

The Advocate

CENTER FOR ADVOCACY & DISPUTE RESOLUTION

Reflections

WHAT RECENT AND NOT-SO-RECENT GRADS HAVE TO SAY ABOUT THEIR LEGAL EDUCATION

Building Confidence

Crystal Enekwa ('13) has worked since graduation as a judicial clerk, first for the United States District Court and now for Judge Bernice Donald of the United States Court of Appeals for the Sixth Circuit.

While some might question the relevance of a law school education focusing on advocacy and dispute resolution to the tasks of a judicial clerk, Enekwa attributes some distinctive skills to her studies.

"I feel that all my advocacy courses helped to boost the confidence I had in my abilities and knowledge," Enekwa says. "Pretrial Litigation exposed me to a wealth of procedural knowledge that has been invaluable in working within the court, while courses like Negotiation and Trial Practice helped me develop the necessary confidence to communicate smartly and efficiently with judges and lawyers."

Law professor and former clerk Brennan Wingerter ('12) agrees, based not only on her own experiences, but also those she has witnessed. "I notice that students who have participated in the concentration tend to be more confident, practical, and 'street smart,'" she says.

Mabern Wall ('12) clerked for a judge immediately following law school. She was grateful



Crystal Enekwa ('13)

for her familiarity with terms and procedure, but after becoming an associate attorney with Hodges, Doughty & Carson, Wall saw a much more direct consequence of her legal training.

"Drafting complaints, answers, motions, and discovery requests and responses in class made drafting my first set of documents for partners much less intimidating," Wall says. "Having to stand up and argue briefs, motions, and evidentiary issues gave me great experience and practice. There is no better way to gain confidence and improve than actually practicing the skills, which is what the advocacy concentration encourages."

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Ouch!

BY PENNY WHITE

"Ouch!" I wrote in a reply e-mail.

I had received a message from a judge asking me to take a look at a book he had written, which he described as "premised upon the fact that law school teaches nothing about how to try a case."

"Being as how I direct the oldest continually existing legal clinic in the world, where 85 percent of our students represent clients and go to court before they graduate," I wrote in my reply, "and direct the Center for Advocacy and Dispute Resolution, which employs more than thirty lawyers and judges who teach our students every conceivable lawyering skill from interviewing and counseling, to voir dire, to closing argument; and teach Evidence, Trial Practice, Pretrial Litigation, and Negotiation, all in a concrete, applied format—ouch! Judge, I doubt I'd be a very objective reader of the book you describe."

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T LAW



Josh Arters ('12)

The ability to feel comfortable in court and to know how to prepare for a trial are skills that directly came from advocacy classes and my clinic experience.

AMY MOHAN ('12)



Hector Sanchez ('14)

Reflections

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Building Confidence

Luke Archer ('10)—an associate attorney with Odin Feldman Pittleman PC, a medium-sized firm serving the Washington, DC, area—describes his classes as teaching him “practice and in-depth lessons about what actually goes on in a courtroom.”

“Although being a civil litigator means that I spend much more time preparing for trial than in trial,” Archer says, “knowing how the trial would proceed, how to admit and exclude certain evidence, and how to present the best, most consistent theme of my case [is critical].” Because of his classes, from the beginning of his career, Archer has felt better “oriented and effective throughout the entire course of client representation,” he says.

Having a lawyer’s orientation early on is something we often describe as “practice-ready.” Kyle Hixson ('08) serves as deputy district attorney general for Knox County. Unlike many of his civil law firm counterparts, Hixson says, “I carried a full docket as a prosecutor the day after I received my law license. That would have not been possible without the practical knowledge and experience that I gained in law school. Because I am in the courtroom every day, I have to have a working knowledge of Evidence and Trial Practice. Those classes have been most helpful to my work as a prosecutor.”

Hector Sanchez ('14), also a prosecutor in Knox County, says those courses and others enabled him to feel “practice-ready based on the extensive practical orientation.” However, Sanchez’s course work was complemented by a unique opportunity: as a law student, Hector tried three jury trials, more than many attorneys try in a year.

Other concentration grads also tried cases during law school. Amy Mohan ('12), now an associate with Sherrard Roe Voight & Harbison in Nashville, tried a jury trial during law school. Although she has not yet tried a jury trial in practice, she finds that she frequently uses the skills she learned in bench trials and arbitrations, she says. “The ability to feel comfortable in court and to know how to prepare for a trial are skills that directly came from advocacy classes and my clinic experience. For ex-

ample, I still use the cross-examination methods [Knox County Public Defender] Mark Stephens ('79) taught me.”

Josh Arters ('12) recognizes the importance of being taught lawyer skills by real lawyers and judges. “A highly respected Knox County chancellor taught my Civil Pretrial Litigation course, where we researched and drafted a motion for summary judgment in a hypothetical employment discrimination case. A staff attorney for the Tennessee Supreme Court taught my Advanced Appellate Advocacy course,” Arters says. “I have relied on the effective writing techniques taught in those courses countless times since becoming an attorney.”

Room for Improvement

As is true of most everything, there is room for improvement. Several recent graduates suggest some lawyering skills that should be added to the curriculum.

Brian Pearce ('13), a solo practitioner in Chattanooga, thinks the curriculum should address issues of office management, docket control, and client relations. He suggests altering the Trial Practice course to more accurately simulate the pressures of the practice. For example, he suggests students be given a mix of cases, which they must prepare, plead, negotiate, and if not settled, try.

“It would help educate as to the necessity of civility and working well with other counsel, as well as the importance of managing client expectations and maintaining credibility,” Pearce says.

Doug Bates IV ('08) agrees with Brian. “I don’t know how to teach this, but there should be a class titled ‘How to Know which Battles to Fight,’ ” says Bates. “Of course, there is a difference between criminal and civil litigation in this area, but when trying bench trials, lawyers lose a lot of credibility fighting over issues they have no real chance of winning. It’s hard to do, but somehow [we should] teach students not to be duplicitous in their reasoning—but I don’t know how you teach wisdom.”

We don’t either, Doug. But we promise to keep trying. ♦

STUDENT SCHOLARS

Irwin awarded 2016–2017 Woolf Scholarship

Lou Woolf was a master trial lawyer. For fifty years, he represented clients in complex litigation all across the United States. Although Lou was born in Brooklyn, he found his way to the University of Tennessee College of Law, graduating in 1961, and practicing in Knoxville with the firm of Woolf, McClane, Bright, Allen & Carpenter, PLLC. When Lou retired in early 2012, his firm honored his work by creating a scholarship to be awarded to a law student who planned a career in litigation.

This spring, at the Annual Center for Advo-

cacy and Dispute Resolution Collaboration, the Woolf Scholarship was awarded to just such a student. Jill Irwin practically grew up in the courtroom. Her mother was a court reporter in Missouri and Jill often went to court with her. Through observing docket days and trials, she “could not wait to go to law school.” Fortunately for us, Jill chose UT to fulfill her dream of becoming a trial lawyer.

Since coming to UT, Jill has excelled in Trial Practice, receiving the CALI Excellence for the Future Award in that class, and in moot court

and mock trial, being selected as a member of both the PAD National Mock Trial Team and the BMI/Cardozo Entertainment Law Moot Court Team. She considers it a “calling to be a trial lawyer” and a privilege to have the opportunity to concentrate her studies in the advocacy and dispute resolution concentration. “Being a trial lawyer has been my dream for so long,” says Jill. “I know this is the right career path for me. I can only hope to be as inspiring and successful as Lou Woolf someday.” ♦



From left, Jill Irwin ('17), Dean Melanie D. Wilson, and Melissa Joy Baxter ('17)

2016–2017 Summers, Rufolo & Rodgers Scholar: Melissa Joy Baxter

This year’s 2016 Summers, Rufolo & Rodgers Scholar, Melissa Joy Baxter, has dedicated herself to the “calling of advocacy.”

Baxter describes herself as feeling “wholly inept” when she visited an incarcerated friend who asked for her help.

“I gave her words of encouragement,” Baxter says. However, without a law license, she realized she could not give her friend the help she needed. Baxter had the intention of becoming a real estate attorney, but her experience with her friend gave her “a real reason

to choose advocacy.” Irwin says she wants to be a “champion for people struggling with something greater than themselves.”

In addition to the beneficial financial aspects of the award, Baxter views the award as an inspiration for the future. “This award funds my education, creates opportunities for me, and facilitates my career,” she says. “But more than that, this scholarship has given me a higher standard of generosity to imitate and a desire to pass such generosity on to future generations of students.” ♦

Defining “moot” or “mock” requires looking beyond the dictionary



2016 Moot Court Banquet

The Cambridge Dictionary defines “moot” as “having no practical use or meaning.” It says “mock” is to “copy in an amusing but unkind way that makes other people laugh.”

At the College of Law, where more than half of all second- and third-year students are members of either moot court or mock trial teams, competing internally and in more than a dozen competitions across the country, both definitions would be met with strong objections not only from the students, but also from faculty who coach teams.

Why Faculty Coach

Associate Professor Gary Pulsinelli, who coaches trademark and patent moot court teams, works with students one-on-one and helps them acquire new skills and improve existing ones.

“Almost all of them significantly improve their speaking skills and their ability to think on their feet, just from the repetition,” says Pulsinelli. “For some students I think it has been transformative, revealing a level of skill I don’t think they necessarily knew they had and perhaps opening their eyes to new possibilities. I find it rewarding to help the students make those breakthroughs.”

In addition to coaching his own teams, Pulsinelli sits as a judge for other teams’ practice rounds. He is well-known for asking very tough questions, even in the early rounds. If pressed, he might have to admit he enjoys watching students squirm as they try to answer, but only because by firing hard questions, he is able to help students improve as advocates.

Helping students gain new skills and improve existing ones also motivates Professor Joan Heminway to coach UT’s National Animal Law Moot Court team. She says that participating helps students gain “confidence in their abilities to use their legal training in a meaningful way.”

Additionally, because the College of Law does not regularly have an animal law course in the curriculum, coaching the team enables her to offer students a co-curricular option for gaining substantive knowledge in the field.

Bridging a void in co-curricular activities is what motivates Associate Professor Brian Krumm to coach the LawMeets transactional law team.

“[The team] gives students an understanding of how complex transactions are handled in the real world,” Krumm says. “It really is the only experience of its kind.”

Fielding a transactional law team not only

provides UT Law students with a unique experience, but also has brought significant distinction to the college’s moot court program. The team has competed regularly in the national finals, which are held at Sullivan & Cromwell LLP in New York and are judged “by some of the best deal lawyers in the country,” Krumm says. “It gives UT students the opportunity to show ‘Big Law’ that UT Law’s transactional training is top-notch.”

Why Students Compete

Law students, like law faculty, have little idle time. Yet many choose to add moot court to their list of responsibilities. Last year, more than 100 UT Law students participated in moot court and mock trial competitions.

Third-year student and veteran moot court participant Alex Thomason says that competing has made him a “better writer and a better advocate.” Thomason, with teammate Garrett Ward, won the law school’s internal appellate competition last year and received top brief honors as

members of the school’s Prince Evidence Moot Court Team. Thomason also developed problem solving and teamwork skills and learned to approach the law creatively. What’s more, he finds his participation to be a good “conversa-

tion starter” when meeting attorneys for the first time, because many of them also participated in moot court when they were in law school.

Spencer Powell, Advocates’ Prize chair and a member of the National Moot Court team, also sees relationship building as a benefit of moot court participation. He says he has developed valuable relationships with fellow competitors, professors, and members of the legal community. However, his motivation for participating is above all the opportunity to hone his advocacy skills and prepare for a career in litigation. Powell has taken advantage of similar opportunities, serving as president of UT Mock Trial as an undergrad, leading his team to the national championship.

Similarly, Derek Mullins has been a mock trial and moot court competitor for years, competing and coaching in high school and as an undergrad. He sees moot court and mock trial as “providing an invaluable mix of theory implementation and practice in an atmosphere where students can represent not only themselves, but the entire law school,” Mullins says. “Moot court and mock trial provide a set of problems that require extensive critical thinking and analysis in order to achieve success.”

Joy Baxter, who has competed on both internal and external teams and in both moot court and mock trial, sees the program as a means of studying the law. Unlike a clinical experience, where the focus is on the facts, Baxter says the moot court/mock trial focus is on the presentation.

“In Trial Practice, you study a survey of proven trial techniques,” Baxter says. “In mock trial, through trial and error you learn which of the techniques work for you and how you can apply them strategically to achieve your desired result.”

How We Do It

Faculty coaches and student competitors may be the most obvious examples of what it takes to build a successful moot court program, but they certainly are not the only ingredients. The behind-the-scenes work is constant, but often unrecognized. For decades, the behind-the-scenes person has been staff member Mary Ann James,

truly the underpinning of much of UT Law’s moot court program. James has organized and hosted the annual moot court banquet, assisted with travel arrangements, and aided individual teams. This year, at the annual moot court banquet, the Moot Court Executive Board honored James for her commitment to all things moot court at the College of Law. ◇



Kimberly Sterling ('16) and Mary Ann James

FOCUS ON ADJUNCT FACULTY

Rachel Park Hurt: Tough teacher, tough learner

Do teachers learn? Every single day.

Rachel Park Hurt ('07) teaches Pretrial Litigation, one of the most demanding courses in the advocacy and dispute resolution curriculum, because, she says, “I once read that you learn best by teaching.” And she teaches the tough course in addition to being a successful lawyer, a partner in a major Knoxville law firm, a mother, a spouse, and a bar activist (not to mention an excellent golfer).

Hurt took the course she teaches while a student at UT Law for an interesting reason. “I took [Pretrial Litigation] to prove my thinking, that I did not want to be a litigator,” she says. “It did not. I blame

the instructor, Heidi Barcus.”

Hurt is recognized consistently by Super Lawyers as a Rising Star and earlier in her career, clerked for Tennessee Supreme Court Justice Cornelia A. Clark.

A partner with Arnett, Draper & Hagood in Knoxville, Hurt focuses her litigation practice on insurance defense, medical malpractice, health care liability defense, and premises liability defense. During her time at the firm, she has obtained many favorable appellate decisions, both in state and federal court, and she has acquired numerous pre-trial dismissals and summary judgment grants in complex litigation.

Why all the hard work? Because practice is hard.

class, students are expected to act and work as professionals. She bans all technology in the classroom to avoid distractions. Rather than coddling the students with a simple, unrealistic fact pattern,

she makes the students “dig for the facts,” she says. “And they vary a little for each student depending on how vigilant the student is in exploring the case—just like in real practice.”

Plus, she continues to learn along the way.



Rachel Park Hurt

am helping students avoid the pitfalls and frustrations I have had.”

Plus, she continues to learn along the way.

“From teaching, I have developed a better understanding of the Rules of Civil Procedure, and students bring new ideas to the cases I have had,” she says. “I learn in every class.” ◇

Advocacy Idol: Giving 1Ls early advocacy experience

Good trial lawyers know that thinking on your feet is essential to being a successful advocate.

"It is the job—the duty—of an attorney to advocate for the client in many settings," says Mike Galligan ('71) of law firm Galligan and Newman. "Becoming proficient and confident in this role must begin early in students' law school careers."

To help instill that proficiency and confidence, Galligan taught Trial Practice at UT Law for more than a decade, traveling each week from his busy law practice in McMinnville. He considers the experience among the most rewarding in his law career. "The students were eager to learn, were so very bright, and challenged me daily," he says. "I recall being so exhilarated by the teaching experience that the 125-mile return trips to McMinnville seemed to pass in a flash."

When Galligan decided he could no longer travel the long distances each week, he looked for a new opportunity to help students gain confidence and learn to think on their feet as advocates. The opportunity he created, "Advocacy Idol," gives first-year students the experience of delivering an open statement, after minimal preparation, before a panel of Tennessee judges.

Because the students have only fifteen minutes to prepare their opening, the experience can be harrowing. Ironically, Emma Steel, a 2016 finalist, says her terror subsided soon after she got to the podium. "The fear and nerves kind of dissolved," she says, "and I realized I was having fun."

Hallie Dyer, also a finalist, agrees. "I appreciated being challenged and getting feedback on something other than performance

on a final exam," she says. "It let me know that those exams are not the only measure of my abilities."

The competition is also one of the few opportunities during the 1L year for students to practice advocacy skills. "I know I want to litigate, and I want to get as much experience and practice as I can," says finalist Alaina Woodall.

Advocacy Idol also gives 1Ls a chance to collaborate with more experienced law students. Upper-level students who have completed Trial Practice and Advanced Trial Practice classes "coach" the first-year students, giving them tips about the delivery and content of their opening statements. Not surprisingly, many of the coaches were coached themselves two years earlier, when they were finalists during their first year. Others are members of UT Law moot court teams. A perfect example is Marriah Paige, a former finalist and member of the Thurgood Marshall Trial Team who coached finalist Elizabeth Holland.

Holland says that becoming a finalist surprised her. "When my name was called as the last of six finalists, my jaw dropped," she says. "But I was able to prepare by reconnecting with Marriah, who had encouraged me to attend UT in the first place. She gave great advice."

By providing this opportunity to 1Ls at UT Law, Galligan has instilled confidence and proficiency. "The competition helped affirm that I'm where I'm supposed to be, doing what I'm supposed to be doing," Woodall says.

Steel agrees. "This competition gives us a chance to see if litigation is something we would like to do," she says. "Plus, since it is just for the 1Ls, it's special. It gives us a competition to call our own." ◊



From top, the 2014 Advocacy Idol finalists, the 2015 finalists, and the 2016 finalists

2016–2017 UPCOMING EVENTS

AUGUST 18
Concentration Kick-Off
College of Law

SEPTEMBER 8
Trial Practice Special Lecture
College of Law

OCTOBER 17–18
Advocates' Prize
Preliminary Rounds
College of Law

OCTOBER 20
Advocates' Prize
Final Round
College of Law

WEEK OF MARCH 20, 2017
Jenkins Trial
Competition
College of Law

WEEK OF MARCH 27, 2017
Advocacy Idol Competition
College of Law

Ouch (continued from page 1)

The judge's premise continued to bother me. I did read some of his book—and I'll likely read the rest, but one statement in the early paragraphs stuck: "The law student is taught in those three years what the rules are, not how to use them."

Not so, judge. Maybe in your day and my day, but not anymore. Maybe at your law school, but not at ours.

Law schools are subject to many regulations, but among the most important are those that relate to the program of legal education offered by the school. The standards, promulgated by the ABA Section on Legal Education and enforced through various accreditation requirements, require that law schools establish learning outcomes that lead students to know and understand substantive and procedural law, as the judge's criticism suggests, but law schools must

also guide students in becoming competent at problem-solving, strategic planning, and professional skills. As part of the curriculum, all students must complete at least six hours of credit in "experiential courses." Those courses may include simulations, clinics, externships, or field placements. Regardless of the format, the course must include an integration of doctrine, theory, and skills; multiple opportunities to perform professional skills and reflect upon professional responsibilities; and opportunities for periodic evaluation.

While some law schools struggle to fit doctrinal courses into the experiential course requirement—by inserting a practical discussion here or there—others, like UT Law, have been pioneers in experiential learning. For almost seventy years, students at UT Law have represented clients in a range of

disputes, both in and out of the courtroom. For fifteen years, our students have worked full-time in government offices, mentored by full-time state and federal prosecutors, public defenders, and government attorneys, receiving classroom credit for the experience. And for

While some law schools struggle to fit doctrinal courses into the experiential course requirement—by inserting a practical discussion here or there—others, like UT Law, have been pioneers in experiential learning.

PENNY WHITE

more than twenty years, the center that I proudly direct has offered skills-based courses far beyond the traditional Trial Practice course that every law school offers. Civil practitioners and judges teach our students Pretrial Litigation, requiring them to draft pleadings, develop case budgets, take and defend depositions, and argue motions for summary judgment. Lawyers from transactional and litigation backgrounds lead our course in Negotiation, in which the students negotiate every other week, simulating representation of buyers and sellers as well as counsel for buyers, sellers, and litigation clients. Their negotiations can be viewed in real-time by their faculty in a satellite location. Skilled counselors at law teach our Interviewing and Counseling course, where students learn that interviewing and counseling is skills-based, not innate.

Undoubtedly, our experiential courses can and will become more abundant and rich, but based on my observations and conversations with our alumni (see "Reflections," page 1), we are on the right track. Of course, as I told the judge, objectivity is not my strong suit on the topic of whether our law school is preparing students for the practice of law. I and others would love to hear what you think. How might we better prepare law students for the practice? When you work with recent grads, what impresses you? What concerns you?

With your input, we will continue to blaze a trail as pioneers in graduating practice-ready lawyers. ◊



COLLEGE OF LAW

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DIRECTOR'S DICTA

At our end-of-year collaboration, fifty-five students received certificates for completing the concentration in advocacy and dispute resolution. During that evening, I shared with our graduates some positive comments I had recently received about our curriculum. One former student wrote that with work experience had come a new perspective on the benefit of her legal education. Another was more specific, noting that he was “taught the proper way to diffuse potentially aggressive and unprincipled stances, and carefully take arguments, synthesize them, and explain them simply and effectively.”

These positive evaluations were gratifying, of course, but knowing how invested I am, would anyone dare to write to me with a negative assessment? Well, yes. Only a few weeks later, I received a judge friend's scathing indictment of legal education. My reaction to his complaints are captured in my article “Ouch” (page 1), along with an invitation to you for suggestions and comments. Let me hear from you. What can we do to improve our course offerings? How can we better prepare our students to be the outstanding lawyers of tomorrow?

A handwritten signature in black ink that reads "Penny J. White".

Penny J. White, Director

