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The Advocate Summer 2013

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

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CENTER FOR ADVOCACY & DISPUTE RESOLUTION "Educating Today the Successful Lawyers of Tomorrow"

Advocacy Center Suite Named for Jerry H. Summers



The Center for Advocacy and Dispute Resolution now resides proudly on the third floor of the College of Law in the Jerry H. Summers Suite. The center named its new location for one of its most staunch supporters and one of its founders, Jerry H. Summers.

Summers practices law at Summers & Wyatt in Chattanooga, TN—a firm he founded in 1969. The firm and Summers engage in a wide variety of trial work, including representing clients in criminal, tort and employment matters. Among the recognized highlights of Jerry's career are his two successful arguments in the United States Supreme Court.

In addition to practicing law, Summers is an active community member. Summers believes in the philosophy of giving back as is evident in the multitude of ways he gives back to the College of Law. Not only was Summers one of the original founders whose gifts created the Center for Advocacy and Dispute Resolution, in 2008 he and the Summers & Wyatt law firm created the Summers-Wyatt Trial Advocacy Endowment, which funds scholarships and symposia.

Each year, the center names Summers-Wyatt scholars, chosen from students whose career objectives are to practice criminal defense or civil plaintiff's trial work (see related story, page 4). Consistent with Summers's philosophy of giving back, the scholarship criteria includes a preference for Hamilton County residents; graduates of UT Knoxville, UT Chattanooga or Sewanee; and descendants of Tennessee lawyers

who have served in named organizations, including the Tennessee Association of Criminal Defense Lawyers, the Tennessee Association for Justice, and the Tennessee Bar Association. The use of these criteria make it likely that the Summers-Wyatt scholars will give back by practicing law in Tennessee as engaged members of the legal community.

The Summers-Wyatt Endowment has enabled the center to host low-cost, high-quality continuing legal and judicial education programs. Hundreds of Tennessee lawyers and judges have heard national experts discuss media relations, childrens' rights issues, and, most recently, immigration law (see related story, page 9).

Summers also served as chair of the law school's Campaign for Tennessee. Under his leadership, the college was able to exceed its campaign goal and raise 15.5 million. \rightarrow

TENNESSEE College of Law

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"Jerry Summers made this happen," said Dean Doug Blaze. "His tireless efforts on behalf of the College of Law were largely responsible for our meeting and exceeding our campaign goal."

Money raised from the capital campaign allows the school to fund additional scholarships and award faculty excellence with professorships and research grants.



On April 25, Tennessee

Supreme Court Chief Justice Gary Wade and former Chief Justice Mickey Barker joined Dean Doug Blaze and a group of law students, faculty and staff to give a little back to Summers. Center Director Penny White unveiled the newly stenciled letters officially naming Room 302 at the College of Law as the Jerry H. Summers Suite. In doing so, White said, "I cannot think of another Tennessee lawyer who more epitomizes the values we seek to instill in those who participate in the advocacy and dispute resolution concentration. Without Jerry's vision, his generosity, and his tireless efforts the concentration would not exist. We will endeavor to live up to the honor of bearing Jerry's name."



CONCENTRATION GRADUATES INSPIRED BY CHIEF JUSTICE WADE

On April 25, at the annual center collaboration, 53 members of the Class of 2013 graduating with an emphasis in advocacy and dispute resolution were encouraged by Tennessee Supreme Court Chief Justice Gary Wade to strive to create a positive and lasting impact.

The Chief Justice punctuated his point with the story of the 1,050-mile journey that President Franklin Roosevelt's body traveled aboard the so-called funeral train, following his death. The touching, unconfirmed story includes a conversation between a reporter and mourner who, when asked whether he knew the president, responded confidently "No, but he knew me." The story crystallized the Chief Justice's message to the students: we should all strive to have a positive and

personal impact on others, even those we have never met.

Chief Justice Wade, whose career includes 25 years as a member of Tennessee's appellate judiciary, graduated from the College of Law. In addition to serving as Chief Justice of the Tennessee Supreme Court, a position he assumed in August 2012, he is the founding member of the Tennessee Judicial Conference Foundation, which provides scholarships to deserving law students; a fellow of the Knoxville, Tennessee, and American Bar Foundations; and co-founder and chairman emeritus of the Friends of the Great Smoky Mountains National Park.



News from the academic community suggests that many law schools are frantically engaged in curriculum revision, attempting to create new courses in order to respond to vocal criticisms that law schools are failing to prepare students for the practice of law. *Inside Higher Ed* reports, for example, that law schools are reacting to the criticism by enhancing their curricula with "new initiatives aimed at better training (and training better) lawyers."

Because the advocacy and dispute resolution curriculum at the College of Law has been rich in skillsbased courses since its inception, our curricular discussions have a differ-

Fine-tuning As Others Work to Create

ent objective. We, too, are examining our curriculum, but for the purpose of evaluating whether it continues to allow students to graduate ready to engage fully in the practice of law.

Students in the concentration likely will have drafted pleadings, motions, and briefs; taken and defended depositions; reviewed volumes of electronically stored information; tried a criminal or civil jury trial; argued appeals; negotiated case settlements and business deals; interviewed and counseled multiple clients; and mediated a dispute in the classroom, all before graduation.

In addition to traditional doctrinal courses such as Criminal Procedure, Federal Courts, and Family Law, to name but a few, students in the advocacy and dispute resolution curriculum select from a wide variety of skills-based courses that introduce them to the essential components of lawyering. These courses, taught by law faculty with practice backgrounds, skilled practitioners and judges, allow students to "learn by doing" and to be better prepared for the practice of law.

The full-time advocacy faculty along with recent graduates, law students and experienced adjunct faculty are critically evaluating each course in the curriculum to assure that it presents the students with a meaningful opportunity to learn and practice essential lawyering skills while receiving frequent individualized feedback regarding their progress.

A good example of the impact of our curriculum enrichment efforts is our revised course in negotiations. Until recently, we offered a course in negotiations and dispute resolution that attempted to introduce students to all aspects of those broad subjects. After teaching the course in its existing format, meeting regularly with others who had taught the course, reviewing curricula from other institutions, reading countless texts on the subject and talking at length to students who had taken the course, we recognized that by trying to do too much, the course was actually doing too little.

Since the law school had existing courses in remedies, mediation, and alternative dispute resolution, we undertook to create a stand-alone course in negotiations, which focused exclusively on the skills and techniques involved in negotiating. Our emphasis on "learning by doing" committed us to providing students an opportunity to practice new skills frequently, as well as to watch and receive particularized feedback about their performances.

To this end, our revised negotiations course requires that students engage in negotiation exercises, which include contract disputes, prenuptial agreements, employment matters and tort

> actions. Most negotiations are video recorded. The week following the negotiation, students watch the recordings with their professors who, in order to provide meaningful feedback, have previewed

and annotated the recording. Though time-consuming, this process of professor preview and annotation—coupled with student review—not only enables the professor to give constructive, specific comments, but also stimulates the student's memory of the performance, which in turn promotes reflection and learning.

Early assessments of the revised negotiations course are positive, but they also provide us with new ideas, which will enable us to continue to enrich the course. By remaining connected with our graduates in practice and engaging skilled practitioners and judges as adjunct faculty, we fine-tune our curricular offerings in order to graduate students who are better prepared for the practice of law.





Center Names Summers-Wyatt and Woolf Scholars

At its annual Collaboration, the center proudly awarded three scholarships—two of which were made possible by the Summers-Wyatt Trial Advocacy Endowment. The third, the Louis C. Woolf Scholarship, was the first to be named in honor of Lou Woolf (LAW '60), a 50-year member

of the Tennessee bar.

Jacob Feuer and Phillip Leamon were named the 2013–2014 Summers-Wyatt Trial Advocacy Scholars. The two rising third-year students were selected by a committee comprised of Chief Justice Gary Wade, Dean Doug Blaze and the presidents of the Tennessee Bar Association, the Tennessee Association for Criminal Defense Lawyers and the Tennessee Association for Justice.

The scholarships are provided to students in the advocacy and dispute resolution curriculum whose career objectives are to serve either as a criminal defense or plaintiff's trial lawyer. While a student's stated career objective is not necessarily predictive of the student's ultimate career path, both Feuer and Leamon have engaged in activities that suggest that they will indeed follow their projected career paths.

Feuer has worked with two criminal defense firms and interned with the Tennessee Court of Criminal Appeals while pursuing his education. These experiences have solidified his career goal of being a "successful and well-respected trial attorney," who has a "positive impact on clients, the legal profession, and the legal system."

However, his interest in trial work predates his enrollment in law school by several years. Feuer participated in mock trial activities as an undergraduate, ultimately serving as team captain and president of the UT Mock Trial. After graduation, he continued to work with the team as a coach. Now, Feuer is a member of the AJA trial team.

Leamon, the other 2013–14 Summers-Wyatt scholar, links his interest in trial work to his days at UT Chattanooga, where he took a course taught by a federal prosecutor and interned with the Hamilton County court system. Leamon has also worked with a Chattanooga law firm that practices criminal law. As a summer associate there, he experienced firsthand the impact that dedicated lawyers can have on the administration of justice. While attending a meeting of the Tennessee Association of Criminal Defense Lawyers, Leamon learned about how the members of the criminal defense bar worked together to convince the district attorney's office to discontinue



the practice of requiring defendants who plead guilty to consent to indefinite warrantless searches of their homes.

The center's third scholar for 2013–2014, and its first Woolf Scholar, Nina Musinovic, impressed the Woolf selection committee with her commitment to becoming a trial lawyer. Her mother, who Musinovic describes as a "strong, successful and hard-working female attorney," inspired her. Although Musinovic had a childhood dream of being an attorney, her dream seemed far-fetched when she and her family were forced to flee their home country of Bosnia during the Bosnian Civil War. The family lived as refugees before immigrating to the United States.

After rebuilding their lives in Bosnia, Musinovic remembered that in addition to missing her home, family and friends, her mother talked about how much she missed being an attorney. Musinovic described the discussions with her mother as "confirming my decision to be a trial attorney beyond any doubt." As early as high school, Musinovic began preparing for her future career, participating in her high school's mock trial program.



At the College of Law, Musinovic continues to prepare for her career by taking courses in the advocacy curriculum and serving as a member of the McReynolds National Trial Team.



Above: Nina Musinovic and Robert Noell, on behalf of Woolf, McClane, Bright, Allen & Carpenter.

At left (from left): Jacob Feuer, Jerry Summers, Phillip Leamon, Chief Justice Gary Wade.



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Externship Provides Differing Point of View

By Monica Goldblatt

I have been fascinated with the conflict between right versus wrong, good versus evil, legal versus illegal and just versus unjust for as long as I can remember.

As a child, I dreamed of becoming a detective—until I realized I did not really enjoy standing outside in inclement weather for long periods of time. I also considered becoming a medical examiner, but I quickly realized I had no desire to go to medical school. However, in college I worked for the local police department and my career path was solidified. I knew on which side of the law I wanted to be. On my law school application, I proudly told the school that the only reason I was coming to law school was to become a prosecutor.

I spent the summer after my first year of law school working with one of the most experienced prosecutors in Maryland. At her side, I worked vigorously to convict two murderers. I second-chaired one of the trials in which the defendant was found guilty and sentenced to thirty years. I could not have been more proud.

During my second summer, I was sworn in by the Maryland Court of Appeals as a student attorney and was able to try my own cases. The soul searching in which I initially engaged before requesting a sentence wore off rather quickly as my caseload grew and, in time, I routinely asked for the higher end of the sentencing guidelines. After all it was what the state of Maryland authorized me to do.

During my third year of law school, I decided to pursue an externship that would expose me to something different. I had only witnessed one side of the criminal justice system, and I believed that in order to become a better prosecutor and reenforce my belief that prosecution was the only job for me, I should see the other side. I specifically sought to work with public defenders because as a prosecutor, the majority of my cases would be against public defenders.

I was honest about my background with the Federal Public Defender Service and despite my desire to become a prosecutor the office welcomed me with open arms. This externship afforded me the opportunity to observe many different types of cases and to interview clients. After watching a number of sentencing hearings, I began to question the federal sentencing guidelines. I found it difficult to grasp the correlation between long sentences and seemingly minor, nonviolent offenses.

When I questioned an Assistant United States Attorney about the federal sentencing process, he explained that he lacked



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discretion in sentencing and that attorneys higher up in the office determined sentences. I saw myself in his answer, because I thought the exact same way when, as a student attorney in Maryland, I lobbied the court to impose long sentences.

During the last two weeks of my public defender externship, I snuck over to state court to observe a highly publicized fatal hit and run trial. Afterwards, I told my federal defender supervisor that I could never have defended the defendant in the case. She looked at me and said, "We've failed you."

I left her office laughing to myself and thinking that she must be crazy if she thought an externship would change my point of view and lead me to pursue a career in criminal defense. Little did I know that soon thereafter a single experience would cause me to question my point of view.

When my externship ended, I had unfinished business. There remained one place I had not been, one thing I had not seen, and one group of clients I had not met. I had no idea how things would change on the day the office took me to Tennessee's death row.

I told myself that, having already helped put a murderer behind bars, I knew what to expect. I had heard more victim impact

statements than I could count, and I knew that the individuals on death row had done something horrible. Others suffered enormous loss because of decisions these death row inmates had made. I had little to no sympathy for the men on death row.

When our first client entered the room, he was neither handcuffed nor shackled. He was a big man, but he didn't seem threatening, and I wasn't scared. I didn't really understand my role in the interview so I sat and listened while the investigator asked questions. At one point, the client turned and asked me what kind of law I thought I might practice. I panicked. I looked at the investigator who knew of my dream to become a prosecutor. She gave me a nod as if to say, "It's ok; you can be honest with him." I gave the most general answer I could and said I might do something in criminal law. The client responded, "Which side?" I answered honestly and told him that I wanted to be a prosecutor.

After a vigorous discussion, during which the client questioned my morality and my ethics, I told the client about my belief that federal sentences for many crimes are too lengthy and that in some cases, jail time is unnecessary. The client then posed a hypothetical. He wondered what I would do if I believed a case I was prosecuting warranted a seven-year jail sentence, but my boss told me she wanted me to push for 15 years. While I could not answer the question with certainty, I saw his point. I would hate to think that I would ask for a 15-year sentence despite my convictions, but as a junior prosecutor, I know my opinion would carry very little weight.

My conversations with the client have caused me to revisit my

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"In the past, when I considered crime and punishment and the death penalty, I did not contemplate that the people we execute may not be the same people we put on death row. By sentencing a person to die, are we saying that he or she cannot be rehabilitated? By foregoing a death sentence, are we denying justice to the families of victims of truly heinous crimes? Can we retain a belief in redemption and also secure justice for the victims' family?"

long fascination with the conflict between right and wrong, just and unjust. This man has been on death row longer than I have been alive. He has had more than my lifetime to think about what he did and to become a different person. He claims to have changed, to be a different man today than he was years ago when he made the decisions that led him to death row. In the past, when I considered crime and punishment and the death penalty, I did not contemplate that the people we execute may not be the same people we put on death row. By sentencing a person to die, are we saying that he or she cannot be rehabilitated? By foregoing a death sentence, are we denying justice to the families of victims of truly heinous crimes? Can we retain a belief in redemption and also secure justice for the victims' family?

As the client left the interview room, I began to realize that this experience likely would be one of the most meaningful of my life.



Legal Clinics—Where Students Learn to be Lawyers

By Fred Pickney (LAW '13)



Through my clinical experience, I had the unique opportunity to learn the skills that lawyers must master to succeed in practice. Interviewing clients and interacting with them on a daily basis taught me how to communicate more effectively. Determining which steps to take to achieve a client's goals improved my legal judgment skills and will help me better counsel clients in the future. Representing clients impressed upon me the trust that clients While a student attorney with the University of Tennessee Advocacy Clinic, my partner and I represented seven clients with issues ranging from juvenile delinquency to housing disputes to a DUI charge. We investigated the facts of the case, researched the law and interviewed and counseled our clients, while learning how to exercise professional judgment in deciding how to proceed with each case.

One aspect of clinic that I found particularly educational was the opportunity to marshal the facts of a client's case. In contrast to casebook-based classes where all the relevant facts are given to you, I had to decide what facts were important and to gather those facts. Making these decisions required creativity and critical thinking unlike anything else I had done in law school.



place in attorneys and the power that attorneys have to change the lives of their clients. By working as a student attorney in the Advocacy Clinic, I have experienced the sense of satisfaction that comes from knowing that my efforts directly impact the lives of others.

Although the clinic is administered like a law firm, what makes clinical education so valuable are the aspects that are different from a traditional law firm setting. The case load is much lighter, the supervisors are always available and, most importantly, the emphasis is on the process of representing a client—not solely on output. The result is a learning experience that cannot be found in any classroom or law firm.

PRACTICING LAW, WITH A SAFETY NET by Justin Pruitt

Like Fred, I signed up for the clinic wanting to practice law under supervision. I wanted the opportunity to step into the shoes of the practitioner, but with a safety net that comes with excellent mentor attorneys on speed-dial. It wasn't long until clients walked through the clinic door eager to meet their attorneys. These were our clients and our responsibilities. Start to finish, we were their attorneys, and we worked their cases. We tracked down necessary records, requested police cruiser videos and remembered to do the important administrative tasks. Court dates that seemed far off soon were fast approaching.

We were not left alone in the representation of our clients, however. Every step of the way, we were provided with mentoring and advice. Before arguing a juvenile appeal in criminal court, I worked side-by-side with the clinic faculty crafting the pleading through many drafts, mooting my oral argument, receiving feedback, reworking my approach and starting all over again. By the time I delivered the argument in court, it felt as if it simply flowed out—and we got a positive result for our client.

What Professor Jerry Black told us at the beginning of the semester was absolutely right. Although the experience of meeting clients and preparing their cases demands most of a student attorney's time, nothing solidifies the clinical experience more than being able to answer the judge when asked who represents the accused: "Your Honor, I am here on his behalf."



Spring Brings Flurry of Events



East Tennesseans are familiar with spring snow flurries, and this spring was no exception. Spring break began—and ended—with snowfall. Despite the wet and unpredictable weather, the Center for Advocacy and Dispute Resolution hosted a flurry of events.

In addition to an inaugural dispute resolution lecture (see related story, page 10), the center hosted famed Tennessee lawyer Robert E. Pryor, Sr., and Dave Prouty, general counsel for the Major League Baseball Players Association. Both Pryor and Prouty discussed opportunities and challenges for lawyers representing clients in negotiations.

The center's annual Advocacy Idol competition, now in its sixth year, continues to flourish. First-year students, coached by upper level students, delivered a brief opening statement to a panel of judges—presided over by the competition's founding attorney Michael Galligan of Galligan and Newman.

C.J. Lewis won the competition and was named the 2013 Advocacy Idol.

second and Timothy Jones placed third. Rounding out the top six competitors were Brianna Powell, Miriam Johnson and Karissa Hazzard.

In addition to continuing its tradition of providing first-year students with an advocacy opportunity, the center once again partnered with the *Tennessee Journal of Law and Policy* to host a cutting-edge legal education program for judges and lawyers. Katie Doran, symposium editor for the *TJLP*, organized this year's symposium on Navigating the Complexities of our Melting Pot: How Immigration Affects Legal Representation. Speakers at the sympo-



sium included lawyers who argued the case of *Padilla v. Kentucky* in the United States Supreme Court as well as experts and scholars on immigration law. Speakers addressed the comingling of immigrant and criminal law, including the ethical implication of *Padilla* for effective legal representation of immigrants.

Stephanie Sparr placed



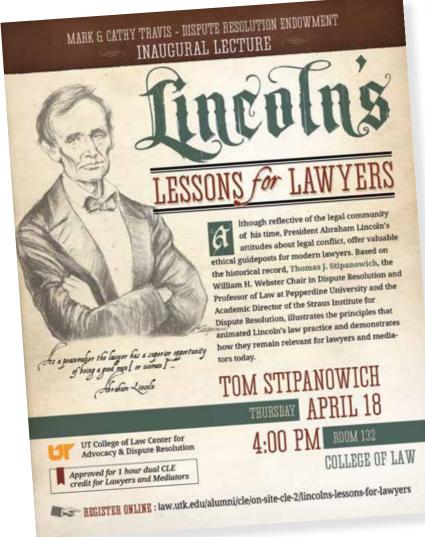
Left to right: Timothy Jones, Miriam Johnson, Karissa Hazzard.

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Lincoln's Lessons Relevant Today

The principles that animated Abraham Lincoln's legal practice "are just as relevant today as they were in Lincoln's day and offer valuable guideposts for modern lawyers." This was the message delivered by Thomas J. Stipanowich to a large audience of lawyers and judges gathered for the inaugural program of the Mark and Cathy Travis Endowment for Dispute Resolution created to provide support for dispute resolution programming.

Stipanowich, who holds the William H. Webster Chair in Dispute Resolution at the Strauss Institute at Pepperdine University School of Law, sprinkled his "Lincoln's Lessons for Lawyers"



among stories about Lincoln's law practice gleaned from Lincoln's legal papers, published in four volumes by the University of Virginia Press.

Though a formidable advocate and experienced trial lawyer, Lincoln is said to have prepared a law lecture that suggested that litigation should be discouraged. Lincoln wrote "[p]ersuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser, in fees, expenses and waste of time. As a peacemaker the lawyer has a superior oportunity of being a good man."

> It is not surprising that many of the lessons that Stipanowich gleaned from Lincoln's approach to legal conflict involve creative alternative dispute resolution. Lincoln was said to be adept at identifying a client's key interests, including the underlying feelings and motivations that lie beneath the dispute. Lincoln used this skill in conjunction with "the bonds of familiarity" to advance his cooperative approach to the practice of law.

Stipanowich explained that Lincoln and his adversaries would often be required to share limited bed space while riding the circuits in which they practiced law. Lincoln's "relational connections reinforced the likelihood of a collaborative solution" enabling him to "avoid extreme positional bargaining and the posturing that goes with it."

From Lincoln's practices, Stipanowich suggested that lawyers should "begin negotiating cooperatively and encourage the reliance of others by behaving in a logical and predictable way"—good advice from the lawyer who directs the number one ranked dispute resolution program in the country.



DIRECTOR'S DICTA

This fall our students will have the opportunity to learn new disciplines from new authorities. We will welcome new full-time and adjunct faculty members, including Professor Briana Lynn Rosenbaum, who will teach primarily in the advocacy and dispute resolution concentration. Rosenbaum joins the College of Law from a teaching fellowship program at Stanford Law School, where she has been since 2009.

Following her graduation from the University of California, Hastings, in 2004, Rosenbaum clerked for a federal district judge and for the Honorable Anthony J. Scirica, Chief Judge of the Court of Appeals for the Third Circuit. Rosenbaum's scholarship centers on the way that procedural rules and structural designs limit the courts' ability to do justice, particularly in the areas of criminal sentence appeals and pro se legal representations. She describes her scholarship as "trans-substantive" with an aim toward reconciling "the normative goals of the judicial system . . . with the practical realities of an overburdened and complex procedural structure." At the College of Law, Rosenbaum will teach Evidence and Pretrial Litigation as well as Civil Procedure.

We will also welcome Mark Travis, mediator and arbitrator with Travis ADR Services, LLC, as an adjunct faculty member who will offer an advanced course in dispute resolution design. In addition to his JD degree, Travis holds a LL.M. degree in dispute resolution from the Straus Institute for Dispute Resolution at Pepperdine University School of Law. He frequently serves as a mediator and arbitrator in labor, employment and other civil disputes. The course, which explores the growing trend toward the design and development of dispute resolution systems within public and private sector organizations, will help to augment our expanding dispute resolution curriculum.

Let us know what you think. Are we meeting our goal of providing our students with relevant educational choices that help prepare them for the practice of law? As always, we welcome your advice and hope to see you at one of the center's upcoming events.





Center for Advocacy & Dispute Resolution 1505 West Cumberland Ave. Knoxville, TN 37996-1810 law.utk.edu/advocacy



September 16 Clint Saxton, Jury Selection Tool Kit

October 7 Mark Travis, Top Ten Keys to Mediation Success (and its failure)

October 17 ABOTA Masters in Trial

October 22-24 Advocates' Prize Competitior

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