



Access to Justice Commission Chair Jim Sales (far left in red tie) with the participants in the first Texas Trial Academy.

# *Texas Trial Academy*

## *Access to Justice Commission, American College Of Trial Lawyers Team Up For Legal Aid Clinic*

**F**or five days in May, legal aid lawyers from across the state convened in Austin to learn from Texas' finest litigators.

The Texas Access to Justice Commission (ATJ), which was created by the Texas Supreme Court to expand access to, and enhance the quality of, legal services to low-income Texans, procured the services of 36 fellows of the American College of Trial Lawyers (ACTL) to offer the first trial clinic for legal aid lawyers.

"Improving the justice system for the poor is not just about raising money," said James B. Sales, chair of the ATJ Commission. "We have to equip advocates with the tools and training that will put them on par with their competition. Legal aid programs could not afford to purchase this level of training for their lawyers, but the Texas Trial Academy has empowered legal aid attorneys to provide top-quality representation to those who could not afford it otherwise."

The Texas Trial Academy included workshops on voir dire, direct- and cross-examination of witnesses, and preparation and delivery of opening and closing statements.

Sales noted that such a program does not appear "out of whole cloth" and that many people deserved thanks. He singled

out the contributions of Otway Denny, Sales' law partner at Fulbright & Jaworski L.L.P. in Houston. "Otway structured the program and convinced really wonderful lawyers to participate." Sales also thanked the staff members of Texas Lawyers Care and the Texas Equal Access to Justice Foundation and the directors of the three legal services programs in Texas.

"We put this together with an empty purse," Sales said. "I played the part of beggar." Scholarships covered the travel and lodging costs of the academy's 29 attendees, but the ACTL fellows donated their time and paid their own way. "We are very grateful to them," Sales said.

The academy further benefited from the generosity of the University of Texas School of Law. Dean William C. Powers, Jr. made the school's courtrooms and video crew available at no charge.

"We have endeavored to enhance the legal skills of those who labor in the trenches," Sales said. "We thank the American College of Trial Lawyers for their enthusiastic support, their generosity, and their farsightedness in recognizing the need for well-trained trial lawyers to represent low-income Texans."

*U.S. District Judge William Wayne Justice delivered the keynote address at a reception marking the conclusion of the Texas Trial Academy. ATJ Chair Jim Sales had been cautioned that Justice rarely delivers public speeches anymore. Undeterred, Sales called and explained the Texas Trial Academy. "I'll be there," Justice said. "I have some events to reschedule, but I'll be there." Reprinted below is the speech he delivered.*

## Burrs Under the Saddle *By William Wayne Justice*

I am very pleased to be here with you this evening and delighted to see so many lawyers devoted to legal services gathered together to sharpen their skills. As many of you know, I feel some kinship and deep respect for those lawyers who dedicate a significant proportion or all of their time to the representation of those of our citizens who would otherwise be unheard and who, without representation, would be the object of our legal system rather than its subjects. To be asked to speak to so many of you who have demonstrated a willingness to take up the challenge of such representation is, for me, a signal honor.

I have seen poor people's lawyers for a very long time now, first as a trial lawyer in the courts of East Texas, then as a U.S. attorney, and for the past 37 years, as a U.S. district judge, and I think I can make a few pertinent observations on the matter. First, being an advocate for the indigent is no way to win a popularity contest. There was a brief period, almost 40 years ago now, when scrappy young defenders of the voiceless were in fashion. Young men and, increasingly, young women were coming from our best law schools with fire in their eyes, determined to fight the good fight. And many of them did, some for a lifetime. But fashion, even if it's a fashion for justice, is flimsy and evanescent. Those for whom representing the poor was merely the thing to do at the time have largely ceased to do it, just as they gave their Nehru jackets, dashikis, and bellbottoms to Goodwill stores long ago.

Public interest advocacy, viewed as a job for the long haul, is not in fashion. Indeed, it is often a way to get people quite angry at you. Lawyers for the indigent tend to be unsettling people, disturbing the arrangements that the powerful create. They make those who wield authority feel less certain in that authority, which is a distinctly unpleasant and unwelcome sensation to them. They remind all of us who live well of the nagging fact that, even in the most dynamic of the world's economies and the freest of its republics, there are those who do not live well, who have been cast aside, who do not enjoy the blessings of liberty the founders promised, because they are enchained by want and ignorance and fear. The task of poor people's lawyers is to bring their clients out of the shadows and into the light. There those clients stand, spectral figures of judgment at the feast. And as those of you who have read "Macbeth" and the Book of Daniel know, authority figures like Macbeth and Nebuchadnezzar do not take kindly to such presences, or to their interpreters.

If fashion and popularity do not account for what you do, dreams of wealth and place also are not the explanation. As I



U.S. District Judge William Wayne Justice (second from left) with the directors of the three legal aid programs in Texas: (left to right) Jesse Gaines of Legal Aid of NorthWest Texas, David Hall of Texas RioGrande Legal Aid, and Paul Furrh of Lone Star Legal Aid.

noted before, I have observed lawyers like yourselves for a long while, and I have noticed that few of you seem to wear Italian suits. You don't seem to get many \$100 dollar haircuts. From my observations in courthouse parking lots, you seem a great deal more likely to drive Honda Civics than Ferraris or BMWs. I suspect that those of you who have come here from out of town are more likely staying at a Motel 6 or a Days Inn than the Driskill or the Four Seasons.

Since acclaim and riches are not your inducements, then what are? Why do you use the great talents you possess, not for self-aggrandizement, but in the service of those who otherwise have no such aid available to them? Why, in short, would anybody be a lawyer for the indigent?

The first answer, of course, is duty. The Texas Lawyer's Creed specifically states, "I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life." In a society that proclaims its devotion to equal justice under law, there must be lawyers to realize that ideal. Justice is not supposed to be a consumer item available only to those with the power to purchase it. But unless there are enough lawyers willing to devote at least a portion of their professional careers to the representation of those without the power to pay, a consumer item is just what justice will be. Legal skills are, after all, exactly like every other sort of profes-

sional skill in a market economy. Ordinarily, the better they are, the higher the price they can command.

The fine words of the lawyer's oath, however, only establish that somebody must be willing to provide such services at a discounted rate. The very next sentence after the one I read to you before fleshes out what is meant by each lawyer's responsibility to ensure access to justice for all: "I commit myself to an adequate and effective pro bono program." In short, the personal provision of such services is not a duty enjoined upon any particular lawyer. Yet, here we are, met in a room entirely filled with men and women who have made the general responsibility

of indigent representation a significant part of their particular careers. Why would you do such a thing?

One answer, of course, is again duty — duty, however, conceived not in the abstract, but as a matter of personal conscience. I would not be surprised if many of you, when you pose the question to yourselves, think of your jobs as something you owe your clients, or owe American society, or owe the law. I would not be surprised if many of you feel bound, as did Presidents Franklin D. Roosevelt and John F. Kennedy, by the maxim that from those to whom much has been given, much should be expected.

Allied to that sense of obligation may, in many cases, be a belief that representing those who cannot speak for themselves has a kind of nobility to it. I think there is a lot to be said for that belief. President Kennedy, paraphrasing Aristotle, used to describe happiness as the full exercise of one's powers along lines of excellence. Certainly, the proper representation of your clients requires the full exercise of your powers. Your adversaries, whether the state or great private enterprises, will

not stint in their efforts and in the full use of their resources, which are typically far greater than those at your command. So your jobs require heavy lifting. And as I learned when I started going to the gym in my 50s, a concerted program of heavy lifting, though it may be exhausting in the extreme, does nothing but good for your constitution.

While virtue and duty may be fine motivations, it is too easy to be virtuous and dutiful, but utterly lacking in joy. And that is no way to live your life or to build your career. If you spend your days grimly doing nothing but what you conceive to be your duty, your life will suffer and your clients will suffer as well. If you spend your days contemplating the nobility of your own sacrifice, what you will be telling those you represent is that they are no more than the beneficiaries of your largesse. You will be telling them that they do not deserve your saintly self-abnegation; and you know, as well as I, just how often your clients are told, by every institution with which they come into contact, that they are the undeserving poor. Beyond the damage that joylessness will do to your client is the damage it will do to you, your friends, and your loved ones. No person who has a choice ought to spend a career trapped where he or she does not want to be. If your career is not, first and foremost, a pleasure to you, then you ought to leave it.

The most compelling reason, then, for a lawyer to take up the fight on behalf of those on the margins of life is that doing so is a positive pleasure. Now, only persons having certain traits of character find that pleasure. In a speech almost two decades old, I had occasion to refer to legal services lawyers as "burrs under the saddle." To be a burr under the saddle of society, to be a constant prick to the social conscience, requires a certain strong-willed and tough cussedness, a cussedness that may be disguised by a genteel personality, but is still there, nevertheless. It requires an unwillingness to accept the smooth lies of power and a willingness to confront those smooth lies with rough truths. That is the task of an advocate for the indigent, and it is a task which affords any number of distinct pleasures — the pleasure of exercising all your skills in a cause you believe to be just, the pleasure of combat against the most vigorous and talented of adversaries, the pleasure of knowing that even though you've been knocked down once, or twice, or 20 times, there still remain sweet victories in your future.

In one of her books, Molly Ivins tells a story about one of the great American lawyers of the 20th century, Joseph Rauh. Rauh was a man who made a lot of money; but more important, he was a man who made a lot of history, notably in the movement for civil rights for all Americans and also for representing victims of the climate of fear created by what one of his clients famously dubbed as the "scoundrel time" of McCarthyism. As Ivins tells the story, Rauh, because of a serious illness, was unable to attend a banquet held to honor his accomplishments. A friend, who had been deputized to speak for him, when to Rauh's hospital room and asked, "Joe, what do you want me to tell them?" Rauh answered, "Tell 'em how much fun it was."

I wish for each of you every success. But most of all, I hope that when you reflect on your respective careers, you, too, will be able to say, "Tell 'em how much fun it was."

**T**he State Bar of Texas passed a Resolution of Commendation to the Texas Fellows of the American College of Trial Lawyers who participated in the Texas Trial Academy:

**James B. Sales** / Houston  
**Otway Denny** / Houston  
**Jeff Wolff** / Houston  
**Dan Bishop** / Austin  
**Lamont Jefferson** / San Antonio  
**Terry Tottenham** / Austin  
**Murray Fogler** / Houston  
**Pat Lochridge** / Austin  
**Cynthia Grimes** / San Antonio  
**Tom Henson** / Tyler  
**Ed Junell** / Houston  
**Douglas Chaves** / Corpus Christi  
**John Weber** / San Antonio  
**Cliff Gunter** / Houston  
**Jerry Clements** / Dallas  
**Knox Nunnally** / Houston  
**Richard Griffin** / Houston  
**Larry Carlson** / Dallas  
**Fidel Rodriguez** / San Antonio  
**Steve McConnico** / Austin  
**Tom Cunningham** / Houston  
**Dicky Grigg** / Austin  
**Chuck Murray** / McAllen  
**Tommy Jacks** / Austin  
**Lewin Plunkett** / San Antonio  
**George Butts** / Austin  
**Don Davis** / Austin  
**R.H. Wallace** / Fort Worth  
**Jerry Beane** / Dallas  
**Marty Jones** / Amarillo  
**Broadus Spivey** / Austin  
**Kenneth Tekell** / Houston  
**Larry Boyd** / Houston  
**Mike McKetta** / Austin  
**Gerald Goldstein** / San Antonio  
**David Beck** / Houston





## A Witness's Testimony *By Kevin Priestner*

In hindsight, I should have asked questions before I agreed to volunteer. The request seemed innocuous enough. Emily Jones, the executive director of the Texas Access to Justice Commission, needed someone to play a male witness during the Texas Trial Academy that the commission was coordinating with the American College of Trial Lawyers (ACTL). Having served as a witness for the National Trial Competition before — at which I essentially read a deposition, answered a few questions, and sat down — I said, “Sure.”

Only later did I realize what I had gotten myself into. I would be playing the plaintiff, John Spatz, a 45-year-old commercial painter and father of three who was injured when a set of scaffolding collapsed. My playing a 45-year-old would in itself strain the verisimilitude of the situation, but what seemed most daunting was the prospect of having to explain to the jury how to assemble a scaffold, which would mercilessly reveal my lack of spatial skills.

It got worse. When I arrived at the Eidman Courtroom at the University of Texas School of Law, I learned that I would

be the only witness for the day, that I would be on the stand for up to 90 minutes (divided between direct- and cross-examination), and that my testimony would be videotaped by the ACTL, presumably as a lesson in how not to prepare a witness.

Imagine my relief, then, when I met my lawyer. Jerry Clements, a partner in Locke Liddell & Sapp, L.L.P. in Dallas and an ACTL fellow, was relaxed, reassuring, and ready. Before my testimony, she guided me through her general line of questioning, assuring me that I knew the material and would do fine. She also displayed her courtroom wisdom, advising me not to walk to and from the witness stand with a limp as I had proposed.

Cynthia Grimes, of Ball & Weed, P.C. in San Antonio, served as opposing counsel. She was disarmingly friendly,

but Clements warned me that the nicest attorneys often asked the toughest questions.

Given the circumstances, my testimony seemed to go well. Clements focused much of her time on humanizing my character for the jury, asking questions about my family and the effects of my injury on my daughter's prospects for attending college. She helpfully provided verbal signposts (“John, I’d like to hear more about your injury, but first I’d like to ask a few questions about the scaffold ...”), which alerted me — but more important, alerted the jury — to where she was headed.

Grimes’ cross-examination was more challenging, but not as challenging as I feared it would be. Smiling throughout,

she asked strings of questions that required short, affirmative responses. I was constantly thinking, “When is the trap coming?” but the trap never came. The prompt for the case was ambiguously written, so there were many discrepancies she might have seized.

After my testimony was over, Clements and Grimes fielded questions from the 30 or so legal aid lawyers in attendance. Grimes said

she quickly determined that I was a sympathetic witness, so she decided to simply establish the factual record she needed and then grill the expert witnesses later in the trial for discrepancies. She also admitted to being constrained by Judge Otway Denny’s blanket decision to overrule objections.

The legal aid lawyers in attendance were thrilled by the caliber of attorneys they saw throughout the week. On the day I testified, they were most impressed by the subtlety of Clements and Grimes’ strategies, their mastery of the details of the case, and their general poise and demeanor. I didn’t have the heart to ask about how well I performed as a witness, but at the reception to mark the conclusion of the trial academy, they unfailingly addressed me as John Spatz, which at least indicates I made an impression.



Broadus Spivey of Spivey & Ainsworth, P.C. in Austin offers trial pointers to Diana Gaston of Lone Star Legal Aid following the fourth and final evening of the Texas Trial Academy mock trial. Spivey presented closing arguments for the plaintiff.