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A Sneak Peek at **Volume 47,** Issue 1

What the United States' Military Detention Authority, the ICC Prosecutor, Universal Jurisdiction, and the New Egyptian Constitution Have in Common

The *Texas International Law Journal* is gearing up to publish one of its most anticipated issues yet. Volume 47, Issue 1 begins with a series of articles exploring the legal framework by which the United States exercises its military detention authority in its war against al-Qaeda. The lead paper, "Enemy Status and Military Detention in the War Against Al-Qaeda," is written by Karl Chang, an attorney in the Office of General Counsel for the Department of Defense. Chang argues that the traditional distinction between "combatant" and "civilian" does not fully encapsulate the contours of the military detention authority. Chang instead turns to the law of neutrality and resets the conversation to analyze the authority under neutrality principles, focusing on what constitutes an enemy. As he notes, "legal limits on military detention are not found in rules on how we fight our enemies, but in rules that determine who we may justly deem an enemy in the first place."

Rebecca Ingber and Kevin Jon Heller both respond to Chang's article, rejecting its central premise that the law of neutrality is an adequate framework by which to understand the scope of military detention authority. Ingber, who is

currently a fellow with the Council on Foreign Relations while on leave from the State Department's Legal Adviser's Office, penned a response article titled "Untangling Belligerency from Neutrality in the Conflict with Al-Qaeda." Ingber criticizes Chang for not setting out a bright line between "mere violations of neutrality and belligerency," arguing that until the difference is made clear, Chang's theory will necessarily fail.

Professor Heller, a senior lecturer at Melbourne Law School and a popular blogger at *Opinio Juris*, rejects Chang's use of the law of neutrality for different reasons. First, Heller argues that the law of neutrality cannot apply in the conflict between the United States and al-Qaeda because the United States has not recognized al-Qaeda as a legitimate belligerent and is not willing to do so. Furthermore, Heller finds that the U.N. Charter's prohibition on the use of force more adequately works in tandem with the *jus ad bellum* and *jus in bello*, and that the law of neutrality "undermines the United States' counterterrorism efforts" instead of aiding these efforts.

Next, Milan Markovic, a teaching fellow at Temple University's Beasley School of Law, addresses the International

Criminal Court's (ICC) failure to issue a code of conduct for the Office of the Prosecutor. In his article, "The ICC Prosecutor's Missing Code of Conduct," Markovic illustrates the need for such a code through several examples, including the trial of Thomas Lubanga Dyilo. As he aptly notes, "The ICC cannot further the rule of law without demanding that its employees not only advocate respect for the rule of law, but embody it."

In the fifth article, Professor Ariel Zeman of Israel's Ono Academic College contemplates ways in which the ICC could aid in eliminating the tension between universal jurisdiction and the principle of equality in law. Professor Zeman, in his article "Reconciling Universal Jurisdiction with Equality Before the Law," proposes a novel reform whereby the ICC would institute a designation system that would, as far as possible, prevent the politically motivated exercises of universal jurisdiction that undermine the principle of equality before the law.

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TILJ Alumni Spotlight:

BLAIR DANCY



A firm believer in maintaining a healthy work-life balance, Blair Dancy, class of 1997, infuses creativity in all aspects of his life. From his involvement with Texas Accountants and Lawyers for the Arts to his creative writing hobby to his penchant for inventing, Dancy has found his balance at Van Osselaer & Buchanan in Austin, Texas, where he has spent the last six years working in commercial litigation.

Dancy's interest in the arts began with his studies as an English major at The University of Texas. After graduating, Dancy spent a year in Japan teaching English as a second language (ESL) to Japanese schoolchildren. It was there that he met his wife, who was in her second year teaching ESL as well. "That

year in Japan is what eventually drew me to the *Texas International Law Journal*. It was an amazing experience," says Dancy.

After spending half a year traveling a circuitous route back from Japan to the United States, going through Asia, the Middle East, and Europe, Dancy spent eight months working as a legal assistant in

the litigation department at Vinson & Elkins. "While I was deciding about law school—and it was either UT or University of Houston—I was working at V&E and I actually got to be there for the *Hopwood v. UT School of Law* case. V&E was representing UT pro bono, so I couldn't work on it because I was a member of the incoming class, but I got to be there through much of the trial," says Dancy.

Dancy carried this enthusiasm with him when he enrolled at UT in the fall of 1994. An Articles and Notes Editor for a TILJ article about Chinese patent law and a Teaching Quizmaster for two years, Dancy took classes that he found interesting, even if they weren't on the side of useful. "I'm one of those personalities that if I don't like the subject matter or

the professor, I will not do well. So I tried to take classes that would interest me." Dancy spent his 1L summer in the transactional and litigation sections at McGinnis, Lochridge & Kilgore in Austin and Houston. That summer he also married his wife. Dancy split his second summer between big firms in Austin and Washington, D.C. It was at Baker Botts in D.C. that Dancy had his first international law experience. "The Cold War had just ended so there was talk about an oil pipeline being built through several former Soviet countries. We basically looked at the Chunnel agreement between France and England and analyzed the law of all the countries to see if it could be done," explains Dancy. "Former Secretary of State James Baker was at Baker Botts at the time, so we had a nice international presence that allowed us to do projects like this. By this time, I knew that getting international experience is about showing up at the right place at the right time, so I definitely sought it out."

After graduating, Dancy decided to stay in Austin with Locke Purnell Rain Harrell, now part of Locke Lord, instead of returning to Baker Botts. "I had decided I wanted to be a trial lawyer and Locke had a partner who was known as a great trial lawyer here in town. When they said that if I came with them I would be in the courtroom left and right, I chose them." Dancy worked there for four years in commercial litigation and

Blair Dancy, continued on pg 10

Symposium to Examine Legal Fallout from Euro Crisis

First Greece—then Ireland, Italy, Spain, and Portugal. The European common currency has come under pressure from large national debts and the effects of the global financial crisis, ultimately requiring a rescue package close to a trillion euros. The Euro Crisis has profound implications for law and policy in the European Union and raises numerous questions of fundamental importance. Should the Treaty on the European Union be amended to provide a clearer basis for financial rescue

measures, and if so, how should such amendments be designed? Should the EU be able to interfere in the economic and fiscal policy of individual member states if such interference is necessary to preserve the stability of the Euro? Does the Euro Crisis call for a redefinition of the role of the European Central Bank?

In cooperation with the Center for European Studies at The University of Texas, TILJ will attempt to answer some of these pressing questions with its Symposium on the Euro Crisis.

The symposium, supported in part by the EU, will feature a number of legal and economic scholars and will focus on both the legal and practical implications the current Euro Crisis has on Europe and the world.

The TILJ Symposium will take place on Thursday, February 9, 2012, and Friday, February 10, 2012, at The University Texas School of Law. The Symposium is free and open to the public. We hope to see you there.

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Finally, TILJ Articles and Notes Editor James Feuille, in his note “Reforming Egypt’s Constitution: Hope for Egyptian Democracy,” explores how the Egyptian revolution of January 2011 has helped pave the way for the enactment of constitutional reforms that could help usher the country into a more democratic state.

As TILJ rises in the rankings, we are committed to publishing superior scholarship that will provoke animated conversation amongst leading scholars, students, and the international legal community as a whole. This upcoming issue already has sparked debate, and we are grateful to have the opportunity to provide an avenue for such insightful discussion. Stay tuned for the publication of the first Volume 47 issue later this year! To order your copy of Volume 47, please visit <http://www.tilj.org/journal/index.html>.

SPECIAL FEATURE: INTRAMURAL SPORTS

The TILJ intramural flag football team produced one heck of a season. After going 3–1 in pool play, the team won its first playoff game before falling short in the quarterfinals with a 6–0 loss. This team was one of the best the journal has fielded, and the name of TILJ will not soon be forgotten in the hearts of those that fell under our combined talents. A special thanks goes out to the Bluebook—whose secret rule 16.18397 showed us the play that made it all possible!¹

¹ For those of you studious enough to go check, this rule has not been written...yet.

Meet the Volume 47 Articles and Notes Editors

Avi Bhuiya, 2L



Avi is a native of Atlanta, Georgia, and received his undergraduate degree in political science from the University of Michigan. In addition to being an avid river kayaker and world traveler, he will also be working in UT's National Security Clinic next semester. He spent this past summer working at the U.S.

Attorney's Office for the Southern District of New York and is pursuing a career in litigation following graduation.

Daniel Collins, 3L



Daniel Collins is a graduate of the University of Texas at El Paso, where he participated in and later taught at the university's Law School Preparation Institute. During his 2L summer, Daniel clerked for two civil defense firms in El Paso, where he worked on employment,

business, and general litigation matters. Since beginning law school, he also has interned with the Honorable Judge David Briones of the Western District of Texas and Texas state Senator José Rodríguez during the 82nd Texas Legislative Session. Daniel is active in UT Law's Chicano/Hispanic Law Students' Association, OUTLaw, the Board of Advocates, and the *Texas Hispanic Journal of Law and Policy*. Daniel has competed as an oral advocate and brief writer for the Law School's American Bar Association National Appellate Advocacy regional moot court team in Seattle.

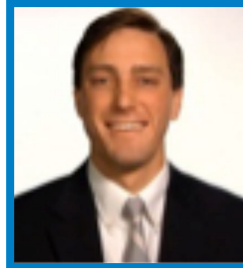
Amber Dodds, 3L



Amber grew up in Lincoln, Nebraska, and completed her undergraduate work at Trinity University in San Antonio. Prior to attending law school, she completed a master's degree at Boston University in Theology, Philosophy, and Ethics. Amber also worked full-

time as an immigration consultant. She has interned with Justice Keyes of the First Court of Appeals of Texas and Judge Yeakel of the Western District of Texas while in law school. Amber is interested in both energy production and regulation, and labor and employment law.

James Feuille, 3L



Originally from El Paso, Jimmy graduated from The University of Texas at Austin with a Bachelor of Arts in History and a minor in Business Administration in 2009. During his first law school summer, he interned for the Honorable Judge Charles Holcomb at the Texas Court

of Criminal Appeals. During his 2L summer, he clerked at the Office of the Solicitor General of Texas. Jimmy is interested in appellate law and hopes to obtain a clerkship after graduation.

Janya Genti, 3L



Jayna graduated from New York University where she studied international development and urban planning. She has worked with local nongovernmental organizations in Dakar, Senegal, and New Delhi, India, on a variety of development and environmental

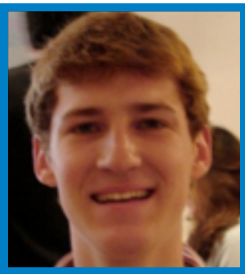
justice projects. While in law school, she has enjoyed interning at Texas Appleseed and Texas Civil Rights Project in Austin and Farmworker Justice in Washington, D.C. She is currently Vice President of the American Constitution Society and a member of the Criminal Defense Clinic. After graduation, Jayna looks forward to clerking for the Honorable Judge David Briones of the Western District of Texas.

Chris Gessner, 2L



Chris Gessner was born and raised in Bel Air, Maryland. He graduated cum laude from the University of Maryland with Bachelor of Arts degrees in History and Economics. Last summer Chris worked as a Consular Section intern at the United States Embassy in Prague, Czech Republic. In addition to his work with TILJ, he is also a staff editor on *The Review of Litigation*. Chris would like to practice commercial litigation upon graduation. His interests include playing squash, solving crossword puzzles, and studying military history.

Bradley Gray, 3L



Brad graduated from The University of Texas in 2009 and worked as a journalist before attending law school. During law school, Brad has interned at the U.S. Attorney's Office in Maryland, the Texas Solicitor General's Office, and the law firm of Davis, Graham & Stubbs LLP in Denver. During his third year Brad spent a semester studying international law at Queen Mary, University of London. This spring he will work with the Supreme Court Clinic. He hopes to practice white collar criminal litigation, and eventually become an Assistant United States Attorney.

Zoe Howe, 3L



Zoe graduated from Arizona State University with Bachelor of Arts degrees in History and Political Science. During law school, she interned with the Texas Supreme Court, the First Court of Appeals in Houston, and the 200th District Court in Austin. During her 2L summer, she worked as a summer associate at Gibson Dunn & Crutcher in Denver, Colorado.

Nishi Kothari, 2L



Nishi Kothari is from Houston, Texas. She received a Bachelor of Science degree in Communications from New York University. After NYU, Nishi worked at Macy's Merchandising Group and was the Communications Director for the Harris County Democratic Party during the 2010 elections. She is currently a mentor for the Bradford Society at UT and participates in Street Law. This past summer, Nishi worked for the Human Rights Initiative in Dallas, working closely with asylum, domestic violence, and special immigrant juvenile status cases. Additionally, during her 1L year, Nishi worked as a legislative aide to State Representative Jessica Farrar. Outside of law school, Nishi enjoys going to local concerts around Austin, traveling, and tasting queso dips.

Mia Nguyen, 3L



Mia is from Houston, Texas. She received her undergraduate degree from Arizona State University and taught third grade in Phoenix with Teach for America. While in law school, Mia has interned for the First Court of Appeals of Texas, the United States District Court for the Western District, and the Office of the Attorney General. She has been a member of the Asian Law Students Association and is the magister of the Phi Delta Phi legal fraternity. Outside of law school, she enjoys hiking with her dog, baking, and reading.

Lynn Abell, 2L



Lynn graduated from New York University with a Bachelor of Arts degree in Italian and Economics in 2008. She also has a master's degree in Italian from The University of Texas and is interested in international arbitration and European Union Law. Lynn is currently serving as secretary for the Action Committee for Career Services and also works part-time as a law clerk for The University of Texas Legal Services for Students. In her spare time, Lynn enjoys long-distance running.

John Bradley, 2L

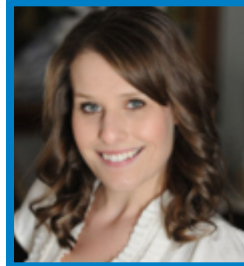


John is originally from Nacogdoches, Texas. He is a graduate of The University of Texas at Austin, where he was the president of the University Filmmakers Alliance and graduated summa cum laude with a degree in Radio-Television-Film. After graduating, John worked for several

years in the Austin film industry and started a successful independent media company touring with rock and roll bands. At UT Law John is the vice-president of OUTLaw and a member of the Teaching Quizmaster Legal Research and Writing Program. John spent his 1L summer clerking at two Austin law firms, where he worked on a wide range of legal matters including class action lawsuits and entertainment law. He is interested in international human rights law and national security law.

and will intern in the spring for Judge Cathy Cochran of the Texas Court of Criminal Appeals. This summer, she will be working for White & Case LLP in New York. Kate intends to pursue a career in litigation.

Sarah McDermand, 2L



Sarah graduated from Texas A&M University with a Bachelor of Arts degree in Political Science and a minor in English. Since starting at UT Law, she has participated in the Women's Law Caucus and the Pro Bono in January Winter Trip, which allows law students to perform pro bono work for residents in the Texas

Rio Grande Valley. Sarah has interned in Houston both with a private law firm and with the Honorable Justice Laura Carter Higley of the Court of Appeals for the First Court of Appeals District of Texas. Sarah wishes to work in Houston and pursue a career in energy transactions.

Jennifer Cannan, 2L



Jenny is originally from San Antonio and graduated from the United States Military Academy at West Point with a Bachelor of Science degree in International Politics. She served as an aviation officer in the Army for eleven years and was stationed in Alabama, Germany,

South Korea, and the Washington, D.C. area. She worked as a law clerk for the U.S. Marshals Service's Office of General Counsel over her 1L summer. Jenny will be working as a summer associate at Baker & McKenzie next summer.

Rachael Jones, 2L



Rachael is from Tennessee. She graduated from UCLA with a Bachelor of Arts degree in Linguistics & Psychology and a minor in Spanish. Before law school, she worked as a paralegal and as a legal assistant at the legal access center of the Superior Court of Los

Angeles in Inglewood. Rachael is currently working as a law clerk for Mueller Law Offices in Austin. She has studied seven foreign languages, spent a year in Barcelona, and is interested in both international environmental law and public interest law.

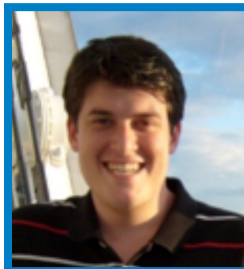
Katherine Draper, 2L



Kate is from New Jersey and graduated from the University of Pennsylvania with a Bachelor of Arts in History and a minor in French. Before starting law school, she spent a year in France teaching at a public high school. Kate has worked for the Texas Legal Services

Center providing legal assistance to low-income veterans

Ryan Meyer, 2L



Ryan is from Dallas and received a Bachelor of Business Administration in Finance and a Bachelor of Arts in History from Southern Methodist University. He has worked as a judicial intern with the Honorable A. Joe Fish in the Northern District of Texas and in the Dallas County

Public Defender's Office. This summer, Ryan will be working for K&L Gates in Dallas. He intends to pursue a career in civil litigation upon graduation.

Mallory Owen, 2L



Mallory is from Dallas and graduated from the University of Pennsylvania with a Bachelor of Arts degree in Urban Studies and History, and from Oxford University with a master's degree in Global Governance and Diplomacy. During her 1L summer, Mallory received a Rappoport Fellowship to work for Protimos, a London-based organization

dedicated to building the legal capacity of indigenous and marginalized communities in Sub-Saharan Africa. She was also a judicial intern for the Honorable Judge Barbara M.G. Lynn of the Northern District of Texas. This summer Mallory will be working for Weil, Gotshal & Manges in New York. She is interested in a career in international arbitration.

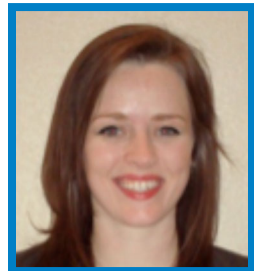
Chenjing Shen, 2L



Chenjing graduated from the Shanghai Institute of Foreign Trade with a Bachelor of Arts degree in International Event Management. She also minored in law at the East China University of Political Science and Law. During her 1L summer, she interned for Judge Leif M. Clark

in the Bankruptcy Court of Western District of Texas and Justice David W. Chew in the Eighth Court of Appeals of Texas. Chenjing is interested in international trade. With knowledge of both Chinese and U.S. law, she intends to specialize in cross-border transactions in her future career.

Austin Thomas, 2L



Austin is from Houston and received a Bachelor of Arts degree in Sociology from Rice University. As an undergrad, she worked at several non-profits, including Scenic Houston, an organization dedicated to improving Houston's urban landscape. Before starting

law school, Austin spent a year studying Spanish and traveling in Argentina. She is very interested in traveling, and also studied abroad in Prague, Czech Republic, as an undergrad. Last year, Austin participated in UT Law's Pro Bono in January trip to the Texas Valley, where students hosted a wills clinic for underprivileged residents in the

area. Austin intends to return to Houston after law school, where she hopes to practice in trusts and estates. Austin graduated as a voice major from Houston's High School for the Performing and Visual Arts, and was greatly involved at the Houston Grand Opera as a child. She continues to enjoy singing in her spare time.

TILJ Alumni Spotlight:



DAVID E. GRAHAM

During his time at UT Law, Graham served on the *Texas International Law Journal* (TILJ) and participated in the Philip Jessup International Law Moot Court Competition, serving as an advocate on the UT team that won the National Championship during his third

decorated Army officer, receiving the Meritorious Service Medal four times, the Legion of Merit twice, the Defense Superior Service Medal, and the Army Distinguished Service Medal.

Mr. Graham has led an exciting and rewarding career. He was the Military Legal Liaison to the American Embassy in Bonn and the first Legal Officer for the Multinational Force and Observers: Peacekeeping Force in the Sinai Peninsula in 1981 and 1982—where one of his principal responsibilities was the negotiation of the implementing arrangements for the 1979 Egyptian-Israeli Peace Agreement. Later he was stationed in Panama as the senior military attorney for Central and South America. Mr. Graham taught and was the Department head for International/Operational Law at the Judge Advocate General's School. He then served as its Director of Academics. For the last eight years of his military career, he served as both the Chief of the Army's International/Operational Law Department and as Director of the Center for Law and Military Operations.

Mr. Graham's advice for current 2Ls and 3Ls thinking about their future careers is to seriously consider public service as an option. As he notes, "It's a very rewarding experience and significantly broadens one's horizons." Mr. Graham's inspirational career truly does serve as a great testament to this fact.

To say that David E. Graham is an accomplished individual is quite the understatement. Currently the Executive Director of the Army's Judge Advocate General's Legal Center and School in Charlottesville, Virginia, Graham has spent the last forty years of his life dedicated to public service. A Bay City, Texas, native, Graham knew at an early age that he was interested in international law. He received a bachelor's degree in History from Texas A&M in 1966 and went on to receive a master's in International Affairs from The George Washington University in 1968, a J.D. from The University of Texas School of Law in 1971, and a Certificate from the Hague Academy of International Law in 1977.

year. Additionally, during his last year at UT Law, his note, "The Calvo Clause: Its Current Status as a Contractual Renunciation of Diplomatic Protection," was published in Volume 6 of TILJ. Since then, Graham has lectured extensively in both domestic and international forums and has been published in numerous law journals worldwide, including the *Georgetown Journal of International Law*, the *Virginia Law Review*, Yale Law School's *Opening Argument*, and, most recently, in the *Journal of National Security Law and Policy*. Through the University of Oxford Foundation for Law, Justice, and Society, Graham also authored a report entitled "The U.S. Judicial Response to Post 9/11 Executive Temerity and Congressional Acquiescence." He was a highly

Blair Dancy, continued from pg 3

administrative law, including some class action work. Then, the terrorist attacks of 9/11 happened. “9/11 hit, and my wife and I had just had our second child. My wife was working full time, and life was just too short, so I made a quality-of-life decision and joined a litigation boutique that had spun off from Locke to do mostly plaintiffs’ work and class action.”

In 2005 Dancy joined Van Osselaer & Buchanan. “The firm is great. We’re a small firm so we are all our own bosses. No one from another city tells us what we can and can’t do. The quality of life is great,” says Dancy about Van Osselaer.

Dancy has had the opportunity to get involved with international clients in litigation cases throughout his career. One of his most memorable cases was helping a Brazilian woman recover damages on a broken septic system on some land she had purchased to build a home. After the case, the woman moved back to Brazil and bought some farmland for her family there with the money she won in the suit. “After a few years, she came back, and I had since changed firms. But she found me and gave me some sapphires that she’d found on her farm. It’s nice to represent real people with real problems. Even if in the grand scheme of things it’s not a lot of money for the lawyers, it means the world to your clients.”

Dancy’s primary passion lies in the arts. As a board member of Texas Accountants and Lawyers for the Arts (TALA), he has helped organize workshops where local artists can come for accounting and legal advice. TALA, which is based in Houston, also recently received funding to start a branch in Austin. “I’m really excited about getting a new staff person here.

The fun thing about doing artist work is that you never know what’s going to come up.” The clinics and educational workshops cover hot topics, as well as basic accounting and basic information about copyrights and contracts. Dancy enjoys using his litigation experience to help budding artists and limits himself to one artist at any given time so that he can devote his full attention

“Even if in the grand scheme of things it’s not a lot of money for the lawyers, it means the world to your clients.”

to that case. “I once represented an artist who was a muralist in East Austin. He was having trouble with the accountability regarding the Holly neighborhood grants. He won a \$37,000 judgment, but, more importantly, he felt vindicated winning in front of a jury. It’s wonderful to be able to represent someone with limited means and be able to help him in a way that means a lot to him.”

In his free time, Dancy enjoys creative writing and spending time with his family. Dancy even won first place in the Texas Bar Journal’s short-story contest for his story “Bird of a Feather.” “The story is about a young attorney interviewing a guy who needed to get an immigration visa. The guy, rather than go under his employer, wanted to get the visa under a provision that allowed someone to come if they had a \$500,000 investment in America. It got me exposure in the Journal and got me published.” His penchant for writing is accompanied by a love of reading. “I took a workshop in Chicago once on how to write a New York Times Bestseller. It was a ton of fun and

made me realize that I need to quit shooting for the Great American Novel and shoot for something that’s fun to read.” Dancy now has a manuscript that he is trying to get published.

Through all the hobbies and career, Dancy never forgets his family. “Despite the quality-of-life decisions we’ve made, my wife and I still work too much. But I am glad that at various points in our careers my wife and I have been able to spend more time with our children.” One decision made by Dancy and his wife, who works as a marketing manager at a Hurst family company, was to invent and market a mosquito trap. Further, because he values innovation, Dancy is encouraging his sons, ages 14 and 10, to pursue creative routes in their careers. “My oldest son loves Japanese and travel. My youngest wants to become an inventor.” Dancy is also instilling a desire for international experience in his children by taking them traveling abroad and by hosting a Vietnamese exchange student. “He fits in well with us. He has an interest in music and composing and plays guitar. He and my oldest are at McCallum High School together, and they both are into music.”

“Life is all what you make it,” says Dancy. Dancy’s life, indeed, is exactly what he’s made of it: filled with creativity and family.