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Fall 1995

### Alumni Headnotes (Fall 1995)

University of Tennessee College of Law

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Fall 1995

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University of Tennessee College of Law

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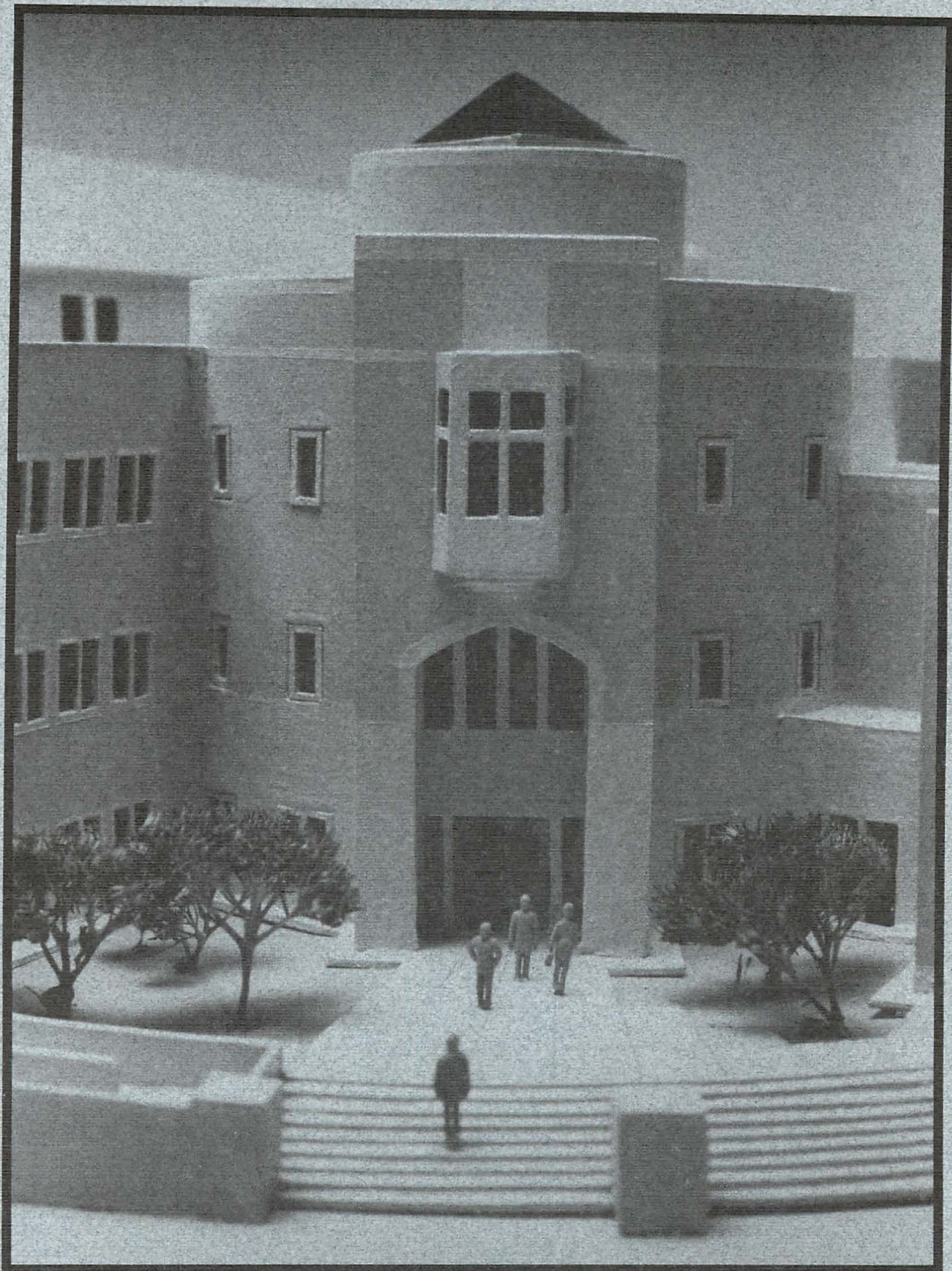
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# THE COLLEGE OF LAW

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THE UNIVERSITY OF TENNESSEE  
ALUMNI HEADNOTES

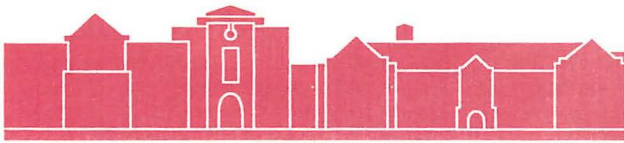


# Alumni Headnotes

THE UNIVERSITY OF TENNESSEE COLLEGE OF LAW

Fall 1995

Volume 21, Number 3



## Contents

### Administration

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Peggy Goodman

*Alumni Headnotes* is published by the Office of Development and Alumni Affairs at the College of Law three times a year for alumni, students, faculty, staff, and friends.

Printer: UT Graphic Arts

The cover design is by Greta Eichel. University Publications. The design is taken from a photograph of the model of the new College of Law building.

Groundbreaking for the new building was held September 17, 1994, and construction is currently underway.

# Dean's Corner

In furtherance of our mission in the areas of teaching, scholarship, and service, the law school is establishing a center devoted to entrepreneurial law--the legal aspects of the conduct of public and private enterprise, with special emphasis on the needs of small and intermediate-sized firms.

Our purposes are these:

- To graduate lawyers competent to advise and assist entrepreneurs at all levels in the conduct of their affairs.
- To meet the needs of large and small businesses, non-profit corporations, and individuals engaged in financial transactions, for competent representation.
- To contribute significantly to the body of scholarship in the area of entrepreneurial law.
- To participate in the formation of mutually beneficial partnerships between the University of Tennessee and private industry.
- To promote the economic growth of the State of Tennessee.

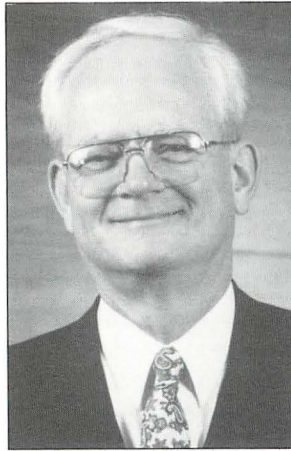
## Why a Center for Entrepreneurial Law?

Of all of the good reasons for doing this, the first and foremost is to graduate lawyers who understand business and are capable of responding in an informed and sophisticated way to the concerns of business clients.

The typical law school curriculum is geared primarily to preparing graduates for roles as advocates or as associates in the larger law firms. Few law schools give adequate emphasis to helping their students develop competence in the kinds of transactional work lawyers do for small- to medium-size businesses. Few do a serious job of orienting their students to the way successful people engaged in business think, their perspective on the law and lawyers, and the kinds of relationships that can develop in the business context between lawyers and clients. Few law schools take a realistic account of the fact that many of their graduates will become businessmen and women.

Good training in advocacy is important--so important, as we see it, that we are also starting up a Center for Advocacy, and initiating a new field of concentration in Advocacy and Dispute Resolution.

Because of the pervasive emphasis on litigation in our teaching, however, many students never seriously consider business practice as a career. Even those who do usually feel better prepared to litigate than to structure a trouble-free business transaction. And they're probably right.



When a law student encounters contract law, it is typically in the context of litigation resulting from a bad contract. What law students don't see is the typical deal that goes through (sometimes smoothly, sometimes not so smoothly) because everyone did their job. It's no wonder that we have produced lawyers who are better at seeing problems than they are at solving them. By developing a curriculum that emphasizes business realities and staffing it with a faculty of experienced business lawyers, we think we can produce graduates who are deal makers rather than deal breakers.

The second primary thrust behind the Center for Entrepreneurial Law is to help our students compete effectively in what is getting to be a very tough job market. In recent years, law firms have come to realize that they, too, are businesses. Like other businesses, they face competitive pressures. Clients no longer unquestioningly maintain long-term relationships. Instead, they have begun to shop for counsel who can provide effective representation at the lowest cost. As a result, law firms have grown leaner. They not only hire fewer lawyers than they did a few years ago, but they also staff individual matters more sparingly. With the aid of computers, a single lawyer and a paralegal often handle a transaction that a few years ago would have been staffed with three lawyers and would have consumed several times the number of lawyer hours it now does. This creates a problem because there are fewer lawyering jobs available, but it also creates an opportunity.

Because clients will no longer pay for law firms to train lawyers by having them work as the second or third lawyer on a deal that could be done by one lawyer, law firms find it more difficult to train lawyers. This means there will be a demand for students who already have practical experience when they graduate from law school. The curriculum we have developed will give our students that practical experience.

At the same time we are giving graduates an advantage in the job market, we will be helping businesses keep their legal costs under control. By training lawyers who can work effectively and by cutting down the amount of on-the-job training required, we can help reduce legal costs.

## The Business Transactions Curriculum

On page 21 of this issue, Professor Bob Lloyd, the Director of the Center for Entrepreneurial Law, describes the curriculum for the new field of concentration in Business Transactions. Though the Center as we envision it will expand into scholarship and service, the curriculum is the starting point.

As Professor Lloyd notes, the students have responded enthusiastically to this program. So have a number of alumni. This fall we held two meetings with entrepreneurs and representatives of large business firms in East Tennessee, soliciting ideas for the future development of the Center. Their reactions were favorable. An encouraging number said they'd like to become further involved.

We are, in truth, building more than a building.

*Richard S. Work*

# Law family responds to Cornerstone appeal



The faculty, administration, staff and emeriti faculty of the University of Tennessee College of Law have pledged nearly \$277,000 to the college's \$6 million Cornerstone Campaign.

The participation rate among faculty was 100 percent and the overall participation rate among the persons who work in the College of Law was 92 percent, tops among all colleges on the Knoxville campus. The College received gifts and pledges totaling \$276,643.

The donors designated their gifts to be used in a wide variety of projects within the College, including the Centers for Advocacy and Entrepreneurial Law, student scholarships, the Legal Clinic, the *Tennessee Law Review*, the Law Library, and a staff development fund.

The College of Law's Cornerstone Campaign is part of the University of Tennessee's 21st Century Campaign, which has a goal of \$250 million. The five-year campaign will run through June 30, 1998. Already

more than \$200 million has been raised during the overall campaign; over \$3.5 million has been raised by the College of Law.

Bob Pryor of Knoxville, the campaign chair, and Dean Dick Wirtz anticipate that every College of Law alumnus/alumna will be contacted before the conclusion of the campaign and offered the opportunity to participate. They hope you will say yes.

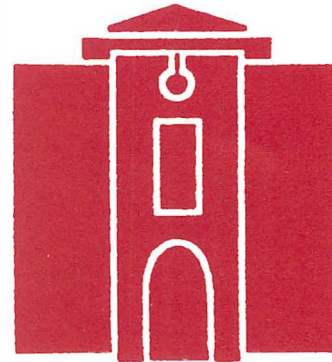
## College of Law Campaign passes \$3.5 million mark

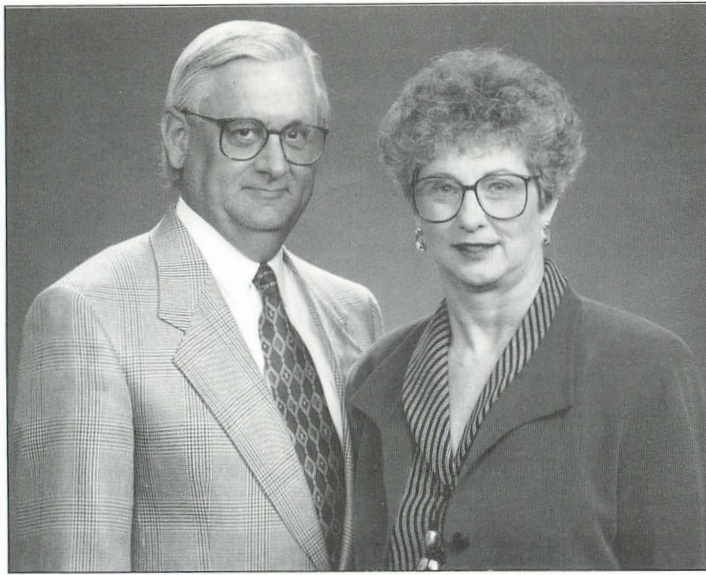
Recent gifts to the College of Law's Cornerstone Campaign have pushed the total to more than \$3.5 million.

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 Legal Clinic and the Law Library, and providing state-of-the-art educational and technological resources in the new law building.

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

- Anonymous, \$100,000.
- Theo J. Emison '68, Alamo, Tenn., \$100,000 (Center for Advocacy).
- Samuel J. Furrow '69, Knoxville, \$50,000 (Center for Entrepreneurial Law).





T. Robert Hill  
'68 (left) and  
Frankie E.  
Wade '78

## Campaign spotlight

During the Cornerstone Campaign, individuals and groups who make substantial gifts to the College of Law will be spotlighted in issues of *Alumni Headnotes*.

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!

# Jackson attorneys Wade, Hill support Center for Advocacy, student scholarship

Attorneys Frankie E. Wade '78 and T. Robert Hill '68 of Jackson have pledged \$200,000 to the University of Tennessee College of Law's \$6 million 21st Century Campaign.

The gift includes \$100,000 for the College of Law's new Center for Advocacy and \$100,000 to endow the T. Robert Hill/Frankie Ellis Wade Trial Lawyer Scholarship.

With the gift, Wade and Hill become Founders of the Center for Advocacy, which will train law graduates in the full range of techniques for dispute resolution. Priority for the endowed scholarship will be given to a current or former Lady Vol athlete who wishes to pursue a law degree at UT.

According to Richard S. Wirtz, dean of the UT College of Law, the Center of Advocacy actually grew out of a conversation between the dean and Hill and Wade in 1993.

"T. Robert and Frankie had just given the college the initial gift for the scholarship," Wirtz recalled. "T. Robert said, 'Dean, I'm probably butting in where I don't belong, but...' and proceeded to outline an idea for an advocacy training program at the law school that would be second to none in the country. It was a great day for the school."

Both Wade and Hill are graduates of the UT College of Law and longtime supporters of the university. Wade received a degree in home economics from UT in 1963 and a law degree in 1978. Hill, founder of the Jackson firm of Hill, Boren, Drew & Martindale, earned a business degree from UT in 1966 and a law degree in 1968. The two were married in 1991.

Wade is a native of Munford, Tenn., and lived in Knoxville for 20 years before moving to Jackson. Her Knoxville practice in civil litigation was primarily in family law. Wade has held various positions in and spoken

at Continuing Legal Education seminars for the Tennessee Bar Association, the Tennessee Trial Lawyers Association, the Tennessee Law Association for Women, and their local organizations. She is currently a member of the Board of Professional Responsibility, the attorney disciplinary arm of the Tennessee Supreme Court. Wade became associated with Hill, Boren, Drew & Martindale in 1991.

Hill, a Knoxville native, began practicing law in Dyersburg in 1969 and moved to Jackson in 1974. He is a former president of the Tennessee Trial Lawyers Association and from 1971 until 1984 served on its board of governors. Hill has contributed numerous articles to various trial lawyer publications and has spoken at seminars on workers' compensation and personal injury litigation.



## Davis gift serves two purposes

Knoxville attorney Donna R. Davis '79 has made a gift of property valued at \$125,000 to the University of Tennessee's 21st Century Campaign.

The proceeds from the sale of the property will serve two purposes, Davis said. The bulk of the gift — \$100,000 — will help establish the new Center for Advocacy at the UT College of Law. With the remaining funds, Davis will honor her mother by establishing the Virginia M. Raskin Scholarship Endowment Fund in the UT College of Agriculture.

With the gift to the College of Law, Davis becomes a Founder of the Center for Advocacy.

Davis said she enrolled in the UT College of Law in 1976 as a 30-year-old mother of two. "At that time, not many law schools opened their arms to women in my situation," she said. "Because of the support I received from UT, and particularly the law school, I was able to pursue two things that were important to me — being a good mother and earning a degree that would help me support my children."

Davis earned a B.S. degree with honors in education from UT-Knoxville in 1976 and received a law degree in 1979.

"This is a generous gift from an extraordinary woman," said Richard S. Wirtz, dean of the UT College of Law. "Donna Davis is an outstanding example of what women are accomplishing in the law today. I am very pleased that she has chosen to become a



*Donna R. Davis '79*

Founder for the Center for Advocacy."

Prior to entering law school, Davis was a registered nurse who worked for nine years in Memphis and Knoxville. She began practicing law in Knoxville in 1980 and is now a partner in the Knoxville firm of Davis, Arnold, Haynes & Sanders. Davis was the 1990 recipient of the Wiedmann Wysocki Citation of Excellence from the Association of Trial Lawyers of America, and she served as president of the Tennessee Trial Lawyers Association during 1991-92. She is a frequent speaker on medical-legal issues.

The Virginia M. Raskin Scholarship will be awarded annually to a UT student, hopefully a female, who is studying ornamental horticulture and landscape design.

## Bass, Berry & Sims pledge supports Center for Advocacy

One of Tennessee's oldest and largest law firms has pledged \$100,000 to help establish the Center for Advocacy at the College of Law. With the gift, the firm of Bass, Berry & Sims becomes a Founder of the new UT center.

Bass, Berry & Sims, founded in 1922, is a full-service legal firm with offices in Knoxville and Nashville. The firm has 90 attorneys, many of them graduates of the UT College of Law.

"This gift is our way of acknowledging the large number of attorneys in our firm who have come to us from the University of Tennessee," said Mike Peek, managing partner. "We are appreciative of the high quality of UT graduates, and by making this gift we are expressing our continued support of the UT College of Law."

Bass, Berry & Sims also sponsors an annual award for an outstanding UT law faculty member and has funded a scholarship for a second-year UT law student.

"It means a great deal to the stature and success of the enterprise to have the distinguished firm of Bass, Berry & Sims as a Founder of the Center for Advocacy," said Dean Richard S. Wirtz. "For some years now, we've been sending the firm some of our best and brightest. Apparently, they are acquitting themselves well. We are highly honored by the firm's decision to make this generous investment in the future of the school."

# Pryor becomes first founder of new Advocacy Center

Knoxville attorney Robert E. Pryor '69 has made a gift of \$150,000 to help establish the Center for Advocacy at the UT College of Law.

With the gift, Pryor became the first Founder of the new center, which will train law graduates in the full range of techniques for dispute resolution.

Pryor, a partner in the Knoxville firm of Pryor, Flynn, Priest and Harber, and his wife, Norma, have two sons who either attended or are currently attending the UT College of Law. Robert E. Pryor Jr. graduated in May 1995 and John P. Pryor is a second-year student. John is among the first class to be given the option of studying under the new curriculum offered through the Center for Advocacy.

The Pryors also have a daughter, Amy, who is a sophomore at UT Knoxville.

"The Pryor family has been impressed with the commitment of the University of Tennessee College of Law to the highest standards in advocacy instruction," said Pryor, "and we are happy to support the new Center for Advocacy, which will establish UT as one of the premier law schools in the country for the preparation of competent, ethical trial lawyers.

"The new Center for Advocacy will be a source of great pride for all UT alumni, and will not only produce more competent courtroom lawyers, but will render services to the bench and bar through advocacy-oriented programs."

College of Law Dean Richard S. Wirtz said the Pryors' gift "is a truly generous act, and a wonderful way to kick off the fundraising for the Center for Advocacy. It sets the tone for the whole campaign."



*Robert E. Pryor '69*

Pryor, who also received an undergraduate degree from UT-Knoxville in 1966, is serving as chair of the College of Law's \$6 million general campaign and co-chair of the Center for Advocacy campaign. He is a member of the UT College of Law Dean's Circle and has been an adjunct professor of Trial Practice at UT since 1978. Pryor is listed in the 1993-96 editions of *The Best Trial Lawyers in America*.

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## Waller Lansden firm endows professorship

The Nashville-based law firm of Waller Lansden Dortch & Davis has pledged \$100,000 to endow a professorship at the University of Tennessee College of Law.

The Waller Lansden Dortch & Davis Professorship of Law is being established by one of the state's largest law firms. Waller Lansden has 75 attorneys, including 18 partners and associates who are graduates of the UT College of Law, said George W.

Bishop, a member of the Executive Committee of the firm and a 1975 UT law alumnus.

"Waller Lansden has enjoyed tremendous success in recent years," Bishop said. "The quality of the education provided by the UT College of Law has been one reason for that success, and the firm is pleased to have an opportunity to give something back to the UT College of Law.

"To start the 21st century with a Waller Lansden Dortch &

Davis Professorship will be gratifying for all of the attorneys at the firm."

"This is the first gift by a law firm to establish a professorship at the College of Law," said Dean Richard S. Wirtz. "The Waller Lansden Dortch and Davis endowment will enable us to honor an outstanding teacher-scholar on the faculty by association with the name of one of the premier firms in the state. We're very pleased, and very grateful."

# Overcash establishes tax law scholarship

Retired tax counsel and University of Tennessee alumnus W. Hugh Overcash of Stone Mountain, Ga., has made a gift of \$100,000 to the UT College of Law as part of the University's 21st Century Campaign.

The gift, made possible by matching gifts from two of Overcash's former employers, will endow the W. Hugh Overcash Tax Law Scholarship in the College of Law. The fund will provide two full tuition scholarships for students majoring in tax law.

Overcash was director of corporate taxes and senior international tax counsel for Georgia-Pacific Corporation for 11 years before retiring in 1994, and prior to that he served as tax counsel for Ashland Oil for 12 years. Both companies provided matching gifts to the University

of Tennessee, boosting the total gift to \$100,000.

Overcash earned a B.S. in business administration from UT Knoxville in 1949, a J.D. in 1951, and an M.S. in accounting in 1952. He later earned a Master of Laws degree in taxation from the New York University School of Law in 1963. Overcash has been involved with tax work, both domestic and foreign, for more than 40 years.

"Hugh and Myra Overcash are two of the finest people we know," said Richard S. Wirtz, dean of the UT College of Law. "These scholarships will enable two students to pursue their studies in the field to which Hugh Overcash dedicated his professional life. There could be no more fitting tribute to a distinguished career in the law."



W. Hugh Overcash '51

## Development News

The UT College of Law is pleased to acknowledge the following patrons:

### New Heritage Society Members

Thanks to:

Betsey B. Creekmore, Knoxville  
Richard L. Rose, Houston, Texas  
Samuel J. Furrow, Knoxville

### New Benefactors Society

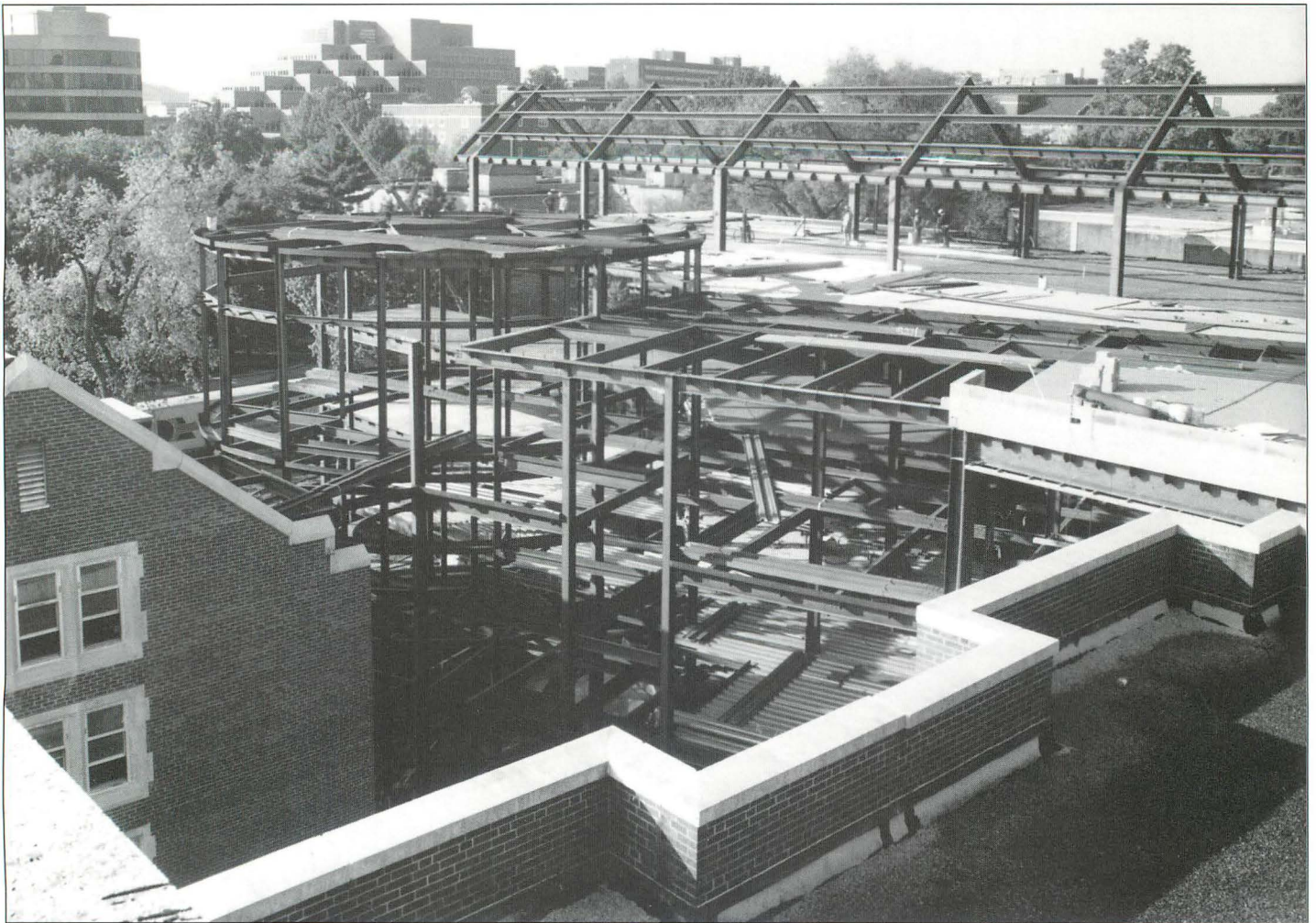
Thanks to:

Theo James Emison, Jr.,  
Alamo, Tennessee  
Sidney W. Gilreath, Knoxville  
Gerald H. Summers,  
Chattanooga

*We thank the individuals and groups listed above for their generous support of The University of Tennessee College of Law, and we are also 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.*





*In October, erection of the steel superstructure of the new law building was completed, giving the building a distinctive appearance on the campus landscape. This photograph was taken from the roof of the White Avenue annex, which is serving as home to the Law Library during construction. The Stokely Management Center (left rear) and Hodges Library (right rear) can be seen in the background.*

## New building part of campus skyline

As of December 1, only one year remained until the new building project will be completed. Thus far, the work has been on or near schedule, and we still plan to occupy the facility in December of 1996.

The size and shape of the new building are now evident on the site, and most observers say, "I had no idea it would be so big."

In the last few weeks the roof decking has been installed on the highest part of the building and the demolition within the original building has

been completed. Soon, the building will be "dried-in" and major interior work will begin in both the old and new portions.

We are watching eagerly.

If you are near the campus, please drive down Cumberland Avenue past the construction site. Even if you are unable to stop, just driving past the site will give you an excellent perspective on the size of the new building.

# UT welcomes Class of '98, 167 strong

The UT College of Law welcomed 167 new first-year students for the 1995 fall semester.

Members of the Class of '98 come from hometowns in 12 states. In addition to Tennessee, students hail from Alabama, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Ohio, Utah, Virginia and Washington.

Approximately 86 percent of the new class (145 students) come from Tennessee. The class includes 87 males and 80 females.

If the pattern of the last five years remains consistent, about 91 percent of the new class will receive Doctor of Jurisprudence degrees in three years.

The first-year students represent 70 colleges and universities located in 21 states. Undergraduate schools represented include UT Knoxville, Vanderbilt University, University of The South, Austin Peay State University, Tennessee Technological University, East Tennessee State University, University of Georgia, Centre College, Middle Tennessee State University, Rhodes College, Tennessee State University, University of Mississippi, UT Chattanooga, University of Virginia, Virginia Tech, Auburn University, Brigham Young University, Emory University, Georgia Tech, Mississippi State University, University of Maryland, University of North Carolina at Chapel Hill, Wake Forest University, the United States Naval Academy, and UT Martin.

UT Knoxville graduates account for 51 members of the new entering class. Vanderbilt is next with 10 representatives.

Forty undergraduate fields of study are represented, including accounting, advertising, business, criminal justice, education, engineering, European studies, geology, human services, international business, marketing, music, pharmacy, public administration, religion, and speech communication.



*Members of the incoming class mingle with returning students at the annual Welcome Back party in August.*

Jonas Compton, a recent graduate of Pacific Lutheran University in Tacoma, Wash., has the distinction of traveling the farthest to enroll at UT.

# Honors Banquet & Awards Program October 20, 1995



Michael Guth (left), a second-year student from Oak Ridge, receives the Hunton & Williams First-Year Writing Award from Nick McCall '91.



Penny Barton (left) receives the Tennessee Attorney General's Award for Excellence in Trial Advocacy from Deputy State Attorney general Michael Catalano. Barton is a third-year student from Kingsport.



Angela Humphreys (left), a third-year student from Limestone, is honored with the Clark Boardman Callaghan and the Herbert L. Davis Memorial Trust Fund Awards from the West Publishing Company. Dean Richard S. Wirtz makes the presentation.



Melanie Davis (left), a third-year student from Maryville, accepts the National Association of Women Lawyers Award from Dean Richard S. Wirtz.



Prof. Don Leatherman (left) receives the Harold Warner Outstanding Teacher Award from SBA Vice President Christie Jones.

## Other Awards:

- Michie Co. Award -- T. Scott Noonan
- United States Law Week Award -- Tonya Lloyd
- Charles H. Miller Excellence in Civil Advocacy Award -- William P. Eiselstein
- James L. Powers II Excellence in Criminal Advocacy Award -- Elena J. Xoinis
- Susan B. Anthony Award -- Amy Harwell
- Carden Award for Outstanding Scholarship -- Neil Cohen



Alice Pinckney (left) of Knoxville receives the Knoxville Bar Auxiliary Award from Gloria Bickers, president of the Knoxville Bar Auxiliary. Pinckney, a second-year student, also received the West Publishing Company First-year Writing Award.



Associate Dean for Student Affairs Mary Jo Hoover (left) receives the Carden Faculty Award for Institutional Service from Dean Richard S. Wirtz.



Prof. John L. Sobieski Jr. (left) is the recipient of the Bass, Berry & Sims Faculty Award. Making the presentation is Bruce Foster of the Knoxville office of the firm.



Ken Greer (left), a third-year student from Oak Ridge, receives the Baker, Donelson, Bearman & Caldwell Student Leadership Award from Dean Richard S. Wirtz.



Doris Gentry (left) receives the Support Staff Award for Extraordinary Service from Dean Richard S. Wirtz. Gentry is senior secretary and receptionist in the Legal Clinic.

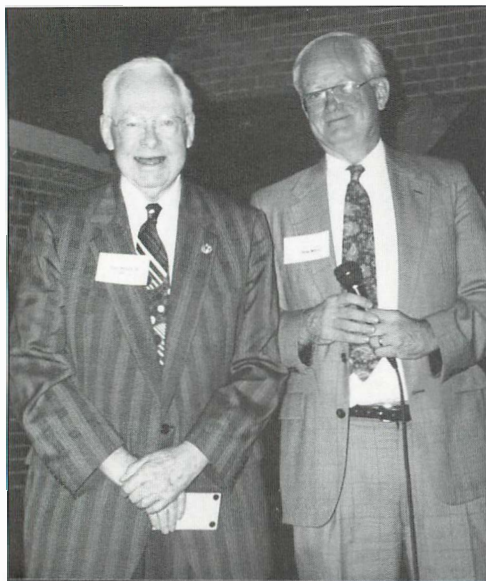


Candis Hopper (left), a second-year student from Hendersonville, receives the Frank Benson Creekmore Memorial Award from Dean Richard S. Wirtz.

*About 225 alumni and friends enjoyed the annual College of Law barbeque, held this year in front of the University Center because of the construction on the old and new law buildings.*



## Homecoming '95



*Earl H. Marsh '30, of Knoxville, was recognized during the Homecoming reception for having practiced law continually for the past 65 years. He has been a title attorney and counsel with the firm of Croley, Davidson and Huie.*



*Jill Gecker and John Graham '70 are surprised to have their picture taken as they arrive at the Friday evening reception at The Foundry at the Fair Site. About 150 alumni and friends attended the gathering.*



# Alumni News

## Class of '65

HIRAM G. TIPTON has been named the assistant general counsel for Eastman Chemical Company. He will be responsible for legal affairs in Europe, the Middle East, and Africa. He is president of the Kingsport Bar Association, a member of the American Bar Association and Delta Phi Legal Fraternity, and serves on the board of visitors for the UTK College of Arts and Sciences.

## Class of '66

JERRY H. SUMMERS of Summers, McCrea & Wyatt in Chattanooga has been certified as a Sports Attorney and accepted into the Institute of Sports Attorneys.

## Class of '68

JAMES M. DORAN, JR. of Nashville has been elected a director of the 19,500-member Defense Research Institute, the nation's largest association of civil litigation defense lawyers.

## Class of '69

JOEL KATZ of Atlanta was recently ranked in *Forbes Magazine* as the 11th top corporate lawyer in the nation. He represents clients such as Jimmy Buffett and B.B. King, and he does entertainment deals for Coca-Cola, Home Depot, and Turner Broadcasting.

PAUL H. MILLIN was appointed Judge of Court of Common Pleas for Warren and Forest Counties, Pa. He began a 10-year term in May 1995.

HENRY WILLIAM SCOTT III has moved to 408 Main Street, Franklin, TN 37064. He is a sole practitioner.

## Class of '70

JOHN WESLEY JONES, General Sessions Judge Division 1, has moved to 117 W. Smith St., Gallatin, TN 37066.

E. WYCLIFFE ORR of Gainesville, Ga., announces that his daughter, Kristine, has joined his law practice. She graduated in May 1995 from the Columbus School of Law at the Catholic University of the Americas in Washington, D.C. Orr served two terms in the Georgia Legislature and has returned to full-time practice under the firm name of Law Offices of Wyc Orr.

## Class of '71

ESSON M. MILLER, JR. of Richmond, Va., was appointed Acting Virginia Registrar of Regulations. He continues as Director of the Division of Legislative Services of the Virginia General Assembly.

## Class of '72

DANIEL J. MURPHY of Patchogue, N.Y. is the Chief Law Assistant to the State Supreme Court Justice of the State of New York. He also serves as Chairman of the Brookhaven Town Board of Ethics.

## Class of '73

JAMES S. MACDONALD, PAUL E. DUNN ('61), AND GREGORY F. COLEMAN ('89) have formed the law firm of Dunn, MacDonald & Coleman, P.C. The office is located at 1212 First Tennessee Plaza, Knoxville, TN 37929-1221. DALLAS T. REYNOLDS III ('94) is an associate with the firm.

J. TUCKER MONTGOMERY and DEBRA A. THOMPSON ('92) have recently formed the

## In Memoriam

C.T. Carden '50, Metairie, La.

Kleber E. Dunklin Jr. '39,  
Waynesville, N.C.

C. Frank Fourmy, Jr. '48,  
Memphis

John H. Hogin '71,  
Knoxville, Tenn.

George M. Krisle Jr. '41,  
Hilton Head, S.C.

Richard I. Lazarus '80,  
Chattanooga, Tenn.

Kenneth Rush '30,  
New York, N.Y.

firm of Montgomery & Thompson. Their address is 9040 Executive Park Dr., Suite 303, Knoxville, TN 37923.

## Class of '74

SCOTT D. SANDERS of Atlanta recently announced the formation of Sanders & Hunter, an association of professional corporations. Concentration will be in the practice of entertainment law, copyright law and related litigation, trademark law, and computer law.

## Class of '75

JOE F. BEENE of Fairfax, Va., was promoted to Professor at Northern Virginia Community College in Annandale, Va.

DAVID G. PHILLIPS joined the firm of McGladrey & Pullen in its National Employee Benefits Consulting Office in Rochester, Minn.

JOHN R. ROSSON, JR, Judge of the Knoxville Municipal Court, is currently serving as the 1994-1995 Chairperson of the Part Time Judicial Officers Committee of the ABA National Conference of Special Court Judges.

BEN SISSMAN of Memphis recently adopted Sarah Rose, born June 27, 1995.

#### Class of '76

H. CHRISTOPHER SEARS of Greensboro, N.C., and wife, Chris, announce the birth of their son, William R. Sears, on Nov. 15, 1994.

#### Class of '77

NANCY KING CRAWFORD has opened a general civil law practice in Nashville as a sole practitioner. She serves as Commissioner on the Hendersonville Regional Planning Commission. Previously, she worked as Assistant General Counsel for the Tennessee Department of Transportation.

THERESA K. LEE of Johnson City was selected as assistant general counsel responsible for corporate law for Eastman Chemical Company in Kingsport. She served on the board of directors for the Madison House and is a member of the Tennessee State Bar, Texas State Bar, and American Corporate Counsel Association. She and her husband have two children.

ALEXANDER W. PURDUE was promoted to Colonel in the U.S. Air Force in April '95. He is currently the Chief of Commercial Litigation at Headquarters, USAF, in Arlington, Va.

#### Class of '78

CHRISTINA NORRIS has joined the firm of Parker, Lawrence, Cantrell & Dean. Her address is Fifth Floor, 200 Fourth Ave. North, Nashville, TN 37219. She is practicing in the areas of general civil litigation and appellate matters. In May 1995, Norris served as Chancellor Pro Tempore after appointment by the presiding judge. Later, Governor Sundquist appointed ELLEN LYLE ('81) Chancellor.

### Baker Donelson opens Jackson, Miss., office

The firm of Baker, Donelson, Bearman & Caldwell has opened an office in Jackson, Miss., and expanded its health law, corporate and tax, antitrust, employee benefits and litigation practices.

#### Class of '79

BILLY J. STOKES of Nashville recently became a special assistant to Governor Sundquist. Stokes is a founding partner in Stokes & Fransler Lawyers. He is a former U.S. Army captain in the Judge Advocate General Corps.

#### Class of '80

GEORGE T. LEWIS III of Memphis was recently elected chair of the Tennessee Judicial Selection Commission. The Commission screens applicants and recommends candidates to the governor for appointment to vacancies on all trial and appellate courts, including the Tennessee Supreme Court.

#### Class of '81

JENNIFER P. CRAIG was elected vice president of the Knoxville Barristers and is currently practicing law with the firm of Moore & Smith, P.C.

FRANK P. HARRIS of Marietta, Ga., recently formed the law firm of Harris, Morgan & Parson, specializing in insurance defense. Martindale-Hubbell rated him as "AV."

CAROLYN JOURDAN of Strawberry Plains, Tenn., is the executive producer and director of *Half Lives*, a film about the origins of nuclear waste. This idea for the film originated with Carolyn, an engineer, attorney, and former nuclear counsel to the U.S. Senate Environment Committee.

JIMMIE CARPENTER-MILLER has been named managing partner in the Kingsport firm of Hunter, Smith & Davis.

HAROLD PINKLEY has joined Chambliss & Bahner as a partner. His address is Suite 1000, Two Union Square, Chattanooga, TN 37402.

PENNY J. WHITE of Johnson City, a Tennessee Supreme Court Justice, was one of six recipients of the Knoxville YWCA Tribute to Women award. This was the YWCA's 11th Annual Tribute to Women, which recognizes the talent and contributions of Knoxville-area women.

#### Class of '83

JAMES ALFRED SOUTHERLAND has joined the law firm of Hutcheson & Grundy in Houston, Texas.

#### Class of '84

ROGER D. HYMAN has opened a new practice in Loudon, Tenn. He served nine years as an Assistant Attorney General for the State of Tennessee in Knoxville. Hyman is listed in the 6th, 7th, and 8th editions of "Who's Who in American Law."

DAVID LEWIS of Knoxville joined the firm of Woolf, McClane, Bright, Allen & Carpenter Attorneys.

#### Class of '85

JILL MENUSKIN STEINBERG, partner with Baker, Donelson, Bearman & Caldwell, was recently named to the 1996 Class of Leadership Memphis. Leadership Memphis is "a program designed to produce well-informed motivated leaders willing and capable of working together for a better Memphis."

#### Class of '86

JON A. ANDERSON and

DAVID R. DUGGAN '87 have formed the law firm of Duggan & Anderson in Maryville, Tenn.

DAVID W. LAMB has left the full-time practice of law to attend medical school at the University of Southern California in Los Angeles. David is married to Dr. Patricia L. Pitts and they reside in Glendale, Calif. David will maintain his business mailing address at 200 South Law Robles Ave., Suite 540, Pasadena, CA 91101.

DAVID B. SCOTT has become a partner in the Nashville firm of Ortale, Kelley, Herbert & Crawford.

#### **Class of '87**

*Alumni Headnotes* wishes to correct an error which appeared in the last issue. Rep. KIM MCMILLAN of Clarksville, a member of the state legislature, worked on the adoption bill, was a negotiator on the campaign contributions bill, and had all three bills she introduced passed. Rep. McMillan was rated by The Tennessee Journal as "the undisputed star of the Democratic freshman class." *Alumni Headnotes* apologizes for the error.

#### **Class of '88**

W. STUART SCOTT of Nashville and his wife, Stephanie, announce the birth of daughter Bonnie Nichols Scott on July 15, 1995.

LAURA H. WALTER has become a partner in the law firm of Glass McCullough Sherrill and Harrold. The address is 1150 17th St. NW #605, Washington, DC 20036. She continues to concentrate on traditional labor and employment litigation.

#### **Class of '89**

MARK A. PINKSTON recently made partner in the Asheville

(N.C.) law firm of Van Winkle, Buck, Wall, Starnes and Davis P.A.

ANGELA A. WOMACK RIPPER has moved to 800 First Tennessee Building, Chattanooga, TN 37402. She is with the law firm of Milligan, Barry, Hensley & Evans.

JULIA M. HIPPS VASQUEZ is working at the law firm of Haynes and Boone in Fort Worth, Texas. She is assigned as an associate representing management in labor and employment matters.

#### **Class of '91**

NICK MCCALL of Knoxville and wife Jennifer announce the birth of their first child, Margaret Ashley McCall, on Aug. 7, 1995.

#### **Class of '92**

KYLE MICHEL will open at office in Nashville to lay the groundwork for preliminary organization and fund-raising for the Clinton-Gore '96 campaign. He was a staffer for Al Gore's Senate office and in the 1992 campaign.

#### **Class of '93**

ADAM EPSTEIN is teaching a new course in Sports & Entertainment Law at Pellissippi State Community College in Knoxville.

JACK L. GARTON of Dickson, Tenn., reports the law firm formerly known as White, Regen & Stuart, is now known as White, Regen & Garton.

GARRY FERRARIS has opened his own office in downtown Knoxville. His solo practice will focus on workers compensation, personal injury, employment discrimination, and labor law. The new address is 713 Market

St., P.O. Box 259, Knoxville, TN 37901-0259.

#### **Class of '94**

BRIDGET BAILEY, CLARENCE RISIN ('94), & LINDA SALES-LONG ('90) were three of the thirty-one women and men honored at the Knoxville YMCA Black Achievers banquet. They will each spend at least 40 hours per school year with students in work site visits, academic tutoring, and career discussion sessions.

DAVID P. CAÑAS of Nashville announces the birth of daughter Caroline Elizabeth on Jan. 31, 1995.

GREGORY L. PEHLMAN recently joined the Nashville law firm of Waller Lansden Dortch & Davis as an associate in the firm's litigation group.

JIMMY F. RODGERS, JR. has joined the Chattanooga firm of Summers, McCrea & Wyatt.

MICHAEL K. STAGG is currently attending The George Washington University Law School in Washington, D.C., obtaining an LL.M. in environmental law.

#### **Class of '95**

K. HOLLYN HOLLMAN has joined the Nashville law firm of Waller Lansden Dortch and Davis as an associate in the firm's litigation group.

HARRY WEDDLE III of Columbia appeared before the Tennessee Supreme Court Oct. 11 under a special order to make a limited and conditional appearance. He made an oral argument.

# Five receive '95 awards for service

The University of Tennessee College of Law has honored five individuals for distinguished service during 1995.

State Senators Ward Crutchfield '51, Joe M. Haynes and Robert Rochelle '69 and State Representative Frank Buck '66 received Outstanding Public Service Awards at a meeting of the College of Law's Alumni Advisory Council in Knoxville in September.

In addition, Paul Campbell III '75 of the Chattanooga firm of Campbell & Campbell received the Outstanding Alumni Service Award.

Crutchfield, from Chattanooga, is the Senate Majority Leader and represents District 10. He has served in the state legislature in both the House and Senate and has been chairman of the Hamilton County Legislative Delegation. Crutchfield is a member of the Tennessee and American Trial Lawyers Associations, the Sertoma Club, Temple Lodge, Scottish Rite, and Alhambra Shrine Temple. He was chairman of the Metropolitan Government Charter Commission and also the attorney for the Hamilton County Board of Education.

Haynes, from Goodlettsville, represents District 30. He received an undergraduate degree from UT-Knoxville and a law degree from the Nashville School of Law. Haynes is a former director and president of the Nashville Bar Association and the Goodlettsville Chamber of Commerce. He is a former



State Representative Frank Buck '66 of Dowelltown (left) receives an Outstanding Public Service Award from Dean Dick Wirtz.

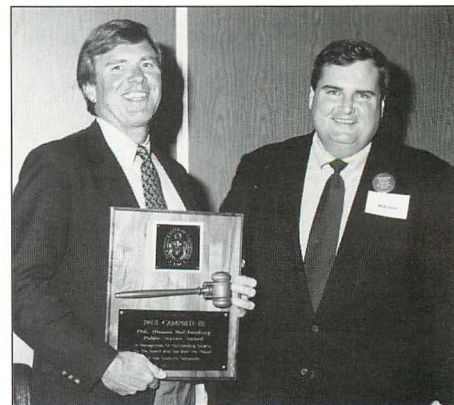


State Senator Ward Crutchfield '51 (left) receives an Outstanding Public Service Award from Dean Dick Wirtz.

exalted ruler of the Elks Lodge and vice president of the Tennessee Elks Association. Haynes is a member of the Tennessee and American Trial Lawyers Association and the Kiwanis Club.

Rochelle, who represents District 17 and lives in Lebanon, is the Speaker Pro Tem of the Senate. He is the charter president of the Lebanon Morning Rotary Club and is a member of the Lebanon Chamber of Commerce and the American Legion. Rochelle received the Lebanon Jaycees Distinguished Service Award and the Phoenix Award from Cumberland University, his alma mater. He is a member of the Tennessee and Wilson County Bar Associations.

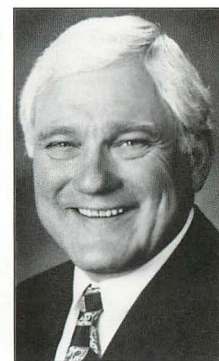
Buck represents House Dis-



Paul Campbell III '75 of Chattanooga (left) receives the Outstanding Alumni Service Award from Buck Lewis '80.



State Senator Robert Rochelle



State Senator Joe Haynes

trict 40 and lives in Dowelltown. He is a member of the DeKalb County Farm Bureau and is a former member of the U.S. and Smithville Jaycees. Buck is a member of the Tennessee Bar Association.

Campbell, who was editor-in-chief of the *Tennessee Law Review* in 1975, is a former member of the board of governors of the Chattanooga and Tennessee Bar Associations and was president of the TBA in 1992-93. He has written articles on workers' compensation and automobile liability insurance which have been published by the Tennessee Bar Journal and the Harrison Company. Campbell is a member of the Tennessee and American Bar Foundations and the Tennessee Defense Lawyers Association.

# Admissions Report

*Over the next three issues of Alumni Headnotes, Director of Admissions and Financial Aid Karen R. Britton will report on law school application activity both on the national scene and here at the University of Tennessee College of Law, review the admissions process at the College of Law, and discuss actual admission activity for the 1996 entering class when the process is complete.*

Life may indeed imitate art if you consider the popularity of the television program "L.A. Law" and law school admission activity. Both reached a zenith in 1990, when "L.A. Law" led television ratings and 94,000 applicants vied for approximately 44,000 spots in the 178 ABA-approved law schools, according to data reported by the *National Law Journal* in October 1995.

"L.A. Law" is a memory now, and application activity is in the fourth year of a national decline. If projections by the Law School Admissions Council hold true, we can expect close to 78,000 individuals to apply for seats in law schools' 1996 entering classes, the *National Law Journal* reported.

Many law schools experienced fairly dramatic declines in applications for the 1995 entering class; the Midwest Association of Pre-Law Advisors reported Harvard was down 18 percent, Yale 22 percent, Michi-

gan 22 percent, Stanford 19 percent, and Georgetown 16 percent.

Across the Southeast, both public and private schools in general received fewer applications; Arkansas was down 16 percent, Alabama 9 percent, Cumberland 17 percent, Duke 13 percent, Texas 8 percent, Mississippi 16 percent, North Carolina at Chapel Hill 5 percent, Kentucky 14 percent, and Virginia 16 percent.

In the state of Tennessee, the three ABA-accredited law schools faced similar declines. The UT College of Law's applications were down 13 percent for 1995. Vanderbilt experienced a 15 percent decline and The University of Memphis a 19 percent decline.

The UT College of Law's applicant base rose steadily through the late '80s and early '90s, reaching an all-time high (since the college began admitting just one class per year) of 1,318 in 1994. This rise continued even after most other law schools began to see their applicant pools drop off sharply. Only in the 1995 applicant pool did the diminishing numbers experienced elsewhere make an impact at Tennessee.

National trends coupled with acknowledged concerns about attending a law school that, for

all practical purposes, had no building as headquarters, contributed to the 13 percent decline UT experienced. Even so, UT's 1995 applicant pool stood at 1,141, about the same as in 1991.

What is the outlook for application activity for the 1996 entering class? Caution with early comparisons is wise. The Law School Admissions Council reports that LSAT test takers are down 9.4 percent nationally for the June and September 1995 test administrations. The most recent data available from the Law School Data Assembly Service shows a decline of 10.7 percent in new registrants nationwide compared to this date in 1994.

As of Dec. 20, 1995, UT's applications were just slightly ahead of the same time in both 1994 and 1995, but this is heavily influenced by the number of applicants who are following our admonition to "apply early." It is too soon to tell just yet.

In real numbers, UT can still expect over 1,000 candidates for an entering class of 150-160.

*In the next issue, we will discuss the impact of declining applications on the competitiveness of the admissions process here at UT and the factors the Admissions Committee considers in making admissions decisions.*

# Professor working on innovative program

*New computer lessons could revolutionize legal instruction*

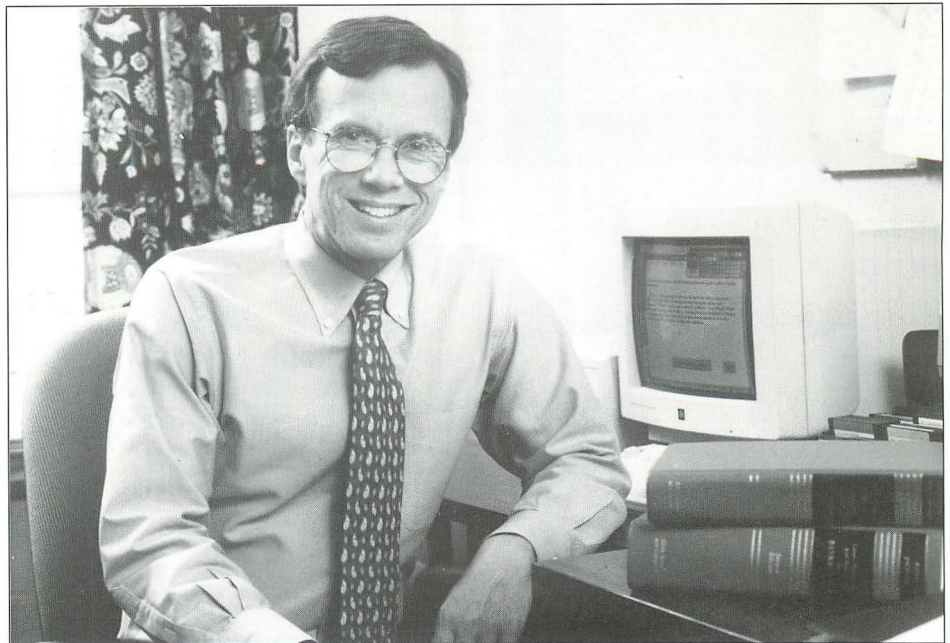
A University of Tennessee professor of law is designing a computer-assisted instructional program that could very well revolutionize the way law courses are taught in law schools across the nation.

Robert M. Lloyd is developing a 15-week series of computer lessons that would eliminate the traditional classroom lecture but still allow a student to receive full credit for a course. The final course materials will be used nationwide and, if successful, could become a prototype for a new approach to teaching law, Lloyd said.

"There is a nationwide trend toward increasing faculty-student ratios," Lloyd said. "If we can find areas in the law where large bodies of material can be taught by computer, then we can break it out of the traditional course and teach it by computer. That would leave the teacher free to concentrate on concepts and skills that can only be taught by the traditional law school student-teacher interaction."

Lloyd's computer lessons are not designed to eliminate completely the personal contact with a teacher -- but similar materials in the future could very well, he said.

Lloyd said many law schools are already using computer



*Professor of Law Robert M. Lloyd*

assisted materials as supplements to the traditional classroom lecture, but he is not aware of any schools using computers exclusively for an entire semester's work.

Lloyd is designing approximately 15 exercises -- one for each week of the semester. Students would be required to successfully complete the week's exercise before each class meeting. The lessons are interactive and measure the student's grasp of material by their responses to questions. When a student is unable to answer a question correctly, the program routes the student back through a series of lessons and questions that eventually lead to understanding the subject matter.

Students can also be tested through the computer program and the instructor can assign grades based upon the students' progress through the 15 weeks, Lloyd said.

Lloyd's course materials will be published by the Center for Computer-Assisted Legal Instruction (CALI), a consortium of 134 law schools including virtually all

of the best law schools in the United States. CALI materials are distributed to all member schools.

Publication of the material will bring considerable recognition to the University of Tennessee, Lloyd said. "Every time a student works on an exercise, the first screen he or she sees is a title screen showing the author's name and school affiliation," he said.

In June 1992, CALI published two earlier exercises written by Lloyd and since then more than 6,000 usages of the exercises at 86 different law schools have been recorded.

"Right now I'm working on only one course," Lloyd said, "but almost any law course could be taught this way. I think this is the wave of the future in legal education, especially as more and more students become familiar with computers."

# Faculty News

**Gary Anderson** was elected to a three-year term on the board of directors of the Tennessee Association of Criminal Defense Lawyers. Anderson was one of two East Tennesseans elected at the association's August meeting. He served previously on the TACDL board and was honored with the group's 1994 Lionel J. Barrett Jr. Award.

Prof. **Fran Ansley** is co-director of the Community Partnership Center, which received a grant of \$500,000 from the U.S. Department of Housing and Urban Development (HUD). The grants from the Community Outreach Partnership Centers Program of HUD are aimed at helping universities form or expand centers for applied research and outreach to communities and neighborhoods. Prof. Ansley was a finalist in the 11th annual YWCA's Tribute to Women. The 18 finalists were gleaned from a field of more than 60 nominations in the arts, business and government, education, human services, science and technology, and volunteer community service. Ansley was an invited participant for "Political Lawyering: Conversations on Progressive Social Change" held Nov. 17-18 at the Harvard Law School. Ansley participated in "Property & Values: Striking an Equitable Balance of Public and Private Interests" at the Harvard Law School Dec. 1.

**Bill Beintema** has been asked to participate in a program at the AALS meeting in San Antonio. He will be a facilitator on "Planning Automation for a New Building" as part of the AALS Section on Law Libraries Program on Management of Law

School Automation and the Impact on Libraries.

**Kelly Browne's** article, "The Ins and Outs of a Uniform Citation System," appeared in the July 17, 1995, issue of the *National Law Journal*. Prof. Browne's article, "Citation Reform at the Annual Meeting," appeared in the September 1995 issue of the *American Association of Law Libraries Newsletter*. Prof. Browne's article, "An Objective Account of the Advantages and Disadvantages of a Neutral Citation System," which appeared in the spring 1995 *Southeastern Law Librarian*, was touted as "required reading" in the August 1995 issue of *Law Librarian's Bulletin Board*.

**Neil P. Cohen** and co-author Donald J. Hall had their teacher's manual for *Criminal Procedure: The Post-Investigative Process* published. Prof. Cohen was honored by the Tennessee Supreme Court for his work in redrafting four sets of Tennessee procedure rules (Appellate, Civil, Criminal, and Juvenile). The award was for Outstanding Service in the Gender Fairness Project. Cohen conducted several TV, radio and wire service interviews on the Michael Frazier and O.J. Simpson cases, including a 90-minute show on WIVK radio involving the Simpson case. Cohen was also a guest commentator on Court TV's coverage of the Frazier case. He spent two days in New York City in the Court TV studio and has been invited back to do other Court TV cases. Cohen also lectured on the death penalty at Maryville College. He submitted to the publisher the third edition of the *Tennessee Law of Evidence* (written with UT

alumni and Adjunct Professors Don Paine and Sarah Sheppard), which will be published by Michie in November or December. Cohen is currently working on a two-volume second edition of *The Law of Probation and Parole*, which will likely be published by Shepard's McGraw-Hill in early 1996. Cohen has been asked by the Supreme Court's Advisory Committee on Civil Procedure to draft an amendment to the Tennessee Rules of Evidence to cover propensity evidence in sex abuse and domestic violence cases. Seven students in Cohen's evidence class have volunteered to form a Propensity Evidence Working Group to assist in the project.

**Joseph G. Cook** and Paul Marcus of William & Mary had the third edition of their casebook, *Criminal Law*, published by Matthew Bender/Richard D. Irwin.

**Grayfred Gray** spoke on "Mediative Processes for Organizational Decision-Making" and led the first UT Colloquy on Dispute Resolution Sept. 15 in the Shiloh Room of the University Center. Also, Gray was elected to the board of the Community Mediation Center and named director of the General Sessions Court Mediation Program. He subsequently submitted a request to the Community Mediation Center for funds from the Tennessee Bar Foundation to support the General Sessions Mediation Program with a full-time staff person to build its caseload during 1996.

**Joe King** was appointed to a committee which will prepare a set of guidelines regarding the criteria for appointment of named chairs and professors at the University of Tennessee.

**Bob Lloyd** served as chair of the internal program review team for the UT Department of Accounting and Business Law.

**Carol Mutter** presented a continuing legal education lecture to the Chattanooga Bar Association in August. The topic was "Recent Developments in Tort and Insurance Law."

**Jerry Phillips'** article, "The Progeny of *McIntyre v. Balentine*," appeared in the 1995 summer issue of *The University of Memphis Law Review*. Volume 2 of the second edition of Prof. Phillips' treatise on *Products Liability*, co-authored by UT alumnus and Adjunct Prof. **Bob Pryor**, was published by the Michie Company. Phillips moderated a panel discussion Oct. 20 at a conference in Boston titled "Consumers in the Civil Justice System." Prof. Phillips will participate in the AALS Conference on Torts next June 5-7 in Washington, D.C. He will be on a plenary panel titled "Teaching and Conceptualizing Products Liability." Phillips will participate in a symposium on the Restatement (Third) Torts: Products Liability at the University of Michigan March 22 and 23, 1996. The symposium is sponsored by the University of Michigan Journal of Law Reform, the UM law school faculty, and the Products Liability Advisory Council Foundation.

**Carl Pierce** received the Ray Shrader Award from the Knoxville Chapter of Children's International Summer Villages for his service to the cause of world peace and cross-cultural friendship. Most recently Pierce was the adult leader for a group of 11-year-olds who took part in a month-long peace village in Lucknow, India.

**Glenn Reynolds'** article "The Moon Treaty: prospects for the

future" was published in the May 1995 issue of *Space Policy*. Prof. Reynolds' article, "Virtual Reality and 'Virtual Welters': A Note on the Commerce Clause Implications of Regulating Cyberporn," has been accepted for publication in the April 1996 issue of the *Virginia Law Review*. Reynolds' article (co-authored with Don B. Kates), "The Second Amendment and States' Rights: A Thought Experiment," was published in the August issue of the *William and Mary Law Review*.

**Dean Rivkin** was an invited participant at a colloquium at American University, Washington College of Law, in June. The colloquium was entitled "Pedagogical, Programmatic, and Personal Perspective." The selected group of clinicians examined the foundational elements, societal and institutional impact, and personal aspects of clinical legal education. Prof. Rivkin served as co-counsel representing the Oak Ridge Environmental Peace Alliance this summer in a lawsuit against the U.S. Department of Energy challenging DOE's failure to prepare an environmental impact statement pursuant to its handling of highly enriched uranium from the Republic of Kazakhstan. He worked on a pro bono basis. Rivkin attended a two-day meeting in Atlanta to develop the design of an integrated assessment to evaluate air pollution reduction options that the Southern Appalachian Mountain Initiative (SAMI) is considering recommending in the region. SAMI's mission is to identify and recommend reasonable measures to remedy existing problems and to prevent future adverse effects from human-induced air pollution on the air quality values of the Southern Appalachians, primarily those of Class I parks and

wilderness trails. He was a panelist at a conference sponsored by the Temple University School of Law and Juvenile Law Center in late September. The conference was "Looking Back, Looking Ahead: The Evolution of Children's Rights." Rivkin and UT alumna Brenda McGee presented papers to a panel entitled "Bad Kids: Do We Educate, Rehabilitate, or Punish?" He made a presentation on "Disciplinary Exclusion and Juvenile Prosecution by Schools" to the Council of the Section of Individual Rights and Responsibilities of the ABA. The Council, which met in Nashville, is interested in promoting more involvement by ABA members in disability advocacy for students.

**Barbara Stark's** article "International Human Rights, Feminist Jurisprudence and Nietzsche's Eternal Return" will be published in the spring 1995 issue of the *Harvard Women's Law Journal*. Stark's book review/essay, "What We Talk About When We Talk About War," will appear in the January issue of the *Stanford Journal of International Law*.

**Greg Stein's** article, "Regulatory Takings and Ripeness in the Federal Courts," appeared with the program materials at the ALI-ABA program on Inverse Condemnation and Related Government Liability held in San Francisco in May. Prof. Stein's article, "Pinpointing the Beginning and Ending of a Temporary Regulatory Taking," appeared in the October issue of *Washington Law Review*. Stein's article, "Hardhat Teaching," appeared as the lead article in the Fall 1995 issue of *The Law Teacher*.

Dean **Dick Wirtz** has been inducted into fellowship in the American Bar Foundation.



# New concentration provides much-needed hands-on training

**By Robert M. Lloyd**  
Professor of Law and  
Director of the Business  
Transactions Concentration

The College of Law has taken a bold new step in legal education by developing a curriculum especially for students who plan to work in transactional practice. This curriculum, known as the Concentration in Business Transactions, will give students practical experience in handling business deals. With this practical experience, graduates of the program will require less on-the-job training when they start work, and because they will get their practical training in a systematic way, integrated with their coursework, they will ultimately develop into better lawyers.

The traditional law school curriculum leaves graduates underprepared in two major areas: understanding how business deals really work and drafting contracts. To make sure our graduates are well prepared in these areas, the College has instituted three new courses: Introduction to Business Transactions, Contract Drafting Seminar, and Representing Enterprises.

Introduction to Business Transactions gives those students who don't already have a background in business an understanding of the basics of accounting and finance and of how the various players in a business deal interact with each other.

The Contract Drafting Seminar will teach students to write effective contracts, the kind that get the deal done while still protecting the client's interests. This is unusual for a law school, because most law schools don't

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*We have a unique resource here at the UT College of Law: a faculty with practical experience in doing business deals. While many schools try to hire young people directly from judicial clerkships, we have hired practicing lawyers who know how things work in the real world.*

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teach contract drafting at all, or if they do, they teach it in a haphazard way. Most lawyers graduate from law school without ever having written a contract. Often, the first contract a lawyer writes is written for a real client, with real money at stake.

The students who take the Contract Drafting Seminar won't have that problem. As its name implies, the course is taught in small sections, and each student will draft (and re-draft) a number of different types of contracts. These will be critiqued and each student will get individualized feedback.

To teach this course, we have been able to prevail upon four outstanding business lawyers -- Jim Giffen '67, Barbara Muhlbeier '83, Tim McLemore '86, and Mark Jendrek '86 -- to serve as adjunct professors. Student response to the course has been overwhelming. More than half the third-year class signed up for it and as a result it was necessary to limit enrollment to third-year students so that the sections would be small enough to allow individual feedback.

Representing Enterprises, taught in the last semester of law school, will give students a chance to bring together the things they have learned in all their law school courses and put them to use. The course will consist of four parts, each a simulation of a major business transaction. Each simulation is based on an actual deal that the professor worked on when he or she was in practice. Each simulation will require approximately four weeks of intense activity, structuring a business deal and negotiating and drafting the documents. Students will work on a wide variety of transactions and they will work with different professors for each simulation. In that way, they will be able to work with experts in different practice specialties and see a variety of approaches to the art of documenting a business transaction.

Representing Enterprises will be a four-credit-hour course and will be taught for the first time in the spring 1996 semester. Tim McLemore and I taught a two-credit-hour pilot course last spring, and the students were enthusiastic about it. The pilot course involved two simulations: the formation of a new business and the restructuring of a troubled loan.

In addition to the three courses described above, students in the business transactions program will take the full complement of required courses plus Business Associations, Land Finance, Taxation of Entities and Commercial Law. Students who complete the full curriculum will receive the designation "Concentration in Business Transactions" on their transcripts.

# Career Services

## COME WATCH US GROW DURING THE ON-CAMPUS INTERVIEWING SEASON!

Career Services now operates from Aconda Court, which is located across the street from the construction site of the new College of Law facility. On-campus visits provide the perfect opportunity for you to see the building take shape, as well as interview candidates for summer clerking and/or associate positions.

Dates for spring semester on-campus interviewing are February 5 through April 26. Fall on-campus recruiting begins September 13 and ends November 22. Resumes will be forwarded to you for prescreening ten days before your on-campus date so that you may select only those candidates you believe will fit your hiring needs. Please contact us at 423/974-4348 for more information or to schedule an on-campus date.

During the construction period, we continue to offer our full range of services, including:

- **JOB LISTINGS AND RESUME REFERRALS** -- We'll post notices asking students and/or alumni/ae to contact you directly, or we'll be glad to collect resumes and mail them to you in one convenient packet. We also offer a focused resume referral service through which we will forward resumes of candidates who have listed a preference for your practice area(s) and geographic location.
- **ALUMNI/AE NEWSLETTER** -- At no charge, your notice for an experienced attorney or entry-level associate will be published in *Job Briefs*, a monthly newsletter mailed to more than 200 subscribers.
- **VIDEOTAPED INTERVIEWS** -- Send us your list of questions, and on camera we'll ask them of the candidates you select. You can watch the taped response at your convenience.
- **STUDENT TEMPORARY ASSIGNMENT TEAM (STAT)** -- We also can be of assistance if you have temporary or single-project clerking needs.

## OFF-CAMPUS RECRUITING CONFERENCES

Please contact Career Services at 423/974-4348 for registration information on any of the following off-campus recruiting conferences.

- **MID-SOUTH LAW PLACEMENT CONSORTIUM, FEBRUARY 24.**
- **SOUTHEASTERN MINORITY JOB FAIR, AUGUST 17, Atlanta.**

- **SOUTHEASTERN LAW PLACEMENT CONSORTIUM, SEPTEMBER 27-28, Atlanta.**

## LAWYERS OF THE PRESENT, VOLUME III, IN PLANNING STAGES

Planning is underway for the third edition of *Lawyers of the Present*, a series of booklets written by alumni/ae to illustrate the versatility of the law degree and the variety of legal and non-legal careers our graduates have pursued. Volume three will highlight alumni/ae practicing in various public interest settings, including legal services, government positions, and advocacy organizations.

In their narratives, alumni/ae recount law school classes and experiences that were invaluable in helping them achieve success. They also describe the satisfactions and frustrations of their work, and offer advice to students who think they may be interested in pursuing a similar career.

Volume two was devoted to alumni/ae who practice in a variety of law firms and as in-house counsel. Narratives for this booklet were categorized broadly in keeping with planning for two new concentrations of study at the College of Law -- the Center for Advocacy and Dispute Resolution and the Center for Entrepreneurial Law. Alumni/ae described their careers in civil rights, criminal defense, labor law, plaintiff's litigation, banking and bankruptcy, elder law, entertainment law, health care, and intellectual property, among others.

Volume one focused on alternative careers, or something considered outside the "traditional" practice of law. Identifying UT law alumni/ae pursuing alternative careers was educational in itself. While compiling this edition, it became clear that the categories of traditional, non-traditional, alternative, non-legal, and law-related careers may not always be distinct for such a versatile degree -- and during the course of their careers, many of our graduates have moved in and out of various categories. We believe that their stories underscore a growing recognition that earning a law degree provides a generalist, graduate education that is valuable in a wide variety of careers.

Volume I was made possible by a gift from Art Stolnitz '52, executive vice president for business and financial affairs for Warner Bros. Television in Burbank, Calif.

Career Services welcomes your suggestions on graduates to invite for participation in *Lawyers of the Present, Volume III*. You may also contact us to request your copy of Volumes I and/or II.

## NEGOTIATING AND RENDERING LEGAL OPINIONS OR FACTUAL CONFIRMATIONS TO THIRD PARTIES ON BEHALF OF YOUR CLIENT

by

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

This outline is reprinted with slight modifications from materials distributed by Professor Pierce at the Third Annual Corporate Counsel Institute co-sponsored in May 1995 by the College of Law and the Tennessee Chapter of the American Corporate Counsel Association.

I. Rendering Legal Opinions to Third Parties: "A lawyer acts as an evaluator by examining a client's legal affairs and reporting about them to ... others." Preamble, American Bar Association, Model Rules of Professional Conduct (hereinafter cited as MR). See generally MR 2.3. This professional role - which is played by many business lawyers - is not recognized in the Tennessee Code of Professional Responsibility.

### II. Negotiating Legal Opinions and Factual Confirmations to Be Provided By Counsel for the Parties

A. The Golden Rule: "It is inappropriate to request an opinion that the Opinion Recipient's counsel, possessing the requisite expertise (and therefore competence respecting the legal issue), would not render if it were the Opinion Giver. Similarly it is inappropriate for the Opinion Recipient to be denied an opinion, otherwise appropriate in the context of the transaction, that lawyers skilled in addressing the matters under consideration would find within their competence and expertise." Committee on Legal Opinions, Section of Business Law, American Bar Association, "Third Party Legal Opinion Report, including the Legal Opinion Accord," 47 Bus. Law 167 (November, 1991) Guideline B(1)(Hereinafter cited as TPLOR).

1. "... the proper purpose of a third party legal opinion is to assist in the Opinion Recipient's diligence. It is not to transform the Opinion Giver into a surety for the Client or to serve as a strategic device employed by any party to renew pursuit of its business objectives. Any request that has the effect of making the opinion more than an expression of professional judgment or that otherwise attempts to obtain overly broad opinion coverage is inappropriate." TPLOR, Guideline B(2).

#### 2. Other "Inappropriate" Opinion Requests

- a. Unexplained opinions with respect to legal issues of known uncertainty. TPLOR, Guideline B(3)
- b. Opinions establishing comprehensive foreign qualification. TPLOR, Guideline B(4)
- c. Opinions that the client is in compliance with all applicable laws as relate to the client's business or properties. TPLOR, Guideline B(5)
- d. Negative assurances, except in conjunction with securities offerings. TPLOR, Guideline B(6)

#### 3. "Questionable" Opinion Requests

- a. Opinion that a transaction does not amount to a fraudulent transfer. TPLOR, Guideline C(1)
- b. Opinion with respect to specific qualification and good standing which can be documented by public authority documents required as part of closing. TPLOR, Guideline C(2).
- c. Requiring that the opinion giver concur in the opinion of another counsel. TPLOR, Guideline, C(3).
- d. Evaluations of the possible outcome of pending or threatened litigation. TPLOR, Guideline C(4).

B. "It is an abuse of the professional relationship for a lawyer on either side to disclose, for the first time late in the negotiation, a lack of authority to resolve an open opinion coverage issue. If a matter is beyond the authority of the lawyer conducting negotiations for either side to discuss dispositively (either because an Opinion Recipient refuses to allow its counsel to make concessions or because an opinion committee or similar entity must pass on the requested

form and scope of the opinion for the Opinion Giver), then persons able to make the decisions should be made available without undue delay." TPLOR, Guideline G.

### III. Rendering Opinions to Third Parties on Behalf of a Client

A. "A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if (1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and (2) the client consents after consultation." American Bar Association, Model Rules of Professional Conduct, Rule 2.3(a)(hereinafter cited as MR). There is no comparable provision in Tennessee's Code of Professional Responsibility.

1. "When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal attorney-client relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting an advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings." MR 2.3, Comment 4.

2. "The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example certain issues or sources may be categorically excluded or the scope of the search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations which are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and surrounding circumstances." MR 2.3, Comment 5.

3. "When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975." MR 2.3, Comment 6.

B. "Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6." MR 2.3(b).

1. M.R. 1.6 does not permit a lawyer to disclose information relating to the representation of a client even when it would be necessary to prevent or rectify a client's fraud in which the lawyer had been an innocent participant, but Comments 14 and 15 thereto and ABA Formal Opinion 92-366 (1992) permit the lawyer who is required to withdraw from representing a client to avoid assisting the client perpetrate a fraud to give notice of his withdrawal and/or withdraw or disaffirm any opinion, document, affirmation or the like. **Warning:** In Tennessee, the Board of Professional Responsibility has issued Formal Ethics Opinion 93-F-133 which interprets DR 7-102(B) in such a way as may require a lawyer who discovers that he/she has been an innocent participant in a still ongoing financial fraud to reveal the fraud to the affected persons.

2. M.R. 1.13 governs confidentiality within an organizational client (including corporations, partnerships, and LLCs) and may require the lawyer to "blow the whistle" on a "constituent" who "the lawyer knows is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization." This disclosure, however, would only be to a higher authority within the organizational client.

C. The A.B.A Legal Opinion Accord and Guidelines: A New Source of Professional Responsibilities for Lawyers Providing or Accepting Third Party Legal Opinions?

1. "The Report does not imply that there must always be a third-party legal opinion or that it would be imprudent for the parties, taking into account cost and other considerations, either to dispense with a third party legal opinion or alter its scope by expanding opinion coverage beyond what the accord contemplates or by modifying, limiting or omitting some of the Accord's provisions." TPLOR at 171.

2. "A third-party legal opinion is an expression of professional judgment on the legal issues explicitly addressed. By rendering a professional opinion, the Opinion Giver does not become an insurer or guarantor of the expression of professional judgment, of the transaction or of the future performance of the client. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction. ...The rendering of a third-

party legal opinion does not ... create any express or implied contract between the Opinion Giver and Opinion Recipient or with any person entitled to rely thereon." TPLOR at 171.

3. "The Report does not replace careful, knowledgeable, transaction-specific legal work as the basis for a third-party legal opinion." TPLOR at 171.

4. "... because the Accord is designed for use in third-party opinion practice, some of its provisions will not be appropriate for use in legal opinions rendered to the opinion giver's own client. While certain portions of the Accord may also be useful in this context, Opinion Givers will likely find it necessary to vary a number of its provisions in recognition of the different relationship between giver and recipient."

#### 5. Opinion Giver's Duty of Care

a. Unless limitations on the scope of inquiry are expressly stated in the opinion letter, the opinion giver must review such documents and give consideration to such matters of law and fact (in accordance with the principles set forth in this Accord) as the opinion giver deems appropriate, in its professional judgment, to render the opinion. Accord, Section 2.

b. Without so stating in the legal opinion, the opinion giver may rely upon information in Public Authority documents and upon information provided by client officials and others (not including the opinion recipient) who are reasonably believed by the opinion giver to be an appropriate source for the information and may so rely without investigation and analysis of any underlying data supporting information contained in a certificate (e.g., confirmation of compliance with a financial covenants). Accord, Section 3.

c. If the reliance is stated in the opinion letter, the opinion giver may rely (without investigation and analysis of any underlying data supporting information contained in a certificate) on information constituting a statement of a legal conclusion in issue or information provided to the opinion giver by the opinion recipient. Accord Section 3.

d. Unless one of the sixteen specified assumptions states a legal conclusion expressed in the opinion, an opinion giver may rely on the assumptions without investigation. Accord, Section 4.

e. An opinion giver may not rely on the information specified in Section 3 or the assumptions specified in Section 4 if a "primary lawyer" in the opinion giver's organization is consciously aware of facts or other information establishing that such information or assumptions are false or that reliance would be unreasonable. Primary lawyers include lawyers in the opinion giver's organization 1) who sign the opinion letter, 2) who have active involvement in negotiating the transaction, preparing the transaction documents or preparing the opinion letter, and 3) who with respect to information relating to a particular opinion issue or confirmation regarding a particular factual matter is primarily responsible for providing the response concerning that issue or confirmation. Accord, Sections 5 & 6.

f. If a lawyer or legal organization other than the opinion giver (other counsel) provides a legal opinion pertaining to particular matters concerning the client, the transaction documents, or the transaction either directly to the opinion recipient or to the opinion giver in support of the opinion, the opinion giver is not responsible for verifying the other counsel's opinion unless the opinion letter states concurrence with the other counsel's opinion. More broadly, the opinion giver is not responsible for the other counsel or the other counsel's legal opinion if the opinion giver's opinion letter does not refer to the particular opinion or only identifies it as the opinion of the other counsel. Accord, Section 8 (a) & (e).

g. Statements of the opinion giver about the opinions provided by other counsel shall be interpreted as follows:

i. A statement by the opinion giver that "the Opinion Recipient is justified in relying on Other Counsel's legal opinion" means only that on the basis of the other counsels' professional reputation the opinion giver believes the other counsel is competent to render its opinion. Accord, Section 8(b).

ii. A statement by the opinion giver that "the form or scope, or both, of the Other Counsel's legal opinion is satisfactory" means only that the opinion, on its face, appears to address the specific legal issue the other counsel was to address. Accord, Section 8(c).

iii. A statement by the opinion giver claiming reliance on other counsel's legal opinion means (with respect to other counsel who are not providing legal representation to the opinion recipient) that on the basis of its professional reputation the other counsel is competent to render its opinion and that the opinion, on its face, appears to address the specific legal issues with respect to the opinion giver is relying. Accord, Section 8(d).

iv. A statement by the opinion giver that it concurs in other counsel's legal opinion means that the opinion giver has assumed the responsibility to verify the substance of that opinion. Accord, Section 8(f).

6. The opinion giver has no obligation to advise the opinion recipient or any third party of changes of law or fact that occur after the date of the opinion letter even though the change may affect the legal analysis, a legal conclusion or an informational confirmation in the opinion. Accord, Section 9.

#### 7. Use of Opinion Letter by the Opinion Recipient and the Lawyers Representing the Opinion Recipient

a. The opinion recipient and the lawyer representing the Opinion Recipient may rely on the opinion without taking steps to verify the conclusions reached with respect to specific legal issues that the opinion affirmatively addresses, but may not rely on the opinion or opinion giver for any analysis beyond that set forth in the opinion letter, such as the broader guidance and counsel that the opinion giver might provide to the client. Accord, Section 7.

b. Only the opinion recipient is entitled to rely upon or assert any legal rights based on the opinion letter and then only for the purpose contemplated by the transaction documents. Absent consent of the opinion giver, the Opinion Letter may not be used or relied upon for any other purpose whatsoever except that it may be used in connection with 1) a review of the transaction by a regulatory agency having supervisory authority over the Recipient or some other person for the sole purpose of confirming the opinion's existence, 2) the assertion of a defense as to which the opinion is relevant and necessary, or 3) a response to a court order. Accord, Section 20.

8. Sections 10 - 19 of the Legal Opinion Accord specifies the meaning to be given in the absence of a contrary statement to various legal opinions and fact confirmations. This can be viewed as a statement of common understanding within the profession about the meaning of general language commonly used in opinion practice. In addition to serving as a dictionary, some of these sections articulate the duty of care of the opinion giver with respect to the particular opinion or confirmation. See e.g.:

a. Section 10 specifies that "the Remedies Opinion deals only with the law of contracts of the Opining Jurisdiction that a lawyer in the Opining Jurisdiction exercising customary professional diligence would reasonably recognize to be directly applicable to the Client, the Transaction, or both."

b. Section 15 provides that the Opinion Giver who renders a "No Breach or Default Opinion" is "required only to determine whether the specific terms of, and performance of agreements in, a Transaction Document would cause a breach of or default under an Other Agreement or a Court Order, taking into account only information that others have provided to the Opinion Giver pursuant to Section 3 and other facts of which the Opinion Giver has Actual Knowledge.

c. Section 17 provides that a confirmation with respect to legal proceedings that are pending or threatened against the client relates only to legal proceedings pending before an adjudicative tribunal or overtly threatened in writing and may be based exclusively on information established pursuant to Section 3 and a review of the opinion giver's litigation docket. No need to review court or other public records or to undertake any broader review of its own files.

9. "Guidelines for the Preparation of Third Party Legal Opinions" regarded by the Committee on Legal Opinions as sound, fair, and drawn from current custom and practice but which are not part of the Accord. They "should apply" to opinion practice generally.

a. Explained Opinions: Because of legal uncertainties due to the nature of the legal process, conflicting authority or lack of authority, an opinion giver may choose to render an explained opinion which expresses not only a legal conclusion but also provides or summarizes the legal analysis supporting that conclusion. While such an opinion may also reach a conclusion, that professional judgment cannot be fairly separated from the explanation. The explained opinion should be an objective analysis rather than an exercise in advocacy and should be sufficient to put the opinion recipient on notice of the uncertainties or limitations discussed in the explanation. Guidelines, Section II-C(2).

b. Non-Opinions: If the opinion giver cannot render the required opinion, that fact should be explicitly communicated to the opinion recipient. Exceptions, qualifications or reservations must be related to a specific legal issue addressed in the opinion. Guidelines, Section II-C(4).

c. Noting that there exists no general requirement and no consistent practice, The Committee on Legal Opinions takes no position on disclosure in an opinion letter of the opinion giver's financial interests in or other relationships with the client. Guideline II-E. Although taking no position on the question, the Committee notes that in some circumstances disclosure may be required.

i. NYSE requires disclosure of an opinion giver's directorship in any opinion rendered in support of the listing of a stock.

ii. SEC requires disclosure of "substantial" financial interest in registrant if the aggregate interest of the organization rendering the opinion and all attorneys participating in the matter exceeds \$50,000.

iii. The court in *Greycas Inc. v. Proud*, 826 F.2d 1560 (7th Cir. 1987) suggests that it might be fraudulent if the opinion giver failed to reveal that the Client was his brother-in-law.

10. The opinion giver must obtain informed consent of client before delivering the opinion to the Recipient. After review of the opinion letter and its implications for the client, consent may be inferred from the transaction document and/or closing arrangements (e.g., delivery of the opinion is a condition precedent to consummation of the transaction. Guidelines, Section II-F.

D. Opinions in Transactions Involving Sales of Unregistered Securities - See ABA Committee on Ethics and Professional Responsibility, Formal Opinion 335 (1974).

E. Tax Law Opinions in Tax Shelter Investments - See ABA Committee on Ethics and Professional Responsibility, Formal Opinion 346 (1982).

F. Responses to Auditors's Inquiries - ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, 31 Bus. Law. 1709 (1976).

### 1. Client Consent

a. Request to provide information to auditor by apparently authorized constituent authorizes lawyer to disclose without further consent unless the information discloses a confidence or secret or requires an evaluation of a claim. Statement of Policy, Section 1(a).

b. In securing subsequent consent to disclosures of confidences or secrets or the evaluation of a claim, lawyer should fully advise the client and might be well advised to review with the client a draft of the lawyer's response. Statement of Policy, Section 1(d).

### 2. Limitations on Response. See generally, Statement of Policy, Section 2.

a. The lawyer may set forth, by way of a limitation on his response, a specification of the limitations on the scope of his engagement by the client

b. The lawyer may specify a date as which his response is effective and disclaim any undertaking to advise the auditors with respect to subsequent events.

c. The lawyer may limit his response to matters with respect to which he has given substantive attention in the form of legal consultation or representation since the beginning of the period being reported on. If the client was represented by a firm or legal department, or both, the lawyer providing the response shall endeavor to identify from currently employed members of the law firm or legal department who have rendered service to the client matters whether their services involved substantive attention in the form of legal consultation concerning overtly threatened or specifically identified loss contingencies. Beyond this limited inquiry, the lawyer need make no review of the client's transactions for the purposes of identifying other loss contingencies.

d. The response may be limited to items which are considered individually or collectively to be material to the presentation of the client's financial statements. Statement of Policy, Section 3.

e. Limitations on the lawyer's response should be clearly set forth in the response. Statement of Policy, Section 4.

f. The lawyer's response should only cover overtly threatened or pending litigation, whether or not specified by the client, and contractually assumed obligations or unasserted possible claim or assessment which the client has specifically identified and which the client has specifically requested the lawyer to address in the response to the auditor. Statement of Policy, Section 5

g. The lawyer should normally refrain from expressing judgments as to the outcome of the matters covered by his response except in those relatively few cases where it appears to the lawyer that an unfavorable outcome is either probable - i.e., if the prospects of the claimant not succeeding are judged to be extremely doubtful and the prospects for success by the client are judged to be slight - or remote - i.e., if the prospects for the client not succeeding in its defense are judged to be extremely doubtful and the prospects of successful by the claimant are judged to be slight.

### 3. Other Professional Responsibilities.

a. The auditor may properly assume that whenever, in the course of performing legal services for the client with respect to a matter recognized to involve an unasserted possible claim or assessment which may call for financial statement disclosure, the lawyer has formed a professional conclusion that the client must disclose or consider disclosure concerning such possible claim or assessment, the lawyer, as a matter of professional responsibility to the

client, will so advise the client and will consult with the client concerning the question of such disclosure and the applicable requirements of FAS 5." Statement of Policy, Section 6.

#### 4. Limitation on the Auditor's Use of the Response

a. Absent the lawyer's prior written consent, the auditor may not quote from, in whole or in part, or refer to the response in any financial statements or related document. Nor may the auditor file the response with a governmental agency or other person..

b. With 20 days prior notice to the lawyer, the auditor may provide the response to others as ordered by a court or do so when necessary to defend the auditor against a challenge to the audit by the client or a regulatory agency.

#### IV. Withdrawing Fraudulent Legal Opinions.

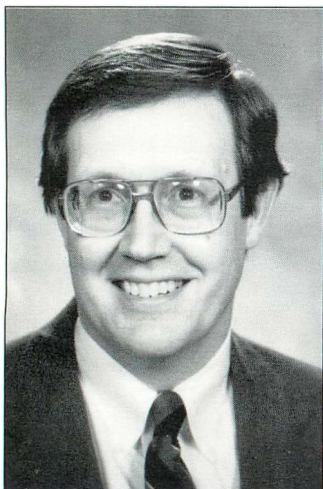
A. If a lawyer has rendered an opinion with respect to a transaction and comes to learn that the opinion is based on lies told to the lawyer by the client and the client refuses to rectify the situation, the lawyer must disaffirm the opinion even though this may have the collateral effect of inferentially revealing client confidences. ABA Committee on Legal Ethics and Professional Responsibility, Formal Opinions 93-366 & 93-75.

#### V. Liability to Third Parties Arising from Transactional Representation of a Client

A. ALI, Restatement of the Law Governing Lawyers, Tentative Draft No. 7, Section 73(2): "... a lawyer owes a duty to use care ... to a non-client when and to the extent that the lawyer or (with the lawyer's acquiescence) the lawyer's client invites the non-client to rely on the lawyer's opinion or provision of legal services, the non-client so relies, and the non-client is not, under applicable law, too remote from the lawyer to be entitled to protection.

B. An action for negligent misrepresentation against a partnership's lawyer brought by a lender to the partnership who had relied on an opinion provided to it by the lawyer to the effect that the borrower was a general partnership and that all the principals were partners may be maintained when the lawyer knew but did not disclose that some of the principals were asserting that they were not partners. Because these doubts were not revealed to the lender, the opinion was a half-truth which was actionable as a negligent misrepresentation. *Roberts v. Ball, Hunt, Hart, Brown & Baerwitz* 128 Cal. Rptr. 901 (1976).

C. Recent Development: In conjunction with a financing on behalf of several Vermont utilities, lawyers for the utilities issued legal opinions to MMWEC which was issuing revenue bonds in conjunction with the financing. MMWEC was not a client of any of the lawyers. The legal opinions related to the legal authority of the utilities to enter into certain power sales agreements (PSAs). The Vermont Supreme Court subsequently held that the utilities lacked authority to enter into the PSA's and voided the PSAs. As a result the utilities ceased making payments called for in the PSAs. MMWEC sued the lawyers alleging malpractice and negligent misrepresentation. The U.S. District Court for the District of Vermont dismissed a malpractice claim because there was no privity of contract between the lawyers issuing the opinion and the bondholders. The Court also held that a "judicial discretion" clause which was included in all but two of the legal opinions and warned that "the obligations of the Participants under the [PSAs] and the enforceability thereof may be subject to judicial discretion" protected the lawyers from liability. With respect to the lawyer who issued an opinion without the judicial discretion clause, the Court also dismissed a claim alleging breach of warranty, but left standing a claim alleging negligent misrepresentation. *Washington Electric Cooperative Inc. v. Massachusetts Municipal Wholesale Electric Co., D.C. Vt. (8/2/95)* 11 ABA/BNA Lawyers' Man. Prof. Conduct 279 (9/20/95).



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.



# Alumni Address Change and News

12/95

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

## News/Awards/Honors

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

### January 29

Charles H. Miller Lecture,\* Professor Linda S. Greene, University of Wisconsin, University Center Shiloh Room, 12:20 p.m.

### February 23

Docket Day

### March 13

Advocates Prize Competition, University Center Shiloh Room

### March 29

Law Preview Day

### March 29-30

Alumni Advisory Council/Dean's Circle meeting in Knoxville

### April 19

Moot Court Banquet, The Foundry on The Fair Site.  
Ray H. Jenkins Trial Competition, University Center Shiloh Room

### May 9

Hooding Ceremony,\* World's Fair Amphitheatre

### May 10

Commencement,\* Thompson Boling Arena

### September 6

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

### September 20-21

Dean's Circle meeting in Knoxville

### November 8

Honors Banquet, The Foundry on The Fair Site

### 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")

\* Alumni invited and encouraged to attend

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