

2017

**2017**

Southern Methodist University, Dedman School of Law, Tsai Center for Law, Science and Innovation

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### Recommended Citation

Southern Methodist University, Dedman School of Law, Tsai Center for Law, Science and Innovation, "2017" (2017). *Tsai Today*. 2.  
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SMU

Tsai Center for Law, Science and Innovation  
DEDMAN SCHOOL OF LAW

# TsaiToday

EXPLORING HOW LAW AND POLICY AFFECT TECHNOLOGY AND SCIENTIFIC RESEARCH

AUGUST 2017

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## Learning from leaders

### Tsai Center launches new lecture series

**I**N OCTOBER 2016 the Tsai Center held the first lecture of its new Leadership Lecture Series. The event featured the Honorable Sharon Prost, Chief Judge of the Court of Appeals for the Federal Circuit. Moderated by SMU Law Professor and Tsai Center Co-Director David Taylor, the lecture attracted more than 100 attorneys and students.

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# Tsai Team

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**Meghan J. Ryan**, Gerald J. Ford Research Fellow and Professor of Law

**David O. Taylor**, Co-Director of the Tsai Center for Law, Science and Innovation and Associate Professor of Law

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**The Honorable T. John Ward**, U.S. District Judge (Ret.) and President, Ward, Smith & Hill, PLLC

**Jerry F. White**, Adjunct Professor and Director of the Caruth Institute for Entrepreneurship, SMU Cox School of Business

**Jingbo Ye**, Associate Professor of Physics, SMU Dedman College of Humanities and Sciences

**Hubert Zajicek**, CEO and Co-Founder, Health Wildcatters

# From the Co-Directors



W. Keith Robinson



David O. Taylor

## Continuing our mission

**I**N ITS SECOND YEAR OF OPERATION, the Tsai Center for Law, Science and Innovation continued its mission of exploring how law and policy affect scientific discovery and the development of new technologies. There were several programming highlights this year. The Tsai Center's annual IP symposium focused on the relationship between IP and social justice. The Center funded an innovative new course that sent students to visit the USPTO and the Federal Circuit in Washington, D.C. Finally, the Center sponsored a symposium on data privacy and a colloquium on financial technologies.

**To assist with these efforts**, Natalie Thompson Greco '05 joined the Center in January as its Director of Programs and Operations. We also added two new Tsai Center Scholar positions, raising the number of students that work with the Center each academic year to four. These personnel changes have allowed the Center to work more efficiently and sponsor more programs.

**With our increased strength**, we have exciting plans for this upcoming year. Our annual IP symposium on September 29 will focus on the value of intellectual property. In December, the Center will co-sponsor the Next Paradigms of Law conference in Taiwan. The Center will also continue to support new faculty research and provide new, innovative courses for our students.

**We invite you to explore** the rest of this newsletter. Inside, you will find details about our programming, class offerings, and sponsored research. We hope you enjoy reading about the Center's accomplishments over the past year, and we encourage you to take part in our upcoming programs.

## W. Keith Robinson and David O. Taylor

TSAI CENTER CO-DIRECTORS AND ASSOCIATE PROFESSORS OF LAW



● **In November** the Tsai Center sponsored a forum on the Patent Prosecution Highway (PPH). The USPTO and the IP Section of the Dallas Bar Association co-sponsored the event. The forum featured representatives from the IP offices of Canada (CIPO) and Mexico (IMPI). Participants explored how eligible countries use the PPH program. Attendees also learned useful information about CIPO and IMPI.

## Law clinics

The Tsai Center sponsors SMU's intellectual property clinics. Both the Patent Clinic and the Small Business and Trademark Clinic provide students with the opportunity to represent clients before the USPTO. In turn, these clinics offer valuable legal services for small businesses and individuals. For more information, visit the clinics at [law.smu.edu/clinics](http://law.smu.edu/clinics).

# Cover Story



## Continued from the cover

Judge Prost encouraged attendees to never give up on their quest to learn new things. She cited her love of learning as a large contributor to her success, including her successful handling of intellectual property cases. She noted that, despite having no background in science or technology, she is able to rule on such cases by learning the facets of each suit. She cited the help of her clerks, who analyze the technological complexities of the cases presented to her. Judge Prost also discussed her unique career path, describing her service as Chief Counsel for the Senate Judiciary Committee and as an attorney for the Federal Labor Relations Authority, the U.S. Department of the Treasury, and the National Labor Relations Board.

Judge Prost's lecture at the Tsai Center inspired those in her audience—even those without a science or engineering background—to continue toward their goal of practicing in complex areas of the law, including intellectual property law. As a female in a predominately male field, she further inspired the women in attendance by noting that hard work, passion, and perseverance can embolden any attorney or law student, regardless of gender, to achieve their goals.

The Tsai Center will use the Leadership Lecture Series to continue hosting top-ranking leaders to inspire the next generation of lawyers.



Judge Prost cited her love of learning as a large contributor to her success, including her successful handling of intellectual property cases.



# TsaiNews



The Tsai Center hosts Tsai Talks, presentations and discussions focusing on real-world examples of the practice of law. Last year's Tsai Talks included:

- **Legal Support of the Automotive Industry and Beyond:** Nilay S. Davé, Managing Counsel, and Fredrick Mau, Intellectual Property Counsel, both with Toyota Motor North America, Inc., addressed the role of in-house counsel in supporting a fast-paced R&D environment.

- **Universities and Innovation:** Teresa Schultz, from UT Arlington's Office of Technology Management, and Abigail Go, from UT Dallas' Office of Technology Commercialization, discussed the purpose of technology transfer offices in a university's development and marketing of research.



- **Inside the Energy Industry:** Michael Haynes (*above*), General Counsel for Riata Corporate Group, gave a talk on his experiences within the energy sector, also answering audience questions regarding the pros and cons of serving as outside vs. in-house counsel.

- **The False Claims Act – A 19th Century Law Becomes a 21st Century Weapon Against Healthcare Fraud:** Christopher S. Hamilton of Standly Hamilton LLP highlighted the increasing role of qui tam litigation under the False Claims Act as a means preventing improper, off-label use of medical devices and drugs.

- **The Economics of Innovation:** Lonnie Brist, a Ph.D. economist and transfer-pricing partner for Ernst & Young, discussed the nuances around law and tax policy as it pertains to intellectual property.



*The Tsai Center will continue to hold Tsai Talks throughout the academic year. To stay informed, follow us @SMUTsaiCenter on Twitter!*



## 2016 Science & Technology Law Review Conference: Food Law Forum

- The Tsai Center sponsored the **4th Annual Food Law Forum** held at SMU Dedman School of Law. This symposium focused attention on cutting-edge issues involving food labeling and adulteration. Experts from across the country analyzed the implications of new food regulations. Panelists explored liabilities associated with manufacturing irregularities. Speakers also discussed recent developments following the Supreme Court's ruling in *Sorrell v. IMS* about labeling of food containing Genetically Modified Organisms (GMOs). The symposium generated articles that will appear in the *SMU Science and Technology Law Review*.



## New course offering: Patent Law and Institutional Choice

- This spring the Tsai Center sponsored a new course, **Patent Law and Institutional Choice**. Taught by SMU Law Professor David Taylor, this course gives students a holistic understanding of the institutional structure of the U.S. patent system and the roles of its institutions. The course included three field trips. The first, to Washington, D.C., included visits to the USPTO and the U.S. Court of Appeals for the Federal Circuit, where students met with USPTO Solicitor Nathan Kelley and Chief Judge Sharon Prost. The class later visited the USPTO regional office in Dallas, meeting with Regional Director Hope Shimabuku '05, a patent examiner, and a PTAB judge. The class also watched jury selection and a claim construction hearing at the U.S. District Court for the Eastern District of Texas, where the students heard remarks from Judge Rodney Gilstrap.



## Colloquium on Innovation in Financial Law and Systems

- In May the Tsai Center co-sponsored a Colloquium on Innovation in Financial Law and Systems. Participants explored several aspects of financial law. One session discussed the regulatory implications of Brexit. Another covered the impact of innovation on financial services. Participants also explored predictions about international financial regulation under the new U.S. administration. The Centre for Commercial Law Studies, Queen Mary, University of London and the Asian Institute of International Financial Law, University of Hong Kong co-sponsored the event.

# Alumni Spotlight

## NDTX Chief Judge sets a high bar

By Shashana Pearson-Hormillosa

**C**HIEF JUDGE BARBARA M. G. LYNN '76 originally set out to be a firefighter. But when she learned in childhood that it wasn't in the cards for her, she harnessed her fondness for arguing and instead became a lawyer. She graduated with highest distinction from the University of Virginia in 1973 – a time when the university had just begun to admit women. Then, in 1976, she graduated from SMU School of Law, *summa cum laude*. She went to work for Carrington, Coleman, Sloman, & Blumenthal, LLP shortly thereafter, making partner in 1983. Judge Lynn was serving as a partner at the firm in 1999 when President Clinton nominated her to the bench. The Senate confirmed her nomination the following year.

**Judge Lynn's interest** in intellectual property and patent law began about 5 years before her appointment. She was serving as a trial lawyer and was asked to work on a patent case in Delaware. That case sparked her interest in intellectual property and patent law, an interest that has served her well in her current role as Chief Judge of the Northern District of Texas.

"I came to that interest [in IP and patent law] through a limited amount of experience as a lawyer, but [I came to] a pretty quick understanding that that is where lawyers were going to come with their highest abilities," Judge Lynn said. "So, it was a great place for me to stretch myself and serve as a judge."

**Today, IP and patent cases** comprise approximately 15% of her caseload. But because of their complexities and issues, these cases require twice as much attention as her other cases.



**"I think very highly of the SMU law school. I feel like I got a fantastic education and feel an obligation to give back." – CHIEF JUDGE LYNN**

"The explosion in patent litigation is because of technological developments that are spawning entry into fields that [began] in another era but are still good," she said. "So, one of the [time-consuming] issues is evaluating [older] patents as they pertain to today's technology."

**Despite having a full docket**, Judge Lynn finds time to give back to the community, particularly when it comes to SMU's law school. She serves on the law school's Executive Board, and each year she conducts *Markman* hearings as part of the Patent Litigation course taught by Lisa Evert '87, Phillip Philbin, and Bruce Sostek.

"Judge Lynn graciously and generously gives of her personal time, typically following a full day on the bench, to hear arguments from as many as ten student pairs," said Professor Evert. "At the end of each semester we receive a written review

of our class from every student. Almost to a person, they identify their claim-construction presentation to Judge Lynn as the very best thing about the semester, often their entire law school experience."

**In 2011**, the American Inn of Court chartered a new chapter and named it for Judge Lynn. The Honorable Barbara M. G. Lynn American Inn of Court, which meets at SMU, is dedicated to serving students and practitioners of intellectual property and patent law.

"I think very highly of the SMU law school. I feel like I got a fantastic education and feel an obligation to give back," said Judge Lynn. "To be successful requires hard work, tenacity, respect for the process, and a good sense of morality. [Students] get all of that at SMU...SMU really should be the law school people think of when considering intellectual property as a focus."

# Symposia

## Symposium on Big Data questions public vs. privacy domain limits

In February, the Tsai Center and SMU's Dedman College Interdisciplinary Institute hosted a panel on cyber security, liberty, and privacy. SMU Law Professor **Jeffrey Kahn** moderated the panel. Panelists included **Justin Kaplow**, Senior Legal Counsel for AT&T's Privacy, Data Protection and Big Data team; **Joel Reidenberg**, Stanley D. and Nikki Waxberg Chair and Professor of Law at Fordham University School of Law; and **Patricia Kosseim**, Senior General Counsel and Director General for the Legal Services, Policy, Research and Technology Analysis Branch of the Office of the Privacy Commissioner of Canada.

The panel outlined how privacy laws differ in each country and explained how many U.S. phone carriers are shielded from government intervention.

While the right to privacy is gaining strength, the panelists warned that there is also more information in the public domain. Professor Reidenberg discussed a class experiment in which his class gathers information on a public person, using only information available from public sources. This exercise illuminates for his students how much private information is readily available to the public.



## How IP policy impacts social justice Tsai Center's symposium on emerging IP issues

In September, the Tsai Center hosted a one-day program, co-sponsored by the Institute for Intellectual Property and Social Justice, entitled the *Symposium on Emerging Intellectual Property Issues: IP and Social Justice*. The symposium, organized by Professor **Keith Robinson**, addressed the impact IP policy has on social justice issues. The first panel, moderated by **Wei Wei Jeang '93** of Grable Martin Fulton, PLLC, explored how patent policy will shape the future. **Hope Shimabuku '05**, Regional Director of the Texas Regional USPTO, and **Stacy White**, Lead Judge for the Patent Trial and Appeal Board, discussed USPTO initiatives to bring more women into the IP field. Panelist **Mark Dvorscak**, agency lead IP attorney for NASA, discussed his agency's special licensing program for technology startups.

**Victoria Phillips**, Professor of Law at the American University Washington College of Law, moderated a discussion about the Supreme Court's recent grant of certiorari in a case concerning the constitutionality of the USPTO's rejection of disparaging marks. **Megan Carpenter**, Dean of the University of New Hampshire School of Law, and **Phil Hampton II**, Senior Counsel with Haynes and Boone LLP, presented provocative arguments for both sides.

**Lateef Mtima** and **Steven Jamar**, Howard University Law School Professors and Directors of the Institute for Intellectual Property and Social Justice, and **Lita Rosario**, an entertainment lawyer, discussed copyright law and non-traditional artistic expression. They analyzed controversies in recent music copyright cases and explored how courts are using the law to address new theories of liability.

**Peter Menell**, Koret Professor of Law at the University of California, Berkeley School of Law gave the keynote address. He provided a road map for how intellectual property doctrines have affected social justice issues.

Following the keynote address, **Peggy Keene** of the Keene Law Firm moderated a panel on the Defend Trade Secrets Act. Professor **Sharon Sandeen** from the Mitchell

Hamline School of Law analyzed key aspects of the new law and its implications for state trade secret common law and statutory schemes. Professor **Meghan Ryan** discussed the role of trade secrets in criminal law, such as fingerprint technology protected under trade secret law.

For the final panel, Professor **David Taylor** moderated a discussion on patents and healthcare. The panelists addressed whether patents are

an incentive or an obstacle to improving healthcare. **Frederick Grinnell**, Robert McLemore Professor of Medical Science at UT Southwestern Medical Center, discussed his view from the perspective of a medical research institution. **Dmitry Karshedt**, Associate Professor at George Washington University Law School, offered key insights about the patent system's influence on healthcare innovation. **Kristel Schorr**, a Partner and Chair of the Chemical, Biotechnology & Pharmaceutical Practice with Foley & Lardner, shared her clients' perspectives on obtaining patent protection for their healthcare innovations.

Immediately following the symposium, the Tsai Center hosted a networking reception. The reception was a perfect ending to a day spent exploring intellectual property and social justice.



# Faculty Updates



● **Lackland H. Bloom, Jr., Larry and Jane Harlan Senior Research Fellow and Professor of Law**, has completed his article, "John Stuart Mill and Political Correctness," to be

published by the *University of Louisville Law Review*. This summer, Professor Bloom will serve as Director of the SMU Dedman School of Law in Oxford Program, where he will teach Comparative Freedom of Speech—U.S. and U.K.



● **Chris Jenks, Director of the Criminal Clinic and Associate Professor of Law**, is continuing his consideration of the intersection between law, technology, and policy

as applied to weapon systems. The *Pepperdine Law Review* published the results of his Fulbright research on lethal autonomous weapons, and the United Nations published his remarks delivered at an international weapons treaty convention meeting. Professor Jenks is currently completing an article that examines the role "swarming" autonomous systems will have on weapon system development.



● **Orly Mazur, Assistant Professor of Law**, conducts research that addresses the U.S. tax implications of operating a global business in the "cloud." Because

traditional tax principles focus primarily on physical presence to allocate taxing authority among different jurisdictions, applying traditional tax systems to these cloud transactions creates compliance

burdens, incongruous tax distinctions, substantial government revenue loss, and tax avoidance. Professor Mazur addresses these issues in several published articles. In "Taxing the Cloud," Professor Mazur explores the uncertainties and complexities involved in taxing cloud transactions among unrelated parties. In "Transfer Pricing Challenges in the Cloud," she analyzes the issues in the context of multinational enterprises that use an internal cloud platform to operate their business. And in her most-recent paper, Professor Mazur and a co-author focus on the pressures that cloud computing place on traditional sales tax and value-added tax systems. These articles seek to provide governments around the world with a framework for issuing guidance that addresses the tax challenges of the digital economy in a manner that minimizes aggressive international tax abuse and ensures one-time taxation of these transactions.



● **W. Keith Robinson, Altshuler Distinguished Teaching Professor, Co-Director, Tsai Center for Law, Science and Innovation, and Associate**

**Professor of Law**, uses natural language-processing tools in his current project to categorize claims in USPTO patents as either process claims, product claims, or product-by-process claims. The result of this project is software that algorithmically identifies a patent claim as belonging to one of these categories. The project provides data both at the claims level and at the patent level. Using data at the claims level, the project documents and describes the composition of patents over time and across different technology classes and industries. At the patent level, the project documents and describes the distribution of patents for different industries and firms over time and across technology classes.



● **Meghan J. Ryan, Gerald J. Ford Research Fellow and Professor of Law**, is investigating the legality of secret conviction programs. From

software informing police departments how to direct their limited resources to programs that predict the future dangerousness of criminal offenders, significant attention has been paid to the problems of today's pervasive reliance on computerized algorithms in the criminal justice system. Although these programs often adopt a methodical, evidence-based approach to criminal justice, they have troubling effects, including disproportionately burdening minorities. Exacerbating concerns, these programs often are kept secret, preventing criminal defendants from challenging their uses. Professor Ryan posits that reliance on secret computer programs is even more troubling when used as investigatory tools and as evidence for criminal convictions; for example, when police officers rely on breathalyzer results; when fingerprint examiners start their analyses with automated fingerprint-identification systems; or when forensic scientists employ certain programs used for analyzing DNA. Professor Ryan is exploring the nuances of these secret conviction programs and the extent to which their uses violate constitutional due process and confrontation-right protections.



● **David O. Taylor, Co-Director, Tsai Center for Law, Science and Innovation and Associate Professor of Law**, joined

Peter Menell from the University of California-Berkeley and Jeff Lefstin from the University of California-Hastings this spring to host a workshop on the law governing patent eligibility. Thirty-one workshop participants included leading practitioners, in-house counsel, government attorneys, legislative aides, and law professors. Professors Taylor, Menell, and Lefstin will be publishing a report on the workshop. Professor Taylor also recently completed his service as Reporter for the Patentable Subject Matter Task Force of the American Intellectual Property Law Association (AIPLA), which approved a legislative proposal crafted by the Task Force. This summer, Professor Taylor, using a grant from Microsoft, is conducting a survey of investors to study the impact of changes in patent-eligibility law on investment decisions.

## Student Organizations and Activities

The Tsai Center offers opportunities for students to expand their knowledge concerning the intersection of law, science, and innovation:

- Board of Advocates (BOA)
- Environmental Law Society
- Health Law Association (HLA)
- Intellectual Property Organization (IPO)
- The Hon. Barbara M.G. Lynn American Inn of Court
- Science & Technology Law Review (STLR)
- Sports & Entertainment Law Association (SELA)



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14th Annual Symposium on Emerging Intellectual Property Issues

# The Value of Intellectual Property

A one-day symposium exploring the latest news, legal developments, and judicial decisions, including panels on:

- What Drives Innovation
- Perspectives on the Value of Intellectual Property
- Patent Eligibility
- Patent Valuation and Complex Products
- The Supreme Court's Recent IP Cases
- The Patent Trial and Appeal Board

#### FEATURED SPEAKERS

- Manny Schecter, Chief Patent Counsel, IBM
- Phil Johnson, Senior Vice President — Intellectual Property Strategy & Policy, Johnson & Johnson (ret)

**Friday, September 29, 2017**

Symposium: 8:30 a.m. – 3:30 p.m.  
Reception: 3:30 – 4:30 p.m.

#### Location

SMU Dedman School of Law  
Hillcrest Classroom  
3315 Daniel Ave., Dallas, TX

To register or for more information, please visit [law.smu.edu/tsaicenter](http://law.smu.edu/tsaicenter)

## Tsai Events

2017

**September 29**

- **Symposium on Emerging Intellectual Property Issues:**  
The Value of Intellectual Property

**December**

- **New Paradigms of Law Symposium, Taipei, Taiwan**

**Fall 2017 and Spring 2018**

- **Tsai Talks:** Lunch hour presentations on topics at the intersection of law, science, and innovation

2018

**Spring**

- **SMU Science and Technology Law Review Symposium**
- **Leadership Lecture Series**

For more info, visit [law.smu.edu/tsaicenter](http://law.smu.edu/tsaicenter) and follow us on Twitter @SMUTsaiCenter