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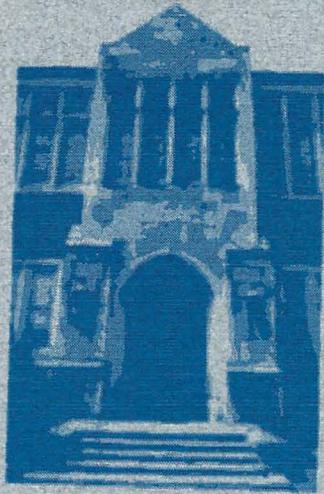
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THE
COLLEGE OF
LAW



THE UNIVERSITY OF TENNESSEE
ALUMNI HEADNOTES
SUMMER 1994

Alumni Headnotes

Summer 1994

Volume 20, Number 2

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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.

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Contents

Alumni News:	20-25
Calendar:	Inside back cover
Career Services:	28-29
CLE Corner:	30-35
Dean's Citations:	4
Dean's Corner:	2-3
Development News:	18-19
Faculty News:	12-15
Homecoming:	17
Hooding:	5
In Memoriam:	20
In the News:	16
Law Library:	11
Moot Court:	26-27
Products Liability Symposium:	35
Top Ten Technology Tips:	6-10
Travels with the Dean:	36

Dean's Corner



There is, in fact, going to be a new building.

In the 1994 legislative session, Governor McWherter recommended funding, as he had promised he would do, for the construction phase of the law school building project. The project had strong support in both houses of the General Assembly. The legislature approved a budget with the Governor's recommended amount of \$18.85 million in it for the renovation and expansion of the law school facility, and the Governor signed it into law. That amount should be sufficient to build the building according to the program, leaving funds for furniture, fixtures and equipment to be appropriated in a subsequent session.

The University is in the process of contracting for the construction. Assuming the bid process goes as expected, contracts will be let and work will begin this summer. It has, in fact, already begun, with the laying of large amounts of steam pipe in a trench across the front lawn. By the time ground is officially broken in September (the date is still not set), construction will be well under way.

This represents the culmination of a lot of effort on the part of a lot of people. In the next issue of *Alumni Headnotes*, Professor Pat Hardin, who has chaired the Building Committee since it was formed in the aftermath of the ABA inspection visit in 1984, will describe the project in full and report on what it will mean to the College. I will cover some basics here, and supply a few details on what we're calling "the transition."

The project is part renovation and part expansion. The Cumberland Avenue building built in the early 1950's - the first building actually built to house the law school - will be renovated thoroughly. A new structure will be built for the law school between the Cumberland Avenue building and the Panhellenic Building, extending to the rear of the parking lot. In preparation for the new construction, the small building just to the west of the 1950's building will come down. (The International House, which most recently occupied that building, has moved to temporary quarters; it will eventually have a new building all its own at the center of campus.)

The two structures will be joined nicely at a rotunda which will constitute the new main entrance to the law school facility. The bridge that connects the Cumberland Avenue building to the 1970's White Avenue addition will be demolished, and the White Avenue building will revert to the University for new uses.

Many alumni who have indicated that they are pleased that the law school will remain at 15th and Cumberland have expressed concern about melding the new construction with the old. If you've seen the sketches of the exterior, or the model on view in the lobby of the Legal Clinic, you know how hard the architects have worked to preserve the Neo-Gothic architectural themes of the old building in the new one. (The architects are a joint venture consisting of two Knoxville firms, McCarty, Holsaple & McCarty and Lindsay & Maples, with the McCarty firm taking primary responsibility for the design. They have done an exceptional job.)

When the project is completed, the library, most of the classrooms, and the Law Review will be in the new part, and everything else - faculty offices, the clinical programs, student space, and the administrative offices - will be in the 1950's renovation. One of the nice features in that building will be a commons area that extends vertically from the first floor to the third, taking in the light from the tall windows of the old library reading room.

Though the facility will be built to accommodate up to 500 students - about 10% more than are currently enrolled - there is NO enrollment increase planned in the foreseeable future.

Concerning parking, all I can say for sure at this point is that the University officials concerned are well aware that taking a parking lot to expand the law school exacerbates an already serious problem, and are working on it.

Assuming reasonable accuracy in the cost estimates, the \$18.85 million appropriated will cover the costs of a facility with about 108,000 net assignable square feet (compared to approximately 64,000 in the current combined structure).

When all the state funds are in, the chances are that in terms of finishes, furnishings, fixtures and equipment, there will be a difference between the building the state funds will stretch to build and the one we'd really like to have - a building that in terms of both form and func-

tion will be worthy of a distinguished law school with high aspirations. We'll take that one as it comes.



The letter that went out this summer to the prospective members of the Fall 1994 entering class told them that they would be the last class to enter in the old building, and, if all goes according to schedule, the first to graduate from the new. The project is scheduled to produce a renovated and expanded law school building ready for occupancy by the end of 1996.

In the 1994-95 academic year we will continue to operate for the most part the buildings we're in now. The major qualification is that classes will be conducted elsewhere on campus during normal construction hours. The acoustics in the law school classrooms really leave us no choice. This summer a group of faculty will move from the White Avenue building to temporary quarters in Dunford Hall, to make way for a fire stair at the west end

of the White Avenue building that has to be moved inside. We are learning electronic mail and morse code.

A year from now, we will pick up and move everything movable to Aconda Court, a building across the street at 16th and Cumberland, and Dunford Hall, a renovated dormitory a little farther south on 16th Street. The Law Library isn't movable, because there is no place to move it. So it will take over all four floors of the White Avenue building, where it will operate until such time as we can all move into the new facility, in . . . December 1996, right?

There's going to be some nuisance.

It'll be worth it.

Richard S. Wirtz
Dean



← Governor Ned McWherter officially announced the plans to build a new law facility at the UT Bicentennial Opening Ceremony, January 13. Afterwards he spoke with Dean Wirtz.

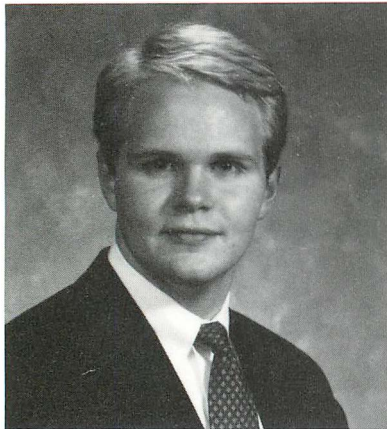


"Transition Construction Forewoman"
Associate Dean Mary Jo Hoover



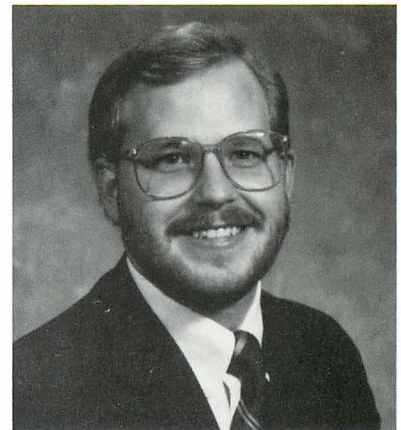
And so it begins!

Class of '94 Dean's Citation Recipients



Jonathan J. Cole from Nashville

The Dean's Citations are a means for expressing special appreciation to students who have been of tremendous service to the College of Law during their three years of study.



Jason P. Hood from Memphis

Jonathan Cole

Jonathan served as the 1994 chair of the Moot Court Board. Under his leadership, and as a result of the outstanding efforts of the coordinators of the Advocates' Prize Competition and the Jenkins Trial Competition, the intraschool program has experienced a revival in student participation. Last year, he and classmate Michele Johnson co-founded and coordinated the pro bono program. The program gave law students the opportunity to work with attorneys dedicated to helping the under-represented in society.

Jason Hood

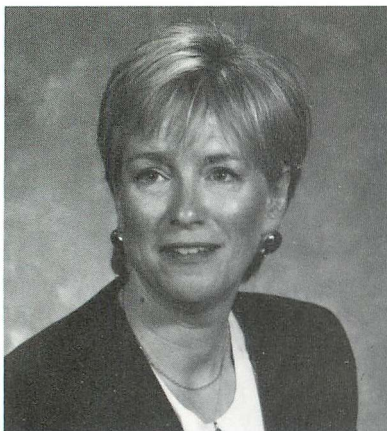
Jason served as 1993-94 president of the Student Bar Association. Under his leadership, the SBA sponsored numerous successful events which included the Novak Auction, the Student Organization Day, and the Advocates' Ball. He also served on the Building Committee and as co-chair of the Development Council.

Barbara Johnson

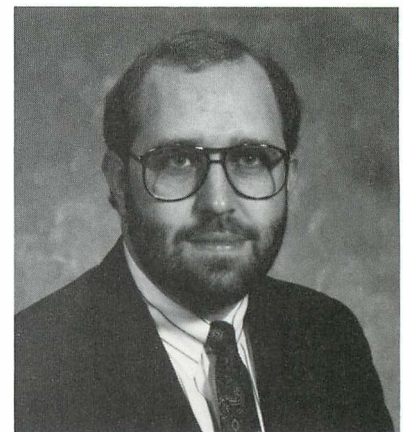
Barbara served as 1993-94 vice-president of the Student Bar Association and 1992-93 president of Law Women. She was instrumental in coordinating a series of seminars designed to provide assistance to first-year students. Barbara co-chaired the class composite project, served on the Development Council and served on the Faculty Appointments Committee.

Michael Stagg

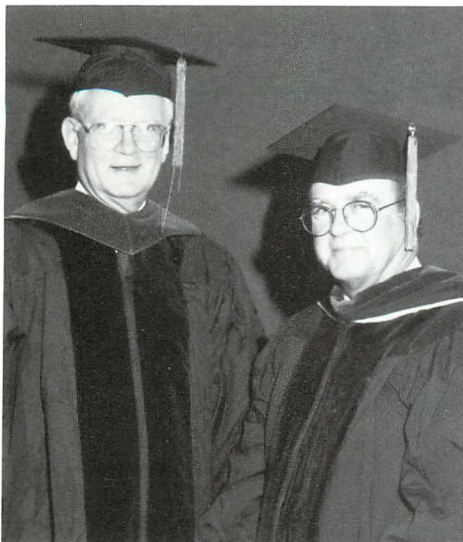
Michael served as the 1993-94 editor in chief of the *Tennessee Law Review*. He provided outstanding leadership by restructuring the Law Review's candidacy program; by implementing desktop publishing, whereby all manuscripts are prepared by the Review's editors and sent to the printer in camera-ready form; by establishing the ethics seminar as a service to the Bar; and by coordinating a products liability seminar.



Barbara W. Johnson from Knoxville



Michael K. Stagg from Knoxville



Dean Wirtz and Justice Anderson

(Excerpts from the speech of The Honorable E. Riley Anderson, Justice of the Tennessee Supreme Court)

With credit to Mario Cuomo, I want to say something just to the parents:

I know that you parents are thinking what I'm thinking - there is so much ahead that they ought to know; so many temptations they should ignore. We have the obligation to tell them; to reduce the pain as much as possible. We have the obligation, but do we have the right? Can we who found the truth elusive for so long tell them with confidence now of the futility of accumulating the material things of the world? Most of us have achieved levels of affluence unthought of two generations ago. We've never had it so good in a material sense at least. But the circle of pure materialism is clear to us now. Aspirations become wants, and wants become needs.

Men and women rise to the top of their professions after years of struggle, but despite their apparent success, they find the world empty.

We know, because we've been there. But do we have the right to tell these graduates that the most important thing in their lives will be their ability and desire to serve, and that without that desire, sooner or later they will be doomed to despair. Do

Class of 1994 Hooding May 12, 1994

you think they would believe us if we told them today what we know to be true - that after the pride of obtaining a law degree, and after earning their first partnership, and buying their first shiny new car, and traveling around the world for the first time, and having had it all, they will discover that none of it counts unless they have something real and permanent to believe in a life of service. Are we the ones to tell them that the philosophers were right? St. Francis, Buddha, and Muhammad all spoke the truth when they said the way to serve yourself is to serve others. And that Aristotle was right before them when he said the only way to assure yourself happiness, is to learn to give happiness. We have for a lifetime taught our children to be go-getters. Can we now say to them that if they want to be happy they must be go-givers? I wonder if we can, in good conscience, say these things to them today when we ourselves fail so often to practice what we preach. How can we tell them that it is their duty to use all that they have been given to make a better America, not only for themselves and their families, but for all who live here? Do we have the right to tell them, as our teachers told us, that they have an obligation in justice to participate in the bar, in the community, politics and government? Will they believe us if we say these things?

I believe we have the right and the obligation. They know we are not perfect, but they recognize we have tried and they will want to build on our foundation.

To the Class of 1994, with the graduation you are now among the most privileged among society. The chances for your success, by almost any definition - professional, political, community, or material - are greatly enhanced. But with the rank also comes responsibility. I ask you to make a contribution to society because you have a responsibility to do so, because you are needed, and because it will give you the greatest

satisfaction. Both the profession and society badly need your talent. I hope that you will choose to do pro bono work and have the courage to serve the unrepresented, the poor, and the criminal justice system.

I ask you to make a contribution to your government and to the political system. You have a particular obligation with your training to participate in politics and government; to serve on your school board, zoning board, or city council. Our system of democracy works well only when there is involvement by all in our system. Too many of us have chosen to sit at home on too many election days muttering grim remarks about the politicians who appear on television, instead of doing what we could to change things for the better.

As I look at you, and I know some of you, you are stronger than we were; more experienced than we were; smarter than we were; smart enough to take our mistakes as a message; to make our example - good and not so good - part of your education; to make our weaknesses your lesson. I think I see in your eyes a perception that perhaps we didn't have.

As I have talked to some of you, I get the feeling you are mature enough to see the real problems of our society and our profession. I have to conclude that you are the best reason for hope that this world knows. I see you as believers and doers who will take what we will pass on to you and make it something better than we have ever known. I have a feeling about this class that makes me want to see and be part of the future that you will create. Finally, I say to the graduates on behalf of all of us how proud we are of you; how much we believe in you and your ability to change the past and create a bright future.

Congratulations to the Class of 1994 and their families.

The Tips On How to Protect Yourself From Technology

by G. Michael Fenner



10. Isolate and vaccinate your computers.

A new kind of virus threatens the health of your business. The symptom of this virus is data destruction. The prognosis is months of work lost. There is a preventative medicine that is not too distasteful: Do not use pirated software. Only very rarely are these viruses found in off-the-shelf software. The source is almost always pirated software.

If a law firm intends to let its members put their own software on its system, it might be wise to do three things:

- In the strongest way possible, the firm should discourage use of pirated software. It is, after all, a federal crime; in addition, there is a risk that pirated software harbors a virus that could infect and crash the whole system.

- Use virus scanning software. There is software that detects and removes viruses before they do their damage. Require that all user-installed software be scanned before it is installed on the system. It is a pain in the anatomy, but not nearly as big a pain as losing everything.

- Back up everything - everything that is at all important. This is not hard to do. It only requires a small amount of discipline. I do it every time I stop work on an important document and save it. I automatically copy it to a backup disk. If I can do it, then it does not require much discipline. With me, it is now habit. Even easier, there is equipment that regularly, automatically backs up everything on your hard drive - each day, if you'd like.



9. Be alert for problems with Lexis and WestLaw.

Here's just one example: For a long time, LEXIS had a limitation on the length of a work for which it would search. At first the limit was 20 characters long ... later 25 characters. If you put in a word that was over 20 characters long - and you might well do so in a medical malpractice case or in environmental litigation where you are dealing with names of chemicals, or in certain kinds of drug prosecutions - the system would respond that no documents satisfy your request. Notice,

the system did not say "Can't search more than 20 characters in a word." It said that what you were looking for does not appear anywhere in the search field.

Here is my tip: If you rely heavily on LEXIS and Westlaw, get this brand new book: *Using Computers in Legal Research: A Guide to LEXIS and Westlaw*. This book is a LEXIS and Westlaw users' manual that explains each and compares the two. It is by Chris Wren and Jill Robinson Wren. I spoke with Chris on September 21 and the book was in page proofs and he expected a mid-October publication date. As I write this, it may be out. As you read this, it surely is out. If you are interested, contact Adams & Ambrose Publishing at 1274 South Park Street, P.O. Box 9684, Madison, Wisconsin 53715. (608)257-5700.



8. Don't carry on important client conversations over cellular phones.

This one's kind of scary for me. I don't know just where this one is going. Most anyone can listen in on wireless communications. That is, it is not so difficult to do: you don't need to climb poles; you don't need to break into places to plant bugs; you don't need to understand wiring systems. All you need is a scanner and the ability to turn an "on" switch the proper direction.

A. First

Not that long ago, the Illinois State Bar Association was asked the following two questions:

- "Does a lawyer violate the ... Rules of Professional Conduct if he or she used mobile communications ... when discussing [client confidences]?"

- "Does the lawyer have an obligation to inquire of the client as to whether the client is using mobile communications?"

Under the laws of evidence, the law of attorney-client privilege, the question becomes this: have the attorney and the client acted reasonably to ensure their conversation is private? Does the client have a reasonable expectation of privacy? When speaking on a wireless communicator, are you taking reasonable precautions to preserve confidentiality?

Here is what that bar association said about it. (Opinion No. 90-7)

●First premise: Mobile communications are not secure and participants in such conversations have no right to expect privacy.

●Second premise: Use of mobile communications by lawyers could possibly result in a waiver of the attorney-client privilege.

●Conclusion: An attorney should not use mobile communication when discussing confidential matters and if an attorney is aware that a client is using mobile communication, the attorney should inform the client that confidentiality and the attorney-client privilege may not apply to the communication.

So, this opinion from Illinois predicts it is a waiver of attorney-client privilege if someone listens in while you are discussing confidences over a mobile phone. The few cases there are seem to support this Illinois opinion. The cases tend to say that there is no reasonable expectation of privacy on wireless communication, therefore, absent special legislation on the subject, there is no protection.

There is a terrific article on this - really a terrific article - and, fortunately, it is in Creighton's very own law review. I am happy to give them this plug. It is a student piece by one of the best research assistants I have ever had: Dale W. Cottam, '93, "Cellular Communications and Confidentiality: Can Waiver Occur on the Way to the Office?" 25 *Creighton L. Rev.* 1185 (1992).

B. Second

No expectation of privacy, therefore no protection, unless there is special legislation on the subject. There is federal law on the subject. The Federal Wiretap Act [18 U.S.C. 2511 (1993). Its official name is The Electronic Communications Privacy Act.] makes it a crime to listen in on or disclose the contents of cellular phone calls. It requires a court order for law enforcement interception of wireless communications. It also provides that all other-wise applicable privileges shall apply to wireless communications. [This, I suppose, makes it an example of an evidence rule found outside the evidence code. For other examples - and, by the way, here comes a shameless plug - see Part II(C)(2) of my article "Law Professor Reveals Shocking Truth About Hearsay," which will be published in the next issue of my alma mater's (the University of Missouri-Kansas City's) law review. Perhaps all this means is that the attorney-client privilege applies to wireless communications, but only to those where there was an expectation of privacy. On the one hand, you might have an expectation of privacy if you can reasonably expect others still obey the law. On the other hand, you might not have an expectation of privacy if you can only expect others still obey the law until the contrary appears, and so many people channel-surf cellular phones that the contrary has appeared. (In this regard, see Top Ten Tip #1.)]

C. Third

Most people who write on this subject think that wireless communication will replace the current model.

The price goes down, the quality goes up. Over the air transmissions and over wire transmissions are switching places: television is coming in our homes through wires almost everywhere; most predictions I have seen say that soon 60% of phone and fax service will use the airwaves.

We need new technology to prevent eavesdropping. We'll all need secure phones and faxes for those parts of our businesses that must remain confidential: stock offerings; merger or purchase negotiations; trade secrets; other than face-to-face conversations with witnesses; etc.

Once again, real life catches up with fiction. Recall Maxwell Smart, Agent 99, and the Chief? We'll each need a cone of silence. [Speaking of Maxwell Smart, the *Wall Street Journal* reports that LA Gear is planning in-shoe computers. In the beginning, they will measure how high you jump, blood pressure, pulse, and distance traveled. *The Wall Street Journal*, at B1 (Nov. 5, 1993). Can the shoe phone be far behind?]

And, in fact, companies that provide such services are springing up now: there are companies that will scramble your cellular phone transmissions. You call their 800 number and they provide the security of scrambled transmission, and somehow they do this without having to install any equipment. What I don't understand is, if you call their 800 number on your wireless car-phone, how can they protect the part of the call that goes from your car to their 800 number? But I read about this in the *ABA Journal*, [79 *ABA Journal* 100 (Oct. 1993)]. so it must be true.

A second privacy advantage of this service is that, unless you ask for more detailed billing, only the 800 number appears on your phone bill. And I suppose that intermediate phone number is the only one visible on the equipment of the person you are calling - they can't trace it back to you. Surely more of these kinds of businesses - more sophisticated, less complicated - will spring up.

One such company, Secure-Net, promotes its services with this copy: "Attorneys and their clients who talk on unsecured cellular phones are risking one of the most important and confidential aspects of their relationship: the attorney-client privilege."

The Massachusetts Bar Association has entered into an agreement with a private company that will offer Massachusetts Bar members a scrambling network through which the lawyer can filter each of his or her outgoing cellular calls. Perhaps the Nebraska Bar Association should investigate such a service.

Soon we'll all have one phone number that will reach our wireless communication device anywhere in the world. [William Safire recently put it this way: "As communications groupies marry cellular telephony to the computer, they intend to make it possible for each of us to be reachable by anybody on Earth at any time, in any place, with all the data that are currently known to

humankind. ... The invasion of your private space by the [teleturians] is something for you to worry about, dear reader." William Safire, *Omaha World-Herald*, at 6 (Metro, ed. Nov. 2, 1993).] With my Creighton phone number, (402) 280-3090, you'd be able to reach me at the base of Mt. McKinley ... if I was stupid enough to take my wireless communication-device to Mt. McKinley ... which brings me to number 7 on the list of the Top Ten Tips On How to Protect Yourself From Technology.



7. Do Not Allow Technology To Let Your Job Swallow Up Your Personal Life.

Technology will soon free us from our desks. We must not let it chain us to our jobs. You must keep the technological improvements in your professional life from swallowing up your personal life - except, of course, those of you who don't have personal lives to begin with.



6. Ban "Revivitol."

Now here is something in the news lately that may put you wills-and-estates lawyers out of business. And those of you who do wrongful death litigation.

Doctors have discovered - and recently tested - a new drug called "Revivitol." Several weeks ago, an experimental procedure was performed at the Walter Reed Army Medical Center. The wonder drug "Revivitol" was administered to the exhumed dead body of former President Abraham Lincoln. Within minutes, doctors got a heartbeat and pulse, then faint brainwaves, and pretty soon the former president began breathing on his own.

Quoting a nurse who was present during the experiment, and who agreed to speak anonymously: doctors got a heartbeat, faint brainwaves, and respiratory activity. The dead president "opened his eyes and ... we all clearly heard him say 'Gentlemen, where am I?' The whole thing happened in a little over a minute and a half, and then he was dead again." [*Weekly World News*, at 4 (Oct. 5, 1993).]

There will be no more estate work. No more wills, There will be no more wrongful death suits; instead, we'll just add the cost of "Revivitol" to the medicals.



5. View Documentary Evidence With A Newly Increasingly Skeptical Eye.

If you saw the movie "Rising Sun," you saw the mechanical "eye-witness" evidence: the video disk recording of the murder. They had it on disk. It proved who did

it. Or did it? Turned out the disk was a fake: computer geniuses deleted the real killer and inserted the fall guy.

Watch out for altered exhibits. The ability to fake photos, videos, audio recordings, xeroxed copies - it gets easier and easier to produce high quality forgeries of all of these items. This is not a new phenomenon. This sort of thing is at least as old as Joe McCarthy and the Army-McCarthy hearings. It's just easier these days, and more sophisticated.

I have a photograph of the exhumed body of Abraham Lincoln. His eyes are opened and focused. His lips poised to move ... I believe the photo has been altered.



4. The information on your computer isn't as private as you may wish and believe.

I want to point out four problems you may experience with your office's internal technology.

A. Hackers

Hackers have access to confidential law-firm files. The September 19, 1991 issue of *Rolling Stone* reports the story of a lawyer, in a Manhattan office of a West Coast law firm, who hired a hacker to break into his own firm's computer system, so he could find out his chances of making partner.

Stuff that can be stolen: personnel information, pricing information, information about stock offerings or mergers or acquisitions, the secret formula for that spray-on hair stuff. Word might get out about this "Revivitol" stuff ... well, but ... I guess that was already in the paper.

B. Voice mail

"When Joseph Cortese called Standard Duplicating Machines Inc. last month to ask about buying a \$100,000 collating machine, he reached the voice-mail system. So he left a message." First thing next morning, Mr. Cortese, who buys equipment for the *New England Journal of Medicine*, received a call from a salesman offering attractive terms on collating equipment. Oddly enough, the salesman worked for Standard's chief competitor." [*The Wall Street Journal*, at B1 (Sept. 28, 1993).]

The competitor had broken into Standard's voice-mail system. He retrieved sales messages, then erased them so Standard never heard them. He got Standard's messages and Standard did not.

Here are three increasingly common problems with voice-mail systems:

- Voice-mail spying.
- Routing calls through someone else's voice-mail to make outgoing calls on their tab.

●Voice-mail loading where vandals clog a system just for the sport of it - the system reaches its limit of incoming information and nothing new comes in.

The remedy: change passwords regularly. That makes each of these three things much more difficult, and it tends to cut them off if they are occurring.

C. E-Mail

Nothing on a networked computer system is really secure. Users are constantly surprised to discover that documents, or electronic mail messages, which they assume are confidential because they are protected by a password, are, in fact, completely accessible to other users.

Don't give out your password. Don't use your phone number or your address or your birthday as your password. When you finish working on the system, log off; an unattended logged-in machine is an invitation to a curious party.

Don't use e-mail to say bad things about the boss: the boss may be listening, and you may be fired. (In fact, most network packages have features for monitoring documents, electronic mail, and user activities generally. Such tracking helps allocate resources.) There are cases in progress right now on this very subject of e-mail privacy and firings.

Remember Oliver North! He and his secretary, Fawn Hall, spent all that time shredding documents. Investigators uncovered months-old e-mail messages about his Iran- Contra dealings. The most important evidence in the Iran-Contra trials of North and John Poindexter came from electronic-mail records. George Bush, near the very end of his term, was ordered by a federal court to preserve all of his e-mail; my recollection is that he ignored the order and erased it all! Said he wanted to clear the space for the Clinton administration. Doing them a favor. The etiquette thing.

And, while I'm on the subject of e-mail, many lawyers have e-mail capability with their clients. I have this tip for you: People using e-mail tend to be much less formal. Two things to beware of: (1) The client may not like that kind of informality, or may mistake it for a lack of seriousness or intelligence as regards the client's problems. (2) You may think you are engaged in casual conversation over e-mail; your client may take it much more seriously, your client's reaction may be much more formal; your client may print out the e-mail message and take it for much more than you meant it to be.

D. Data recovered from "destroyed" disks and hard drives

John Jenson, a Seattle-based consultant once recovered data from 15 fire-damaged diskettes. It helped his client win a civil case. Later the owner of the business whose diskettes they were, the business where they were burned, was convicted of arson. Deleted files often are

recoverable long after they are erased. Material often can be recovered from damaged diskettes.

Often what is damaging is the recovered first or second draft of a document that has gone through 10 or 20 drafts - an early draft, before the truth has been crafted out of a document.



3. Take Care When Disposing of Old Computers.

This leads directly to tip number 3 of the Top Ten Tips On How to Protect Yourself From Technology. Take care when throwing-out, selling, or trading-in old computers.

There is a story floating around - I have not bothered to check it out because if it is not true, [It could well be techno-mythology.] it should be. The United States Attorney's office in ..., well, since I don't know if it is true, I won't name the office. In a state known for thoroughbred horses and horse races, and whose preeminent race is known by the name of the state, ... but spelled frontwards..., the United States Attorney's office was upgrading its computers. They erased everything from the hard drives of the old computers, and got rid of them. Then they learned the old equipment had been purchased by the enemy. Then they learned the enemy had recovered much important data from the "erased" hard drives.

If the stuff on your old computers is as important to you as grand-jury notes, informants' names, and wiretap locations may be to a U.S. Attorney's office, destroy the hard drive before you dispose of your old computers. Grind the hard drive into powder, burn the powder into ash, and sprinkle the ash around a theater showing a Ted Danson movie ... or someplace else no one ever goes.



2. Discovery.

Technology is changing discovery in important, major, serious, significant, momentous, complex, profound, and grave ways. [And just like the thesaurus function on my computer, the change is not altogether for the better.] I've two things to say about discovery.

A. First

First, discovery gone awry. What happens when your opponent has a staffing emergency and calls a temp service and the temp inadvertently, lackadaisically, stupidly, whatever - faxes you a privileged document. For example, a New York law firm accidentally faxed to the *Wall Street Journal* confidential information about a proposed merger.

There are three views on what your responsibilities are when you find you have been sent something you were not supposed to see:

- Do not read it; notify the sending lawyer; send it back.

- Read the document. Use the document. Voluntary disclosure, whether done negligently or intentionally, waives the privilege.

- Maybe you read it and use it, maybe not. A balancing test. How much care did the sending lawyer take? And so forth.

When your jurisdiction has no rules covering this, which approach do you take? If you take what might be the "high ethics" approach and send it back unread, do you risk malpractice for not taking what might be the "good evidence" or "tough litigation" approach? On the other hand, if you take the "tough litigation" approach, do you risk sanctions for unethical behavior?

And, what do you do as the sending lawyer? Make sure your fax cover sheets have a privilege statement: a statement of intended privacy and a statement of what the receiver is to do if he or she is not the addressee. Yet I find it hard to believe that a person who slides pieces of paper under my door has any right to threaten me if I sneak a peak. It reminds me of those mattress tags telling me I would violate federal law if I removed the tags. First thing I always did with those tags: remove them.

B. Second

Second, new things you may want to try to discover:

- Discover e-mail - we have always discovered daily planners with diaries of phone calls and meetings, now we need to discover computerized calendars and logs of phone calls, and who knows what else can be discovered off these machines. Congress subpoenaed Oliver North and John Poindexter's e-mail, maybe you can too.

- Discover drafts preserved (even though erased) on hard drive or diskette.

- Discover computer stored images from video surveillance cameras (as in "Rising Sun").

- Here is one that could be important. Even in cases where there are paper copies of documents, discover your opponent's computer disk copies. It is much easier to search the information, reorganize the information, work all kinds of magic with the information, when you have it on computer disk.

- Currently, you ask your opponent to identify certain people who played a role in the subject of the litigation. Begin asking your opponent to identify data bases that were involved, and then try to get the whole

data base, not just paper copies of selections from the data.

- In cases involving computer crime or computers that were involved in fraud, discover the whole computer - get the machine itself to see what it was set up to do.

In other words, we are used to putting on our discovery shoes, walking into an office and heading for the file cabinets. Today we should be walking into that office and heading for the computer.

C. New Rules

We are going to need new rules to handle both of these aspects of discovery: ethical rules, state supreme court rules, rules of civil procedure. Someone needs to begin working on new rules.

We are using yesterday's rules to handle tomorrow's technology. Yesterday's rules weren't designed to handle tomorrow's technology.

D. Virtual-Reality Helmets

And speaking of tomorrow's technology, and as an aside, for you trial lawyers, do you know where all this technology is going? Some day, jurors will slip on court-provided virtual-reality helmets. Virtual-reality helmets will put jurors not just at the scene of the accident, but in the driver's seat.



1. Number One on the List of the Top Ten Ways to Protect Yourself from Technology.

Here is the partial text of a cellular phone conversation between the heir to the British throne, Prince Charles, and a woman friend, Camilla Parker Bowles. This was picked up and recorded by a scanner that was surfing radio frequencies.

P.C.: "Oh God. I'll just live inside your trousers."

C.P.B.: "Oh, you're going to come back as a pair of knickers!"

The number one Tip on How to Protect Yourself From Technology: If you are married with political ambitions, never use a cellular phone to tell your lover that in your next life you wish to come back as his or her undergarments.



G. Michael Fenner, Professor of Law at Creighton University School of Law, Omaha, Nebraska, is the author. This article first appeared in the Spring 1994 issue of the *Creighton Lawyer*.

by **Bill Beintema, Director**

The College of Law has spent an exciting five years planning and designing an improved home for the Law Library. The new library will have many new tools to enhance the educational and research needs of the student of the future as well as the members of the legal profession. Let's now spend some time in the Law Library with an average student.



Judith Williams is a second-year law student and a member of the Labor Law Moot Court Team.

Judith comes to the library at 9:00 a.m., with her trusty IBM ThinkPad notebook computer, and goes to the carrel she shares with two other students. She plugs her computer into the ethernet connector in the carrel and signs on to the College of Law network.

Judith finds she has an e-mail message from boy friend, who is now a student at a Law School down in Tuscaloosa, Alabama. Her boy friend complains about the trouncing Alabama took from UT at Saturdays game in Neyland Stadium. Judith sends a quick response gloating over the win and complaining about some of her professors at UT.

Judith finds another message, addressed to all the members of her Environmental Law and Policy class, telling them the class has been cancelled for today. The message also instructs the students to find an article of their choice on the Clean Water Act and be prepared to discuss it at the next class.

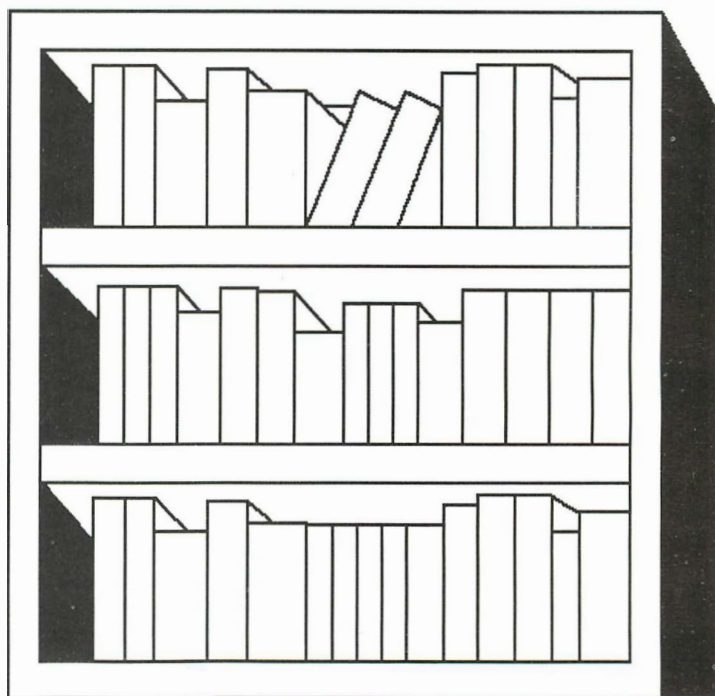
Judith immediately signs on to the on-line catalog to see if the Law Library has any information about the Clean Water Act which might help her locate a good article. She comes up dry and moves on to the Index to Legal Periodicals database and finds an article which she wants to use for the class.

Judith checks to see whether or not the issue of the law review with the article is in the Law Library and finds it has been sent to the bindery. She then signs on to the Westlaw database, which also contains the law review, and orders an off-line print of the article to be transmitted to the Copy and Print Center. She will go down to the Center and pick it up when she gets ready to go to class. If Judith had wanted to use the article in a paper she will be writing for the class, she could have downloaded the article to her storage area on the network file server for later inclusion in her paper.

Judith has been working on the brief for the Labor Law Moot Court competition and has found several relevant cases and articles by traditional and electronic search methods. She has the books and journals checked out to her carrel and selects the information she wants to include in the portion of the brief she is preparing. She enters the information in the word processing program she uses to prepare the brief and saves the document in a section of the network file server that each of the team members may access. The team will meet together in one of the Group Study Rooms later today to review their work.

In the course of her research Judith has found an obscure journal article which she would like to use for the brief. Unfortunately, the only on-line library listing ownership of the journal is in Melbourne, Australia. Fortunately, the library is willing to fax a copy of the article to Judith, charging the cost to her VISA card. She orders the fax via e-mail and as is sent back a message that it will be sent within an hour.

It's time to go to class. Judith disconnects her computer, packs it up, goes to pick up her documents from the Print and Copy Center and heads for class. She probably won't be back in the Law Library today, except for her meeting with the Labor Law Moot Court Team, but she will be able to continue with her work when she gets home by dialing in to the Law Library network.



Faculty News

Dwight Aarons attended a meeting of the Tennessee Bar Association's Commission on Women and Minorities in Nashville in January. He is a member of the Commission. In March, he presented a class to undergraduates on "AIDS and Criminal Law."

Gary L. Anderson testified before the Judiciary Committee of the Tennessee General Assembly about a measure that would have preempted the recommendations of the Supreme Court's Post-Conviction Study Committee with respect to the processing of death penalty cases. His testimony defeated the measure and helped ensure that any change in the law in this area will be made as part of a considered judgment of the whole state scheme for post-conviction review.



Professor Blaze was introduced by ATLA/TTLA Student Chapter President, Harry Weddle, a second-year law student from Chattanooga.

Douglas A. Blaze presented "Very Recent Changes in the Federal Rules of Civil Procedure and How This Affects the Practice of Litigation," on February 24 at the College of Law. His presentation was sponsored by the Student Chapter of ATLA/TTLA.

Kelly K. Browne, Assistant Professor and Reference Librarian, and **Steven R. Thorpe**, Assistant Professor and Head of Public Services for the Law Library, organized the Second Annual Legal Research "Teach-In", April 23.

The four-hour program featured lectures on cost-effective CALR techniques, how to research labor and employment law, how to survive your first legal job in Tennessee, and how to do a federal legislative history. LEXIS and WestLaw and two law firms in Knoxville - Baker, Worthington, Crossley, Stansberry & Woolf and Lewis, King, Krieg & Waldrop - co-sponsored the seminar.

Neil P. Cohen continues to work with the Tennessee Sentencing Commission in Nashville. He coordinated a dinner with Nadine Strossen, President of the A.C.L.U., during her visit to the University in April. Several law faculty and students talked with her informally before her debate on the problem of crime in our society with Daryl F. Gates, ex-Chief of Police for Los Angeles, California.

Judy M. Cornett will have her article, "The Treachery of Perception: Evidence and Experience in *Clarissa*," published in a special summer 1994 issue of the *University of Cincinnati Law Review* called "Recent Work in Law and Literature." She attended the University of Cincinnati Law School's Robert S. Marx Lecture in April and participated in a roundtable discussion following the lecture. Professor Cornett delivered a paper on "The World Within' Meets 'the World Without': Epistemology in *The Mysteries of Udolpho*" at the annual meeting of the American Society for Eighteenth-Century Studies in Charleston, South Carolina in March.

R. Lawrence Dessem had an article, "The Role of the Federal Magistrate Judge in Civil Justice Reform," published in a symposium issue of the *St. John's Law Review* on the Civil Justice Reform Act. He will serve on the new Federal Court/Knoxville Bar Association Joint Committee on Dispute Resolution. He is the faculty inductee of Phi Delta Phi Legal Frater-

nity this year. Professor Dessem has become a consultant to the Advisory Commission to the Tennessee Supreme Court on Civil Procedure, joining long-time Commission consultant Professor Neil Cohen and the Commission's Reporter, Attorney Don Paine, Class of '63.

Lawrence F. Giordano, an Adjunct Professor, has been appointed to a 5-year term as an Administrative Law Judge for the State of Tennessee Department of Education.



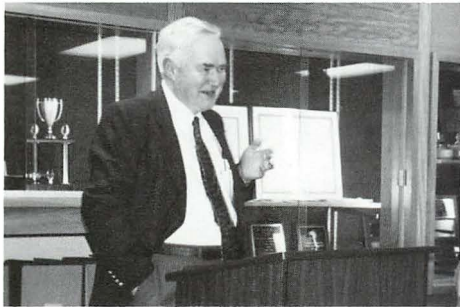
Amy M. Hess has been named one of The University of Tennessee National Alumni Association's Outstanding Teachers for 1994. She was chosen for her teaching abilities as well as for her professional image and was presented the award at the Chancellor's Honors Banquet, April 6.



Mary Jo Hoover, Associate Dean for Student Affairs, received The University of Tennessee Teaching Council and Student Government Association Award for Excellence in Advising at the Chancellor's Honors Banquet, April 6. She was honored for treating students as professional colleagues.

Joseph H. King, Jr. had two of his articles included in an anthology of leading torts articles from the last 60 years. They are: "In Search of a Standard of Care for the Medical Profession: The 'Accepted Practice' Formula," 28 *Vanderbilt Law Review* 1213 (1975) and "Causation, Valuation, and Chance in Personal Injury Torts Involving Preexisting Conditions and Future," 90 *Yale Law Journal* 1353 (1981). The book, *A Torts Anthology* by Levine, Davies and Kionka, was published in 1993 by Anderson Publishing.

Robert M. Lloyd has been elected to membership in the American College of Commercial Finance Lawyers.



Professor Phillips thanked his colleagues for their kind remarks during a reception celebrating the publication of his casebook and treatise..

Jerry J. Phillips was honored at a reception at the College of Law on February 28 to celebrate the publication of his casebook on products liability, and volume one of the second edition of his treatise on products liability. His article, "Comments on *Van Ballegooijen v. Bayer Nederland* from an American Perspective" has been published in Volume 2, No. 2 of the *Consumer Law Journal* (1994). Professor Phillips received a UT Faculty Development Grant to study German at the Goethe Institute in Germany this summer. He will serve as the 1994 chair of the Association of American Law Schools Tort and Compensation Systems Section.

D. Cheryn Picquet serves as editor of the newsletter of the East Tennessee Lawyers Association for Women.

Glenn H. Reynolds attended the National Space Society's Reinventing NASA Conference at George Washing-

ton University in Washington, D.C. in March. He served as a member of the panel on "Reform the Procurement System." NSS will present the results of the conference to NASA, elected officials, the media and the public. Professor Reynolds serves as the NSS Executive Vice President. He delivered a presentation on government procurement reform as part of a panel on "Reinventing NASA" at the 1994 International Space Development Conference in Toronto, Canada. As a member of Academics for the Second Amendment, Professor Reynolds is a co-author of an *amicus* brief before the U.S. Supreme Court in the case of *Lopez v. United States*. The case challenges the federal "Gun-Free Schools Act." He wrote "Framers' intent: Second Amendment being rediscovered in debate over gun control," for the March 25 issue of *The Knoxville News-Sentinel*.

Dean H. Rivkin made a presentation titled, "The Dynamics of Special Education Law and Advocacy," at the annual meeting of the Tennessee Association of School Psychologists in Gatlinburg in April.

Barbara J. Stark received a UT Faculty Development Grant to travel to Stockholm this summer to study women's rights in Scandinavia. She was a panelist at a Tennessee Higher Education Association Conference in Knoxville on March 17. Professor Stark was on the "Family and the Law" panel and spoke on "Using Family Law to HELP Families: If the Cure Doesn't Kill You."

Gregory M. Stein will serve as vice-chair of the Legal Education Committee of the American Bar Association's Real Property, Probate and Trust Law Section. He presented a workshop in February on "What Lawyers Do: Litigation, Transactions, and Justice" as part of the College of Business Administration's Executive Undergraduates Workshop Series.

Richard S. Wirtz chaired a joint ABA-AALS Site Inspection visit to the State University of New York at Buffalo School of Law. He has been selected to serve as a member of Leadership Knoxville, Class of 1995. The volunteer group assists area leaders with community development.



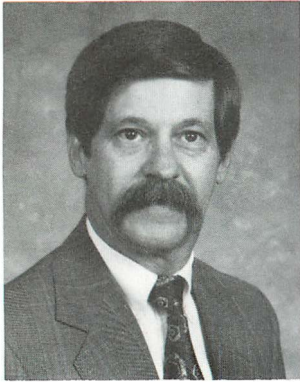
Pam Wolf (left) and Priscilla Brown

Homeless Persons Representation Project Earns Honor for Student Intern

Priscilla Brown, a College of Social Work intern at the Legal Clinic, has won the 1994 Student of the Year Award from the Knoxville Area Branch of the National Association of Social Work. She was nominated by Social Work classmates and two Social Work faculty for her work with homeless persons, the mentally ill, and clients at various Knoxville shelters.

"Priscilla has worked very, very well with the law students in educating them about how the two professions can work together to solve problems and then effectively bring about solutions." said Pam Wolf, an instructor for the Legal Clinic's Homeless Person Representation Project and Priscilla's supervisor.





Hodges to Computerize the Law Library, Old and New!

Bill Hodges is the new Computer, Electronics Services, and Networking Manager for the College of Law. He had been a Systems Analyst and Programmer Analyst at UT since 1974. Bill will be extensively involved in planning for computer services and networking during the transition phase of the new building construction, will review plans for networking in the new facility, and will oversee the computer services needs of the College of Law. His areas of computer knowledge include: DEC, VAX/VMS Platform, IBM MVS Platform; IBM VM Platform, IBM System/38 Platform, and IBM PC Platform.

He received a B.S. in Applied Mathematics from UT in 1973 and graduated with high honors. Bill was awarded a Chancellor's Citation for Extraordinary Service to the University in 1984.

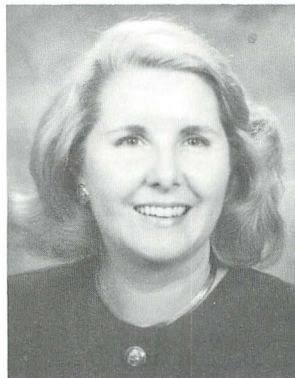


Professor Mutter: From Full Time to Visiting

Professor Carol A. Mutter resigned as a full-time faculty member of The University of Tennessee College of Law at the end of the 1993-94 academic year. Her retirement will only last until this fall, though, when she will return as an Adjunct Associate Professor. She will teach Contracts I in the fall and Insurance in the spring. "We are very fortunate," said Dean Dick Wirtz "to continue to have the services of a departing colleague."

Professor Mutter has taught at the College of Law since 1982 and introduced two new courses, Insurance and a Business Torts Seminar, to the curriculum. While at GCT, she has served on many committees and sponsored the judicial clerkship program. In 1987, she received the Chancellor's Citation for Extraordinary Community Service. Due to her scholarship in torts, she was presented a framed copy of the first page of the Tennessee Supreme Court Opinion on *McIntyre v. Ballentine*, autographed by her colleagues, as a token of thanks.

With her husband's medical practice now in Chattanooga, she will commute to teach. Professor Mutter is also the mother of three sons. "I feel the move has been a good one for my family," she said "and I will continue to be available at the College of Law for two or three days during semesters."



Britton Becomes New Admissions Director

Karen Reagan Britton became the Director of Admissions and Financial Aid at the College of Law in June. She replaces Sybil Richards who left last year to become a solo practitioner. Karen had been the Director of Programs at Bass, Berry & Sims in their Nashville office.

Karen earned a B.S. in 1976 and an M.S. in 1978 from the University of Tennessee, Knoxville. Her Master of Science is in Continuing and Higher Education and Educational Psychology. Prior to her joining Bass, Berry & Sims, she worked in the field of continuing education at UTK and the University of Georgia.

Karen is a member of many placement and marketing organizations and has written several articles on law placement. She has also presented law placement workshops. Karen's husband, John, is associated with the Knoxville law firm of Lewis, King, Krieg & Waldrop and is a member of the Class of '82.



New Faculty Members

Don A. Leatherman, Carol M. Parker and Thomas E. Plank are the newest members of the College of Law faculty and will begin their teaching careers here this fall. Professor Leatherman will teach Income Tax I and advanced courses primarily in the area of corporate taxation. Professor Parker will direct the legal writing program. Professor Plank will teach Commercial Law.



Professor Leatherman earned a B.A. in 1975 from Goshen College, a J.D. in 1981 from Dickinson School of Law, and an L.L.M. in 1984 from New York University. While in law school, he was on the law review and wrote "The Pennsylvania Eminent Domain Code: The Bittersweet Nostrum for the Residential Tenant," 84 *Dickinson Law Review* 499 (1980). Upon graduation, he was elected to the Order of the Woolsack.

As a law clerk and attorney from 1980 to 1983, Professor Leatherman worked on plaintiff and defense tort liability matters and on real estate, estate, divorce, tax, and criminal matters at the Harrisburg, Pennsylvania law firm of Skarlatos & Zonarich. In 1984 he joined the Washington, D.C. law firm of Arnold & Porter and worked as a tax associate. His responsibilities included corporate, partnership, employee compensation, international, and state tax issues. He left Arnold & Porter in 1989 to join the Internal Revenue Service in Washington, D.C.

Professor Leatherman has been an adjunct at Georgetown University Law Center since 1987. He taught a spring semester course on business planning.



As Director of Legal Writing, Carol M. Parker will coordinate the Legal Process classes as well as establish the course curriculum. Professor Parker comes to us from Indiana University School of Law in Bloomington where she was their Writing Program Coordinator. She

has also taught Legal Writing at DePaul University College of Law in Chicago and the University of Illinois in Champaign.

She earned a B.S. and an M.A. from Northwestern University, Evanston, Illinois, and a J.D. from the University of Illinois College of Law. While in law school, Professor Parker served as an Associate Editor for their law review and worked as a Student Legal Services Intern and as a Research Assistant. She was a Harno Scholar, made the Dean's List, and received an AmJur for Evidence.

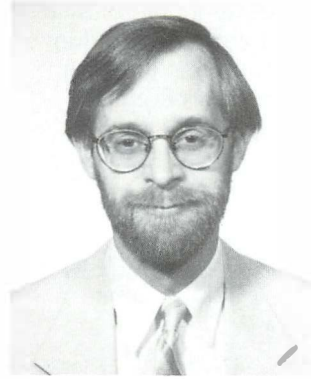
Professor Parker authored the *DePaul University College of Law Legal Writing Manual* (1988-89 and 1989-90 editions) and is currently working on a book titled *Writing Persuasive Briefs*.



Professor Plank earned an A.B. in 1968 from Princeton and a J.D. in 1974 from the University of Maryland School of Law where he was the editor in chief of the *Maryland Law Review*. Upon graduation from law school, Professor Plank was elected to the Order of the Coif.

He was a law clerk for the Honorable Robert C. Murphy of the Court of Appeals of Maryland for a year and then joined the Baltimore, law firm of Piper & Marbury. Before joining Kutak Rock in 1985, he served as an Assistant Attorney General and Counsel to the Maryland Department of Budget and Fiscal Planning and the Maryland Department of Economic and Community Development. Professor Plank became a partner in Kutak Rock of Washington, D.C. in 1986 and practiced real estate, commercial finance, and securities law.

He is the author of four law review articles and is a member of the American Law Institute. His teaching experience includes semesters at George Mason University School of Law teaching Bankruptcy and semesters at the University of Maryland School of Law teaching Real Estate Transactions, Legislation, and Legal Writing.



Don
Leatherman



Carol
Parker



Tom
Plank

"Three strikes' proposal should be out as a cure for crime" by Professor of Law Neil P. Cohen

For years American criminal policy has been the product of political rhetoric, sound bites and gut reaction. The cure for crime is simple: Lock up the criminals and the rest of us will live crime-free.

The most recent craze - "Three Strikes, You're Out" - is typical of this approach. It is also shortsighted, tremendously expensive and unlikely to do much to affect the level of violence in our society.

"Three Strikes, You're Out" is an effort to reduce crime by providing a sentence of life-without-parole for people convicted of three violent crimes. So far, only Washington State has enacted this provision, but at least 30 other states, including Tennessee, are considering it.

Despite the clamor for this change, it is time to ask whether "Three Strikes, You're Out" makes sense.

If nothing else, the sheer financial cost of this concept should give us pause. The Tennessee Department of Correction recently estimated that the cost would be over \$400 million for one proposal.

What do we get in return? The supporters of the "Three Strikes" sentences offer no hard data that it will actually reduce violent crimes. The reason is simple: There are no such data. We taxpayers are being asked to spend a fortune to enact a program that no one can say with any assurance will have its desired effect.

Our Tennessee experience also suggests we should think carefully before jumping on the "Three Strikes" bandwagon. Gov. Lamar Alexander pushed through a poorly thought-out reform called the Class X felony law, which imposed very long sentences for conviction of a number of serious offenses. Although there was never any evidence that the Class X law had any impact on the crime rate, it did fill up our prisons and forced the Tennessee Legislature to repeal it in order to gain control over

an overburdened prison system.

The real problem with "Three Strikes, You're Out" is that it is very likely to lead to the incarceration of people long after there is any reason to keep them in prison at taxpayer expense. Most violent crime is committed by people in their 20s. Virtually no violent crime is committed by people older than 50.

"Three Strikes, You're Out" will give many young offenders a life-without-parole sentence, meaning they will be incarcerated during their crime-prone years as well as long after they have become safe risks. Do we really want to incarcerate men in their 60s and 70s who committed violent crimes 40 years ago and have lived as model prisoners for 30 years? We will have to turn some of our prisons into nursing homes to accommodate our aged prisoners.

Think of the costs. At \$25,000 per year, a life-without-parole sentence for a 30-year-old person who lives to age 75 will cost the taxpayers \$1.125 million. Most of this cost will have virtually no effect on the crime rate since this man is unlikely to recidivate during his later years. Moreover, our aged prisoner will occupy a scarce resource - a prison cell - that could better be devoted to a young criminal committing a first or second violent crime.

The problem can be illustrated by a recent case in Washington State. A 35-year-old man faces life without parole for his third offense: robbery of a sandwich shop. He had put his finger in his pants pocket and pretended to have a gun. He did the same thing on his second offense. Is this really the kind of person the taxpayers of Washington should support for the next 40 years?

"Three Strikes, You're Out" may be worthwhile if it actually reduced crime. There are two prime theoretical justifications for "Three Strikes, You're Out." Some proponents argue that it will deter crime. This means that fear of the punishment for the third conviction will cause poten-

tial violent criminals to change their behavior and not commit their next violent crime. Unfortunately, studies routinely find that making harsh sentences even harsher does not deter.

The second justification is incapacitation - getting the person off the streets so he or she cannot commit another crime. "Three Strikes, You're Out" may accomplish this, but it is overkill at its worst. It removes people while they are dangerous (during their younger years) but also keeps them incarcerated during their most harmless years.

If "Three Strikes, You're Out" is not the answer, what is? Unfortunately for us all, violence in our society has many causes, ranging from poverty to a pathetic value structure. The cures are complex, costly and controversial. Most have nothing to do with the criminal justice system.

But there are some things that our criminal laws can do. Violent crimes should be dealt with harshly. We must give the clear message that violence is unacceptable. Repeat violence must be punished with even greater penalties. At some point, perhaps three serious violent crimes, persons should be identified as posing too great a risk of violence and should receive a substantial sentence. But that sentence should be no longer than necessary to get them through their violent years. Keeping them any longer than necessary inflicts a second assault on the public.

We not only bear the brunt of being victims of violence, we also must support the criminals in their crime-free senior years.



Professor Cohen teaches Criminal Law and Criminal Procedure at the College of Law and is a member of the Tennessee Sentencing Commission.



College of Law 1994 Homecoming and Class Reunions

All alumni and their families and friends are invited to attend and enjoy all the College of Law '94 Homecoming Events!

Friday, September 30, 1994

Reunions for the Classes of '34, '39, '44, '49, '54, '59, '64, '69, '74, '79, '84, & '89

By the pool at the Hyatt Hotel,
500 Hill Avenue SE
6:30 - 8:30 p.m.

Cash bar and hors d'oeuvres
\$10 per person

Saturday, October 1, 1994

Traditional Barbecue on the front
lawn two (2) hours before UT v.
Washington State kick-off
Buddy's Buffet
\$6 per person
Live music!



**See a model
of the new
building!**

College of Law Homecoming/Reunion Hosts

Emeritus Professor E.O. Overton, Charles Lockett, J.D. Lee, David Haynes, Frank Barnett, Richard Hollow, Larry Leibowitz, Bob Murrian, Pam Reeves, Charles Sterchi, Charles Swanson, Janie Porter, and Andy Tillman



Delta Air Lines, Inc. is offering 1994 Homecoming Law Alumni a 5% discount off any Delta domestic published fare made 14 days in advance or a last minute 10% discount off full fare. Call 1-800-289-3030 to make reservations. Ask for Yvonne or Vicki at the University Travel Center.

The Hyatt Regency, 500 Hill Avenue SE, is the official 1994 Homecoming Hotel. A block of rooms has been reserved at the rate of \$110 single/double. Call 615/637-1234 and say "Homecoming UTK" to reserve a room at the Homecoming rate. Room reservation deadline is August 30, 1994.



Order UT v. Washington State football tickets by using the form in The University of Tennessee Homecoming Bicentennial brochure. Also plan to enjoy all the UT Bicentennial Homecoming events.



The Office of Development and Alumni Affairs (615/974-6691) is coordinating the College of Law's Homecoming Events. If you have not received the 1994 College of Law Homecoming brochure, please call and one will be mailed to you.

Development News

Scholarship Established to Honor Judge Louis K. Matherne

E.H. (Buddy) Avery of Atlanta, Georgia, established the Judge Louis Kirby Matherne Scholarship Endowment at the College of Law in February. Once endowed the scholarship will be awarded to a law student who shows financial need. Mr. Avery created the scholarship to honor Judge Matherne's life of service to the legal profession, the bench, and the people of Tennessee. "Judge Matherne views laws as the framework for people to live, work and prosper," said Mr. Avery. "I hope that the men and women who pursue the study of law can learn by Judge Matherne's example and embrace justice as their true goal."

Judge Matherne received his LL.B. in 1948 from UT. In 1968 he was elected to the Tennessee Court of Appeals where he served until his retirement in 1982. He continues to serve by assignment. Judge Matherne and his wife, Betty, live in Brownsville and are the parents of five children. Mr. Avery, Class of '70, was a son-in-law. Judge Matherne's deep commitment to justice was a standard Mr. Avery was inspired by and aspired to adopt. Mr. Avery is presently the Executive Vice President and Chief Financial Officer at Taylor & Mathis in Atlanta.

Contributions to the scholarship may be sent to the Office of Development and Alumni Affairs at the College of Law.



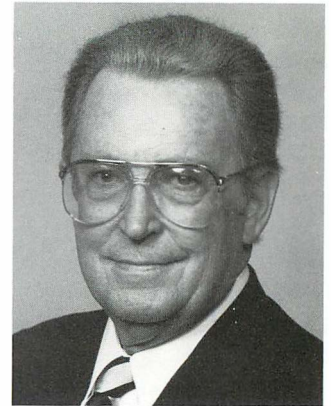
Anthony Scholarship Challenge

An anonymous donor has agreed to contribute up to \$10,000 over the next five years to insure the endowment of the Susan B. Anthony Scholarship at the College of Law, which is sponsored by the East Tennessee Lawyers Association for Women (ETLAW). The donor has requested that the contribution be matched by ETLAW members and supporters. Contributions and pledges may be made to the Office of Development and Alumni Affairs at the College of Law.

Waters Scholarship Established

The establishment of the John and Patsy Waters Scholarship Endowment Fund at the College of Law will provide much needed assistance to law students from Sevier County, Tennessee. John, Class of '61, and Patsy are lifelong residents of Sevier County.

The Waters want the scholarship to be used to recruit qualified, outstanding and deserving students. John served as the Director of the Tennessee Valley Authority for many years and is now in private practice. He and Patsy have two children and two grandchildren.



John Waters

Contributions to the Waters Scholarship may be sent to the Office of Development and Alumni Affairs at the College of Law.



KBA Honors Will Hayes With Scholarship

The Knoxville Bar Foundation, a public service organization of the Knoxville Bar Association, created the William C. Hayes Memorial Scholarship last February. Hayes, who died in a tragic accident last summer, worked for the Knox County District Attorney General's Office after his graduation in May 1990. Donations to the Hayes Scholarship should be sent to the KBF, P.O. Box 2027, Knoxville, Tennessee 37901.



UTK Commemorative Book

The first 200 years of The University of Tennessee, Knoxville has been pictorially represented in a "coffee table" book. The book is on sale at the UT Bookstore for \$20. Twenty percent of the purchase price will be allocated to a UT scholarship fund. The College of Law is featured in the book. For information on how to order your copy, call 615/974-1037.

Class of '94 Selects Class Gift

The Class of '94 is creating the first loan repayment assistance endowment to assist students who have made the decision to enter a career in public service. The endowment will be known as the Class of '94 Public Service Loan Repayment Assistance Endowment Fund.

When the endowment is funded, the income from the account will be used to assist students who have accepted low-paying public service jobs with their law school loan repayment.

The Class of '94 wishes to express their encouragement and support for UT College of Law students who decide to use their law degree to advocate for the under-represented of society.



Class of '94 Development Council
(From left, front row) Kim Mitchell, Amy Haddad, Michele Johnson, David Canas, Leah Gerbitz, Wendy Proctor, Cindy Richardson, Kimberly Moore, Mitzi Privette, Liz Sowa.
(Middle row) Micki Griffin, Chad Hatmaker, Robert Manning, Ray Hixson, John Sholly, Jonathan Cole, Chris Pittman, Michael Stewart.
(Back row) Jeff Hill, Michael Stagg, Pete Halverstadt, Rich Plumley, Steven Page, Jason Hood, Lane Simpson, John Kea.
Not pictured: Bridget Bailey, Gregory Burks, John Cooper, Derek Crownover, Lida Hoskins, Barbara Johnson, Melissa Johnson, Tammy Mulling, Jane Stahl, and Mary Templeton.



←(From left) Former Dean William Wicker, Mrs. Wicker, Mrs. Augusta Kolwyck, Mr. Clarence Kolwyck, and Former Dean Kenneth Penegar at the law library book dedication on March 14, 1979.

Alumni Support GCT with a Variety of Gifts

➤ W.W. Kennerly, Class of '31, has established a charitable remainder trust with a gift of \$312,000. One-half will be used to establish the W.W. and Lucille D. Kennerly Scholarship Endowment for law and the other half will be used to establish the W.W. and Robert T. Kennerly Men's Athletic Scholarship Endowment Fund. This is the second charitable remainder trust Mr. Kennerly has established for law and athletics. He is a partner in the Knoxville law firm of Kennerly, Montgomery & Finley, P.C.

➤➤ John F. Schrankel, Class of '51, from Barnesboro, Pennsylvania, has made a gift of \$50,000 to establish the John F. Schrankel Scholarship Endowment Fund for law students. He has also named the College of Law as a beneficiary in his will. Mr. Schrankel is retired.

➤➤➤ W. Allen Separk, Class of '69, from Marietta, Georgia, made an additional gift of \$15,000 to add to the W. Allen Separk Faculty Development Endowment Fund. Professor Fran Ansley received the first Separk Faculty Award for her outstanding research.



College of Law fondly remembered by the Kolwycks

Mrs. Clarence (Augusta R.) Kolwyck, who died in December 1993, established the Clarence and Augusta Kolwyck Memorial Loan Repayment Assistance Endowment with provisions in her will. Mr. Kolwyck, Class of '28, is also deceased. Once the provisions of the endowment are finalized, the program will begin immediately to help law students who wish to accept a low-paying public service job with educational loan repayment.

A few years earlier, the Kolwycks had established a Tennessee Collection in the Law Library. The collection includes *English Reports - Full Reprint*; Holdsworth's *History of English Law* (200 volumes); and a 1929 edition of Gibson's *Suits in Chancery*. Along with books, they also donated several bookcases to house them. The Kolwycks were residents of Chattanooga where Mr. Kolwyck practiced law for over 50 years.

Alumni News

In Memoriam

Agnes Thornton Bird '74
Maryville

Sheldon I. Diesenhouse '69
Middletown, New York

Raymond H. Fields '48
Knoxville

Harry L. Garrett '26
Kingsport

James S. Gill '57
Roswell, Georgia

Abe Hatcher '52
College Grove

Charles Merle Johnson '63
Knoxville

Harry W. Laughlin, Jr. '35
Memphis

James F. Pryor '63
Greeneville

Ivo W. Sanders '48
Loudon

Fred Wade '22
Memphis

Class of '25

HOMER H. WALLACE has retired and is now living at the Oak Ridge Health Care Center in Clinton. He retired from the practice of law at the age of 87 and recently celebrated his 95th birthday!

REUNION YEAR

Class of '49

The Honorable HOWARD H. BAKER, JR. was named Knoxvilleian of the Year by the Greater Knoxville Juvenile Diabetes Foundation. He was honored at a banquet in April for his outstanding civic and business leadership in the area.

Class of '51



Hugh and Myra Overcash

HUGH OVERCASH and his wife, Myra, visited the College of Law in May and discussed their scholarship in tax with Professor Amy Hess. Hugh has served over forty years as tax counsel to major U.S. corporations. He retired from Georgia-Pacific in January. Hugh and Myra live in Stone Mountain, Georgia.

Class of '55

ALLEN J. BUSH has retired from Bush Brothers and resides in Blytheville, Arkansas.

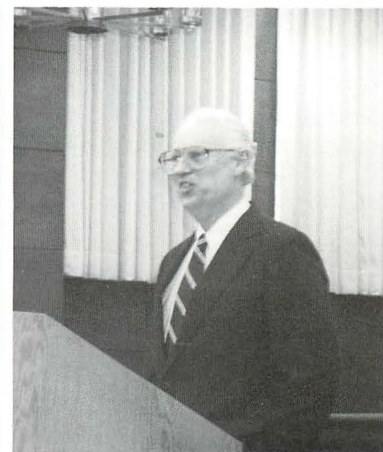
Class of '57

W. HOWARD CARPENTER retired from the Labor Relations Division of Olin Corporation. He and his wife, Mable, live in Louisville.

REUNION YEAR

Class of '59

FRANK E. BARNETT of Baker, Worthington, Crossley & Stansberry in Knoxville presented "The Developing Field of International Law: How Do You Fit In?" in March at the College of Law. The talk was presented by Phi Delta Phi Legal Fraternity. "With more trade opportunities developing from the European and Asia markets," Frank said "there will be a need for more lawyers." Frank is the director of European Operations for the Tennessee Valley Industrial Development Association.



Frank Barnett

Class of '63

CHARLES D. SUSANO, JR. was appointed by Governor Ned McWherter to the Eastern Division of the Tennessee Court of Appeals. He was sworn in on March 18 by Tennessee Supreme Court Justice Riley Anderson, Class of '57. Prior to his appointment to the bench, Charles was a civil practitioner in Knoxville for 30 years.

Class of '67

ROBERT D. ARNOLD, formerly with Hicks, Arnold, Haynes, Sanders & Davis in Knoxville, is now with Davis, Arnold, Haynes & Sanders in Knoxville.

Class of '68

PAUL D. DEATON has been named Mayor of the City of Van Lear, Kentucky. He has also been named chair of the Ethics and Professionalism Committee of the Small Firm and Solo Practitioners of the Kentucky Bar Association. Paul practices law in Paintsville, Kentucky as Paul D. Deaton, PSC.

JOHN J. DOGGETT III serves as the Chief of Law Enforcement for the United States Fish and Wildlife Service in Washington, D.C. He is also active in the Army Reserves. As a Colonel in the JAG Corps, John is assigned as an Appellate Judge on the Army Court of Review. He lives in Arlington, Virginia.

FRANK M. GROVES, former Hamilton County District Attorney, has joined the Chattanooga law firm of Witt, Gaither & Whitaker, P.C., of counsel. Upon leaving the District Attorney's office, he received the lifetime achieve-

ment award. Frank lives in Signal Mountain with his wife, Beverly, and their three children, Misty, Frank III and Betsy.

OLEN G. HAYNES, formerly with Hicks, Arnold, Haynes, Sanders & Davis in Knoxville, is now with Davis, Arnold, Haynes & Sanders in Knoxville.



Sports and Entertainment Law Society Banquet - April 7, 1994 - Dean Wirtz welcomes guest speaker Joel Katz, Class of '69 (left) to Knoxville. Joel has an entertainment law practice in Atlanta, Georgia.

Class of '70

G. WILLIAM BAILEY, JR. has relocated his law office to 29 Public Square in Elizabethtown, Kentucky. His new mailing address is P.O. Box 278, Elizabethtown 42702-0278.

ERVIN L. BALL, JR. has been elected president of the 25th Judicial District Bar Association for 1994-95. The district includes the Asheville/Buncombe County, North Carolina area. He is with the Asheville law firm of Ball, Barden, Contrivo & Bell, P.A.

CHARLES W. BONE joined the Nashville law firm of Wyatt, Tarrant & Combs and will handle the firm's management responsibilities. He was formerly with Baker, Worthington, Crossley, Stansberry & Woolf in Nashville.

SAM J. McALLESTER III joined the Nashville law firm of Wyatt, Tarrant & Combs. He was formerly with Baker, Worthington, Crossley, Stansberry & Woolf in Nashville.

HERBERT S. MONCIER was the featured speaker at The Roosevelt Inn Chapter of Phi Delta Phi's Spring Initiation and Banquet on April 10. His talk, "Caning, Three Strikes You're Out, Fear, and Justice," was appreci-

ated by the audience of PDP members, new inductees, and friends. He spoke about the war being waged in this country against crime because we are afraid of crime and no one is standing up for the rights of the citizenry due to this fear. Herb's law practice is in Knoxville.

Class of '71



(From left) Dean Wirtz, Roger Dickson, and Payson Matthews, Class of '59 and chair of the Alumni Advisory Council.

ROGER W. DICKSON received an Alumni Appreciation Award from the College of Law during the spring meeting of the Alumni Advisory Council, April 9. He was honored for his work on behalf of the new law facility and for his service to UT as a Trustee. Roger is a partner with the Chattanooga law firm of Miller & Martin.

Class of '72

JAMES R. (Russ) DEDRICK was appointed Interim United States Attorney for the Eastern District of North Carolina by Attorney General Janet Reno and the United States District Courts from April-November 1993. He serves on the Attorney General's Advisory Committee. Russ has been the First Assistant United States Attorney for the Eastern District of Tennessee since November 1993.

Class of '73

CHARLES V. HOLMES has become associated with the Memphis law firm of McKnight, Hudson, Lewis & Henderson. He was previously with Hanover, Walsh, Jalenak & Blair.

J. CURTIS SMITH was appointed Circuit Judge of the 12th Judicial District of Tennessee on January 17, 1994. He resides in Dunlap and has practiced law there with Stephen T. Greer, Class of '72, since 1974.

REUNION YEAR

Class of '74

VICTOR H. ASHE II was sworn in as president of the United States Conference of Mayors last month at their annual meeting which was held in Portland, Oregon. He is the mayor of Knoxville. As president, Victor will focus on crime and unfunded federal mandates as top priorities.

ANTHONY J. CARUSO, JR., joined the law firm of Wesesls & Pautsch, P.C. in their Chicago office. His address is Suite 900, 321 South Plymouth Court, Chicago 60604 and his telephone number is 312/461-0500. The firm is known for its labor and employment practice, and Anthony will head the workers' compensation defense section. With offices also in St. Charles, Illinois, and Milwaukee, Wisconsin, the firm has the distinction of being the first in the country to defend at trial an American With Disabilities Act claim.

PHIL KELLEY left the private practice of law to become the General Counsel to High Reach Learning, Inc. High Reach publishes educational programs for preschool educators and is located in Arden, North Carolina.

HOWARD H. VOGEL will serve as a member of Leadership Knoxville, Class of 1995. The volunteer group assists area leaders with community development. He is the managing partner in the law firm of O'Neil, Parker & Williamson.

DAVID H. WELLES was appointed to the Tennessee Court of Criminal Appeals in Nashville by Governor Ned McWherter on February 17, 1994.

Class of '75

ROBERT M. FRIEDMAN was the Tennessee delegate to the National Summit on Crime and Violence in Washington, D.C. in January. He is currently serving a three-year term as chair of the Tennessee Bar Association's Criminal Justice Section. Bob is a partner in the Memphis law firm of Friedman, Sissman & Heaton, P.C.

PHILIP J. LAWSON is the managing partner of Wimberly & Lawson with offices in Knoxville and Morristown.

Class of '76

KATHERINE LOVINGOOD is the senior patent attorney for the U.S. Department of Energy in Oak Ridge.

ARNOLD A. STULCE, JR. and his partner, John G. Yantis, Class of '77, announce the formation of Stulce & Yantis. The firm's address is 100 Dome Building, 736 Georgia Avenue, Chattanooga 37402. Arnold will concentrate on real estate, corporate, estate planning, and trial litigation. He is also the city attorney for Red Bank and sits as a judge for Lakeside. Arnold and his wife, Becky, live in Hixson with their two children, Emily and Andrew.

Class of '77

JOHN G. YANTIS, and his partner, Arnold A. Stulce, Jr., Class of '76, announce the formation of Stulce & Yantis. The firm's address is 100 Dome Building, 736 Georgia Avenue, Chattanooga 37402. John will concentrate his practice on personal injury, workers' compensation and commercial collections. He and his wife, Diana, have three sons, Adam, Joseph and Matthew.

Class of '78

MARCIA BACHMAN will return to her position as a Senior Acquisition Attorney in the Office of the General Counsel of the United States Air Force upon her graduation from Air War College in June 1994. Additionally, she has been selected for promotion to Lieutenant Colonel in the West Virginia Air National Guard. Marcia lives in Alexandria, Virginia.

STEVEN A. BRIGANCE serves as special counsel to LeBoeuf, Lamb, Greene & MacRae of Washington, D.C., and is also the owner of a business consulting office. He resides in Arlington, Texas, with his wife, Peggy.

JOHN W. CHANDLER, JR. received the Pro Bono Attorney of the Year Award from the Memphis Bar Association and was selected as a Fellow of the Tennessee Bar Foundation. He is with the Memphis law firm of Burch, Porter & Johnson.

FLEM K. WHITED III is the author of *Florida DUI Defense* (Revere Legal Publishers, 1994). He is a partner in the Daytona Beach law firm of Lambert & Whited.

REUNION YEAR

Class of '79

DONNA R. DAVIS, formerly with Hicks, Arnold, Haynes, Sanders & Davis in Knoxville, is now with Davis, Arnold, Haynes & Sanders in Knoxville. She has been reappointed to the Board of Trustees for the National College of Advocacy which is the educational arm of the Association of Trial Lawyers of America. Donna also recently served as a faculty member at the NCA's Trial College at the University of Colorado in Boulder.

PETER B. IRVINE proudly announces the birth of his second granddaughter, Caitlin Claire O'Connell, on March 30, 1994. He is the Director of Planned Giving at the University of Pittsburgh in Pittsburgh, Pennsylvania.

ROBERT MONTGOMERY, JR. was named the 1994 Library Trustee of the Year by the Tennessee Library Association at their annual meeting in Memphis. He has served on the Kingsport Library Commission since 1984 and served as chair from 1989-93. Robert is the Sullivan County District Attorney.

Class of '80

MARY ANNE REESE works for the Criminal Justice Section in the Office of the Ohio Attorney General in Cincinnati and practices federal civil rights litigation involving prisoners. She has litigated cases involving excessive use of force and a class action suit challenging the adequacy of mental health service in Ohio prisons. Mary Anne's most interesting cases involve the rights of a transsexual prisoner to receive estrogen, the entitlement of prisoners to wheat bread, and the right of a prisoner to mail order a correspondence sexology course and a Zen mind-control machine. She has appeared on television news to discuss the high volume of federal prisoner lawsuits.

Class of '81

ROBYN J. ASKEW will serve as a member of Leadership Knoxville, Class of 1995. The volunteer group assists area leaders with community develop-

ment. Robyn is a partner in the law firm of Woolf, McClane, Bright, Allen & Carpenter.

Class of '82

MARY KENDALL (Kendy) KALLAHER has become associated with the Memphis law firm of McKnight, Hudson, Lewis & Henderson where she will specialize in labor and employment law. She was previously the Assistant General Counsel at the Library of Congress in Washington, D.C.

ANDRÉE LAROSE and her husband, Henry Elsen, proudly announce the birth of their second child, Thomas Henry Larose Elsen. Thomas was born on February 21, 1994, weighed 9 lbs. 10 ozs. was 21 inches long, and has a two and a half year old sister named Rénée. Andree continues to work as a staff attorney at the Montana Advocacy Program, an agency which advocated the rights of persons with disabilities. The family welcomes visits from any law school friends who venture as far west and north as Montana.

Class of '83

FLOYD S. FLIPPIN hosted Gibson County UT alumni for a golf tournament on May 2 during the 1994 Big Orange Caravan. He is a partner in the Humboldt law firm of Adams, Ryal & Flippin.

MARK H. FLOYD and his wife, Beverly, proudly announce the birth of their son, Alexander Hazen, on March 2, 1994. Alex joins siblings, Jackson, 4, and Elizabeth, 3. Mark is a partner in the Nashville law firm of Floyd & Bryant.

TERRY D. GOLDBERG participated in the 14th Maccabiah Games, in Israel, as shortstop for the U.S. Fastpitch Softball team. He had been to the games two times previously. Terry is a partner in the Philadelphia, Pennsylvania law firm of Datz & Goldberg. He and his wife, Cindee, live in Holland, Pennsylvania.

MICHAEL G. MESKIN opened a title insurance agency, MGM Land Title Abstract, Inc., in Elizabeth, New Jersey. He also practices real estate law.

E. MARLEE MITCHELL has become a partner in the Nashville law firm of Waller Lansden Dortch & Davis.

BARBARA J. MUHLBEIER has been named a Senior Vice President at First American National Bank in Knoxville. She serves as the bank's legal counsel and has been at First American since 1988.

Dr. OTIS H. STEPHENS, JR. gave The University of Tennessee, Knoxville's spring commencement address on May 13. He spoke on "The Price of Freedom" and emphasized to graduates the importance and challenge of balancing freedom and responsibility. Otis is a Professor of Political Science at UTK.

REUNION YEAR

Class of '84

TERESA D. DAVIDSON announces the establishment of Davidson & Associates, P.C. in Phoenix, Arizona. The firm will concentrate on general business law and finance, real estate, and other transactional matters. She lives in Peoria with her husband, Philip Vavalides, Class of '77, and their two children.

JENNIFER BALES DRAKE serves as head of the real estate department for Becker & Poliakoff, P.A., in Fort Lauderdale, Florida. The firm also has offices in the Check Republic and China. Jennifer and her husband, Gary, proudly announce the birth of Tyler Scott Drake on October 26, 1993. He joins three-year-old brother, Dylan.

MARK W. FOWLER will be attending The University of Tennessee, Memphis College of Medicine as an Underserved Area Clinical Scholar in August 1994. He practices law in Union City.

DAVID B. GOLDSTEIN has been named a partner in the law firm of Semmes, Bowen & Semmes. He works in their Baltimore, Maryland office and practices primarily in maritime, commercial litigation, and railroad and transportation law.

Class of '85

DENNIS CARTER and his wife, Sheila, proudly announce the birth of Lauren Denise on January 14, 1994. Lauren's older sister, Melissa, is 14 years old.

Dennis is a judge with the E.E.O.C. in Los Angeles, California and Sheila, who worked in the College of Law's Career Services Office from November 1978 to May 1985, is a legal administrator for the Riverside, California law firm of Reid & Hellyer, P.C.

ROBERT L. LEVI has opened a solo practice in Southfield, Michigan. He will concentrate on criminal trials and appeals, and business litigation.

BRENDA L. LINDSAY has been appointed by the Knox County Commission to serve as one of Knox County's four judicial commissioners. Judicial commissioners sign city and county warrants, set bonds, and decide the validity of complaints. Brenda practices civil and criminal law in Knoxville. She also serves as a special judge in the Fourth Circuit Court and as an acting judge in the Knox County Sessions Court.

JILL MENUSKIN STEINBERG has been named a partner in the law firm of Heiskell, Donelson, Bearman, Adams, Williams & Caldwell in their Memphis office. She practices in the firm's litigation section. Jill and her husband, Ken, proudly announce the birth of Eli Phillip Steinberg on March 1, 1994. Eli has a brother, Corey, 4.

Class of '86

BEN A. BURNS has been appointed legal counsel for the Nashville Area Junior Chamber of Commerce. He is a partner in Baker, Worthington, Crossley, Stansberry & Woolf in their Nashville office.

DAVID A. DOYLE serves as the District Public Defender for the 18th Judicial District of Tennessee. His office is located at 117 East Main Street, Gallatin 37066. David was previously with Phillips & Ingrum in Gallatin.

DEBORAH K. HAYES has been made a partner in the Nashville law firm of Boulton Cummings Connors & Berry and will practice in the area of commercial finance. She was a law clerk for the United States Sixth Circuit Court of Appeals before joining Boulton Cummings in 1988.

DAVID J. HILL has been made a partner in the law firm of Baker,

Worthington, Crossley & Stansberry. He works in their Nashville office.

R. DAVID PROCTOR, with four of his former law firm associates, formed Lehr, Middlebrooks & Proctor in Birmingham, Alabama on May 3, 1993. The firm is located at Suite 300, 2021 Third Avenue North, Birmingham 35203. There are presently seven attorneys at the firm who all concentrate in the area of labor and employment law, representing management. David and his wife, Teresa, are expecting their second child in August. Their first child, Luke, is three.

GARY W. STARNES opened a solo practice in Chattanooga on August 2, 1993, and will specialize in personal injury, workers' compensation, domestic relations, and trial litigation. He had previously worked for six years in the Chattanooga office of Spears, Moore, Rebman & Williams.

Class of '87

KELLY MICHAEL HUNDLEY has become associated with the Atlanta, Georgia law firm of Elarbee, Thompson & Trapnell. His new address is 800 Peachtree-Cain Tower, 229 Peachtree Street, Atlanta 30303. Kelly was previously with Bernstein, Stair & McAdams in Knoxville.

Captain MARGARET DAVIS WEATHERMAN and her husband, Captain Shannon D. Weatherman, proudly announce the birth of Justine Lanae on January 6, 1994. She has a two-year-old sister, Jessica. Margaret is currently in the USAFR JAG in Goldsboro, North Carolina, but will be transferred to Whiteman AFB in Missouri soon.

Class of '88

THOMAS L. BLANKENSHIP has been admitted to practice in Kentucky and now practices law in Benton. He is also licensed to practice in Tennessee.

JAMES C. BRADSHAW III joined the Nashville law firm of Wyatt, Tarrant & Combs where he will concentrate his practice on employment, casualty defense, workers' compensation, and commercial litigation.

BRIAN E. HUMPHREY has been made a partner in the Chattanooga law firm

Alumni News

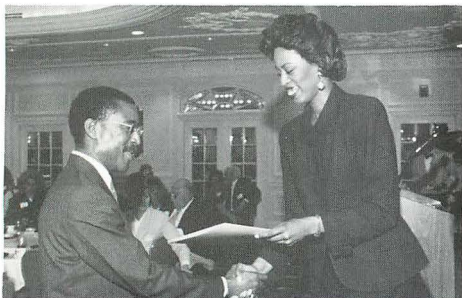
of Miller & Martin. He practices real estate, environmental, and antitrust law.

ANGIE W. LE CLERCQ is the Head of User Education and Special Assistant to the Dean of Libraries at UT-K's Hodges Library.



Angie poses with the Alex Haley Bust at the unveiling, February 22, 1994.

LEONARD MADU received a 1994 "Brotherhood/Sisterhood Award" in the Not-for-Profit category from The National Conference of Christians and Jews on February 24, 1994. He is the editor of *The Human Rights Monitor* and the *CALC Quarterly News Bulletin* in Nashville and works closely with the Nashville Clergy and Laity Concerned.



Dr. Madu receives the "Brotherhood/Sisterhood Award" from WSMV-TV Channel 4 Anchor, Cathy Hobbs.

JEFFREY D. NIETHAMMER and his wife, Monica, proudly announce the birth of Kevin Scott on September 30, 1993. He joins brothers, Justin, 5, and Mark, 3. Jeff works for Alpha Industries, Inc. in Knoxville.

STEPHEN W. RAGLAND is the new president of the Memphis/Shelby County Chapter of the UT National Alumni Association. He is associated with the law firm of Heiskell, Donelson, Bearman, Adams, Williams & Caldwell, P.C. in their Memphis office.

W. STUART SCOTT and Stephanie Raby were married at the Hermitage in Nashville on June 18. Stephanie is a home health care nurse. They will live at 2104 Sharondale Drive in Nashville and the newlyweds invite all classmates, except Bob Widerkehr, to visit them. Scott is associated with the Nashville law firm of Stewart, Estes & Donnell.

ROBERT L. WIDERKEHR, JR. has become a partner in the Chattanooga law firm of Fleissner, Cooper, Marcus & Quinn where he practices civil litigation.

REUNION YEAR

Class of '89

DOUGLAS ALLEN BELKNAP has become associated with the Phoenix, Arizona law firm of Cook, Kotel & Fitch where he specializes in professional liability defense. He was previously with Gallagher & Kennedy. Doug also recently married Dana Robin Stagg.

DAVID S. and JOSEPHINE D. CLARK proudly announce the birth of their daughter, Ashton Elizabeth, on October 8, 1993. David opened his own law practice in Oak Ridge on May 1, 1993, and Josephine is an associate with Joyce, Meredith, Flitcroft & Normand in Oak Ridge.

VIRGINIA E. GANDY has accepted a staff attorney position with Federal Express in Memphis. Her primary area of practice will continue to be labor and employment law.

F. SCOTT MILLIGAN taught Legal Process II at the College of Law during the Spring 1994 Semester. He now is associated with the Knoxville law firm of Gentry, Tipton, Kizer & Little, P.C.

MARK A. PINKSTON and his wife, Patti, proudly announce the birth of their third child, Samuel Kane, who was born on December 31, 1993. Mark is associated with the Asheville,

North Carolina law firm of Van Winkle, Buck, Wall, Starnes & Davis.

C. MARK WARREN joined the Chattanooga law firm of Duncan & Mickles in February. His area of practice will be general trial work with an emphasis in lender liability, personal injury and environmental law. Mark and his wife, Terrie, have two children, Bo and Susannah.

Class of '90

SUSAN BRADLEY proudly announces the birth of Katlyn Elizabeth Shonting on July 28, 1993.

Class of '91

LEO BEALE II became associated with the Chattanooga law firm of Rice, Kreitzer & Winer on May 1. His new address is 660 Georgia Avenue, Chattanooga 37402. Leo was previously with Spears, Moore, Rebman & Williams in Chattanooga.

CARLA G. FOX has become associated with the Nashville law firm of Booker & Associates. She was previously with Boulton, Cummings, Connors & Berry in Nashville.

Class of '93

VICTORIA H. BOWLING coordinated the 1994 Tennessee High School Mock Trial Competition for Knox County for the College of Law. Classmates Heidi Barcus, Wade Davies, Ann Jarvis, Richard Matlock, and Lisa Ramsay coordinated the event for the Barristers. Victoria is associated with Ingram & Lowe; Ann and Richard are associated with Baker, Worthington, Crossley & Stansberry; Heidi is with the UT General Counsel's Office; Wade is with Ritchie, Fels & Dillard; and Lisa is with Lewis, King, Krieg & Waldrop, P.C.

ALLISON C. CARDWELL has joined the Chattanooga law firm of Stophel & Stophel. Her practice concentrates on commercial litigation and health care law. Allison and her husband, Carter, live in Cleveland.

BRADLEY A. HANEBERG has become associated with the Nashville law firm of Waller Lansden Dortch & Davis.

BENJAMIN C. HUDDLESTON has become associated with the Nashville

law firm of Waller Lansden Dortch & Davis.

PAUL F. SOPER has become an associate with the Nashville law firm of Boulton Cummings Connors & Berry. He will practice in the area of corporate and securities law.

AMANDA HAYNES YOUNG was an Adjunct Professor of Law at Memphis State last fall. She recently co-authored an article, "Judicial Activism: Just Do It" which was published in a 1994 issue of the *Memphis State Law Review*.

Class of '94

AMY E. HADDAD had her note, "Constitutional Law - Fourteenth Amendment Right to Equal Protection - Criminal Defendant's Racially Discriminatory Exercise of Peremptory Challenges Georgia v. McCollum," 60 *Tenn. L. Rev.* 229 (1992), footnoted in *Cox v. State of Tennessee*.

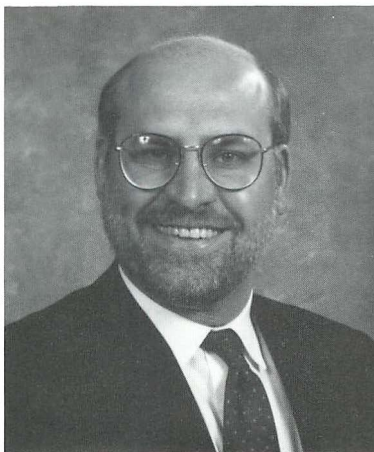


JASON P. HOOD received a plaque from the Student Bar Association to honor his outstanding service as 1993-94 SBA president. Dean Wirtz presented the plaque to Jason at the "Passing of the Gavel: Installation of 1994-95 SBA Officers and Council Members" on March 7.

MICHELE M. JOHNSON received a two-year grant from Southern Community Partners, a part of the Lynhurst Foundation, to continue her work on children's health and educational needs with Legal Services of Middle Tennessee. She was selected from a field of 96 applicants.

BRIAN K. KRUMM won the 1994 Harold A. Shertz Essay Award Contest. His essay, "High Speed Ground Transportation Systems: A Future

Component of America's Intermodal Transportation Network?" was selected by the Transportation Law Journal Board of Governors. Brian won a cash prize and the essay will be published in an upcoming issue of the *Transportation Law Journal*. After earning a B.A. in Political Science from State University of New York at



Oswego in 1977, Brian received a Master of Public Administration in 1978 from Syracuse University in New York. While in law school, he was a member of Phi Delta Phi and the Student Bar Association. Brian will continue to work for the Tennessee Valley Authority after graduation. As Project Manager in the Analytical Services Department at TVA, he administers new economic and environmental development projects.

BERNARD J. O'CONNOR was the first runner-up for the 1994 Outstanding Faculty Award from the National Association of Continuing Education. He also received a Volunteer Spirit Award from Buick Motor Company for his work with UT's Continuing Education Program, the Equal Opportunity Commission, the College of Law's Committee on Mediation, and the UT Conflict Resolution Center. Father Bernie, a Roman Catholic priest, is a certified graphologist and also teaches handwriting analysis.

Class of '95

MICHAEL L. GALLION had his case note, "Property Law - Landlord-Tenant - Validity of Exculpatory Lease Provisions Abolished in Tennessee," published in the Fall 1993 issue of the *Tennessee Law Review*.

JAMES H. NIXON III had his case note, "Civil Procedure - Tennessee Rule of Civil Procedure 56 - Clarified

Procedure for Summary Judgment," published in the Fall 1993 issue of the *Tennessee Law Review*.

HARRY WEDDLE III introduced participants for a panel discussion on gender discrimination at the College of Law on April 11. The panel was sponsored by ATLA/TTLA and Law Women. Harry is the ATLA/TTLA president at the College of Law.



(From left) Harry Weddle, Jerry Becker, Helen deHaven, Class of '80, and Carol Nickle, Class of '75.

Students Get Involved With ABA Early

The Law Students Division of the American Bar Association has come to life at the College of Law. After founding the chapter last year president Cynthia M. Richardson, a member of the Class of '94 from Jacksboro, organized projects that served the community. With law students, Daphne L. Cornwell, a first-year law student from Maryville, Steven M. Roderick, a member of the Class of '94 from Minox, North Dakota, and Jason C. Rose, a second-year law student from Maryville, the chapter did a Work-a-Day Program at the Knoxville Volunteer Rescue Mission, provided income tax assistance to low-income persons, and organized a canned food drive for the Union Rescue Mission.

Several chapter members also serve in regional leadership positions. They include: Jack K. Greer, Jr. from Oak Ridge - Liaison to the ABA Section of Science and Technology. Tonya R. Lloyd from Waltherboro, South Carolina - Lieutenant Governor for Communications; Linda McLain-Parsons from Memphis - Lieutenant Governor for Women and Minorities; and Cindy Richardson - Lieutenant Governor for Membership. Mr. Greer Ms. Lloyd, and Ms. McLain-Parsons are second-year law students.

**1993-94 Moot Court Program Successful
Banquet Highlighted Honors
April 15, 1994**



Jason Hood and Dean Wirtz

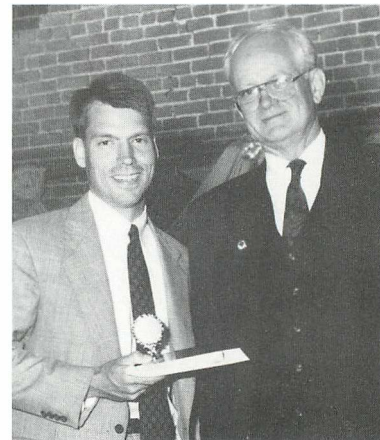


(From left) Hollyn Hollman, Mike Stewart, Michelle Gensheimer, and Dean Wirtz

The Vinson and Elkins Achievement Awards for Moot Court were presented to Jason P. Hood, a third-year law student from Memphis, and Jane M. Stahl, a third-year law student from Chattanooga, for Oral Advocacy, and Michelle L. Gensheimer, K. Hollyn Hollman and Michael G. Stewart for Brief Writing. Ms. Gensheimer, Ms. Hollman and Mr. Stewart were members of the National Moot Court team and their brief placed second in the regional competition. Ms. Gensheimer is a second-year law student from Kingsport; Ms. Hollman is a second-year law student from Jackson, Mississippi; and Mr. Stewart is a third-year law student from Rogersville.



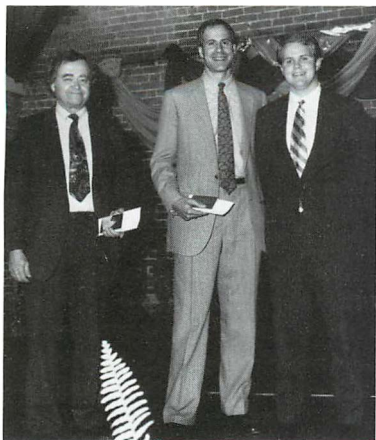
Jonathan Cole and Dean Wirtz



Steele Clayton and Dean Wirtz

The Chancellor George Lewis Moot Court Board Award was presented to Jonathan Cole, a third-year law student from Nashville, for his leadership and service to the College of Law's Moot Court program as its 1993-94 chair. Dean Wirtz presented Jonathan with the award.

Steele Clayton IV, a third-year law student from Knoxville, received the McClung Medal and the Phi Delta Phi Outstanding Moot Court Attorney Award. Both are awarded for outstanding proficiency in moot court. Dean Wirtz presented Steele with the award.



←(From left) Gary Anderson, Steve Oberman and Jonathan Cole

The 1994 Forrest W. Lacey Award for Outstanding Faculty Contribution to the Moot Court Program was presented to Professor Gary L. Anderson and Steven Oberman, a Knoxville attorney, for their work with the National Trial Team. Moot Court Board chair Jonathan Cole made the presentation.

→Third-year law students who were elected to the Order of Barristers this year were (from left) Rhonda D. Fawbush from Whitesburg, E. Steele Clayton IV from Knoxville, Jason P. Hood from Memphis, Leah M. Gerbitz from Chattanooga, and Michael G. Stewart from Rogersville. Jane M. Stahl from Chattanooga and Raymond H. Hixson from Hixson are not pictured. Dean Wirtz made the presentations. Ms. Gerbitz also received The Judith Turcott Special Service Moot Court Award.

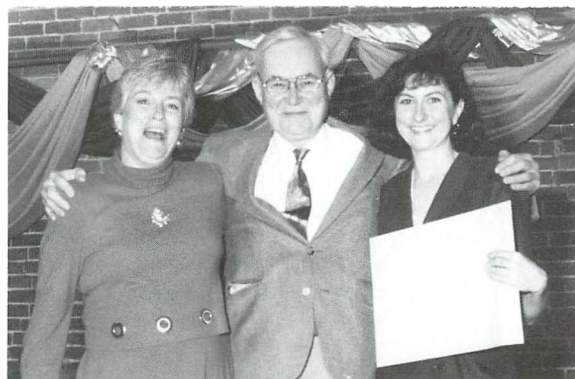


←(From left) Steele Clayton, Professor Hess, Rhonda Fawbush, and John Taylor

The University of Tennessee College of Law's Tax Moot Court Team placed second in the nation during the national competition in Clearwater, Florida, January 19-23. Steele Clayton was named best oralist for the competition. The team's advisors were Professor Amy M. Hess and Timothy M. McLemore, an adjunct professor and local attorney. Team members were E. Steele Clayton of Knoxville, Rhonda Drinnon Fawbush of Whitesburg, and John C. Taylor of Cumberland Gap. All were third-year law students. Professor Hess teaches Estate Planning, Gratuitous Transfers, Property, and Tax at the College of Law. Mr. McLemore has taught Legal Process and Corporate Tax at the College of Law and is associated with the Knoxville law firm of Gentry, Tipton, Kizer & Little. He is a 1986 graduate of the law school.

(From left) Barbara Johnson, Professor Phillips and Michele Johnson→

The University of Tennessee College of Law's 1994 Constitutional Law Moot Court team reached the final four at the national competition in Williamsburg, Virginia, February 24-27. Team members were Ray Hixson of Hixson, Barbara Johnson of Knoxville and Michele Johnson of Nashville. All were third-year law students. Professor Jerry J. Phillips served as the team's advisor.



Career Services

Non-Traditional Law Careers Fair

In keeping with increased student interest in the versatility of the law degree and alternatives to the traditional practice of law, the Career Services office hosted its first "Non-Traditional Law Careers Fair" on Friday, March 4. It probably will become an annual event.

The occasion provided students the opportunity to talk with more than 20 attorneys, not in a traditional law firm practice, about their careers in business, government and public service. Participating professionals were assigned to various locations throughout the law school so that students could speak with them one-on-one. They answered questions regarding job content, hiring criteria and qualifications, working hours and conditions, how/where to find job openings, and the potential for returning to a traditional practice.

Gil Campbell, Class of '57 and Executive Director of the Tennessee Bar Association, gave the keynote address, "What If." He advised students not to be reluctant to choose a non-traditional career if it seems right for them, no matter what pressures they receive from parents or peers to go the traditional route. Campbell said also that he would "undergo the expense of three years of legal education again and all [the work] that those three years demand...in a New York minute!"

Several other alumni were among the participating professionals. They included: Tracy Carter, Class of '89, Assistant General Counsel, Tennessee Department of Environment & Conservation, Nashville; Cynthia Chapman, Class of '90, Assistant District Attorney, Knoxville; Andre Coure, Class of '90, Attorney with the Social Security Administration, Office of Hearings and Appeals, Knoxville; Aubrey Davis, Class of '84, Assistant Public Defender, Knoxville; and Monica Franklin, Class of '92, Information Specialist/Attorney with Science Applications International Corporation, Oak Ridge.

Also participating were Sam Furrow, Class of '69, Businessman/Entrepreneur, Knoxville Motor Company, Furrow Auction Company, Furrow-Justice Machinery Corporation, Knoxville; Jayson Hill, Class of '92, Regional Field Director of the Office of Senator Harlan Mathews, Knoxville; Catherine Mizell, Class of '75, Deputy General Counsel, The University of Tennessee, Knoxville; Robert Sain, Class of '83, Deputy Director of Procurement of MK-Ferguson Company, Oak Ridge; Lynn Talley, Class of '86, Manager of the Analysis Section, Equal Opportunity Compliance, TVA, Knoxville; and Paula Voss, Class of '79, Assistant District Public Defender, Knoxville.



Booklet on Alternative Careers Available

If you've been considering making a change, perhaps even using your law degree outside the practice of law, Career Services' most recent publication could provide some ideas. Entitled *Lawyers of the Present, Volume I, Alternative Careers*, the booklet profiles the careers of 41 alumni who currently, or in the past, have used their degrees outside the traditional practice of law.

This edition of *Lawyers of the Present* is dedicated to Art Stolnitz, Class of '52, whose generous donation to the College of Law provided the resources for its publication. Art's contribution will also provide for an increase in Career Services resources and programming, especially in the area of alternative careers.

Volume I marks the first in a series of booklets planned by Career Services to give students and alumni a better picture of the versatility of the law degree and the variety of legal and non-legal careers our graduates have pursued. Subsequent issues will profile attorneys in traditional law firms, corporate legal departments, and public interest organizations.

Identifying UT law alumni pursuing alternative careers was educational in itself. After mailing the first 100 or so request letters, Career Services learned of many additional alumni/ae in this category. Some of the invited practitioners were unable to participate in this edition, while others were identified too late to ask; the office looks forward to inviting their participation in future editions.

It also 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 graduates have moved in and out of various categories.

The following is a list of alumni from the *Lawyers of the Present*. If their jobs pique your interest, or if you're considering a career change, please contact the Career Services office to request a copy of. The address is Suite 13, 1505 West Cumberland Avenue, Knoxville, Tennessee 37996-1800 or call 615-974-4348.

Non-Legal Careers

Corporate Management

Bill Baxter, Class of '78 - President, Holston Gases, Knoxville

Steven A. Brigance, Class of '78 - Assistant to the Chief Officer, Burlington Northern Railroad Company, Arlington, Texas



Nancy Hunley, Class of '84 - Senior Director of Energy, Fluor Daniel, Inc., Marlton, New Jersey
Robert Sain, Class of '83 - Deputy Director of Procurement, MK-Ferguson Company, Oak Ridge
Art Stolnitz, Class of '52 - Executive Vice President for Business and Financial Affairs, Warner Brothers Television, Burbank, California

Entrepreneurs

James Lee Clayton, Class of '64 - Founder, Clayton Mobile Homes, Knoxville
Michael De Parto, Class of '82 - Partner, MedNET Financial Services, Watchung, New Jersey
Samuel Furrow, Class of '69 - Founder, Furrow Auction Company, co-owner, Knoxville Motor Company, construction machinery dealerships, real estate developer
N. Whitney Johns, Class of '81 - President and part-owner, Whitney Johns & Company, an acquisition and consulting firm, Brentwood
John Ward, Class of '53 - "Voice of the Vols," Founder and president, Award Production, Inc., Knoxville
Ryland Wiggs, Class of '72 - Founder, USPower Corporation, Allentown, Pennsylvania

Medical

Terry Vaisvilas, Class of '78 - Anesthesiology Resident, University of Illinois Hospital, Chicago, Illinois

Law-Related Career Choices

Sports and Entertainment

Gitano Bryant, Class of '87 - Sports Agent, B&B Sports, Marina del Rey, California
Lee Wilson, Class of '83 - Legal writer and publisher, Pleasant View, Tennessee

Environmental Compliance

Richard Atwood, Class of '89 - Specialist, Bechtel Environmental, Inc., Oak Ridge
Bob Booker, Class of '92 - Specialist, Environmental Compliance Group, Oak Ridge

Law Enforcement

Kelly Bryson, Class of '91 - Special Agent, Federal Bureau of Investigation, New Orleans, Louisiana
Russell Fallis, Class of '80 - Inspector, U.S. Postal Inspection Service, Knoxville
Robert Kosky, Jr., Class of '88 - Special Agent, Federal Bureau of Investigation, Tampa, Florida

Legal Ethics

Melvin Cooper, Class of '50 - Executive Director, Alabama Ethics Commission, Montgomery, Alabama
Bruce White, Class of '76 - Director, Clinic Ethics Center, St. Thomas Hospital, Nashville

Public Service and Government-Related Careers

Victor Ashe III, Class of '73 - Mayor of Knoxville
Frank Barnett, Class of '59 - Director, European Operations for the Tennessee Valley Industrial Development Association, Knoxville
Jeanne Bryant, Class of '77 - Director of Receiverships, Tennessee Department of Commerce and Insurance, Nashville
Jeffrey Copeskey, Class of '86 - Director of Government Affairs, Mississippi Manufacturers Association, Jackson, Mississippi
Kenneth Cutshaw, Class of '78 - Former Deputy Assistant Secretary, U.S. Department of Commerce, International Trade Administration, Washington, D.C.
Kyle Michel, Class of '92 - Personal Assistant to Vice President Albert Gore (now in private practice in Washington, D.C.)

Teaching

Joe F. Beene, Class of '75 - Associate Professor and Program Head, Administration of Justice, Northern Virginia Community College, Annandale, Virginia
Melinda Branscombe, Class of '85 - Professor, University of Puget Sound Law School, Tacoma, Washington
Bethany Dumas, Class of '85 - Professor of English and expert witness on language and the law, The University of Tennessee, Knoxville
Gregory Gundlach, Class of '85 - Assistant Professor of Marketing, University of Notre Dame, Notre Dame, Indiana
Michael Johnson, Class of '83 - Professor of Psychology, The University of Tennessee, Knoxville
Cheryl Massingale, Class of '85 - Professor of Business Law, College of Business Administration, The University of Tennessee, Knoxville
Laura Womack Short, Class of '83 - Professor of Business Law, Middle Tennessee State University, Murfreesboro
Christopher Smith, Class of '84 - Professor of Political Science, University of Akron, Ohio

Educational Administration

Julia P. Hardin, Class of '78 - Executive Director, Center for Research and Development in Law-Related Education, Winston-Salem, North Carolina
Peter B. Irvine, Class of '79 - Director of Planned Giving, University of Pittsburgh, Pennsylvania
Chloe T. Reid, Class of '88 - Assistant Dean of Students, Whittier College of Law, Los Angeles, California
W. Timothy Rogers, Class of '80 - Dean of Students, The University of Tennessee, Knoxville

Bar Associations

Gilbert Campbell, Class of '57 - Executive Director, Tennessee Bar Association, Nashville
Allan F. Ramsaur, Class of '77 - Executive Director, Nashville Bar Association, Nashville



I. THE PHILOSOPHY OF ARTICLE 2

A. Karl Llewellyn and "Legal Realism."

1. Legal realism was the dominant theory in mid-twentieth century American legal thought. Karl Llewellyn was its leading theorist and chief spokesman.

2. Llewellyn was the moving force behind the entire Uniform Commercial Code, but Article 2 is the showpiece for how a legal realist statute should work.

B. What Legal Realism Is and Is Not.

1. Legal realists believe that legal rules (common law rules as well as statutes) should not bind judges to rigid technicalities but should guide them, telling them what factors they should take into account in reaching a decision.

Compare Article 2, which throughout requires that things be done "seasonably" or within a "reasonable time," with Articles 3, 4, and 9, which have rigid rules prescribing the exact number of days (or in some cases hours) that a party has to perform certain acts.

2. Legal realism does NOT mean "widows and orphans always win; banks and insurance companies always lose," or "the judge decides the case on the basis of what she ate for breakfast," as some critics have charged. Legal realism is not a license to take into account what Llewellyn called "fireside equities," but under proper circumstances, a "reasonable time" might be longer for an unsophisticated widow than for a bank. *See, e.g.*, T.C.A. Section 47-2-607, Official Comment 4 (what is a "reasonable time" for giving notice of a defective product is to be based on different standards depending on whether the buyer is a consumer or a merchant and on whether or not there has been personal injury).

II. THE SCOPE OF ARTICLE 2

A. Article 2 applies to sales of goods.

1. Basically, "goods" are tangible personal property. T.C.A. Section 47-2-105(1).

2. Sales of real estate are not governed by Article 2.

3. Sales of investment securities are not governed by Article 2.

B. Article 2 does not apply to service contracts. For mixed goods/service contracts, the courts have adopted a test of whether the "predominant purpose" of the transaction was the sale of goods or the performing of services. The leading case is *Bonebrake v. Cox*, 499 F.2d 951 (8th Cir. 1974). *Cf. Knoxville Rod & Bearing Inc. v. Bettis Corp.*, 672 S.W.2d 203 (Tenn. Ct. App. 1983) (applying a "totality of the circumstances" test to hold that the sale of the assets of a business was governed by Article 2).

III. TENDER, ACCEPTANCE, REJECTION, REVOCATION

A. The "Perfect Tender Rule."

Theoretically, T.C.A. Section 47-2-601 requires that the tender be perfect, i.e., that the goods conform to the contract in all particulars. In Practice this is tempered by judicial de minimus rules and by the seller's right to cure.

B. Acceptance and Rejection.

If the goods tendered fail to conform to the contract, the buyer can

- (1) reject all of the goods;
- (2) accept all of the goods and retain the right to sue for damages;
- (3) accept any commercial unit or units and reject the rest. (A "commercial unit" is a group of goods that normally would be sold together: a ton of coal; six pack of beer; a boat motor and trailer. T.C.A. Section 47-2-105.).

Rejection must occur within a "reasonable time" after the goods are delivered, and the buyer must notify the seller of the rejection. T.C.A. Section 47-2-601(1). If the buyer fails to reject the goods and notify the seller within a reasonable time, the goods are accepted. T.C.A. Section 47-2-606(1)(b). BUT "acceptance does not occur until the buyer has had a reasonable opportunity to inspect them." *Id.*

HYPOTHETICAL:

Homeowner has a new heating and air conditioning system installed in her home in September. The heating works fine in the winter, but in June Homeowner discovers that the air conditioning will not keep her house at a comfortable temperature. The seller makes various repairs and adjustments throughout the summer, but on hot days the house is still too warm. In August, Homeowner hires an independent engineer who determines that the capacity of the system is too small to cool the house. Can Homeowner reject the system after she's had it eleven months?

ANALYSIS:

Arguably, Homeowner can reject the system. A number of cases have held that where the goods are complex machines that must be tested in use, acceptance doesn't occur until the buyer has had an opportunity to test the goods in actual use. An important fact is that the buyer notified the seller in June when the problem first became evident and worked with the seller until it became evident that the problem could not be corrected. If she had failed to notify the seller within a reasonable time after the problem first became evident, she probably would have been deemed to have accepted the goods. Similarly, if she did not notify the seller when it became clear the problem could not be rectified, she would have been deemed to have accepted the goods at that time.

CASES:

Moses v. Newman, 658 S.W.2d 119 (Tenn. Ct. App. 1983). The seller delivered mobile home to the buyer's lot, leveled the mobile home, removed the wheels and axles and connected water and sewer pipes. The buyer's fiancée cleaned the mobile home and moved kitchen utensils and dishes in. The court held that these acts did not constitute acceptance because the buyer had not had a reasonable opportunity to inspect the home.

Latham & Associates, Inc. v. William Raveis Real Estate, Inc., 218 Conn. 297, 589 A.2d 337, 14 U.C.C. Rep. Serv.2d 394 (1991). The court held that rejection of a computer system was effective even though the buyer had kept the system while the seller was attempting to effect a cure. "Until the possibility of cure has been exhausted, the purchaser did not have the opportunity to make the final inspection that is the prerequisite to an implied rejection [sic -- acceptance?] under [U.C.C. § 2-606(1)(b)]." 14 U.C.C. Rep. Serv. 2d at 401-02. This opinion is especially significant because it was written by Chief Justice Peters, a leading authority on Article 2. See, e.g., Ellen Peters, *Commercial Transactions* (1971) (casebook); Linda Evans, Comment, *Ellen Ash Peters and the Uniform Commercial Code*, 21 Conn. L. Rev. 753 (1989).

Sierra Diesel Injection Service, Inc. v. Burroughs Corp., 651 F.Supp. 1371, 3 U.C.C. Rep. Serv. 2d 538 (D. Nev. 1987). The buyer had used a computer system for six years before giving up on the seller's ability to make it work. The court nevertheless held that there was a question of fact whether the revocation of acceptance was timely.

Continental Concrete Pipe Corp. v. Century Road Builders, Inc., 195 Ill. App. 3d 1, 552 N.E.2d 1032, 11 U.C.C. Rep. Serv. 2d 1156 (1990). The buyer's rejection of concrete pipe was effective even though it was made three months after the defect was discovered and even though much of the pipe had already been laid in the ground. The buyer had been attempting to correct the problem using techniques suggested by the seller.

In re Lifeguard Industries, Inc., 42 Bankr. 734, 39 U.C.C. Rep. Serv. 1268 (Bankr. S.D. Ohio 1983). After rejecting goods, the buyer stored them for two years. The court allowed the storage charges as part of the buyer's damages and apparently no one even argued that keeping the goods that long negated the rejection.

C. Cure.

1. If the goods fail to conform to the contract, the buyer must allow the seller a reasonable time to "cure" the defect. T.C.A. Section 47-2-508. As long as the seller still has a right to cure, it is not in breach.
2. How long does the seller have to cure?
 - a. The seller has an absolute right to cure "if the time for performance has not yet expired." T.C.A. Section 47-2-508(1). Presumably, this means if the delivery date has not passed. If the contract does not specify a date for delivery, delivery must be within a "reasonable time." T.C.A. Section 47-2-309(1).
 - b. If "the seller had reasonable grounds to believe [the goods] would be acceptable," the seller has a further "reasonable time" to cure even after the last date for delivery has passed. T.C.A. Section 47-2-508(2).

HYPOTHETICAL:

Buyer, who operates a market in a remote rural area, purchases a refrigerated display case for his meats. Shortly after the display case is installed, he notices that his meat is drying inordinately fast and becoming unsalable after a short time. He thereupon contacts the seller, who suggests he place pans of water in the display case to add moisture to the air. When this doesn't work, the seller sends a technician to adjust the cooling system. This makes an improvement, but the meat still dries out too fast. After another try by the technician, the meat is still drying too fast. The seller says it will replace the compressor in the cooling unit, but it will take two weeks to get the part. The buyer thereupon removes the display case, tells the seller to come pick it up, and buys a replacement from another dealer. Who is in breach, the buyer or the seller

ANALYSIS:

If the buyer gave the seller an adequate opportunity to cure, the seller is in breach for not delivering conforming goods. If the buyer did not give the seller an adequate opportunity to cure, the buyer is in breach for improperly rejecting the goods. In determining whether the seller was given an adequate opportunity to cure, a court might consider the following factors (among others):

1. The likelihood that the seller will in fact be able to effect a cure. (Note: the perceived likelihood is probably more important than the actual likelihood; if the buyer reasonably believed the seller could not fix the problem, he might have been justified in rejecting the goods even if in actuality the seller was on the verge of remedying the problem.
2. How diligent the seller has been in attempting to effect a cure.
3. The time that has elapsed since the display cases were delivered.
4. The losses (e.g., spoiled meat, customer goodwill) the buyer is suffering because of the problem.

HYPOTHETICAL:

Buyer purchases a computerized cash register system for her restaurant. On the second day it is in operation, it fails. The automatic data backup works fairly well, but some data is still lost. The big problem is that the resulting slowdown in operations costs her a fair amount of business that day and a great deal of customer goodwill. The seller repairs the system, but the same thing happens three days later with the same result. The seller repairs the system again and assures the buyer it has found the cause of the trouble and there will be no future problems. The buyer, however, removes the system and returns it to the seller. Is the buyer's rejection wrongful?

ANALYSIS:

This might be a good situation for the application of the so-called "shaken faith" doctrine. In essence, this holds that once the defects have undermined the buyer's confidence in the goods, no further repairs can cure the defect. The seminal case, and still the most often cited, is *Zabriskie Chevrolet, Inc. v. Smith*, 99 N. J. Super. 441, 240 A. 2d 195, 5 U.C.C. Rep. Serv. 30 (1968). The transmission on a new car failed while the buyer's wife was driving it home from the showroom. The seller picked up the car and replaced the transmission, but the buyer insisted on a new car, which the seller refused to give him. The court said:

For a majority of people the purchase of a new car is a major investment, rationalized by the peace of mind that flows from its dependability and safety. Once their faith is shaken, the vehicle loses not only its real value in their eyes, but becomes an instrument whose integrity is substantially impaired and whose operation is fraught with apprehension. The attempted cure in the present case was ineffective.

240 A. 2d at 205, 5 U.C.C. Rep. Serv. at 42. In an unreported decision, the Tennessee Court of Appeals held that where a transmission failed shortly after a new truck was placed in service, the buyer had to accept the rebuilding of the faulty transmission as cure. *Yandon v. East Tennessee Motor Co.* (Tenn. Ct. App., March 7, 1988). This would not appear to be a rejection of the shaken faith doctrine because the shaken faith issue was never mentioned in the opinion. *Cf. Haverlah v. Memphis Aviation, Inc.*, 674 S.W.2d 297 (Tenn. Ct. App. 1984) (applying the shaken faith doctrine to find "substantial impairment" under T.C.A. Section 47-2-608(1)).

D. REVOCATION OF ACCEPTANCE

1. Even after the goods have been accepted, the buyer may still revoke her acceptance if she meets the Code's requirements.
2. The buyer can revoke only if the defect "substantially impairs" the value of the goods. T.C.A. Section 47-2-608(1). The perfect tender rule no longer applies.
3. In order to revoke acceptance, T.C.A. Section 47-2-608(1) requires the buyer must have one of the following "excuses" for accepting the goods in the first place:
 - a. The buyer reasonably assumed the defect would be cured and it has not been.
 - b. The buyer did not discover the defect before acceptance because the defect was difficult to discover or because the buyer relied on the seller's assurances. *See, e.g., Patton v. McHone*, 822 S.W.2d 608 (Tenn. Ct. App. 1991) (consumer buyer of automobile not expected to discover cracked engine block and bent frame); *Carmichael & Carmichael, Inc. v. Nicholson Co.* (Tenn. Ct. App., July 24, 1992) (buyer could not revoke acceptance of mislabeled audiocassette binders when defect could have been discovered by inspection upon acceptance).
4. If the buyer rejects goods, the burden is on the seller to prove that the goods conformed to the contract. If the buyer revokes acceptance, the burden shifts to the buyer, who must prove that the goods did not conform to the contract. T.C.A. Section 47-2-608(4).

IV. WARRANTIES

A. Express Warranties

1. No particular language is necessary, nor is intent to warrant necessary. Any affirmation of fact, promise, model, sample or description of the goods can be a warranty. T.C.A. Section 47-2-313(1).
2. To be an express warranty, the representation must be "part of the basis of the bargain." T.C.A. Section 47-2-313(1). This requirement has not been construed very strictly. Basically, any communication made to the buyer before she becomes bound is probably part of the basis of the bargain.

HYPOTHETICAL:

Buyer, a self-employed carpenter, buys a pickup from Dealer. In the course of his sales pitch, Dealer says: "This truck is in A-1 Condition." Is this an express warranty?

ANALYSIS:

In *Winningham v. Timber Products Corp. of Oneida, Tennessee* (Tenn. Ct. App., Feb. 21, 1990), the Court of Appeals held that a statement a bulldozer was "in A-1 condition" was a puff rather than an express warranty. Most courts would probably agree. Sellers need to be able to say some nice things about their goods. Commerce would grind to a halt if used car salespeople had to give objective descriptions of their merchandise. T.C.A. Section 47-2-313(2) states that "an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty." Commendation of goods that does not rise to the level of an express warranty is often called "sales talk" or "puffing."

Courts interpreting Article 2 have struggled with the affirmation/puffing distinction. They have not really come up with a good test for telling one from the other. A leading treatise puts it this way:

A statement that a seller's representation is only a puff and not a warranty is but a conclusory label. Indeed, one who reads a few cases gets the strong impression that the puff or warranty conclusion is only the product of an unobserved and subtle analysis that has to do with the reasonableness of the plaintiff's reliance, the seriousness of the plaintiff's injury, and other similar factors.

James J. White and Robert S. Summers, *UNIFORM COMMERCIAL CODE*, Sec. 9-4 (3d ed. 1988).

The most commonly articulated test is that a statement is a puff and not an affirmation of fact if it states an opinion or judgment about a matter on which the buyer should have her own opinion, rather than asserting a specific fact within the seller's special knowledge. This test gives some help, but it is still hard to reconcile the cases. For example, one court held a statement that trucks were "road ready" to be an express warranty. *Wiseman v. Wolfe's Terra Haute Auto Auction, Inc.*, 459 N.E.2d 736, 37 U.C.C. Rep. Serv. 1486 (Ind. Ct. App. 1984). Another court, however, said statements that "the trucks are in good condition" and "the trucks are ready to work tomorrow" were "clearly an example of 'puffing.'" *Pell City Wood, Inc. v. Forke Bros. Auctioneers, Inc.*, 474 So.2d 694, 41 U.C.C. Rep. Serv. 1225 (Ala. 1985).

B. An implied warranty of merchantability arises automatically when the seller is "a merchant with respect to goods of that kind." T.C.A. Section 47-2-314(1).

1. Among other things, this warrants that the goods "are fit for the ordinary purposes for which such goods are used." T.C.A. Section 47-2-314(2)(c).

2. "To be merchantable, a used car must be in reasonably safe condition and substantially free of defects that could render it inoperable." *Patton v. McHone*, 822 S.W.2d 608 (Tenn. Ct. App. 1991).

C. There is an implied warranty of fitness for a particular purpose if (1) the seller has reason to know that the goods are required for a particular purpose and (2) the seller has reason to know that the buyer is relying on the seller's skill or judgment to select suitable goods. T.C.A. Section 47-2-315.

D. The seller warrants title to the goods, and if the seller is a merchant, she warrants that the goods do not infringe any patent or the like.

V. DISCLAIMERS AND EXCLUSIONARY CLAUSES

A. Terminology.

1. A disclaimer is a clause that disclaims or modifies the warranty itself.

2. An exclusionary clause limits the buyer's remedy for breach of the warranty.

B. "AS-IS" Clause.

1. Language such as "as-is", which is commonly understood as meaning that there are no warranties, excludes all warranties EXCEPT the warranty of title. T.C.A. Section 47-2-316(3)(a), and Section 47-2-312(2), Official Comment 6.

2. In Tennessee, "as-is" clauses must be conspicuous. *Harriman School District v. Southwestern Petroleum Co.*, 757 S.W.2d 669 (Tenn. Ct. App. 1988); *Patton v. McHone*, 822 S.W.2d 608 (Tenn. Ct. App. 1991). (Note that the statute does not expressly require this and courts in other jurisdictions are split on this issue.) "Conspicuous" is defined in T.C.A. Section 47-1-201(10).

C. Disclaimers of Express Warranties.

1. The Code looks with disfavor on disclaimers of express warranties. See T.C.A. Section 47-2-316(1).

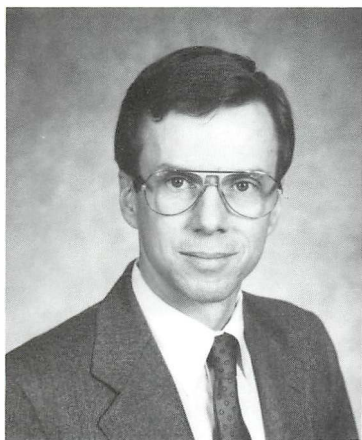
2. Nevertheless, under the parol evidence rule, a disclaimer may nullify a prior express warranty. T.C.A. Sections 47-2-202, 47-2-316(1).

HYPOTHETICAL:

Consumer purchases a car from a used car dealer. The dealer in fact knows that the car has been "reconstructed" after a major accident. The contract the parties sign clearly states that the sale is made "AS-IS, WITH NO WARRANTIES, EXPRESS OR IMPLIED."

ANALYSIS:

These were the facts in *Morris v. Mack's Used Cars*, 824 S.W.2d 538 (Tenn. 1992). The Supreme Court stated that although there was no cause of action for breach of warranty (the disclaimer precluded that), the buyer did have a cause of action under the Tennessee Consumer Protection Act (T.C.A. 47-18-104(b)(6), (7)).



Professor Lloyd teaches Bankruptcy, Commercial Law and Contracts at the College of Law. He is the author of a book on secured transactions and numerous articles on commercial lending transactions. Professor Lloyd earned a B.S.E. from Princeton University and a J.D. from the University of Michigan. Before joining the faculty at the College of Law in 1983, he served in the United States Marine Corps and as an associate with the Los Angeles, California law firm of Sheppard, Mullin, Richter & Hampton.



The *Tennessee Law Review* presents

A Products Liability Symposium

at The University of Tennessee College of Law
Saturday, August 13, 1994

Nationally acclaimed authorities will speak and participate in panel discussions. Audience participation with both speakers and panelists will be invited. The one-day symposium will cover the following topics:

How does strict liability make a difference in a products liability suit?

Speakers: Philip H. Corboy, Esq., Paul Rosen, Esq., The Honorable Henry Woods, and Louis C. Woolf, Esq.

Should strict liability be retained in the ALI Restatement 3rd of Products Liability?

Speakers: Robert Habush, Esq., Professor Mark M. Hager, Barry Nace, Esq., and Professor Teresa M. Schwartz

The panel discussions for both questions will include the following:

Panelists: Sidney Gilreath, Esq., Professor Oscar S. Gray, Professor M. Stuart Madden, Professor David G. Owen, Professor Michael J. Saks, Professor Frank J. Vandall, Professor Ellen Wertheimer, and Professor Richard W. Wright

This symposium is presented in cooperation with the Tennessee Bar Association and the Tennessee Trial Lawyers Association. The registration fee of \$125 includes admission to the symposium, the handouts, and the Tennessee CLE fee. This program has been approved for 6.5 hours of Tennessee CLE credit.

The Summer 1994 issue of the *Tennessee Law Review* will be a products liability symposium issue which will include papers by many of the speakers, and other leading writers in the field.

For more information please contact Micki Fox, *Tennessee Law Review* Business Manager, at 615/974-4464 or Fax 615/974-0681.

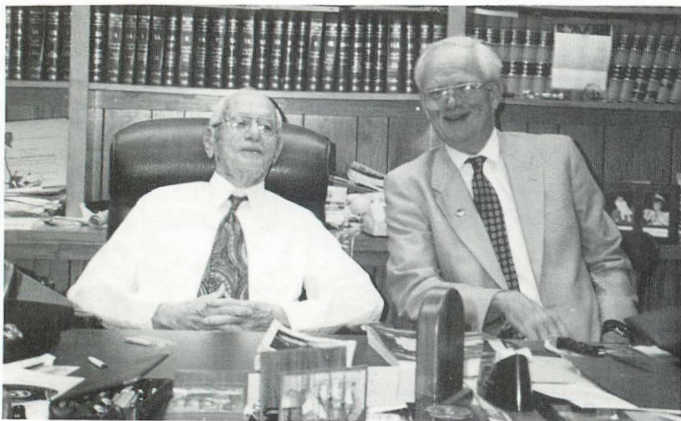
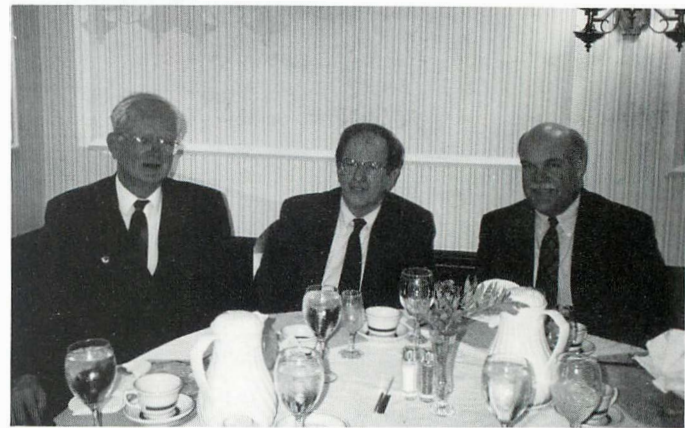


Travels with the Dean



←Columbia Alumni Breakfast - March 25, 1994
Hosted by Bobby Sands, Class of '79

→St. Louis, Missouri Lunch - May 2, 1994
(From left) Dean Wirtz, Burton Halpern,
Class of '68, and Charles Grace, Class of '72
(Hal Wellford, Class of '81, also present, but
not pictured)



←Elmer L. Stewart, Class of '26, continues to practice law in Lexington. At 91 years young, he gets to the office by 9:00 a.m. every day except Wednesday and handles mostly civil cases. Even after 65 years of practice, he still enjoys the law. Elmer lives in Lexington with his wife Orene.

Alumni Address Change and News

8/94

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

Name: _____ Class: _____

Firm Name/Organization: _____

Address: _____

City/State/Zip: _____

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: _____

News/Awards/Honors

Please send your information to: Office of Development and Alumni Affairs
The University of Tennessee College of Law
Suite 14
1505 West Cumberland Avenue
Knoxville, Tennessee 37996-1800

Our telephone number is 615/974-6691. Please call if you have any questions.

Calendar



August 12

Commencement*

August 13

A Products Liability Symposium* See page 35.

August 22-23

Registration and Orientation

August 24

Classes Begin

September 5

Labor Day (No classes)

September 17

Alumni Advisory Council/Dean's Circle Fall Meeting

October 21

Fall Break (No classes)

October 22

The Second Annual Tennessee Law Review

Ethics Seminar*

For further information, contact Micki Fox at 615/974-4464.

November 4

Law Careers Fair. Call Career Services for more information.

November 24-25

Thanksgiving Break

December 2

Classes End

December 6-16

Examination Period

*Alumni cordially invited to attend.

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E01-1610-008-95

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