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Spring 2009

## The Advocate Spring 2009

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Spring 2009

# The Advocate Spring 2009

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

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CENTER FOR ADVOCACY & DISPUTE RESOLUTION

# The Advocate

SPRING 2009 VOLUME 3, ISSUE 2

"educating today the successful lawyers of tomorrow"

#### **Center Hosts Collaboration For Graduates Awards Two Summers-Wyatt Scholarships**

On April 23, the Center for Advocacy & Dispute Resolution hosted its annual Year-End Collaboration for students graduating and adjunct professors teaching in the advocacy concentration. This year, the Collaboration featured Advocacy Center Founder Robert E. Pryor who inspired and amused advocates of all ages in David Letterman style with his "Top Ten Reasons Why I Still Love the Practice of Law." Bob demonstrated why he is such a successful trial lawyer by integrating stories about his

> fense Lawyers, the senior member of the Tennessee Supreme Court who is a graduate of the Col-

> William Holloway attributes his interest in trial law to a summer clerkship working for Judge

Timothy Easter. As a child, Will had watched his father argue cases not exactly understanding what was taking place but seeing "something special about the process."

During the clerkship, he realized that "the courtroom was not just some place where 'something special' took place. And I realized the black letter law learned in the first year was not so black and white. The courtroom is where the gray lives."

Center Founder Robert E. Pryor

inspires the 2009 advocacy

concentration grads with his Top

Like Will, Jennifer Milam is anxious to become a well-respected trial advocate. As a law student, Jennifer says she has learned "how to persuade, defend, argue, and protect." To Jennifer, these abilities "reflect the quintessential qualities of any Scholarship winners William Holloway (far attorney." Jennifer looks forward to practicing law where she can exercise her "legal voice" to achieve her client's goals.

life and his cases into his presentation. The event was also the occasion for announcing the 2009-10 Summers-Wyatt Trial Advocacy Scholars. The Trial Advocacy Endowment, created by the Summers-Wyatt law firm in Chattanooga, provides scholarship awards to students interested in pursuing a career as a trial attorney. The Scholarship Committee, consisting of the President of the Tennessee Association for Justice, the President of the Tennessee Association of Criminal De-

lege of Law, and the Dean of the College of Law, named two recipients — William Holloway and Ten Reasons he loves the practice Jennifer Milam — for the 2009-10 award.

left) and Jennifer Milam (far right) are joined by Center Founder Jerry Summers (2nd from right) and Justice Gary Wade (2nd from left).

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of law.

First-Year **Advocacy** Competition

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Director's Dicta



Scholarship benefactor Jerry Summers meets the '09-'10 Summers-Wyatt Scholars.



Summers-Wyatt Scholarship Committee member Justice Gary Wade with Dean Doug Blaze and Development Director Howie Avery.



Professor Becky Jacobs (Mediation, ADR) talks with Adjunct Professors Francis Lloyd (Pretrial Litigation) and Heidi Barcus (Trial Practice).



Larry Bridgesmith (Institute for Conflict Management) meets Adjunct Professor Ruth Ellis. (Trial Practice)



Chancellors and Adjunct Professors Daryl Fansler (Pretrial Litigation) and John Weaver (Trial Practice) amuse Justice Gary Wade.



Bob Pryor and Adjunct Professor Larry Giordano (Advanced Trial Practice) talk with Chancellors John Weaver and Daryl Fansler.

It has been said that good trial lawyers capture the jury's imagination and compel their action. It takes only a glance at these graduates' faces to understand the success of trial lawyer Bob Pryor.



# **Bob Pryor's Top Ten Reasons to Practice Law**

- 10. Older Is Better
- 9. Mentoring
- 8. Power of Persuasion
- 7. Reliability
- 6. Life Style
- 5. Sense of Identity
- 4. Professional Competition
- 3. Challenge
- 2. Friendship
- I. Love



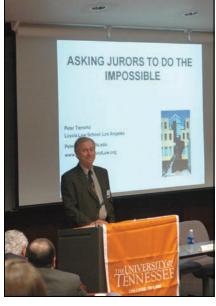


# Center Hosts First Summers-Wyatt Symposium: Asking Jurors To Do The Impossible

When the Center for Advocacy and Dispute Resolution partnered with the TENNESSEE JOURNAL OF LAW AND POLICY to host the first Summers-Wyatt Symposium, the goal was to produce a program that would be both theoretical and practical, both abstract and applied. To accomplish this, the program began with a keynote address from one of the country's premier judicial linguists, Dr. Peter Tiersma. Professionals from various disciplines responded to Dr. Tiersma's remarks with their own viewpoints — some based on law and language, others founded in psychology and sociology. Following the panel discussion, participants viewed testimony from a hypothetical medical negligence case in which the jury was faced squarely with the credibility of the witnesses. While almost two dozen Tennessee judges grappled with proposed and pattern jury instructions, a mock jury deliberated the case. After these small group discussions, the participants reconvened to compare revised instructions and to learn from two law student "jury masters" what issues the jury had confronted in the case. The day's events are memorialized in Volume 5, Number 2 of the TENNESSEE JOURNAL OF LAW AND POLICY.

Aaron Chapman, Class of 2010, served as a jury master. His insightful description of the experience, and those of his colleagues, provide meaningful lessons to all lawyers who try jury cases. "Observing the

jury's deliberations was an eye-opening experience. I learned that every jury is most likely unique, and individualized factors shape deliberations. It seemed that there could often be jurors who, while seemingly agreeing to factual determinations, still cling to overriding concerns [about] the impact their decisions would have. The question became, to what extent would the jury be able to reconcile its natural tendencies with the black-letter charge of a pattern jury instruction? This question proved to be complicated, because the jurors never made reference to the instruction, except to ask themselves if they were 'in the clear' to decide the case on the merits. 'What are we supposed to figure out?' was asked at least twice. The title of the symposium 'Asking Jurors To Do The Impossible' may describe exactly what courts are doing. The jurors knew what they thought, they knew what they saw, they knew what they heard, and they knew how to judge credibility. They knew how to express themselves and their observations. They could persuade each other. They didn't need to be instructed on any of this. But they didn't know what (or why) they were being asked to determine, even after being instructed. When we sought to clarify, we found ourselves simplifying the instruction. Real juries don't have facilitators, though. What I learned is that the simplification should come in the charge itself."



Dr. Peter Tiersma delivers the keynote address.



TJLP Editor Ashley Musselman introduces the panelists.



Tennessee Judges and Symposium participants discuss jury instruction reform.

By attending the jury symposium, I was able to interact with, collaborate with, and learn from attorneys and judges. Several of the judges are currently engaged in pilot programs to aid jurors in "doing the impossible" and several are on the committee to modify and, hopefully, simplify jury instructions.

It was helpful to get a range of perspectives on jury instructions, especially the perspective of non-attorney specialists such as linguists, jury experts, and psychologists. This enabled the legal practitioners to view jury instructions from an entirely new perspective – that of the juror. It also helped the law students gain perspective about the importance of the wording used in and the realistic impact of jury instructions on jurors.

—Meredith Rambo Class of 2010

As a member of the TENNESSEE JOURNAL OF LAW AND POLICY, I was able to attend the Summers-Wyatt Symposium, "Asking Jurors To Do The Impossible," for the entire day on March 27, 2009. I particularly appreciated the format with the keynote speakers and panelists introducing the topic in the morning followed by more practical application in the afternoon workshop sessions. In the morning, I was impressed by the presenters' commitment to and deeply felt need for clearer jury instructions. Whether the presenter was from California (Professor Tiersma), Washington state (Professor Ainsworth), or Tennessee (Professors Ross and Dumas), the perceived need for better communication between the courts and jurors was the same.

I expected the presenters to be enthusiastic, but my greatest revelation came in the afternoon when I had the opportunity to watch Tennessee judges at work on revising problematic jury instructions. I worked with the group that was grappling with the Tennessee Pattern Jury Instruction on comparative fault. The judges were intent on simplifying language and untangling repetition, but they were constantly careful to keep the nuances of the law intact. The judges listened to us—the students—when we could lend insight as readers still fairly new to the law, and they listened to presenters' ideas from other jurisdictions and disciplines.

Because I am a second-career student, this was not my first conference, but it was my first legal symposium, and the experience was invaluable. Most of all, I will remember the sense of collaboration among different members of the legal community, the commitment to a fair jury system, and the respect for simple, clear language in articulating jury instructions.

—Sally Goade Class of 2010

I was extremely honored to serve as jury master for this year's symposium on jury instructions and deliberations. When my colleague and I brought the undergraduate students into their deliberation room, I was concerned that they would be too nervous to "play along" and open up to one another. Fortunately, I was wrong! Once the jury instructions were read to them, and they chose a foreperson, they immediately began to talk openly about what bothered them and what they couldn't understand.

As a law student in my second year of law school, I know that I no longer see through ordinary eyes and I no longer think with a "real world" mentality. So it was tremendously informative to hear the impediments in language, witness testimony, and evidence that prevented our jury from adequately deliberating the case. I will soon be an officer of the court, who will vow to uphold justice and truth. However, our justice system has flaws that these intelligent undergraduate students were not hesitant to expose. I thank them for being so open and bringing back a little "reality" into my legal world.

—Monica Rice Class of 2010

#### CCA Judge Camille McMullen Addresses UT Law on Her Legal Career



Judge Camille McMullen, UT Class of 1996, outlined her stellar legal career to a packed audience of enthusiastic students and then presided over a nine-judge panel in the Center for Advocacy and Dispute Resolution's Second Annual First-Year Advocacy Competition. Judge McMullen, who began her legal career clerking for Judge Joe Riley, Tennessee Court of Criminal Appeals, Western Section, now sits as a judge on that very court. She presently is the youngest member of the twelve-member Court of Criminal Appeals, one of two female members, and the first African-American female appellate judge in Tennessee's history.

Within days of being appointed by Governor Phil Bredesen, Judge McMullen was sworn in, evaluated by the Tennessee Judicial Evaluation Commission, and began the task of reviewing and authoring opinions in the hun-

dreds of cases appealed to the Court of Criminal Appeals each year. The Court has direct appellate review over all criminal cases in Tennessee. That makes for a huge caseload and a daunting challenge, but not a challenge that Judge McMullen does not enthusiastically accept. "My focus is to give 120 percent and try to write the best clear, concise opinions that I possibly can and then go from there," the judge said when a Memphis newspaper asked her to speak about her goals.

It is that kind of determination that has characterized every step in Judge McMullen's twelve-year legal career. In just a dozen years, she has clerked for an appellate judge and served as an Assistant District Attorney and a federal prosecutor, all while enjoying a wonderful family life with her husband Bruce, also an attorney, and two small children.

On the very day of Judge McMullen's swearing in, she agreed to serve as "Judge in Residence" at the College of Law. In addition to delivering a compelling address and judging the first-year advocacy competition, Judge McMullen graciously met with students to discuss their careers and to talk about hers. And within a few days of her judicial residence experience, she returned to campus to deliver the annual Julian Blackshear Lecture at the Ninth Annual Blackshear Scholarship Banquet on April 4.

Immediately following Judge McMullen's conversation with the student body, the halls were buzzing with excitement — students loved her down-to-earth advice, her optimism and encouragement, and her challenge that each of them strive for excellence. In a flurry of emails, the students described how Judge McMullen's address affected them as students and as future lawyers. Here are some of those student reactions:

"I left with wonderful words of wisdom that I am sure will stay with me throughout my legal career."

"We need to develop selfdetermination to be great lawyers— never settling for mediocrity in our practice."

"It was one of the most enjoyable and beneficial presentations I have been to in this law school." "I could... feel every single student in the room listening and mentally taking down her words of advice. She encouraged us to continually challenge ourselves in our career choices."

"She is everything I strive to be."

"She seems to represent a new era of judges and judicial thought in this state." "Even while addressing law students, I could see her trial experience and passion for advocacy shine through."

"Judge McMullen's words affirmed my belief that if I work hard and look for personally fulfilling opportunities that fit my skill set, there is nothing outside of my reach."

"It was an honor to hear her speak."



Some consider the presumption of innocence to be largely ineffective, but in one of her first opinions, Judge McMullen displayed her devotion to the bedrock constitutional principle. In *State v. Lewter*, Judge McMullen wrote: "[t]he identity of the perpetrator is an essential element of any crime." The State has the burden of proving "the identity of the defendant as the perpetrator beyond a reasonable doubt. Here, the proof showed that a burglary and theft occurred . . . The only evidence linking [the defendant] to these offenses was a white shirt, containing skin cells matching [his] DNA, that was left at the scene of the crime but [an expert] testified that the skin cells could remain on the shirt for several years. Unlike a fingerprint or a blood sample taken from the scene, the presence of the shirt with [the defendant's] DNA does not prove that [he] was present at the time of the burglary and theft. We note that [the defendant] made no incriminating statements regarding these crimes. In addition, no witnesses, including Justice, who pleaded guilty to these offenses, placed him at the crime scene. Because there was no other evidence, direct or circumstantial, to make the presence of the shirt at the dental office incriminating, the State failed to provide sufficient evidence to support [the] convictions. Therefore, we reverse and vacate [the] convictions."

State v. Lewter (Tenn. Crim. App., Western Section, April 9, 2009)



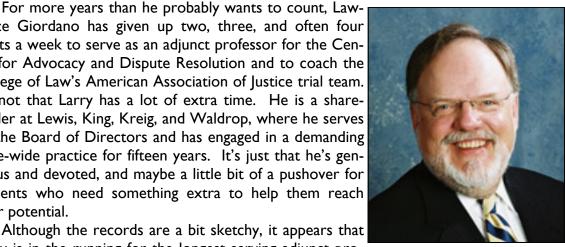
UT law students and Alum / Judge Camille R. McMullen following Judge McMullen's address.

### Lawrence Giordano—"teacher, mentor, friend"

**FOCUS ON ADJUNCT FACULTY** 

rence Giordano has given up two, three, and often four nights a week to serve as an adjunct professor for the Center for Advocacy and Dispute Resolution and to coach the College of Law's American Association of Justice trial team. It's not that Larry has a lot of extra time. He is a shareholder at Lewis, King, Kreig, and Waldrop, where he serves on the Board of Directors and has engaged in a demanding state-wide practice for fifteen years. It's just that he's generous and devoted, and maybe a little bit of a pushover for students who need something extra to help them reach their potential. Although the records are a bit sketchy, it appears that

Larry is in the running for the longest serving adjunct professor (Don Paine excluded). He certainly should take the



Lawrence F. Giordano

award for the most uncompensated work — Larry not only works individually with the students he teaches in Advanced Trial Practice each Fall semester, he also selects and coaches one of the College's two trial teams. The team practices most nights in the weeks leading up to competition and Larry is usually there, aided by his friend and cocoach Summer Stevens, a member of the London and Amburn firm. We at the Center for Advocacy and Dispute Resolution are grateful to Larry for his long-term dedication to the advocacy curriculum and the moot court program. But don't take our word for it. Take Adrienne Gillam's, a member of his AAI team for two years running, and a student in Larry's Advanced Trial Practice class, who writes on behalf of the team about Larry:

"Larry Giordano epitomizes what it means to be a legal practitioner, teacher, mentor and friend. He is not only a talented and extremely effective law professor, but also a caring and compassionate individual. My favorite time in law school has been spent under the instruction of Professor Giordano.

I was first introduced to Larry through the AAI Trial Team. He was all bark, no bite- so to speak. Professor/Coach Giordano demanded preparation and professionalism during our practices to achieve our highest potential. However, he also provided tons of laughs and jokes. He encouraged questions and provided countless personal experiences to help all of us grasp the concepts he had mastered. All this being said, my favorite memories of law school will be the AAJ competition in Memphis. Larry was our fearless leader through Memphis' record snow, the Courthouse bomb threat, numerous bad directions, and an adventure down Beale Street. All that Professor/Coach Giordano has done for me cannot be summed up in a small blurb but in short, he's made a substantial contribution to my legal education and law school experience."

> —Adrienne L. Gilliam Class of 2009 Member, AAJ Trial Team

" ...he's made a substantial contribution to my legal education and law school experience."

## 2008 Advocacy Grads Win Awards

The Center for Advocacy and Dispute Resolution presented three of its top awards at the College of Law's annual honors banquet on February 13.

Kyle Hixon received the Robert E. Pryor Award for Excellence in Trial Advocacy. The award was presented by Center Founder Robert E. Pryor and honors the top student in the advocacy concentration. As a law student, Kyle was a Robert A. Finley and James P. Reeder Scholar. He excelled in the curriculum concentration in advocacy and dispute resolution, earning top honors in several of his courses. During the summers, Kyle clerked for the Knox County District Attorney's Office. Kyle graduated with high honors from the College of Law in May 2008, and ranked first among the students who graduated in the advocacy concentration. Kyle is currently a lawyer with the Knox County District Attorney's office.

Tennessee Attorney General Robert E. Cooper presented the Tennessee Attorney General's Award for Excellence in Trial Advocacy to Charles Hunt. In addition to his exceptional performance in Trial Practice, Charles earned top honors in several other courses in the advocacy concentration. Charles serves as judicial clerk for the Honorable James Wynn, North Carolina Court of Appeals. He has accepted a second judicial clerkship with Justice Patricia Timmons-Goodson of the North Carolina Supreme Court following the completion of his year with Judge Wynn.

Knoxville attorney Latisha Stubblefield received the International Academy of Trial Lawyers Trial Advocacy Award, presented by Center Founder Sidney Gilreath. The International Academy of Trial Lawyers presents the award to the student who has demonstrated exceptional proficiency in Trial Advocacy, through outstanding performance in Trial Practice, Evidence, and pleading and procedure courses. Latisha excelled in the concentration in advocacy and dispute resolution, earned top honors in many of her law classes, and ranked second among the students who graduated in the concentration. She now practices law with the firm of Woolf, McClane, Bright, Allen & Carpenter in Knoxville.



Center Founder Bob Pryor presents the Robert E. Pryor Award of Excellence in Advocacy to Kyle Hixon.



Tennessee Attorney General Robert E. Cooper, Jr. presents the Tennessee Attorney General's Award for Excellence in Trial Advocacy to Charles Hunt.



Center Founder Sidney W. Gilreath presents the International Academy of Trial Lawyers Trial Advocacy Award to Latisha Stubblefield.

#### Center Holds Second Annual First-Year Advocacy Competition

Thirty first-year law students coached by their upper class peers gave opening statements in the murder case brought by the State of Rockytop against Bobby Rambo Edwards on March 25, in the Second Annual First-Year Advocacy Competition. Panels of three judges — consisting of Erica Greene, Juvenile Referee for Hamblen County; H. Bruce Guyton and C. Clifford Shirley, United States Magistrate Judges for the Eastern District of Tennessee; Patricia Long, Knox County General Sessions Court Judge; Camille McMullen, Tennessee Court of Criminal Appeals Judge, Western Section; John Partin, Morrison Municipal Court Judge; John Rosson, Jr., Knoxville Municipal Court Judge; William H. Russell, Loudon County General Sessions Court Judge; and William Shults, Claims Commissioner, Tennessee Claims Commission, Eastern Division — selected the top six advocates.

The six finalists were Jason Bobo, Heather Graves, Eric Mauldin, Kevin Swinton, Michael Woods, and Jacob Wilson. After a final round, heard by an *en banc* panel, Eric Mauldin was named the 2009 First-Year Advocacy Idol. Jason Bobo placed second and Jacob Wilson placed third. All of the advocates and their coaches are to be congratulated for a spirited competition.



The nine judges sitting en banc for the final round of competition.

The six finalists prepare to deliver their opening statements to the enbanc panel of judges.





The first-year competitors and their upperclassman coaches prepare to deliver first-round opening statements.

## **Center Works to Expand ADR Offerings**

The Center for Advocacy and Dispute Resolution and the Institute for Conflict Management at Lipscomb University, Nashville, are discussing ways to provide interested students with a unique opportunity to complement their training in alternative dispute resolution and conflict management. The Institute (ICM) in conjunction with the Strauss Institute at Pepperdine University offers two degrees in conflict manage-



ment — a certificate and a master's degree. Currently, the requisite courses are offered only on the Lipscomb campus, but plans are underway for the College of Law to host two or more courses per year. In this way, UT law students and alumni can enhance their educational background, while securing relevant training and experience in specialized aspects of alternative dispute resolution and conflict management. Students will have the opportunity to learn from experts in their respective fields. ICM courses are taught by a nationally acclaimed faculty including a former president of the International Academy of Mediators and a dean emeritus of one of the nation's top law schools The classes are designed to be experiential and hands-on learning opportunities and will be offered to accommodate the schedules of both the law student and the working professional. Plans are also under way to offer Rule 31 Family and Civil mediation training on the UT Law campus.

#### **Howard Vogel: Premier Tennessee Mediator**

On Wednesday, January 21, the Center for Advocacy & Dispute Resolution hosted a presentation by Howard H. Vogel on ADR in Tennessee. After many years as a civil litigator, Howard Vogel turned to service as a mediator of civil disputes. He is a Tennessee Supreme Court Rule 31 civil mediator and a member of the mediation panel for the United States District Court for the Eastern District of Tennessee. Vogel has mediated over 1500 civil disputes and is board certified by the American Academy of ADR Attorneys. As a Fellow in the International Academy of Mediators and a member of Tennessee's ADR Commission since 2002, Mr. Vogel was the ideal person to update the law school community about the current state of ADR in Tennessee and to discuss the benefits of alternative dispute resolution.



#### **Chauncey Davis: Arbitration**

Chauncey Davis, Region Vice-President of the American Arbitration Association (AAA), visited the College of Law and discussed the procedural aspects of arbitration and gave insight into the inner-workings of the AAA. Davis detailed the arbitration process, including the role of representation (counsel), the role of the arbitrators, and the difference in governing rules. Davis explained that the arbitrator is often educated in the subject matter of the controversy, giving him or her a better understanding of the underlying issues than would be possessed by a typical trial judge. In addition, he noted that while the arbitration process is ordinarily not as formal as litigation, lacking specific rules of evidence and procedure, the parties are at liberty to contract for more stringent governing rules.

In the fall, the AAA in conjunction with the Center for Advocacy and Dispute Resolution plans to host a day-long seminar at the College of Law. The seminar will feature presentations by nationally acclaimed arbitrators and lawyers with experience representing clients in arbitration. Law students will be invited to participate in the sessions.

The Center will co-sponsor a

national symposium entitled

"Achieving the Promise of the

Sixth Amendment" with the

ABA Standing Committee on

Legal Aid and Indigent Defense

on May 20-21, 2010

#### **Upcoming Events, New Additions to Clinical Training Program**

The Center for Advocacy is busy preparing for the 2009-2010 academic year. Upcoming events will include a featured presentation by Bobby Lee Cook on September II, 2009, a co-sponsored seminar with the American Arbitration Association in November of 2010, and a co-

sponsored national symposium entitled "Achieving the Promise of the Sixth Amendment: Indigent Defense in the United States" scheduled for May 20-21, 2010.

In addition to having the opportunity to hear these highly acclaimed speakers and participate in important discussions on national issues, our students will have expanded opportunities to participate in clinical offerings while at the College of

Law. Once again, the highly ranked UT Legal Clinic is planning to expand its course offerings. In 2009-2010, two new clinics will complement the existing offerings. [http://www.law.utk.edu/clinic/] A new Wills Clinic will be offered thanks to the efforts of Professor Amy Hess and Knoxville attorney Barbara Johnson. Students will draft wills and other documents for clients and will handle

some probate matters. This Clinic is one of the first of its kind in the United States. In addition, a combined Innocence Project/Wrongful Convictions Clinic will be taught by volunteer adjuncts (Knoxville attorneys Wade Davies, Steve Johnson, Rob Kurtz and Gianna Maio) and Profes-

sor Dwight Aarons. This Clinic will focus on investigating and presenting claims of wrongful conviction. The UT Clinic continues to thrive under the leadership of Director Ben Barton and was recently ranked 15th nationally and 5th among public universities.

The Clinic is an integral part of the advocacy and dispute resolution concentration. Each student in the concentration participates in a live-

client clinic, so on behalf of the Center, we extend our heart-felt thanks to the many committed practitioners who are helping to assure that every student who desires can have that experience before graduation.

Penny White Director



COLLEGE of LAW

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