



Houston
Intellectual Property
American Inn of Court

Inaugural Dinner

November 13th, 2012



Forward

It is a special privilege for the Houston intellectual property community to launch its very own IP Inn of Court with the inaugural dinner today.

Many thanks go to Federal Circuit Judge Richard Linn for providing the inspiration and encouragement to our local judiciary to create a Houston IP-specialty Inn. Also, I want to express our sincere gratitude to Judge Nancy Atlas for her extraordinary and diligent efforts in working with local IP bar leaders to investigate the feasibility and interest in an IP Inn in light of the many other fine organizations already established that serve the Houston IP community.

Now that the structure is in place with our new Inn, it will require a high level of energy and dedication from its members to cause the Inn to function in a way to achieve and exceed the fundamental goals of the inn--to promote excellence in professionalism, ethics, civility and legal skills, with a focus on mentoring students and young lawyers. The success of the Houston IP Inn will depend on the active participation and dedication of every Houston IP Inn member. Thank you for your commitment to our newly-established Inn. I am looking forward to advancing our collective education and skills in our quest for professional improvement and growth.

William L. LaFuze, President
Houston Intellectual Property
American Inn of Court





Statement

On behalf of the local federal judiciary, I extend my admiration and best wishes to the founding members of the Houston Intellectual Property American Inn of Court. Today's intellectual property lawyers of all experience levels in our community will look back with pride at this inaugural dinner as a welcome historic event. Lawyers, clients and judges in Houston will benefit mightily from the commitment this Inn has to mentoring junior and mid-level attorneys, and to teaching professionalism in practical, creative and energetic ways. I endorse the Inn's leaders' commitment to complement existing strong local intellectual property organizations.

Nancy F. Atlas
United States District Judge





Linn Inn Alliance

The Houston Intellectual Property American Inn of Court is a member, along with twenty other Inns, of the Linn Inn Alliance. The Linn Inn Alliance was founded in 2008 by the Honorable Richard Linn, along with Hal Wegner and Olivia Luk, and is a vehicle for the sharing of meeting and program information and for the enhancement of the Inns of Court experience among all of the intellectual property law American Inns of Court around the country.

Attendance at meetings of Alliance member Inns is open to all members of sister Inns who are able to attend. If you are planning an upcoming trip and would like to attend an Alliance Inn meeting, please visit the Linn Inn Alliance page at the American Inns of Court website for information about upcoming meeting dates, places, topics, and contact information



Reflections on Judge Linn

As its President, Circuit Judge Richard Linn led the Washington, D.C. Intellectual Property Inn of Court named in honor of our late colleague, Giles Sutherland Rich, to the 2005 Model of Excellence award as the best Inn in America. He strongly supports the American Inns of Court in its mission to promote civility, professionalism, and excellence in the practice of law, and regularly participates in meetings of the Giles Rich Inn, the IP based Ben Franklin Inn in Philadelphia, and the appellate practice Edward Coke Inn, which meets at the Federal Circuit. A life-long patent lawyer, a patent examiner, a private practitioner and an electrical engineer, he also served as leader of the electronics practice group of Foley and Lardner's intellectual property department, and prior to that, the leader of the intellectual property practice of Marks & Murase, now part of Bingham McCutchen LLP. He is, in short, a very well-rounded lawyer and judge. The author of major patent decisions, he is well respected by all his colleagues on the Court of Appeals for the Federal Circuit, which he joined in the first minute of the new millennium, January 1, 2000. In addition to his contributions to the development of the patent law, Judge Linn has contributed to putting the Federal Circuit at the vanguard of automation. A leader in the larger intellectual property community and on the court, he is widely-recognized as a down-to-earth man who is good, generous, and great company. I think it is entirely fitting that Judge Linn, who succeeded Judge Giles Rich on the court and who has played and continues to play an active role in the Inn named after Judge Rich, now is honored to have an Inn in his own name. I am confident that it will be a resounding success.

The Honorable Paul R. Michel
Chief Judge, Court of Appeals
for the Federal Circuit

Written for the Inaugural Meeting of The Richard Linn American Inn of Court and Presentation of Charter in Chicago, January 2007

Reflections on Judge Linn

We've all heard about Judge Linn's achievements on the bench and his advocacy for and leadership within the American Inns of Court movement and the drive toward a restoration of civility.

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One incident perhaps best illustrates civility in the profession and genuine collegiality amongst colleagues even as adversaries: Many years ago, Judge Linn and the late Frank Rothwell were lead counsel on opposite sides in an intellectual property dispute before a court in Baltimore where they needed to make periodic but brief court appearances.

Instead of separately driving from their suburban Washington, D.C., area homes to court, Judge Linn would drive to Frank's home in Maryland where Sissy Rothwell prepared breakfast, after which the two of them would head off together for Baltimore where they would then argue their clients' positions before the Court and return together.

This manifests perhaps better than any other anecdote civility in the practice of law, the ability to compartmentalize vigorous representation while retaining civility within the profession.

Harold C. Wegner
October 31, 2012

This passage is excerpted from an article that will be uploaded to the Houston Intellectual Property Inn's website.



Reflections on the Houston Intellectual Property Law Community

By Rodney Caldwell

The development of the Intellectual Property Bar in Houston is probably unique, as Houston is the only city I know of where, 43 years ago when I completed law school, all of the largest general practice law firms had substantial groups of "patent lawyers." Indeed, the patent lawyers at Andrews, Kurth, Campbell & Jones, Baker, Botts, Shepherd & Coates, Butler, Binion, Rice, Cook & Knapp, Fulbright, Crooker, Freeman, Bates & Jaworski, and Vinson, Elkins, Searles, Connally & Smith probably outnumbered the boutique and independent practitioners.

Yes, we all were called "patent lawyers" then, even though we handled trademark, copyright, trade secret, unfair competition, and even related antitrust matters. Few of us specialized in these other areas, though, and none of us called ourselves "intellectual property lawyers." Consistent with that state of affairs, the Houston Intellectual Property Law Association was then the Houston Patent Law Association, although the American Bar Association's Section of Intellectual Property Law was then, more inclusively, the Patent, Trademark and Copyright Law Section.

Many of the Masters will remember Lee Larkin of Andrews Kurth, Garrett ("Res") Tucker and Frank Pugsley of Baker Botts, Ned Conley and Murray Robinson of Butler Binion, Jim Weiler, Jeff Giller, and Paul DeVerter of Fulbright, Vince Martin, Joe Edwards, and Bud Evans of Vinson Elkins, and many of their contemporaries -- too many to name -- who were active in our Bar. Were our Inn to have been established then, many of these folks would have been our founders.

Houston also had a number of boutique firms, as well as solo practitioners and in house patent lawyers. Many of the boutique firms had been founded by alumni of the general practice firms. Indeed, my firm, Arnold, White & Durkee, had its beginning when Tom Arnold left his partnership in Hutcheson, Taliaferro & Hutcheson in December 1956 to

start his own patent law practice. Bill Durkee joined him in 1963, and Bob White in 1969, to complete the firm name. Along the way, Lou Pirkey, Frank Vaden, and John Lynch arrived. When I got there in 1970, as the twelfth lawyer listed on the letterhead, two of our founding Masters were already there, Paul Van Slyke and Jack Goldstein. We were soon joined by fellow Masters Paul Janicke and Floyd Nation, and then by many more.

Bill Pravel had left Vinson Elkins to form Hayden & Pravel, which by eventually became Pravel, Wilson & Matthews. Bill was another of the early leaders of our IP bar, and the firm was our closest contemporary in Houston. He, Coke Wilson, and Guy Matthews soon were joined by Al Kimball, Lester Hewitt, and Paul Krieger, three more of our Masters. The firm became Pravel, Hewitt, Kimball & Krieger when Jim Gambrell left them to move to the hill country. John Kirk and Hoppy Dodge also were among its members. Our early boutiques also included Browning, Bushman & Zamecki, and Hyer, Eickenroht, Thompson & Turner. These firms were soon joined by others. Frank Vaden left Arnold, White & Durkee and formed Vaden, Eichenroht & Thompson. Meg Boulware later left Vinson Elkins to join them. Ned Conley, David Rose, and Jeff Tayon left Butler Binion to form Conley, Rose & Tayon, now Conley Rose, which is now one of the largest IP practices in Texas. Williams, Morgan & Amerson were from Arnold, White & Durkee. Wong, Cabello, Rutherford & Brucculeri, from Arnold, White & Durkee, and Lutsch, from Pravel, Hewitt, Kimball & Krieger, formed Wong, Cabello, Lutsch, Rutherford & Brucculeri after they all passed through a period of in-house practice at Compaq Computer. John Kirk and Hoppy Dodge each went on to form new firms, and then John returned to a large general firm. Over the years, the local intellectual property practice continued to grow. Even as it grew, though, it remained a very collegial practice.

There is a recurring circular pattern to the movement of Houston's intellectual property practitioners. Some of the IP early boutiques subsequently have become parts of large

general firms, especially as new firms have arrived and established offices in Houston. The Houston office of Arnold, White & Durkee joined the Washington, D.C. firm of Howrey & Simon in 2000 to form Howrey, Simon, Arnold & White, later shortened to Howrey, and now most of the former AWD/Howrey lawyers comprise the Houston office of Winston & Strawn, a large general practice firm. Other Arnold, White & Durkee alumni also are now with large general firms, including King & Spaulding, Locke Lord, McDermott, Will & Emery, and Weil, Gotshal & Manges. And to continue the circle, or perhaps now the spiral pattern, alumni of some of those larger general firms have moved to IP boutiques, such as Fish & Richardson, Pirkey Barber, and others, or formed their own firms, such as Sutton, McAughan & Deaver. Similarly, former principals of Pravel, Hewitt, Kimball & Krieger now are at Akin, Gump, Strauss, Hauer & Feld, Bracewell & Giuliani, and Morgan, Lewis & Bockius.

The growth of our corporate and academic intellectual property community over the past 43 years has paralleled the growth of our private practice. We have moved from a single course in patent law taught by a team of adjunct professors to substantial and highly regarded programs that offer advanced degrees and attract students from near and far. Today, thanks to the dedicated efforts of Professors Paul Janicke, Ray Nimmer, Craig Joyce, and their colleagues, the Institute for Intellectual Property and Information Law (IPIL) at the University of Houston Law Center is recognized throughout the world for the strength of its faculty, scholarship, curriculum, and students. Its contributions to the study of law have earned both respect and a reputation for excellence. Competition and demand no doubt spurred the other law schools in Houston to develop their own IP programs and we now find that students at all three local law schools have the opportunity to study IP or patent law.

At the same time, able practitioners were recognized as such by their clients and hired away from their firms to devote their talents to a single client. Although many of our corporate and academic IP practitioners arrived in their

positions from private practice, others developed their expertise in situ.

Reflecting the growth of Houston's IP bar and its IP academic programs, the Federal Circuit has twice sat in Houston in recent times, once in 1996 and again in 2009, and the Houston IP bar has drawn many CCPA and Federal Circuit law clerks to practice here – seventeen at last count. The strength of our private, corporate, and academic IP practice in Houston is reflected in the membership of our Inn.

Like the law, our involvement with our courts has evolved. Although some of our trademark and unfair competition cases are tried in state court, most of our intellectual property disputes are in federal court. Notwithstanding the boom in patent infringement cases in the Eastern District of Texas, the Southern District has experienced substantial growth. In the early years no one would try a patent case to a jury – 98 percent or more were bench trials. Courts were tolerant, if not exactly happy to see us, but heard our cases and handed down decisions with a promptness not always found in other parts of the country. In one of my early bench trials, several of the staff from my firm came into the courtroom to observe some of the trial. The judge promptly stopped the proceedings to tell them that, if they were there to see a trial, they should go to the courtroom next door where there was a real trial going on, because our trial “was just a patent case.”

Today, almost all patent infringement cases are tried to juries, and dockets are much busier. The Federal Circuit has had a profound effect on our cases, and our courts have worked with us to enable more efficient processes for handling pretrial and trial matters tailored to patent cases, surely in the hope that our pretrial efforts will result in more settlements to the benefit of both our clients and their trial loads. The support of our judicial counselors in the establishment of our Inn is a positive sign that our federal courts believe we can continue to work together productively for our mutual benefit, and is greatly appreciated.

In 1969, the IP Bar in Houston was perhaps one-fourth its present size. It may surprise some to know that even then it was the largest group of intellectual property practitioners in the country not in Chicago or on the East or West Coast. We probably have Howard Hughes to thank for that, as the early practice of The Hughes Tool Company in patenting of its oilfield tools, especially drilling tools, and its unparalleled success in enforcing those patents, led others to conclude that perhaps they should get some patents of their own. When Compaq Computer Corp. was formed in Houston in the early 1980's by three veterans of Texas Instruments, another strong proponent of patents, the patent mindset in Houston got a large boost. Over the past several years Texas has trailed only California in the number of patents issued to its residents, edging out New York, and Massachusetts for second place. That growth has meant more patent work here, as Houston is a major location for patent recipients.

We now have more than 600 members in our Houston Intellectual Property Law Association (HIPLA). While the large general practice firms still have substantial intellectual property practices, the boutique firms have grown remarkably in number and in size. Many of our intellectual property practitioners have moved to other cities, but many more have stayed and worked to develop practices here. Houston still has the largest IP Bar of any city other than Chicago that is not on the East or West Coast.

In sum, there has been no better place to practice intellectual property law over the past 43 years than right here in Houston, Texas.

Rodney Caldwell
November, 2012

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