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The Advocate Summer 2014

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Recommended Citation

The University of Tennessee College of Law's Center for Advocacy & Dispute Resolution, "The Advocate Summer 2014" (2014). *The Advocate (2006 - 2012)*.

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The Advocate

CENTER FOR ADVOCACY & DISPUTE RESOLUTION



Advocacy Idol participants Clinton Sprinkle (finalist), Kimberly Sterling (finalist), Marriah Page (third place), Ben Morrell (2014 Advocacy Idol), Sarah Jarrard (finalist), and Casey Duhart (second place)

Morrell named 2014 Advocacy Idol

What do you get when you combine forty-four law students, nine trial and appellate judges, and twenty-two fifteen-minute prep sessions? You get the Advocacy Center's First-Year Advocacy Competition, affectionately referred to as "Advocacy Idol." The annual event gives first-year students the opportunity to be coached by second- and third-year students in the art of delivering an opening statement.

Following a crash course in developing theme and theory and a quick read of highly provocative facts, each first-year advocate must decide which side to represent and prepare and deliver a brief opening statement in a hypothetical case. This year's case, *State of Rocky Top v. Rambo Matthews*, involved a first-degree murder charge lev-

eled against a man who was either a loving, distraught husband or a murderous maniac.

After preliminary rounds, the top five advocates delivered their opening statements again before nine judges. Joining the *en banc* panel this year was newly appointed Tennessee Supreme Court justice Jeffrey Bivins and Tennessee Court of Criminal Appeals judges Camille McMullen and Roger Page, as well as circuit, sessions, juvenile, and municipal judges from Knox and neighboring counties.

Following a close competition, Ben Morrell was named the 2014 Advocacy Idol, with Casey Duhart placing second and Marriah Page placing third. The other three finalists were Clinton Sprinkle, Kimberly Sterling, and Sarah Jarrard.

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Year-End Collaboration features retiring professor Jerry Black's advice

If members of the Class of 2014 were hoping to receive some professional inspiration and advice during the Year-End Collaboration and Awards Ceremony this year, they were not disappointed.

Professor Jerry Black, days from retiring from the College of Law, told the graduates that the practice of law is a "noble calling" in which individuals ask you to stand with them and champion their cause. Because of that, "there is no greater honor or privilege than to be a lawyer."

Black reflected upon his own legal education, where he said he was taught "how to think like a lawyer but not how to do like a lawyer." He said he became a law professor because he felt that his legal education was deficient.

Perhaps anticipating his future on his farm (the place Black always says he is going when asked about retirement), Black analogized the lawyer's role in the process to that of a gardener: Lawyers have to do their best to plant and nurture a case, but ultimately they have to let a case go. His advice reflected how he performed as a lawyer, devoting himself to his clients, students, and colleagues.



This year's event honored more than forty students who completed the requirements of the concentration in advocacy and dispute resolution. Fortunately, each of them had the opportunity to be taught Trial Practice by Black, who received the Richard S. Jacobson Award. The Jacobson Award recognizes the top Trial Practice teacher in the nation.

Lawyering skills in the first year

Most of us remember experiencing two phenomena during our first year of law school: the Socratic teaching method and the one-exam-per-semester evaluation method. The Academic Standards Committee at the College of Law, following two years of study, is proposing changes to the first-year curriculum that might alter these previously universal experiences.

The committee started by articulating educational outcomes that students should achieve by the end of the first year of law school. At the end of their first year, students should have acquired knowledge of the core areas of law but also should have begun developing skills and values necessary to being an effective lawyer. According to committee chair Paula Schaefer, the committee's comprehensive study of literature on teaching

and learning has confirmed that "students learn more when they are actively engaged in the material. Experiential learning activities—problems and simulations that put students in the role of lawyer—can help students make sense of the law." Additionally, "students need prompt and meaningful feedback on their work. This gives them the direction necessary to improve."

In addition to reviewing recent literature on teaching and learning, the committee discussed the first-year curriculum with students and alumni. Schaefer reports, not surprisingly, that many former students felt "confused at the end of the first year of law school." Almost everyone surveyed thought that adding hands-on exercises to first-year classes would be a positive change: "When presented with a variety of possible new course offerings, the most pop-



Professor Paula Schaefer mentors students in her e-Discovery class. She chairs the Academic Standards Committee and has long integrated experiential learning into her courses.

ular choice among alumni and current students was a 'lawyer-ing' course that would integrate first-year subject matter with lawyering skills and professionalism issues."

Schaefer and the committee recently shared some preliminary recommendations with

the faculty, which will enable the committee and the faculty to continue to work toward an improved first-year curriculum. You may send any suggestions concerning curricular revision to paula.schaefer@tennessee.edu, with the subject line "1L Curriculum."

Students excel at national LawMeet competition

In just its second year participating in the Transactional LawMeet, UT's team finished third in the nation.

Transactional LawMeet is the transactional counterpart to the National Moot Court Competition. The challenging competition tests the drafting, communication, and negotiation skills of the participants

and their ability to perform those skills with composure while under pressure. The competition includes a drafting stage, three client conference calls, a mark-up of opposing counsel's draft, and live negotiations.

UT's team members were Brooke Baird, Michael Crum, Elizabeth Clippard, Ryan

Franklin, Michael Crowder, Todd Skelton, and Alex Williams. The team represented a party in drafting and negotiating an indemnification agreement to address a royalty dispute that arose between the seller and a third party during an acquisition, with the buyer wanting further assurances that the dispute would not

compromise the value of the transaction.

Before traveling to the University of Georgia School of Law to compete in the regional rounds, the team worked for months drafting and marking up the indemnification agreement. The regional rounds culminated in live negotiations, during which the negotiating

team of Brooke Baird and Michael Crum took top honors, entitling them to compete in the nationals held at the New York offices of Sullivan & Cromwell.

The team ultimately placed third nationally out of eighty-four teams and was recognized for having the best draft agreement. Professor Brian

Krumm, the team's coach, attributes the students' stellar performance to the quality of the students and the excellent training that they are receiving in both the transactional curriculum and in negotiation courses at UT Law.



Michael Crum, Brooke Baird, Professor Brian Krumm, Ryan Franklin, and Elizabeth Clippard

Why teach trial practice?

As members of the profession lament the vanishing jury trial, others worry that society will be left with television and Hollywood to provide images of a lawyer addressing a jury. However, that won't be the case for students at UT Law.

Each year, the college offers multiple sections of Trial Practice to accommodate more than 100 students who want to learn the art of advocacy in a courtroom setting. These students are taught by a diverse group of private attorneys, public defenders, prosecutors, and judges, all of whom serve as adjunct faculty despite their demanding full-time professional careers. Given the demands on their time, one might wonder why these legal professionals give three or more hours every week to train law students in what many view as a dying art.

First, there is the importance of trial advocacy skills.

"A trial is the most reliable method for dispute resolution," says John Weaver, a Knox County chancellor who has taught Trial Practice for ten years. "I teach Trial Practice because the alternative of a fair trial with competent counsel has to be preserved at all costs. Without the availability of a trial as a reference point, the other methods of dispute resolution would become completely ineffective. The continued availability of fair trials depends upon the ongoing development of competent attorneys. The promise and potential of the students in Trial Practice classes rejuvenates my belief that they are there."

Larry Giordano, shareholder and law firm director at Lewis Thomson, agrees.

"As for why we teach trial advocacy, it's because there will always be a need for skilled advocates, regardless of the frequency of trials," Giordano says. "Sooner or later someone's going to figure out that by making trials surprise-proof with massive, unbounded discovery, we have made litigation unacceptably expensive for the average individual and business. Maybe the pendulum on the number of trials will swing back to a more balanced position."

Second, there's the importance of giving back to the profession. Although civil trials are indeed rare in her practice, Suzanne Bauknight—an Assistant United States Attorney for the Eastern District of Tennessee, where she is chief of the Civil Division—teaches Trial Practice to give new attorneys "experience doing the basics so that they can settle cases for the right reasons rather than because they are terrified of having to stand up and present evidence in a courtroom."

The theme of helping others rings true with other Trial Practice teachers. "Teaching allows me to pay forward the many lessons, experiences, and opportunities that other lawyers have generously given me over my thirty-six years in practice," says Giordano. "When teaching, I feel connected to the profession of the law much more than I usually experience in the day-to-day business of law practice."

Mark Stephens, director of the Knox County Public Defender's



Students CJ Lewis (standing) and Jared Hagler

Community Law Office, reminisces about his own days as a law student. "Bob Ritchie would come and share his experiences," Stephens says. "Those sessions with him and other practitioners provided a context that I wouldn't have had any other way. I feel that [giving back by teaching] is the least I can do for students today."

Finally, there's the gift that teaching returns to the teacher. While acknowledging that teaching allows the professor to give back to the profession, our adjunct faculty often feel they get more than they give.

"Teaching trial practice has made me a better trial lawyer," says Julie Gautreaux, an assistant public defender for Knox County.

Gautreaux's sister, Leslie Nassios, an assistant district attorney, enjoys "interacting with young, enthusiastic students and [finds it] refreshing to listen to them, to watch them put a case together, to see them communicate an idea or theory to a group of people." But, she adds, "I'm sure I get more out of it than I give to them."

Robbie Pryor, a partner at Pryor Flynn Priest & Harber, is sure he gains as much as he gives from the experience. "I teach because I love thirsty minds who share my passion for the courtroom arena and for people in need," he says. "I also make at least eight new friends each semester who turn into colleagues. Those relationships enhance my life greatly."

Robert Burns, a professor of law at Northwestern University School of Law, says a "trial lawyer is the producer and director of—and actor in—an extremely demanding and engaging drama." UT Law graduates can fill that multi-dimensional role without relying on Hollywood to provide an archetype of a trial lawyer's image.

Fraser, Boles named Summers-Wyatt Scholars

When Jerry Summers, one of the founders of the Center for Advocacy and Dispute Resolution, created the Summers and Wyatt Trial Advocacy Endowment, his goal was to help students who desire to pursue a career as a trial attorney. If desire is any predictor, this year's Summers-Wyatt scholars, Kathryn Fraser and Ellie Boles, will help fulfill that goal.

After only four semesters in law school, Kathryn Fraser has clerked for the Knox County and federal public defender offices, as well as a preeminent criminal defense firm. Her desire to practice criminal defense is motivated by her belief that "people are more than their fault under the eyes of the law." Because of the stigmatization that results from a criminal conviction, Fraser hopes to provide the best defense possible. Fraser studied linguistics as an undergraduate at UT and was an exchange student at La Universidad de Guanajuato in Mexico. Before coming to UT Law, she worked for Survivors International in San Francisco, where she handled social, medical, and psychological needs for immigrant survivors of torture and gender-based violence. These experiences have helped Kathryn become highly proficient in Spanish, which has aided her many community service activities. Fraser volunteers with UT Pro Bono, serves as coordinator of the Voter Rights Restoration Project, and works with the Family Justice Center assisting domestic violence victims. Despite her community service and work in a law firm, she ranked in the top 10 percent of her class.

Ellie Boles also desires to pursue a career in trial advocacy. Boles began that career path early, serving as a student attorney in the Advocacy Clinic. That work gave Boles "a unique opportunity to gain practical experience by representing clients who desperately need an



2014–2015 Summers-Wyatt Scholars Kathryn Fraser (left) and Ellie Boles

advocate in the justice system." As a student attorney, she represented indigent clients in criminal, juvenile, and landlord-tenant cases. This work required her to conduct interviews and investigations, research and draft legal documents, negotiate with opposing counsel, and present matters in court.

Fortunately for Boles, she had observed numerous attorneys present matters in court during the summer following her first year of law school while serving as a judicial intern. Working directly with a trial judge before appearing before judges gave her a unique insight from the other side of the bench. Boles is confident her work experience and participation in the advocacy and dispute resolution curriculum will allow her to start her career "with an arsenal of practical skill, knowledge, experience, and confidence."

Legal process inspires Woolf Scholar to pursue advocacy track

Danielle Richter was prepared for a career in banking. After graduating from UT with a bachelor's degree in business administration in 2011, Richter began to work in finance as a special lending banker, managing and administering a loan portfolio of more than \$100 million. While she gained valuable business and banking experience, she also saved money so that she could ultimately go to law school. When she began law school in 2012, Richter intended to pursue a course of study that would focus on transactional law, complementing her undergraduate degree and work experience and leading to a career in business law.

Then, during the spring of her second year, in a Legal Process class instructed by adjunct professor Regina Lambert, Richter found herself preparing and delivering an oral argument in a hypothetical case that raised issues surrounding the single-purpose container exception to the Fourth Amendment.

To Richter's surprise, despite her initial reticence, she found her "true passion was to be in the courtroom." To explore both interests,

she pursued summer clerkships with firms specializing in different areas of the law following her first year of law school. These experiences confirmed her passion for advocacy.

"I enjoy the legal creativity that advocacy allows in forming arguments, as well as the great responsibility that comes with being an advocate," Richter says.

Richter is the second concentration student to receive the Woolf Scholarship, endowed by the Knoxville law firm of Woolf, McClane, Bright, Allen & Carpenter, PLLC, to honor Lou Woolf, who retired from the firm in 2012 after fifty years of practice. The Woolf Scholarship is awarded to a student who intends to pursue a career in trial advocacy.



FOCUS ON FACULTY

White House internship leads Rosenbaum to UT Law



Professor Briana Rosenbaum and her husband, Peter, embrace the Rocky Top spirit.

If Professor Briana Rosenbaum had been interviewed while she was studying political science at Santa Clara University and had been asked about her career ambitions, she would likely have said she planned to serve in the United States Congress.

It was her interest in politics and steadfast determination and extraordinary academic promise that landed Rosenbaum a White House internship working in the Office of Scheduling and Advance. Every day, Rosenbaum's job of delivering schedules throughout the White House would provide her with exciting and chance encounters with many, the most memorable of which was her opportunity to play ball outside the Oval Office with Buddy, President Clinton's Labrador retriever. But it was also that internship, which spanned the impeachment proceedings in the House and Senate, that led Rosenbaum to become disillusioned about the political parties' ability to resolve governmental dysfunction.

Rosenbaum returned to Santa Clara after completing her internship and received career advice from college mentors that ultimately led her to the law. With their advice, she gravitated to the law because, as Rosenbaum explains, "unlike politics, I saw the application of the rule of law as providing a means of resolving problems. Once I became a lawyer, I appreciated the ability of lawyers to advocate on behalf of people who would not

otherwise have a means of resolving problems or have access to justice."

Rosenbaum chose Hastings College of Law because of its focus on experiential learning. While moving into her law school dormitory, she met Peter Rosenbaum, a young man from Portland, Oregon, who would later become her husband. They dated throughout law school but adhered to their pledge to never take a class together. Rosenbaum admits they had a friendly competition in law school, adding only that her husband "did very well." She graduated fifth in her class.

Her law school success landed Rosenbaum a position with the San Francisco firm Bingham McCutchen LLP, but the firm graciously allowed Rosenbaum to defer the position until she finished clerking. She clerked in the United States District Court for the Eastern District of California for Judge David F. Levi (now the dean of Duke Law) and in the United States Court of Appeals for the Third Circuit for Judge Anthony J. Scirica.

Upon completing her clerkship, Rosenbaum moved back to San Francisco to begin her work as an associate at Bingham McCutchen, where she was involved in a wide variety of complex litigation matters, with pretrial litigation as her focus. In one large action, Oracle v. SAP, a case involving allegations of copyright infringement for downloading copyrighted documents from

Oracle's website, Rosenbaum led Oracle's e-discovery collection and production efforts.

She enjoyed the practice, but an opportunity to participate as a fellow in Stanford Law's Thomas C. Grey Fellowship program provided an attractive pathway to teaching law. During her four years at Stanford, Rosenbaum taught legal research and writing and federal litigation and researched and published articles, the first of which was submitted when her son, Zachary, was two months old. Rosenbaum's research focuses "on the ways that procedural rules and structural designs limit the courts' ability to do justice."

When it came time for Rosenbaum to choose an institutional home, the UT College of Law had two advantages. First, the college has long emphasized instruction that blends theory and practice. Rosenbaum was looking for an institution with a "history of teaching lawyers the fundamental skills they need to become actual practitioners." Teaching at UT gave her the opportunity to "join an institution of thinkers with goals" that were consistent with her own.

The second advantage was the result of family history, as Rosenbaum has family in Mississippi and Virginia and lived with her family in Memphis during her formative years. Rosenbaum treasures and values the opportunity to spend time with family, and we're fortunate to have her as a part of the UT Law family.

DIRECTOR'S DICTA

Some classes are harder than others to let go. For me, this was one of those years when the Hooding Ceremony, which Dean Doug Blaze refers to as "bittersweet," was far more "bitter" than "sweet."

After two wonderful years of having excellent research colleagues, sometimes known as student research assistants, I congratulated both Greg Talley and Jacob Feuer on graduating, all the while threatening to find a way to keep them around.

Saying goodbye to the 2013-2014 Moot Court Board was equally difficult. With Hector Sanchez at the helm, flanked by vice chairs Sarah Watson and John Jolley, and ably aided by Meredith Slempe, Jared Klebanow, and Amy Beramo, the Moot Court Board performed its tasks exceedingly well, providing me with comfort (because they took care of things) and with the pride and pleasure of working with such a distinguished group of young leaders.

I had a similar opportunity, working with Anna Swift and Willie Santana, editor-in-chief and managing editor, respectively, of the *Tennessee Journal of Law and Policy*. Together, we hosted a ten-year celebration of the journal, at which Le Evans, one of the founding editors, helped the journal's members understand how their work would mirror their professional careers.

The departure of these outstanding student leaders and many more just like them has left the College of Law feeling like a quiet and lonely place, but I know the silence is temporary. Soon it will be replaced with the sweet sound of students, some returning from summer clerkships and others beginning their UT Law journey as the Class of 2017. And while they won't be Greg and Jacob and company, I will look forward to the connections we too will forge.

Penny J. White
Director



Center for Advocacy & Dispute Resolution

1505 W. Cumberland Ave.
Knoxville, TN 37996-1810

law.utk.edu/advocacy

2014

UPCOMING EVENTS

SEPTEMBER
UT Law Welcomes One of
Tennessee's Newest Justices

OCTOBER 20-23
Advocates' Prize
Moot Court Competition

OCTOBER 31—NOVEMBER 1
Right to Counsel Symposium:
A Time for Reform
in Tennessee
Featuring Stephen Bright,
Advocate in Residence

NOVEMBER 7 (TENTATIVE)
Health Care Symposium
Co-sponsored by
Tennessee Journal of Law and Policy

MARCH 9-12
Jenkins Trial Competition

MARCH 25
First-Year Advocacy
Competition

APRIL 21
Center's Year-End
Collaboration