorney General Randy Nichols was an avid supporter of the exchange program and would like to see it expanded even more. He supports a pending proposal that would allow students to work with his prosecutors in exchange for course credit.

"One thing the prosecution needs is to step up to the plate and say, 'This is a good career.' Public service is something these law students should consider. It's honorable work," Nichols said.
CONFIDENTIALITY, PRIVILEGE AND THE REPRESENTATION OF ORGANIZATIONAL CLIENTS

by

Carl A. Pierce, Associate Professor of Law, University of Tennessee

May 1995

The following is a revised and updated portion of an outline prepared by Professor Pierce for a three-hour Ethics and Professionalism CLE presentation at the Third Annual Corporate Counsel Institute held in Nashville, Tennessee, May 19-20, 1995. Other portions of this outline were included in the Summer 1995 and Fall 1995 issues of Alumni Headnotes.

I. Introduction: Confidentiality obligations and the attorney-client privilege affect all lawyers, but present some special problems for lawyers who represent corporate or other organizational clients in business transactions.

II. The Basics

A. Confidentiality

1. TN Supreme Court Rule 8, Disciplinary Rules 4-101 and DR 7-102(B)(1):

   a. DR 4-101: Without client consent, a lawyer may not reveal, use to the disadvantage of a client, or use for the advantage of the lawyer or a third person a client's "confidence" or "secret," except that the lawyer may reveal the intention of the client to commit a crime.

   i. "Confidence" refers to information protected by the attorney-client privilege under applicable law.

   ii. "Secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

   b. DR 7-102(B): A lawyer who receives information clearly establishing that ... his client has, in the course of the representation, perpetrated a fraud upon a person ... shall promptly call upon his client to rectify the same, and if the client refuses or is unable to do so, he shall reveal the fraud to the affected person..., except when the information is protected as a privileged communication.

2. American Bar Association Model Rules 1.6 and 1.8:

   a. Absent client consent, Model Rule 1.6(a) and 1.8(b) prohibit the disclosure or use to the disadvantage of the client of "information relating to the representation of the client."

   b. Model Rule 1.6(b) only permits disclosure to the extent "the lawyer reasonably believes necessary to prevent the client from committing a criminal act that the lawyer reasonably believes is likely to result in imminent death or substantial bodily harm."

3. Note the differences between Rule 8 and the Model Rules

   a. The Model Rule concept of "information relating to the representation of a client" is broader than the Rule 8 concept of a "secret."

   b. The Model Rule reduces the number of situations in which a lawyer will be permitted to disclose confidential information and has no counterpart to DR 7-102(B)'s requirement that a lawyer reveal a client's fraud to the affected person. But See Section VI below.
c. The Model Rules do not include an express prohibition against a lawyer using information related to the representation for the benefit of the lawyer or another person without the consent of the client. Doing this, however, would be a breach of the common law fiduciary obligations of a lawyer-agent to the client-principal.

B. The Attorney-Client Privilege

1. TCA 23-3-105 provides that “No attorney ... shall be permitted in giving testimony against a client or a person who consulted the attorney... professionally to disclose any communication made to the attorney ... as such by such person, during the pendency of the suit, before or afterwards, to the persons’ injury.” TCA 23-3-107 makes the violation of this prohibition by an attorney a class C misdemeanor and provides further that an attorney convicted of this offense “shall also be stricken from the rolls....”

2. In most jurisdictions, the attorney-client privilege has been articulated as a common law evidentiary privilege. For two helpful attempts to codify the general principles governing the availability of the privilege, see Proposed Federal Rule of Evidence § 503 and American Law Institute, Restatement of the Law (Third), The Law Governing Lawyers, §§ 118-135 (Tentative Draft No.2, 1989).

C. The Relationship Between Confidentiality, Privilege, and Other Professional Responsibilities of the Lawyer.

1. The duty not to disclose confidential information is a professional responsibility of the lawyer which is broader than and transcends the right of the client to invoke the attorney-client privilege to prevent the lawyer or client from being compelled to testify about privileged communications.

   a. Much of the information a lawyer will gain in the course of his or her representation of a client will not be privileged, but will nonetheless be either a “secret” as defined in DR 4-101 (A) or “information related to the representation” as protected by Model Rule 1.6

   b. A lawyer’s duty not to voluntarily disclose confidences or secrets requires that the lawyer take reasonable action to resist compelled disclosure of any information that is arguably privileged.

2. The lawyer’s duty to represent a client competently requires that the lawyer take reasonable action to prevent inadvertent disclosure of privileged or otherwise confidential information.

3. The duty not to disclose or use to the disadvantage of the client information relating to the representation is at the root of many conflict of interest problems. The basic conflict arises when the confidentiality obligation to one client clashes with the duty to advise another client of all information that client needs to protect his or her interests. If the second client should be told about information the first client is unwilling to disclose, there is a conflict of interest between the two clients. These problems are compounded because the confidentiality obligation can be triggered by a preliminary consultation with a prospective client and continues beyond the termination of the representation of a client the lawyer has chosen to represent. See, e.g., American Bar Association, Formal Ethics Opinion 90-358 (Protection of Information Imparted by Prospective Client) and Section VIII below.

4. In some circumstances, the failure of a lawyer to disclose information related to the representation of a client may be regarded by law as a misrepresentation by the lawyer or as the provision of assistance to a client who is perpetrating a fraud. See, e.g., American Bar Association, Formal Ethics Opinion 95-397 (Duty to Disclose Death of a Client).

III. Confidentiality and Privilege in Conjunction with the Joint Representation of Clients in Business Transactions

A. Business lawyers sometimes represent two clients in a business transaction between them - e.g. the formation of a joint venture, partnership, corporation, or an employment relationship or the purchase or sale of real estate or goods. This type of representation is specifically legitimated and regulated by Model Rule 2.2. Although there is no counterpart to this rule in Rule 8, it is arguable that the principles in Rule 2.2 are consistent with DR 5-105 which specifies when a lawyer is prohibited from representing conflicting interests.

B. The Comment to Model Rule 2.2 makes clear that a lawyer who represents two clients as an intermediary in a business transaction between them has an unadulterated confidentiality obligation to each client. The lawyer also has an unadulterated obligation to fully communicate to each all information they need to know in order to protect their interests. If these duties come into conflict because one client needs to know something the other does not want disclosed, the lawyer must either decline from undertaking or withdraw from the joint representation.
C. Information provided to a lawyer by a jointly represented client is privileged with respect to disclosure to third parties, but will not be privileged if there is a falling out between the jointly represented clients and one sues the other with respect to the subject matter of the joint representation. See American Law Institute, Restatement of the Law (Third), The Law Governing Lawyers, § 125 (Tentative Draft No.2, 1989). Indeed, Model Rule 2.2 specifically requires that prospective joint clients be informed of this limitation on the availability of the attorney-client privilege.

D. These confidentiality and privilege issues arise in cases in which a lawyer who has previously served co-clients as an intermediary seeks to represent one of the co-clients against the other in a related matter.

1. It has been claimed that the rule prohibiting lawyers from representing interests adverse to a former client in a substantially related matter - a rule which in part is designed to prevent use against the former client of the former client's confidential information - is inapplicable because the information given the lawyer during the joint representation would not be privileged. Several courts have rejected this argument and point out the difference between the privilege - which admittedly cannot be asserted in the litigation between former co-clients - and the duty of the lawyer to protect client confidences - which remains in full force during and after a joint representation. See e.g. Brennan's Inc. v. Brennan's Restaurants, 590 F.2d 168 (5th Cir. 1979).

2. But see Committee on Legal Ethics and Professional Responsibility of the Pennsylvania Bar Association, Opinion 93-80, 1001 ABA/BNA Man. Prof. Conduct 7329. (A lawyer was retained by two brothers to memorialize a buy-sell agreement between them. Upon the unexpected death of one of the brothers, the lawyer may testify for the surviving brother as to the contents of the oral agreement. Because the lawyer represented the brothers jointly communications with one brother are not privileged or confidential vis a vis the other brother.) The conclusion that the communications are not confidential - as distinct from privileged - conflicts with the Model Rule position that the duty to preserve each client's confidences is in full force during an intermediation.

3. A variation on this argument based on Allegaert v. Perot, 565 F.2d 246 (2d. Cir. 1977) is that the substantial relationship test used to disqualify lawyers from representing interests adverse to former clients is inapplicable when the former client has "no reasonable expectation of confidentiality," and that a jointly represented client has no expectation of confidentiality relative to his or her co-client because the information is not protected by the attorney-client privilege. The "Allegaert exception" has not been well received, and its application in the context of a dispute between former co-clients was recently rejected in Casco Northern Bank v. JBI Associated Ltd., 667 A.2d 856 (Maine Sup.Ct. 1995).

4. Model Rule 2.2 provides that upon withdrawal from the representation of co-clients as an intermediary, a lawyer "shall not continue to represent any of the clients in the matter that was the subject of the intermediation." But what if the subsequent matter was not the subject matter of the intermediation, but was substantially related to that subject matter?

IV. Confidences and Secrets of Organizational Clients

A. In Tennessee, a lawyer retained or employed by an organizational client has a duty not to reveal the confidences and secrets of the organizational client without the consent of the organization. Similarly he may not use the confidences and secrets to his or another's advantage or to the disadvantage of the organization without first obtaining the informed consent of the organization. He may but is not required to reveal client confidences in order to reveal the intention of his client to commit a crime. See generally DR 4-101. In some circumstances the lawyer for an organization may be required to reveal client confidences or secrets. See DR 7-102(B)(1) and Section VI below.

B. Which communications to the organization's counsel will be regarded as a confidence? DR 4-101(A) defines a confidence as "information protected by the attorney-client privilege." Which communications among those who speak or act for the organization, then, are protected by the attorney-client privilege?

1. TCA 23-3-105 sets forth the attorney-client privilege in Tennessee, but it does not address the applicability of the privilege to communications made on behalf of organizational clients.

2. In TN Formal Ethics Opinion 46(b), the ethics committee seemed to approve the approach taken by the U.S. Supreme Court in Upjohn Co. v. United States, 449 U.S. 383 (1981) and concluded that communications between a nurse and the corporate counsel for the hospital were privileged. One should not rely on this conclusion. Whether a communication is privileged is a question of law which must be decided by the courts and not by an ethics committee.
3. Try a multiple choice question about the holding in Upjohn: In Upjohn, the I.R.S. sought to discover communications from corporate employees to the corporate counsel who at the request of top corporate management was conducting an internal investigation of possible illegal payments by Upjohn employees to foreign governmental officials for the purpose of advising management with respect to the company’s legal responsibilities with respect to such payments. Upjohn contended that these communications were protected by the attorney-client privilege. The Supreme Court held:

a. That only communications from members of the corporate “control group” to corporate counsel are protected by the attorney-client privilege.

b. That all communications by corporate employees in response to an inquiry by the corporation’s lawyer are protected by the attorney-client privilege, provided the lawyer sought the information to render legal advice to the corporation.

c. That all communications to the corporation’s lawyer by corporate employees who have been told by the lawyer that their statements will be held in confidence are protected by the attorney-client privilege.

d. That the attorney-client privilege covers all communications by corporate employees to the corporation’s lawyer, but that the information is nonetheless discoverable if the I.R.S. can establish that the information is needed and cannot be obtained from other sources.

e. None of the above, but held on the facts of the case that the communications from the corporate employees to Upjohn’s lawyers were privileged.

4. Some federal courts have extended Upjohn. The Ninth Circuit, for example, has held that conversations between corporate counsel and a former employee were privileged where the counsel was seeking information needed to advise the corporation. In re Coordinated Pre-Trial Proceedings 658 F.2d 1355 (1982). It has also held that communications between corporate counsel and an employee of a subsidiary corporation are privileged. Admiral Insurance Co. v. U.S. District Court, 851 F.2d 1486 (1989).

5. Upjohn is not binding on the states. Some states have not adopted Upjohn’s “liberal” approach.


b. More recently the Arizona Supreme Court has held that where someone other than the corporate employee who communicates with the corporation’s attorney initiates the communication, a factual communication from the employee to the attorney is within the corporation’s privilege only if it concerns the employee’s own conduct within the scope of his or her employment and is made to assist the lawyer in assessing the legal consequences of that conduct for the corporate client. Samaritan Foundation v. Goldfarb, 862 P.2d 870 (Arizona Sup.Ct. 1993)

6. Section 123 of the ALI, Restatement of the Law Governing Lawyers (Tent. Draft No. 2, 1989) extends the corporation’s attorney-client privilege to include all communications to corporate counsel from a person communicating pursuant to an agency relationship with the corporation with respect to a legal matter of interest to the corporation so long as the communication is only shared with other agents of the corporation who reasonably need to know of the communication in order to act for the organization. This goes beyond Upjohn.

7. There are other interesting privilege issues peculiar to corporate clients. The Bankruptcy Court for the Eastern District of Tennessee has held, for example, that the identity of former officers and shareholders is not privileged and suggests that communications to corporate counsel will be protected only if they are made to the corporate counsel acting as such rather than as a director or in some other non-legal capacity. Deutscher v. Lick Fork Ltd. (In re Southern Industrial Banking Corp.) 35 Bankr. 643 (1983). It has also been sensibly held that communications to lawyers who are salaried employees of the corporation’s client are as entitled to the protections of the attorney-client privilege as communications to retained counsel. Rossi v. Blue Cross & Blue Shield of Greater New York, 540 N.E.2d 703 (1989). See also Georgia-Pacific Corp. v. GAF Roofing Manufacturing Corp., 1996 WL 29392 (S.D.N.Y. 1996) (Information conveyed to corporate attorney is not privileged if attorney is serving in role as negotiator of a business transaction rather than as legal counsel).

C. In the special context of shareholder litigation, the corporate attorney-client privilege is not absolute.

1. The seminal case is Garner v. Wolfinbarger, 430 F.2d 1093 (5th Cir. 1970). The Sixth Circuit has more recently addressed this issue in Fausek v. White, 965 F.2d 126 (1992).
2. Section 134 of the ALI, Restatement of the Law Governing Lawyers (Tent. Draft No. 2, 1989) provides that the attorney-client privilege of a corporation does not apply if the directors or officers of the corporation are charged with breach of their obligations to the corporation or its shareholders, the communication occurred prior to the suit and relates directly to those charges, and the court concludes that the need of the requesting party to discover or introduce the communication is sufficiently compelling and the threat to confidentiality sufficiently confined to justify setting the privilege aside.

D. Reminder: That a communication is unprivileged does not mean that corporate counsel may voluntarily reveal the communication. It may be a secret!

E. Which communications to corporate counsel will be regarded as a DR 4-101 “secret” - i.e., “other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.” Does this include anything any corporate employee tells any corporate counsel? Or are there some cases where the information obtained by the corporate counsel will not have been “gained in professional relationship”? Under Model Rule 1.6, what information will be regarded as “information relating to the representation” of an organizational client? These issues are distinct from the attorney-client privilege issues noted above and have basically been ignored by everyone.

F. Who has authority to consent on behalf of the corporation to corporate counsel’s disclosure of confidences or secrets? The person who communicated with the lawyer? The person who communicated with the lawyer, but only if authorized to act on the legal advice provided by counsel? The corporate official who requested or instructed the person who communicated with the lawyer to do so? The corporate official who requested or instructed the person who communicated with the lawyer to do so, but only if authorized to act on the legal advice provided by counsel? The President or a person authorized by President only? The Board of Directors or a person authorized by resolution of board only? New Management? Trustee in Bankruptcy? See CFTC v. Weintraub, 471 U.S. 343 (1985) (bankruptcy trustee may waive the corporation’s privilege over the objection of the corporate officials who had sought legal advice from the corporation’s lawyer).

V. Permissive Disclosure of Corporate Confidences, Secrets, and/or Information Relating to the Representation.

A. The attorney-client privilege will not be available if the corporate client sought the services of the lawyer for the purpose of perpetrating a crime or a fraud. Note that this exception focuses on the purpose of the client in seeking legal service and applies to both frauds and crimes. See ALI, Restatement of the Law Governing Lawyers, Section 132 (Tent. Draft No. 2, 1989). Remember, however, that the fact you can be compelled to disclose does not mean you can do so voluntarily.

B. DR 4-101(C)(3) permits, but does not require, corporate counsel to reveal the intent of his corporate client to commit a crime and the information necessary to prevent the crime. Can a corporation do things that are wrong and cause a great deal of damage, but which are not crimes? Not all frauds, for example, are crimes. Alternatively, are there crimes the prevention of which may not be worth the cost of permitting the lawyer to reveal client confidences?

C. Model Rule 1.6 is more restrictive on its face, only permitting disclosure of information “to the extent the lawyer reasonably believes is necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm. Is this too restrictive of the lawyer’s right to protect third parties from injury the lawyer’s client intends to inflict upon them? MR 1.6, Comments [14] & [15] and ABA Formal Ethics Opinion 92-366 broaden this exception to a limited but very significant extent. If the client is going to use the lawyer’s services to perpetrate a fraud or crime, the lawyer must withdraw to avoid assisting the client perpetrate a fraud or commit a crime. Although, after withdrawal, the lawyer must continue to protect client confidences in accordance with Model Rule 1.6, Comment 15 asserts that Model Rule 1.6 does not prevent the lawyer from giving notice of the fact of withdrawal or withdrawing or disaffirming any opinion and document she innocently prepared but which may still be used to perpetrate the fraud or commit the crime. This is known as a noisy withdrawal. Although dissents are very uncommon in ethics opinions, three members of the ABA Ethics Committee dissented from Opinion 92-366 and would have prohibited noisy withdrawals.

D. If you may disclose, can you be faulted for choosing not to? Section [8] of the Model Rule Scope Statement says that “the lawyer’s exercise of discretion not to disclose information under Rule 1.6 should not be subject to reexamination.” What do you think is the likelihood that your decision will be accepted if your silence made it possible for your corporate client to seriously injure a large number of people and they subsequently find out that you were permitted to make disclosures that would have prevented the harm?
VI. Mandatory Disclosure of Corporate Confidences, Secrets, and/or Information Relating to the Representation.

A. No such obligation under the Model Rules.

B. DR 7-102(b) provides that if a lawyer receives information “clearly establishing” that in the course of the lawyer’s representation of a client the client “has perpetrated” a “fraud” upon a person the lawyer must first call upon the client to rectify the fraud, but if the client refuses or is unable to do so, the lawyer must reveal the fraud to the affected person, “except when the information is protected as a privileged communication.”

C. Consider this hypothetical: “I am a lawyer for XYZ Inc. During the last three months I worked on documents to be submitted by XYZ to a bank in conjunction with the XYZ’s application for a $25,000,000 line of credit. The bank approved the line of credit yesterday and the corporation is planning to borrow $10,000,000 next week. My involvement with the transaction is over. This morning, however, I discovered an internal memorandum written by an assistant treasurer alleging that XYZ’s treasurer, with the knowledge and acquiescence of all the directors, had intentionally falsified some of financial data given to the bank as part of the loan application and upon which the Bank had relied in approving the loan. When I called this to the attention of the Board and told the Board that I expected them to inform the bank of this fraud, I was expressly instructed not to inform the bank about the false financial data. Please advise me whether I am required to inform the bank.”

1. Has a fraud been perpetrated yet? If no, go to DR 4-101 to decide whether the lawyer is prohibited from disclosing or permitted to disclose the client’s intention to commit a crime. Nothing in Canon 4, however, requires disclosure. Is a fraud perpetrated when the application is submitted, when the line of credit is approved, or only when money is actually loaned?

2. Does the lawyer have information “clearly establishing” that a fraud has been perpetrated? How much proof do you have to have? Do you need actual knowledge? Substantial reason to believe?

3. Is the information the lawyer received protected as a privileged communication? Does the reference to privileged communications only embrace confidences or does it include secrets as well? Is the memorandum a confidence? Is it a secret?

4. If the information is a confidence or secret, is it protected as such? Are any of the exceptions in DR 4-101 applicable? Is it possible that on the facts of this case a fraud has been perpetrated but that XYZ can be seen as still intending to commit a crime?

D. In Formal Ethics Opinion 93-F-133, the Ethics Committee held that a lawyer who learns that her client has perjured herself during the course of the lawyer’s representation must inform the court of the perjury. Although the ethics opinion only dealt with perjury, its logic would require that a corporate lawyer who learns that her client has perpetrated a fraud upon a person reveal the fraud to the affected person. This ethics opinion, however, is only binding on the Board of Professional Responsibility and the attorney who requested the opinion.

E. In response to Formal Ethics Opinion 93-F-133 the Tennessee Supreme Court amended DR 7-102(B)(1) to delete the phrase “except when the information is protected as a privileged communication.” After the Nashville Bar Association expressed concern about this amendment, the Supreme Court repealed its amendment - returning Tennessee to the legal status quo as of the promulgation of Formal Ethics Opinion 93-F-133. The Court requested comments on this issue.

F. The Tennessee Bar Association’s Committee on Standards of Professional Conduct has recommended a revision of DR 7-102(B) which would read in pertinent part as follows:

“(B) A lawyer who is representing or has represented a client in a matter other than a proceeding before or conducted pursuant to the authority of a tribunal and comes to know, prior to the conclusion of the matter, that the client has, during the course of the lawyer’s representation of the client in the matter, perpetrated a fraud which the lawyer reasonably believes will cause harm to the financial or property interests of another person shall promptly advise the client to rectify the fraud, shall consult with the client about the consequences of the client’s failure to rectify the fraud, and if the client refuses or is unable to rectify the fraud,

(1) the lawyer shall reveal the fraud to the affected person, except where the lawyer’s knowledge of the fraud is derived from a “confidence” or “secret” as defined in DR 4-101(A), and’
(2) the lawyer shall withdraw from the representation of the client in the matter, and

(3) if the lawyer is prohibited from disclosing the fraud by paragraph (B)(1), but reasonably believes that the client will use written statements made, written opinions rendered or written work-product submitted by the lawyer to the affected person to assist the client with the consummation of the fraud, the lawyer shall, but only to the extent necessary to prevent the consummation of the fraud and without any further disclosure of the client’s confidences or secrets, inform the affected person of the lawyer’s withdrawal from the representation of the client or the lawyer’s disaffirmation of any written statements made, written opinions rendered, or written work-product previously submitted to the affected person by the lawyer and which the lawyer reasonably believes have been rendered false or misleading by the client’s fraud.

G. A lawyer who prepared a deed for a client and notarized the client’s signature, and subsequently discovered that an additional signature was later inserted under the lawyer’s notarization must reveal the document alteration; on the facts posed the information is not protected. The lawyer must advise the client that the alteration must be corrected; if the client refuses or unable to take action, the lawyer must reveal the fraud to the proper authorities. Professional Ethics Committee of the Suffolk County Bar Association, Opinion 93-1, 1001 ABA/BNA Man. Prof. Conduct 6301.

H. A lawyer served as counsel to a mortgage company (Medcon) which was owned by a long-time friend, Medeiros. The lawyer served as the closing attorney for an S&L (Suncoast) in a transaction with Medcon and received mortgage proceeds which were designated to pay off preexisting loans on the property. The lawyer turned the funds over to Medcon or Medeiros who illegally diverted the funds. When the lawyer discovered this, he advised Medeiros that he had committed a crime, but did not notify Suncoast or the Company which had issued title insurance. He said that Medeiros, speaking personally and on behalf of Medcon, had instructed him to remain silent. Held: The lawyer is censured because he did not have an attorney-client relationship with Medeiros, only Medcon. Because Medeiros was not his client, the information the lawyer received from him was not protected by MR 1.6. In re Silva, 636 A.2d 316 (R.I. Sup.Ct. 1994). Was Medeiros a constituent of Medcon whose communications to the corporation’s lawyer must be kept confidential unless the corporation consents to disclosure? Was he a constituent authorized to withhold consent? Did the lawyer have the obligation under Model Rule 1.13 to reveal what Medeiros did to other members of the Medcon board of directors?

I. A lawyer who learns that a statement he made in negotiation with an opposing party was based upon inaccurate information may withdraw the statement although he is not required to, even over his client’s objections, when the lawyer believes the opposing party is relying on materially inaccurate information. If the misstatement constitutes fraud, the lawyer has the discretion to disclose it to the opposing side, but is not required to do so under the exception to rule on confidentiality. Committee on Professional Ethics of the New York County Lawyer’s Association Opinion 686 (1991), 1001 ABA/BNA Man. Prof. Conduct 6501.

J. A lawyer retained to represent a buyer of property learns in the course of his representation that after signing the contract and just prior to closing the buyer has agreed to pay a sum of cash to the seller in excess of the purchase price and under the table. The lawyer advised the client not to do this - explaining the risks and penalties for filing false reports and returns and refusing to assist with the preparation of the returns. The client ignored the advice. The lawyer withdrew, but remained silent. With the assistance of another lawyer, the client then closed the deal. According to the Ethics Committee, the lawyer must first determine whether he knows that the client has perpetrated a fraud, resolving any doubts about the client’s state of mind in favor of the client. For there to be fraud under the MCPR there must be scienter, deceit, intent to mislead, of knowing failure to correct misrepresentations which can reasonably be expected to induce detrimental reliance by another. The lawyer must next determine whether his information is protected as a confidence or secret. The exception in DR4-101(c) that permits the lawyer to reveal the intention to commit a crime should be strictly construed as applicable only when the client is “planning to commit a crime in the future or is continuing an ongoing criminal scheme. In such a case, however, disclosure in only permitted, not required. The ethics committee apparently concluded that there was a fraud perpetrated, but that the lawyer was bound not to reveal it because the client was not planning a future crime or continuing an ongoing criminal scheme. Association of the Bar of the City of New York, Formal Ethics Opinion 1994-8, 10 ABA/BNA Man Prof. Conduct 240 (1994)

VII. Confidentiality and the Corporate Constituent

A. This issue has not been addressed in Tennessee. MCPR, EC 5-18 suggests that unless a joint representation has been undertaken, a corporate constituent is not a client of the corporation’s lawyer. Taken literally, then, the corporate lawyer has no affirmative confidentiality obligation to the constituent (as distinct from the corporation). But I believe that the corporate lawyer has a duty to the corporation to refrain from disclosing the information received from a constituent to anyone within the corporation who the lawyer is not advising with respect to the matter in
question. Note, however, that this limitation on revealing constituent confidences is derived from the lawyer’s duty to the corporation and not from any duty owed to the constituent.

B. The starting point under Model Rule 1.13 is the same. Unless a joint representation has been undertaken, a corporate constituent is not a client of the corporation’s lawyer. Taken literally, then, the corporate lawyer has no affirmative confidentiality obligation to the constituent (as distinct from the corporation). But Comment [3] to Model Rule 1.13 suggests that the lawyer’s confidentiality obligations to the corporation would preclude the lawyer from disclosing information received from one constituent to other constituents “unless explicitly or impliedly authorized by the organizational client in order to carry out the representation.”

C. What if the constituent who communicates with corporate counsel seeks legal advice with respect to previous wrongful conduct which if detected could have adverse consequences for the corporation and wants to deal with the problem without disclosing it to his/her superiors? Model Rule 1.13(b) does not apply. What would you do? Are you prohibited from disclosing? Permitted but not required to disclose? Required to disclose?

D. What if the constituent who consults you tells you that he or she is doing something or is going to do something which you think will adversely affect the corporation, you advise against the proposed conduct, and constituent tells you that he or she is going to do it anyway? Model Rule 1.13 (b) applies, but speaks only to cases where the ongoing or proposed conduct is a violation of a legal obligation to the corporation or a violation of law which reasonably might be imputed to the corporation and is likely to result in substantial injury to the corporation.

1. What if Model Rule 1.13(b) is inapplicable? Are you prohibited from disclosing? Permitted but not required to disclose? Required to disclose?

2. If Model Rule 1.13(b) is applicable, the lawyer must proceed as reasonably necessary in the best interest of the corporation, taking into account the seriousness of the violation and its consequences, the scope and nature of the lawyer’s representation, the responsibility in the corporation and the apparent motivation of the constituent involved, the policies of the corporation concerning intra-corporate whistle-blowing, and any other relevant considerations. One of the ways the lawyer might proceed is to refer the matter to higher authority - i.e. blow the whistle on the constituent who sought but did not follow the lawyer’s advice.

a. Does referral by a lawyer in the legal department to a supervisory attorney in the legal department count as a referral to higher authority? Probably not. What if it is a referral to the corporation’s general counsel by a lawyer in a law firm retained by the corporation with respect to the matter in question?

b. Referral to higher authority within the corporation should be a last resort and may be prohibited if not “reasonably necessary” to protect the best interests of the corporation.

c. Referral to higher authority is required if the referral is reasonably necessary to protect the best interests of the corporation. If warranted by the seriousness of the matter referral to the highest authority that can act on behalf of the corporation is required.

i. With respect to the “higher” authorities, MR 1.13, Comment 4 provides that “the stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy.” Do your corporate clients have such a policy? Comment 4 continues: “Even in the absence of organizational policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act in variance with the organization’s interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority.”

ii. With respect to the “highest” authorities, Model Rule 1.13, Comment 5 provides that “in an extreme case it may be reasonably necessary for the lawyer to refer the matter to the organization’s highest authority. Ordinarily, that is the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere; for example, in the independent directors of a corporation.” What about the shareholders? If the matter relates to a merger requiring shareholder approval, aren’t the shareholders the highest authority with respect to that matter?

E. The bottom line: Corporate constituents should know that the corporate counsel with whom they communicate may be required to report the information to a corporate superior. There is a greater risk that this will happen than that the corporation will waive its privilege or that the lawyer will be required to disclose a constituent communication to someone who is not an authorized corporate constituent.
A. A lawyer’s obligation to preserve client confidences and secrets continues after the termination of the lawyer’s representation of the client, and the prohibition against representing interests adverse to a former client in a substantially related matter is a prophylactic rule designed to prevent a lawyer from representing a new client in a situation in which a former client might reasonably fear that the lawyer would be tempted to disclose or use to the disadvantage of the former client information acquired while representing the former client. See A.B.A. Model Rule 1.9 and Tennessee Formal Ethics Opinions 81-F-9, 84-F-65, and 86-F-104.

B. A lawyer who 10 years earlier had represented a S&L in connection with a mortgage loan wants to represent the debtor who is seeking a restructuring of the loan. The loan is now held by a successor entity of the S&L which was created by the RTC. The lawyer must seek the consent of both the debtor and the successor. He should assume that the successor will be treated as the functional equivalent of the predecessor S&L and that the two representations are substantially related in that they generally involve the same loan. The terms of the new representation should be put in writing and should explain to the debtor any limitations on the lawyer’s ability to represent the debtor because of his prior representation of the S&L - in particular his inability to challenge the validity or meaning of the initial loan documents. Committee on Legal Ethics and Professional Responsibility of the Pennsylvania Bar Association, Opinion 93-198, 1001 ABA/BNA Man. Prof. Conduct 7335 (1993).

Carl A. Pierce is an associate professor at the UT College of Law and teaches American Legal History, Business Associations, Contracts, Government Contracts, and Professional Responsibility. He has been a member of the UT faculty since 1972. Prof. Pierce earned a B.A. degree from Yale University in 1969 and a J.D. from Yale in 1972. While at the University of Tennessee, Prof. Pierce has served as assistant dean of the College of Law (1972-74) and president of the UT Faculty Senate (1979-80). He received the 1993 Carden Award for Outstanding Service to the College of Law. Prof. Pierce speaks regularly at CLE programs about lawyers' professional responsibilities and is currently serving as the Reporter for the Tennessee Bar Association's Committee on Standards of Professional Conduct.
The Transition

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Aconda Court has a student lounge and message center, but the area is much smaller than what was available in the old Taylor Law Center building. The new law building will have a large student commons area and lots of space for student organizations.

“A lot of students get in their cars, drive to class, attend class, and then go home,” said Hardison. “You don’t see as many of your classmates as you used to.”

“I know a few people from my first year who didn’t come back because of the transition,” said Hargrow. “They decided to wait a year or two and come back when the new building is finished.”

The transition back to the new building is scheduled to begin during the holidays this December. The Law Library will probably be the first unit to move into new quarters. Hopefully, classrooms will be available in January for the beginning of the spring 1997 semester.

“I’d love to have a couple of classes in the new building,” Dodson said, “but I won’t be hurt if it doesn’t happen.”

“At this point it makes no difference,” said Hargrow. “If I don’t get in, I’ll come back and visit because it’s going to be quite a building.”

Faculty and staff may begin moving into the new building later in the ‘97 spring semester. Some offices may wait until the summer to return. Another transition team -- humorously dubbed the “Scream Team” -- has been formed to plan the return move. The official dedication of the new building will be scheduled for the fall of 1997.

“Scream Teamer” Hoover is ready for the trek back across Cumberland Avenue. “It sure will be nice to be back in one place again,” she said. At that time, she plans to hang up her hard hat -- permanently.

Alumni key partners in admissions process

This past winter, approximately 50 alumni wrote highly-qualified admitted candidates to the College of Law to encourage their acceptance of our offer of admission. Some great letters were sent, and the Admissions Office received excellent feedback from the admitted candidates.

The Admissions Office needs more alumni to participate during the winter of 1997. In particular, alumni volunteers from Chattanooga, Upper East Tennessee, North Carolina, Georgia, Virginia and the Northeast are needed.

If you can help by sending no more than five letters next year, please contact Karen Britton, Director of Admissions and Financial Aid, Admissions Office, Room 104 Aconda Court, 802 Volunteer Boulevard, Knoxville, TN 37996-4070; FAX (423) 974-1572, or phone (423) 974-4131.

Student Organizations

The following student organizations are active at the UT College of Law:

- American Bar Association/Law Student Division
- Association of Trial Lawyers of America--Student Chapter
- Black Law Students Association
- Christian Legal Society
- Class Development Council
- Environmental Law Association
- Hispanic Law Students Association
- Inn of Court
- Lambda Legal Society
- Law Women
- Moot Court Program
- Phi Alpha Delta
- Phi Delta Phi
- Sports & Entertainment Law Society
- Student Bar Association
- Tennessee Association for Public Interest Law
- Tennessee High School Mock Trial Competition
- Tennessee Law Review
Friday, November 15


Saturday, November 16

Traditional barbecue lunch on the FRONT PLAZA of the NEW LAW BUILDING two (2) hours prior to kickoff of the Arkansas game.

ALL alumni/ae and their families and friends are invited to join in the festivities!

MARK YOUR CALENDARS NOW AND PLAN TO ATTEND!

WATCH FOR THE OFFICIAL HOMECOMING PUBLICATION!!!

The Official UT Knoxville Homecoming brochure will be mailed out in late July by the UT Alumni Office. It will provide information concerning all homecoming activities on campus. But more important, you MUST use this brochure to register for all College of Law Homecoming Events, including Football Tickets, the reunion, and the barbecue. The College of Law will NOT SEND a separate mailing.

So WATCH YOUR MAIL! WATCH YOUR MAIL! WATCH YOUR MAIL! WATCH YOUR MAIL! AND --- if you want FOOTBALL TICKETS... RESPOND QUICKLY - RESPOND QUICKLY (Tickets are Limited)

REUNION HOSTS/HOSTESSES NEEDED!!!

If you are a member of a reunion class and would like to serve on your class year’s reunion committee, please contact Dotti Bressi in the Office of Development and Alumni Affairs at 423/974-2007 or 423/974-6691 as soon as possible. Responsibilities include sending correspondence to fellow class members encouraging them to attend this year’s reunion and helping with the planning of activities for Friday night.

Name: ___________________________________________ Year of Graduation __________
Address: ____________________________________________
__________________________________________________
Phone # __________

________ Yes, I am interested in serving as Host for my law school class reunion.

Please return to: UT College of Law Office of Development and Alumni Affairs Dunford Hall Knoxville, TN 37996-4070
### Alumni Address Change and News

If your address or job status has changed or will soon change, let us know.

| Name: | ________________ | Class Year: |
| Firm Name/Organization: | ________________ | |
| Address: | ________________ | |
| City/State/Zip: | ________________ | |
| Work Phone: | ________________ | Home Phone: |
| This is my: | Office Address | Home Address |
| Is this a change of address? | Yes | No |
| Would you like your new work address published? | Yes | No |
| If yes, please list your former address: | ________________ |

Please send information to: Office of Development and Alumni Affairs
The University of Tennessee College of Law
Dunford Hall
915 Volunteer Boulevard
Knoxville, TN 37996-4070

Our telephone number is 423/974-6691. Please call if you have questions.

### Calendar

**September 6**  
Alumni Jurisprudence Lecture,* John Langbein, Chancellor and Kent Professor of Law and Legal History, Yale University

**September 13-14**  
Tennessee Corporate Counsel Institute*

**September 20-21**  
Dean’s Circle meeting in Knoxville

**November 8-9**  
Alumni Advisory Council meeting in Memphis

**November 15-16**  
Homecoming 1996* (Arkansas football game) (Reunions for class years ending in "1" and "6")

**November 22**  
Honors Banquet, The Foundry, Knoxville

* Alumni invited and encouraged to attend

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The University of Tennessee, Knoxville does not discriminate on the basis of race, sex, color, religion, national origin, age, handicap, or veteran status in provision of educational opportunities or employment opportunities and benefits. UT Knoxville does not discriminate on the basis of sex or handicap in its educational programs or activities, pursuant to requirements of Title IX of the Educational Amendments of 1972, Public Law 92-318, and Section 504 of the Rehabilitation Act 1973, Public Law 93-112, and Americans With Disabilities Act of 1990, Public Law 101-336, respectively. This policy extends to both employment by and admission to the University. Inquiries concerning Title IX, Section 104, and the Americans With Disabilities Act of 1990 should be directed to Diversity Resources and Educational Services (DRES); 1818 Lake Avenue; Knoxville, Tennessee 37996-3560; or telephone (615) 974-2498. Charges of violations of the above policy should also be directed to DRES.