Do we have to remember case names?
AUTOBIOGRAPHY OF A LAW SCHOOL

Stories, Memories and Interpretations of
My Sixty Years at
The University of Houston Law Center

By

John Mixon, Law Alumni Professor
Dedicated to A.A. White, who made the history
and to
Don Riddle and members of the John Mixon Society
who made the telling possible
Albertus Magnus by Gerhard Marcks

UHLC Photo
# Table of Contents

ACKNOWLEDGMENTS ........................................................................................................ 4  
INTRODUCTION .............................................................................................................. 8  

PART I: THE BEGINNING, 1933-1956 .......................................................... 12  
  CHAPTER 1. WANTING A SEERSUCKER SUIT, 1933-1952 ...... 15  
  CHAPTER 2. FOUNDING DEAN A.A. WHITE AND HIS LAW  
    FACULTY, 1947-1956 ................................................................................................. 39  
  CHAPTER 3. STUDENTS REARED LIKE ME, BUT MORE SO,  
    1947-1955 ................................................................................................................. 71  
  CHAPTER 4. LEARNING LAW BY THE CASE METHOD AT THE  
    FEET OF LOCAL GIANTS, 1952-1955 ........................................................................ 91  
  CHAPTER 5. STUDENTS TEACHING STUDENTS, 1955-56 ..... 107  

  CHAPTER 7. AMERICAN LEGAL REALISM AT YALE, 1961-1962  
    ...................................................................................................................................... 147  
  CHAPTER 8. MYRES McDOUGAL AND HAROLD LASSWELL’S  
    LAW, SCIENCE AND POLICY, 1961-1962 ......................................................... 167  
  CHAPTER 10. YOUNG TURKS AND THE OLD GUARD, 1962- 
    1970 ....................................................................................................................... 201  
  CHAPTER 11. PLANNING A NEW LAW BUILDING,1966-1968, 237  
  CHAPTER 12. SEX, DRUGS, AND SENSITIVITY TRAINING,  
    1968-1970 ............................................................................................................... 251  
  CHAPTER 13. JIM HIPPARD’S SURPRISE VOTE, 1969 ......... 267  
  CHAPTER 14. JOHN NEIBEL, DEAN IN TROUBLED TIMES, 1966- 
    1974 ....................................................................................................................... 275  
PART III: A MODERN LAW CENTER EMERGES, 1974-2013 ........302

CHAPTER 16. MIKE JOHNSON, UNSUNG HERO, AND INTERIM DEAN A.A. WHITE, 1974-1976 ......................................................... 305

CHAPTER 17. GEORGE W. HARDY III, DEAN, 1976-1980 ........327


CHAPTER 20. NANCY RAPOPORT, DEAN, 2000-2006 ...........419

CHAPTER 21. RAYMOND T. NIMMER, DEAN, 2006 -2013 ......443

CHAPTER 22. LAW STUDENTS, 1947-2012 ...........................459

CHAPTER 23. JUDGE CAROLYN KING, LAW CENTER FRIEND FROM 1962 ................................................................. 485

APPENDICES ............................................................................. 490

APPENDIX I. WERE A.A. WHITE AND SIMON FRANK REALISTS AND NEWELL BLAKELY A FORMALIST? ................................. 491

APPENDIX II. F. S. C. NORTHROP’S COMPLEX JURISPRUDENCE, 1961-1962 ................................................................. 503

APPENDIX III. LAW, SCIENCE AND POLICY, 1961-1962 ...... 508

APPENDIX IV. THE APRIL 8th EMAIL ....................................... 518

APPENDIX V. THE DECLINE OF LL.Ms IN LAW TEACHING, 1993-2013 ................................................................................. 522

APPENDIX VI. LL.M. PROGRAMS AT THE LAW CENTER, 2012 ............................................................................................. 526

APPENDIX VII. INSTITUTES AT THE LAW CENTER, 2012 ....542

APPENDIX VIII. TENURE TRACK FACULTY HIRED, 1947-2011 ............................................................................................ 550

APPENDIX IX. ENTERING CLASS DATA, 2000 – 2007 .............556

INDEX .......................................................................................... 558
ACKNOWLEDGMENTS

Many people helped make this book possible. Most important, A.A. White created a law school that was worth writing about and provided me a playground for sixty years. I don’t know what my life would have been like if he hadn’t thrust me into a law classroom twenty days after my twenty-second birthday, but it could not have been more fun. When Dean Newell Blakely invited me back to law teaching after three years in the Coast Guard protecting New Orleans from enemy attack, I knew I did not want to go back to the farm, work for a corporation, serve in the military, or practice law. Law teaching, by contrast, was, as a colleague, Steve Huber, says, “a loophole in life.” I have exploited that loophole for well over half a century. I fully expected to teach another fifty years, when I could claim to be the longest serving University of Houston faculty member. But that was not to be. Two other professors with longer tenure are quite healthy and still teaching.

David Dow’s excellent book, Autobiography of an Execution, inspired the title. That book also prompted me to write about the Law Center from my personal perspective as a player. David wrote his story as a death row lawyer. My involvement with the law school was not a matter of life and death, although we sometimes treated it as such.

K. Lance Gould, M.D., a personal friend, has kept my heart pumping and my cholesterol down for more than thirty years. Susan Williams, M.D., guided my recovery from a classroom event in the fall of 2010, when I turned to the blackboard during class and could not make sense out of what I had written. After a trip to the emergency room and $30,000 in tests, we still don’t know what happened. But I knew it was time to quit.
Many people provided information, read early drafts, and encouraged my efforts as I went through draft after draft. Craig Joyce, my Law Center colleague and a legitimate historian, was an indispensable advisor. Zach Martin and Tyson Morgan’s professional editing was invaluable. Justice Eugene Cook, Judge Gladys Oakley, Judge Michol O’Connor, C. M. “Hank” Hudspeth, Ira Shepard, Richard Ewing, Sidney Buchanan, Craig Joyce, Jim Herget, David Dow, Tom Oldham, Don Riddle, Lenya Gould, Judith Mixon, Beverly Rudy, and Sybil Balasco read and commented on drafts.

Ben Schleider, a member of the first graduating class, was one of the earliest advocates and unflagging supporter for this project. Ben was also my excellent teacher of Bills and Notes (now called Commercial Paper) in 1954. He provided valuable information and comments on the very first draft of this narrative. Erin Osborne worked on my feeble efforts to include Italian and French phrases, and she provided valuable research and editing. Sandra Jackson deserves special thanks for serving my office suite for more than twenty years faithfully as secretary, cheerful presence, and friend. She spent long hours printing draft after draft of this narrative from Word and PDF files. Mon Yin Lung, the law library’s princess of publication, discovered facts I never knew existed from sources I had never heard of, and she finally showed me how to get on line with Hein.

Don Riddle made publication easy by raising a tidy sum to enable The John Mixon Society to bring guest speakers to the Law Center. I appreciated that effort and enjoyed the speakers, but equally important, the Society had enough cash left over to support producing, printing, and distributing this story.

While preparing the manuscript, I made amateur television tapes of a number of a few former students, faculty, and friends, including former Deans Robert Knauss and Stephen Zamora, former
colleague Rick Ewing, former Director of Libraries Jon Schultz, Judge Gladys Oakley, Judge Michel O’Connor, Ben Schleider, Fred Rizk, Nancy Westerfeld, Leonard Rosenberg, Don Graul, Rick Colton, Beverly Rudy, Sybil Balasco, Marvin Nathan, Don Riddle, Todd Riddle, Gregory Thrower, Lynn Thrower, Lily Thrower King, Adam King, Randal Hendricks, Larry J. Doherty, and Mike Johnson. I hope these tapes will be professionally edited and transcribed to provide a direct and unfiltered oral history of the Law Center.

I acknowledge especially those 7,000 or so students who played classroom law games with me. They were kind enough not to hold me responsible for any errors committed when they later became real lawyers and dealt with real clients. I hope they will enjoy reading about law school events that happened before, during, and after they attended. I have no illusions that I will continue in the memory of the Law Center past 2011, the year I taught my last class. The half-life of any law professor is one and one-half years. After the third year, no trace remains. What will last is a plaque on the wall of Bates Law Building that memorializes Don Riddle’s very generous funding of the John Mixon Chair in Law. That title and stipend will pass to some willing soul in 2013, along with a free copy of this book.
INTRODUCTION

The University of Houston Law Center is sixty-five years old. This narrative is my interpretation of the sixty years the Law Center and I spent together. It is based on personal memories, shared collective memories, and the few surviving artifacts that reveal other versions of truth. Personal memories, mine and others, are necessary to the story, but not entirely reliable. Written accounts are hard to come by. Death has silenced many voices that could have told more about the Law Center’s early years. Obituaries, when found, seldom reveal more than basic dates and honorable achievements.

I have undertaken to tell the Law Center’s story by describing some of the heroes and heroines whose struggles and ideals produced the Law Center’s current, unfinished form. It is hard to find a villain in the piece if the definition requires evil intent. I am convinced that every soul who advanced a position within the law school believed at the time it was best for the institution.

The book focuses on people who served the law school as deans. Deans are not all-powerful, but in the Law Center’s case, they provide a significant constant for describing the ups and downs of the institution. Deans are essential players in any law school history, particularly in the formative years. They set the tone for the school by directing internal budgeting, hiring, and promotion. They control what passes for faculty governance by selecting committees that reinforce their policies. They have power of the purse to determine faculty salaries, within some limits. Deans alone can deal with university administrations and the outside world where they have to make the case for funding and institutional priorities.
I have judged a few administrators, both law and university, as good and a few as not so good. It is easy to say the current administrators at both the Law Center and the University have been unusually effective in improving both institutions.

To focus only on deans and faculty shortchanges the contributions of many staff members whose value to the Law Center exceeded that of some deans and professors. Three who come to mind are Nan Duhon, Deborah Hirsch, and Julie McKay. There are others who added immeasurable value to the program, including Tobi Tabor, Merle Morris, and Susan Rachlin, three of the people who make the writing program work. Non-tenured members of the teaching staff have contributed enormously to the practice courses and Moot Court program. A few staff members’ activities were less worthy. It was, I suppose, a staff member who delivered a package outside my door revealing a dean’s personal calendar for several weeks. It was interesting reading, but the revelation that there were more personal grooming appointments than academic meetings on the schedule hardly justified the perfidy. The secretarial staff has been loyal, dedicated and competent, with notable exception when a departing secretary stole an IBM electric typewriter and was foiled when the factory repair shop sent it back to the law school.

When I began to circulate drafts for comment, I ran into some criticism that the book was not legitimate history. There is some justification for the criticism. I am not a historian, and this book is not a product of objective research. Instead, it is more a joint autobiography. By this, I mean that I tell my own story, and through that narrative, I tell a substantial part of the law school’s history. Beginning in 1952, our joint life is presented subjectively, the way we lived it together.

I claim several reasons for personalizing the narrative. First, except for five years from 1947 to 1952, my own history is entwined with that of the law school. After sixty years as student
and as teacher, I cannot easily separate “me” from “us” or “it.” Second, my pre-law school history closely resembles life stories of many early students who were directly affected by the Great Depression and World War II. My story is to some extent their story as well, and the stories of those founding students deserve to be told. Third, if this were someone else’s story, I would take it with a grain of salt. I think readers deserve to know who it is that, without credentials or traditional objective research undertakes to describe how people and events created an institution. Fourth, the most likely motivation is that this is my book, and I choose to tell our common story—mine and the Law Center’s—the only way I know how. What I recount is, within reasonable boundaries, true. I invite anyone who is better able to sort fact from fallible memory to write a rebuttal. Some history has been sanitized. I am content to leave curious readers wondering what was left out.

At a late point in the undertaking, I realized that my target audience lies thirty-five years in the future, in 2047 when the Law Center will celebrate its one hundredth birthday. No one who was part of the school in the formative years will be alive on that anniversary, and this text will be the only source of information about that critical time. If it is not rebutted, what I have to say will become definitive. With that in mind, I have tried to remain true to the spirit of history and truth. I expect some disagreement with what I say. Mostly, I hope I produced a good read that also serves a literary and history purpose.¹

¹ I found it liberating to write without having a historian’s solemn burden to investigate and report only pure fact. In Chapter 5, I admit I do not remember the identity of the first student I called on. In Appendix VIII, I state my own beginning date as 1956, even though my Instructor title was not tenure-track. I also accommodated a colleague’s questionable claim for the date on which his tenure track commenced. I have similarly advanced the beginning time of other colleagues whenever I noticed that they started as visitors. There are no other conscious misstatements.
Sometime in 1947, E. E. Oberholtzer, President of the University of Houston, hired A.A. White, top-ranking Southern Methodist University law graduate, Texas lawyer, and wartime bureaucrat, to create a law school and serve as its first dean. The new dean and a single faculty member began classes that fall for sixty-six students in drafty campus barracks left over from World War II. I registered as a student five years later, taught my first law class in 1955, and retired in January, 2013. Sixty-five years after its founding, the University of Houston Law Center employs more than fifty full-time faculty members and serves some 900 undergraduate law students and 100 graduate students annually. I have taught perhaps two-thirds of the 10,000 or so graduates of the Law Center.

Part I describes my memories of the people and my interpretation of the events that shaped the institution in its first decade, from 1947 to 1956.

The College of Law, like the University of Houston, was created to serve an upward-mobile student population that was
driven by the Great Depression and World War II to turn to higher education to improve their social and economic condition. My own story is typical, and it is told in some detail.
Hoya Abstract Company

http://pictures-of-historic-nacogdoches.com/thumbnails.html
CHAPTER 1. WANTING A SEERSUCKER SUIT, 1933-1952

The only thing we have to fear is fear itself.

Franklin Delano Roosevelt, inaugural address, 1933

Hitler Forms His First Government.

Headline, Manchester Guardian, January 31, 1933.

The Law and I had our first encounter in 1941. It was late afternoon and I was leaving the little Northeast Texas town of Cushing for my two-mile walk home on Highway 204. From a distance, I saw a group of teenagers shooting craps in front of a deserted storefront. I crossed the street to watch. Actual gambling was out of the question because I had no money and didn’t know the rules. They wouldn’t let an eight-year-old kid in the game anyway. After a few minutes, I moved on, knowing darkness was about to make my lonely trip even longer. The Law—in the form of a Nacogdoches County Deputy Sheriff—and I took no account of each other as I walked south toward the farm and he drove north to arrest the gamblers.

Next day, my fourth grade classmates told me The Law had hauled players and bystanders alike to the county jail. They declared observers caught “sweating” the game had to pay the same fine as players. Otherwise, all players not caught on their knees would claim they were just watching. I had no money to pay a fine or bail, so I guessed I would have spent the night in jail if I hadn’t walked
away. It was unsettling. I wondered whether I was guilty of a crime for stopping long enough to see one throw. What if I saw two? Was I a criminal without knowing it? Or did it matter since I didn’t get caught? At this early age, it looked as if crime and punishment were more a matter of luck than law.

I learned more about The Law in 1945 when a local feud led to two killings. It started with competition between the town’s two jitney drivers. World War II shortages of gas, rubber, and automobiles had left many local families dependent on hired transportation. Cushing’s 500 or so inhabitants could support one taxi, but not two, and Green Holsomback and Shack Lucas competed for the local trade. Green parked his four-door Chevrolet on Main Street next to Bill Long’s drug store, and Shack parked his two-door Ford across the street facing Jack Beck’s ice cream shop. One day around noon, Green Holsomback walked up behind Shack Lucas while Shack was rummaging in his car trunk. Shack turned around and broke Holsomback’s skull with a tire tool. There were enough people on the street to verify the essential facts, but they were not sure why Shack killed his competitor. Some said Green hit Shack first from behind. The Law took Shack to Nacogdoches, and, for a while, all local conversations began or ended with “What do you

3 Photo of Cushing’s Main Street: Barclay Gibson.

4 Troy Gresham, a fellow Cushing school student, acknowledges the event at http://archiver.rootsweb.ancestry.com/th/read/TXNACOGD/2002-05/1021944504 (October 25, 2011).
think The Law will do to Shack?” The answer wasn’t clear when The Law released Shack and he resumed his taxi business a couple of days later.

With Shack back on the street, every conversation began or ended with, “What do you think the Holsombacks will do?” So many people asking the question guaranteed the response. Within a week or so, somebody told Green Holsomback’s son, Tubby, that Shack Lucas had just bought a ticket at the E-Tex movie theater. Tubby got his pistol and his son, Bruce, and they walked together into the theater. They found Shack and shot him dead in front of a few movie-goers. Next day, every conversation began or ended with “I wonder what The Law will do to Tubby and Bruce?” The answer turned out to be “nothing.” I heard, and believed, the story that circulated a few months later. The Law decided Tubby was not guilty because Bruce, not Tubby, fired the fatal shots. And Bruce couldn’t be tried for murder because he was a juvenile. My eleven-year-old brain couldn’t make sense out of The Law’s making bystanders criminals and letting killers go free.

My acquaintance with law expanded in 1947 when, at age fourteen, I met a real lawyer at his little office in Nacogdoches, twenty miles away from Cushing. My dad had died in 1945, and I inherited his half interest in the 160-acre family farm. Humble Oil & Refining Company (now ExxonMobil) wanted to lease the land for oil and gas exploration. I was a minor and couldn’t give a valid lease, so Humble struck a deal with my mother and hired Kelly Bell, a Nacogdoches lawyer, to have her appointed guardian to lease my minerals. I wasn’t sure what Mr. Bell did that put $2,000 in my brand new bank account, but he said if Humble produced oil or gas, I would get royalty on my share of the farm. Kelly Bell had done a magical thing with words on paper, and nobody went to jail.

What raised my sights as much as the law Kelly Bell practiced was the blue and white seersucker suit he sported in that
hot East Texas summer. There was nothing like it in Cushing, where Sunday suits were dull grey, brown, or blue, and threadbare. Often, the coat and trousers did not match. Lawyers with seersucker suits had to be something special.

I forgot about lawyers and seersucker suits until 1950, when I landed a sixty-cent-an-hour job as a filing clerk and typist at Hoya Abstract Company, located just off the brick-paved Nacogdoches Post Office square.

Several lawyers used the abstract records free of charge, including S. M. “Moss” Adams, whose part-time secretary, Josephine Pittman, was my second great love. She spurned me, just like the first. Moss Adams also wore seersucker, but I judged Kelly Bell’s law partner, Tom Reavley, as even more impressive in his stylish and traditional professional dress. These three, along with several other lawyers, were frequent visitors to the abstract office, resplendent in their white shirts, ties, and matching coats and pants.

Moss Adams, Kelly Bell, and Tom Reavley gave me a glimpse of what lawyers wore and the magic they could do with words on paper. Working in the abstract office taught me what title companies do and gave me firsthand acquaintance with the county courthouse. My duties included carrying documents from the abstract office to the courthouse for recording. The trip could be hazardous. One windy day, I rounded a corner just as an experienced tobacco chewer let fly, splattering me and my documents with fresh brown spittle.

After a few months, I began to see law as a straight path to prosperity. Hoya Abstract Company charged $10.00 for drafting a deed. Local lawyers charged $25.00. The $15.00 price difference told me being a lawyer was more profitable than title work. I could type names and land descriptions on a printed deed form in ten or fifteen minutes, and $25.00 was more than I made in two weeks at
my half-time job. Moreover, according to the office manager, Odie V Tannery, a lot of local lawyers couldn't draft deeds properly. I calculated that I could make $500 a month as a lawyer if I could sell a deed a day. The seed was planted.

Moss Adams, Kelly Bell, and Tom Reavley disappeared from my history in 1952 when I left for law school, but I took note when President Jimmy Carter named Tom Reavley to the Fifth Circuit Court of Appeals in 1979.

Not many people go to law school so they can charge $25.00 for deeds. I might not have done so either if my life had not changed dramatically six months after I appeared as a late-in-life surprise to my parents in August, 1933.

My first few months of life were ripe with middle-class promise. The Great Depression had inflicted tragic deprivation on most American families, but we seemed immune. My dad’s nineteen-year seniority earned him a Depression-proof job as railroad telegrapher in Crandall, a small town near Dallas. My parents had a two-family income until the school board assigned my mother’s slot to a teacher whose husband had no job. Losing her job imposed little hardship because Dad’s salary amply supported their modest middle-class life style.

Railroad pay even accommodated my dad’s idiosyncratic charity—letting hobos charge cheap meals to his account at the local cafe. This practice ended when Crandall’s KKK took note, and the Grand Dragon warned dad to stop encouraging undesirables to stop for a meal instead of passing on to Dallas. Forever after, my mother

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5 The name is not misprinted. There was no period after the V. See: 
http://records.ancestry.com/Odie_V_Ruple_records.ashx?pid=48707727
ritually examined the hands of newly-introduced men to ensure they did not wear the detested Dragon ring.

My prospects for middle-class privilege ended in 1934 when encephalomyelitis, an inflammation of the myelin lining of the spinal nerves, disabled my dad from walking and working. Nineteen years of railroad seniority entitled him to his choice of station assignments, but no disability benefits. Efforts to find a cure quickly exhausted family savings, and in 1934 the three of us left Crandall in the almost new 1933 Chevrolet coupe Dad had bought when life was good.6 My mother recalled wistfully that, when Dad first drove his new car and saw a highway speed sign, he would call out “Sixty miles, sixty minutes.” A year later we had little money for gas.

We did have a place to go before putting the Chevy on blocks for the next eight years. A few years earlier, my dad had bought his father’s farm near the small Northeast Texas town of Cushing, twenty difficult miles from Nacogdoches, the county seat. My mother, who became a school teacher to escape the dreariness of her own farm life, objected to buying the land, presciently declaring she would someday have to live on that patch of red dirt surrounded by pine thickets. Those fears became reality when our family of three moved into a back-pasture, unpainted house, infested with so many spiders, bugs, and vermin that it had to be fumigated with burning sulfur to become marginally livable. For a year or so, my dad engaged sharecroppers to raise cotton on bottom land that was

too poor to farm. The crop failure didn’t matter because there was no market for picked cotton, and I doubt the venture paid for seed and fertilizer.

Luck turned briefly in our direction when the Highway Department condemned a few acres of the farm for a paved road connecting Nacogdoches and Cushing. The award enabled us to build a small, but clean, two-bedroom house on the new highway a couple of miles from Cushing. A local carpenter, Kinch Parker, salvaged heart pine lumber from the old house and used it to build our new, spider-free, two-bedroom home, along with a tiny rent shack and outbuildings. The smell of honest sweat and sawdust still revives my memory of Mr. Parker and his two sons sawing and hammering on the house I would live in from 1936 to 1952. It was built to face the new highway, leaving its backside staring at the old road and the railroad beyond it. My classmates laughed at the backward-built house for several years before the new highway made sense out of its orientation.

In 1937, a benevolent uncle sold or gave us a few dairy cows to improve our chances for survival, and for a year my mother ran a one-woman dairy. Seven days a week, she herded and milked reluctant cows, separated cream by hand-crank, and carried heavy five-gallon cans to the road to be picked up by the local milk truck. I was only four or five years old, but the dairy smell still keeps me from drinking the white liquid. The dairy business and its meager income ended when my mother twisted her back chasing cows. For a year, she could barely walk, let alone herd and milk cows. I became her legs as well as my dad’s for a year until a chiropractor finally relieved her sciatic nerve pain.

Dairy farming requires dependable workers, and we had none. We traded our milk cows for an equal number of mixed-breed beef cows with modest hope their calves, fattened on summer grass and sold on the hoof, would produce a profit. The Depression price
for a crop of calves barely covered their winter feed, but the few dollars they brought every fall saved us from starvation. At sale time I grieved along with the mother cows that lowed the entire night trying to recall their offspring from their journey to slaughter.  

We ordered baby chicks by mail and kept them warm by a kerosene lamp until they were big enough to survive outside. The water they drank was made pink by a medicine supposed to ward off some mysterious poultry disease. A few of the chickens that survived hawks and possums augmented our protein-poor diet, but left me with little taste for poultry, however prepared. There was no market for chickens, but we could sell infertile eggs for a few pennies per dozen. Each egg was hand-stamped with our name to assure buyers they could find us if a chick embryo turned up at breakfast. One day, I looked into a hen’s nest and spotted a coiled chicken snake, gorged on eggs and sound asleep. Chicken snakes are not poisonous, but at close range they trigger the same instinctive fear as a rattlesnake. The snake slithered away, but we knew it would return. Acting on a neighbor’s advice, we slit the shells of several eggs and inserted single-edged razor blades, hoping the snake would swallow an egg whole, then squeeze its belly and engage the blade. After we planted a few doctored eggs, the snake stopped visiting. Our effort to raise rabbits for food was aborted because none of us could eat pets we had named Buck, Blue, and Molly.

We managed enough food to get by, and there were even a few days when we had beef to eat. One day, I suppose after selling the year’s crop of calves, we had four little pieces of round steak for

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7 Local residents talked about the government’s slaughtering cows to correct the market by reducing the supply. After digging a pit, workers herded cows and calves into it to be shot. I was told rifles got so hot they jammed before the last cow was dead and earth could be closed over the still-bleeding carcasses.
Wanting a Seersucker Suit, 1933-1952

lunch, fried country-style with a flour crust. C.K., a boy my age who lived several farms over, had walked two miles to play, and he stayed to eat. My dad sat to my left, at the end of the table; I sat on a side facing the kitchen; C.K. sat at the end next to the window; and my mother sat with her back to the kitchen. The plate with four pieces of meat passed first to my dad, who took one piece of the thinly sliced steak. It passed to me, and I knew to take only one portion. But then it passed to C.K., and my playmate did not hesitate before raking both remaining pieces of meat onto his waiting plate. Gentle soul that she was, my mother did not claim her portion from my guest. But the meal lived in her memory for years, even after food became plentiful.

The fried steak story stuck with me, not so much because I took note at the time, but because, for years afterward, my mother commented on the injustice of C.K.’s taking more than his share. I got her heavy lesson on justice, but I secretly defended my friend, thinking he was probably hungrier than we were. Justice was not simple.

We were not alone in our poverty. Virtually all local families suffered in varying degrees from the Great Depression, but I noted that some suffering was different from others. Sharecroppers with nothing to sell but their unneeded labor suffered a poverty of spirit that did not extend to debt-free, able-bodied landowners who grew food for their tables and reaped occasional income from crops or timber. A few of those farmers weathered hard times reasonably well. I also knew about a shadow community of outlying timber-cutters whose offspring had hands and, I suppose, feet adorned with extra digits. Affluence in that community meant accumulating enough cash to have the marks of incest surgically removed, leaving small white scars on otherwise normal hands.

The nearby town-folk were also different. They maintained a middle-class dignity that distinguished them from farmers who
struggled to produce cash crops, and, even more clearly, from the outlying inbred community. We were once members of the middle-class, and town people accepted us as fellow victims of an economic but not societal poverty. Social acceptance meant a lot to my mother, and it let me know I was not classified with the indigenous poor. My finger count was right, and our newly-constructed house had wood floors and linoleum. That was a cut above a schoolmate’s cleanly swept dirt floor.

People with money make a cavalier assumption that welfare takes care of all people without income, but FDR’s New Deal programs did not fit our particular poverty. Works Progress Administration (WPA) paid unemployed people to do public work, and Texas’ Aid for Dependent Children (AFDC) helped children in single-parent households. My dad could not work, but he lived in the house, so we dropped through the welfare crack. Our acceptance as middle-class victims of misfortune brought a modest favor that might have been denied to equally impoverished sharecroppers. Simply stated, I was a welfare cheat. Mr. Nelson, the local AFDC administrator, occasionally slipped my mother a bag of beans and a block of cheese from the stock in his feed store. He cautioned her not to let anybody know. The knowledge she had broken the law was as painful to her as the shame of welfare. She stopped accepting the handout, even though we were often hungry and illegal beans and cheese might have been ours for the asking.

8 Later known as the “Works Project Administration.”

I also got welfare underwear and welfare overalls on the sly, probably along with the beans and cheese. Welfare underwear came in three sizes, small, medium, and large. I was too scrawny for even the small size, but drawstrings sewn onto each side of the white boxer shorts could be tightened so they fit without falling off. I am sure many of our rural contemporaries wore their out-of-sight underwear, but only the very poor wore welfare overalls in public.

There was nothing wrong with overalls as such. Every male in East Texas who was not a banker or shopkeeper wore them. But nobody wanted to be seen in public wearing welfare overalls. Their design and cheap fabric distinguished welfare overalls from the store-bought variety and made them a visible badge of poverty. Over-the-counter overalls came in a popular striped fabric, and they had bib pockets to hold pencils and tobacco. Welfare overalls came only in bright blue, and their skimpy bibs had no pockets. After all, people on welfare had no need for bib pockets to carry expensive luxuries such as pencils and tobacco.

Well-meaning charity gave me a precise meaning for the adage in Acts 20:35 that it is more blessed to give than to receive. One Christmas when I was four or five years old, Bill Long, the local pharmacist, drove to our house with the basket of fruit and candy that the Lions Club distributed to welfare children. My mother cried at the shame of being so classified, and Mr. Long left in an uncomfortable hurry. Neither he nor I felt good about the gift. I knew then, and I know now, it is not blessed to receive.

A single grocer and one dry-goods merchant extended us modest store credit, well aware that payment was chancy. I was grateful, but embarrassed, that we had to charge my school shoes at Williamson’s Dry Goods store so I wouldn’t be barefoot in winter as well as summer. I viewed the word credit itself as a badge of shame until 1958, when American Express turned it into a middle-class status symbol.
Medical care was not a problem. Dr. Carriker was accustomed to getting dressed fryers instead of cash, so a couple of range chickens could buy my vaccinations. I did not require medical care often. I credit my good health, then and now, to a water supply that guaranteed either fast death or lasting immunity from disease. Our tin roof captured rainwater that flowed untreated through open gutters into a red cistern that sat on brick pillars by the side of the house. We drank that untreated water, enriched with the residue of animal carcasses, bird feces, and whatever else flowed from the roof. The cistern’s output pipe was placed a foot above the tank bottom to avoid contamination from the black sludge that filled several wheelbarrows the one time the tank was cleaned. Attempts to find well water near the house failed, despite the best efforts of Mart Mason, the local water witch.

A trace of our former middle-class affluence appeared one night without warning when I was five or six years old. The family’s former maid in Crandall, Bertha, showed up pleading for shelter. Her bruised face showed that her husband had beaten her, and her presence showed she had somehow traveled 120 miles to Cushing. Bertha lived in our milk shed through Christmas, when her husband came to apologize, said he wouldn’t do it again, and took her away. She and I had spent a lot of time talking, and I was sorry to see her go.

I was not particularly aware of racial segregation’s cruelty until I overheard my dad and Demps McGowan discussing whether Demps should try to vote in the Democratic primary. Demps was an African-American neighbor whose wrinkled face bore a perpetual smile. He owned his farm, and he was respected by white and black alike. Demps may not have descended from typical plantation ancestry. His distinctive, high-pitched, musical voice attended a dialect I have heard only one other time—a Houston doctor hired by a life insurance company to give me a physical sounded so much like Demps I wanted to ask his background, but didn’t. In addition
to playing recreational dominoes with Dad, Demps once ground a precious Depression dime into voodoo powder to cure dad’s paralysis. It didn’t work. Demps and his wife Mertie seemed to weather the Depression handily with home-grown food. Demps always wore freshly laundered, striped overalls when he came to our house, sometimes bringing turnip greens and other vegetables.

The talk about Demps’ voting happened before 1944, when Smith v. Allright\textsuperscript{10} declared the Democratic Party’s exclusion of black voters was unconstitutional. Voting law wouldn’t have mattered in Nacogdoches County, where a black man’s casting a ballot would have been as hazardous after 1944 as before. I sat in our combination living room and bedroom while Dad and Demps discussed whether his vote was worth the risk of lynching. I don’t remember their conclusion, but I am pretty sure Demps didn’t vote. I know the Klan didn’t ride. I didn’t understand what it was all about.

When I later asked why Demps couldn’t vote and what the Klan was, my mother told me about Dad’s encounter with the Klan over feeding hobos in the Crandall cafe. I asked who these Klan people were, and she warned me not to try to find out. I wondered about some of the people I knew in Cushing. The banker? The grocer? The Chevrolet dealer? Could they be Klan riders? I could not understand why anyone would want to hurt Demps. I know Demps lived into the 1950s, and I hope he and his wife Mertie cast at least one vote before they died. I have some recollection of a reported lynching in another county, but, as far as I know, the races near Cushing obeyed the complex rules of segregation and lived peacefully in close proximity. I learned enough before and after I left East Texas to understand the local saying “Southerners don’t care how close black people are as long as they don’t get uppity;
Yankees don’t care how uppity they are as long as they don’t get close.”

Public school segregation was brought home when I learned my two earliest playmates had to go to the “other” school because of their color. Thad and Thelma Tips were the children of Bill Tips, a widower who lived in a tiny rent house on our farm. Bill had lost a set of toes when a train ran over his foot, and his pronounced limp let me know how important toes are. Thad and I were both about five years old. We wrestled for dominance and swam bare-ass in Dill Creek, our pasture water supply, while Thelma, who was a few years older, watched protectively from the bank. Later, during the 1944 Dewey-Roosevelt campaign, my aunt explained I should be a Democrat because “the Republican Party is the nigger party.” This revelation prompted me to announce at age eleven that I was a Republican. There was one other local Republican, and Dwight Eisenhower rewarded his loyalty by naming him Cushing Postmaster in 1953, thereby putting James Heaton, the Democrat, out of a job. I voted for Richard Nixon in 1960 as a faithful Republican before realizing his Southern Strategy had reversed my aunt’s earlier, true in its day, assessment of Republicans and Democrats.

World War II finally brought rural East Texas out of the Depression, albeit at great cost. In 1942, young men went to war and old men went to Beaumont to work in the shipyards. I was too young for the army or the shipyards, but the combat deaths of people I knew brought home war’s reality. Hedley Cameron, a sharecropper who had lived briefly in a shack in our back pasture, died in a bombing run over Italy. The John Satterwhite family, whose farm adjoined ours, lost their son, John Lamar, in ground
Wanting a Seersucker Suit, 1933-1952

fighting in Italy. ¹¹ Four of my cousins served without injury, three in the army and one in the navy. Another cousin, Kitty Mae, volunteered as a WAC (Women’s Army Corps) and never saw combat.

The War also brought us out of the Depression. Wholesale departures for war and wartime jobs left the local school district short of teachers. It was almost nightfall in spring of 1942 when Roy Self, the local school superintendent, drove out to the farm and offered my mother a nine-month teaching job at $120 per month. ¹² She didn’t cry until he left. It must have been her first moment of pure joy since my dad became ill. She was lucky to get a teaching job without a college degree. Her permanent teaching certificate, awarded after a couple of years of Normal School, ¹³ qualified her to teach in public school, but she had to take college classes every summer to maintain her certification. She retired from teaching second grade twelve years later, never having earned a degree.

My mother’s salary paid a few debts, saved the farm from tax foreclosure, got the Chevy off the blocks, and supported our new life of comparative prosperity. A stable income did not ease my dad’s frustration that he couldn’t contribute to family income. Somehow, he managed to drive the revived Chevy, and for a few months he and I peddled diesel-fueled room heaters at fairs and


¹² This figure comes from Lone Star College, American Cultural History: 1940, http://kclibrary.lonestar.edu/decade40.html (December 2, 2011). I recall the actual salary as being more like $90.00 per month, perhaps because my mother had no college degree.

other local public gatherings. I went along to set up the little
display. I don’t think we sold enough heaters to pay for gas, and he
went back to sitting in a rocker and listening to the battery radio that
brought war news at 5:00, followed at 5:30 every week-day by the
adventures of Jack Armstrong, the All-American Boy; then Terry
and the Pirates; and on Monday, Wednesday, and Friday, The Lone
Ranger. I followed war news religiously, hearing about Bataan, Iwo
Jima, and Tarawa, whose geographic location meant nothing. By
1945, the news was mostly good and the end seemed in sight. Dad
was still uncomfortable living off my mother’s labor, and he wrote a
radio mystic named “Madame Marie Nobel,” asking whether our
farm would ever produce oil or gas. She replied that it would, but he
would not see it.

Madame Nobel was right on both counts.

My dad died in August, 1945, one day before my twelfth
birthday, one month before World War II ended, and two years
before Humble Oil & Refining Company decided our 160 acres
overlay a productive gas field. It took another eight years for the
lease royalty to provide my mother a modest retirement income
supplement.

After the funeral guests left, my mother told me to take my
dad’s place at the table. A few days later, she asked me whether we
should sell the farm and move to Houston, where her brother said
she could buy a four-unit apartment house for about what the farm
would bring. I tried to look wise when I said, “No.” Even at twelve
years old, I knew that raising calves for the market in 1945 was a
better bet than running a boarding house in Houston. This was a
heavy burden for a twelve-year-old, and it reinforced my feeling
that I was always too young for whatever circumstance I was in. My
August birthday made me the youngest boy in my class and ensured
that I would always lose the playground scuffles with my
contemporaries.
School in Cushing was dull because, apart from World History and Algebra, I already knew most of what we studied. I never learned any World History because the teacher, Ella Jenkins, read us a contemporary novel instead of the assigned text. She explained that we would not study the history book because it said the Catholic Church was the only church in Europe for the first few centuries, whereas, “We all know the Baptist Church was begun by John the Baptist before Christ was born.” I learned a little Texas History from a comic book published by Magnolia Petroleum Company. When the opportunity appeared to leave public school a year early, I took it.

I skipped the eleventh grade by taking summer courses at Stephen F. Austin State College’s Demonstration High School (SFA) where education majors got practice teaching experience. Commuting with my mother to Nacogdoches saved me from the boredom of the farm, and the courses counted for high school credit. When it became clear I could finish high school a year early, the Cushing Superintendent put me in senior classes. That was a good move. The older boys knew they could beat me up and didn’t need to prove it. I enjoyed my final year of high school, serving as a virtual class mascot.

It is misleading to say it, but, in truth, I never graduated from high school. By fall of 1949, thanks to summer school, I had earned the 15-1/2 high school credits required for college enrollment, but not the 16 credits for high school graduation. I registered as a freshman at SFA in the fall of 1949, twenty-six days after my sixteenth birthday, paying less than one hundred dollars for the semester’s tuition and books.

College was a lot more fun than public school. My mother had used her share of Humble Oil’s lease bonus to buy a 1948 Plymouth that I used for a year transporting students from Cushing to college and back. I carried five students daily at five dollars per
passenger per week. The car bore
a serious dent behind the left rear
door.\textsuperscript{14} Chrysler products of that
generation had “suicide” rear
doors that opened from the front,
and when Poochie Penny swung it
into the slipstream at fifty miles an
hour, the door folded back and left
a mark of design stupidity that
graced most of those sedans. Another passenger, Charles “Spooky”
Bunn, laughed and said Poochie just wanted to spit. My career as a
paid driver ended in the last week of my freshman year when Vesta
Bratt, my college typing teacher, recommended me for a clerk-typist
job at Hoya Abstract and Title Co. J. R. Gray, who managed the
abstract company, was the son-in-law of Charles Hoya, a wealthy
Nacogdoches land surveyor who began the business. Odie V
Tannery was Mr. Gray’s office manager.

Working meant I could buy my own car. For East Texas
teenagers, automobiles translated into power, freedom, and
achievement as much as transportation. I later observed that many
twentieth century lawyers also regarded cars and other toys as
important for the same reasons, and they chose them with the same
sense of style they applied to Rolex watches, tailored suits and
Italian shoes. This narrative occasionally honors that connection by
including a representation of an automobile that may say something
about the owner. I tapped my bank account to buy Squash Lloyd’s
1949 Ford and handed the Plymouth back to my mother, ending her
dependence on me to get to and from her teaching job. Having my
own car let me participate in teenage conversations that compared
Fords with Chevys, argued whether gutted mufflers sounded better

\textsuperscript{14} Photo of 1948 Plymouth: \url{http://www.allcarcentral.com/Plymouth_pix-7.html}. 

32
than smittys, and lied about how fast we drove last night on a deserted road.

Still sixteen years old, I began to cover college expenses out of my sixty-cent-an-hour, almost white-collar, almost professional, part-time job of filing index cards, typing copies of recorded conveyances, and binding abstracts of title. Most of the abstracts were ordered by Humble Oil to clear title for their gas units that eventually included our own family farm. I later learned that I practiced law without a license by filling in deed and mortgage forms as instructed by my employer.

The job also provided my first ethics test.

One day, Odie V handed me a blank royalty deed with penciled instructions for preparing it. I turned to my typewriter to type in the data, but then I focused on the name of the grantor. I was supposed to prepare a royalty conveyance from Demps McGowan and wife Mertie McGowan to a local royalty buyer. I recognized the buyer as a speculator who paid less than others for whom we also prepared royalty deeds. I got up from my typewriter and went to the back office to tell Odie V about our family relationship with Demps and Mertie. I asked whether I should tell Demps to talk with Jewell Byrd, another royalty buyer. She listened patiently before saying the first buyer was our client, and interfering with his deal would be unethical.

I revisited this event periodically during the years that followed. It was obvious, even at the time, that she was right about business ethics. For a while, I was simply distressed that I couldn’t counsel Demps to get a better price. But a few years later, I questioned my own paternalistic reaction. I had automatically assumed I knew more than Demps about the business of selling royalty and what he should do with his property. But all I really knew was how to fill in the blanks and a little bit about going prices.
What bothered me after years of reflection was that my uninvited advice would have been a subtle form of racism. Demps was a man, well over twenty-one years of age, and he was entitled to make his own decisions. I was not his parent or advisor. As it turned out, Demps’ land produced gas, and he would have been better off not selling any royalty. But if the well had been a dry hole, he was better off selling royalty at any price he could get. The decision to sell or “ride the well down” belonged to him and him alone. I am glad my early lesson in ethics saved me from doing something that would have been inappropriate at an entirely different level.

Odie V gave me another useful insight on law’s political side when she described an ongoing District Court trial. Locally renowned trial attorney Vernis Fulmer had sued a Nacogdoches store owner on behalf of a client. Fulmer was a natural performer who cultivated clients and juries by his Sunday gospel-singing radio show and “all day singing and dinner on the ground” events that provided rock star entertainment under a thin guise of spiritual piety. The Nacogdoches establishment despised him. Odie V’s story was that during the entire trial, a contingent of local business owners filed into the courthouse and sat behind the defendant as a show of support. The jury got the message and, as I recall, poured the plaintiff out. She added with some pride that our boss, J. R. Gray refused to join the display. This sort of establishment politics may have contributed to Fulmer’s disbarment in 1969 for barratry.16

15 Ancestry.Com, Message Boards, “My great-grandmother’s (Mary Fulmer Whitton) nephew was Vernis Fulmer, of Nacogdoches, Texas. He was known as the ‘Percy Foreman’ of East Texas, because if you were guilty, I’m told he could get you off. A former president of the Texas Trial Lawyer’s Assn. was introduced to me years ago, and he conveyed that some years ago, and the story I heard he was collecting rent from a tenant and entered the person’s home to do so. God rest his soul.” http://boards.ancestry.com/thread.aspx?mv=flat&m=2048&p=localities.northam.usa.states.texas.counties.nacogdoches

Wanting a Seersucker Suit, 1933-1952

Politics probably was not involved in 1975, when a jury assessed him $150,000 damages for shooting Sam Thompson in the leg with a .22 rifle.¹⁷

My clerk’s job taught me a lot about real estate records, deeds, mortgages, oil and gas leases, and how to type like a demon. It also introduced me to local lawyers who, along with Moss Adams and Kelly Bell, used the abstract records free of charge.

Neither Odie V. nor J. R. Gray was a lawyer, so the office practiced law without a license every time I drafted a deed. It seemed unimportant at the time, but several years after I left for Houston, the Nacogdoches Bar Association held a secret meeting and voted to enjoin Mr. Gray from writing $10.00 deeds. I still consider that a terrible insult to an honorable man whose crime was so small and whose generosity to the community of lawyers was so great. As Odie V. said, all they needed to do was ask him to stop.

I think being a lawyer was Mr. Gray’s unrealized ambition. He runs A.A. White a close race as the most impressive and honorable person I ever met. His wife, Clara Gray, was my silent advocate and supporter who, unasked, once paid the fine for a speeding ticket I picked up on my college commute. She owned a 1940 Cadillac Limousine¹⁸ driven by her chauffer and handyman, Hiawatha Metcalf. Hiawatha’s son, Willard, was very bright, and Clara Gray paid his way through


Wanting a Seersucker Suit, 1933-1952

Morehouse College. I had seen very few Cadillacs, and no limousines. I could only imagine what it would be like to ride in or drive one.

Clara Gray provided my first contact with the University of Houston. She heard about my law school ambition and introduced me to her personal friend, Lou Russell. Lou did many things for the University of Houston, including arranging jobs for potential students. She told me a wonderful man named A.A. White was dean of the University of Houston’s new law school, and she would arrange an introduction if I wanted to learn more about it. Even more important, she said the law school had an evening division, and I could find a full-time job to cover tuition and living costs while attending what she declared was the best law school in the state.

Meeting Lou Russell entwined my life for the next sixty years with the University of Houston. My 1949 Ford did its part, carrying me 163 miles to meet the founder and patron saint of the institution that is now the University of Houston Law Center.

![1949 Ford](http://www.toywonders.net/history/1949%20Ford%20Coupe/1949-ford-coupe.htm)

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19 Nicholson, In Time, note 18, page 311, states “Dr. Kemmerer had already located an extremely able director of placement services who would serve the University until her retirement almost 25 years later. This was Lily Lou Russell, an ex-teacher of Latin and USO (United Services Organization) executive who established and maintained sound relationships between the University of Houston and dozens of local and national corporations.”

Wanting a Seersucker Suit, 1933-1952
A.A. White, Founding Dean

File Photo, UH Law Center
CHAPTER 2. FOUNDING DEAN A.A. WHITE AND HIS LAW FACULTY, 1947-1956

*I told President Oberholtzer my ambition would be to make the law school better than the University.*

A.A. White, to John Mixon in the 1970s.

A bronze bust of A.A. White stands proudly on a pedestal in the Law Center’s Frankel Room. The patrician likeness might cause one to wonder what roles this striking, solemn man would have played as a movie actor. He had Henry Fonda’s angular face, dramatically adorned with bushy eyebrows. He exuded Jimmy Stewart’s kindliness and honest demeanor. A.A.’s own comment at the unveiling was, “I thought I looked more like Cary Grant.” I can imagine him as a hellfire and brimstone preacher or as President of the United States. The bust is a perfect image of the man who sat behind the desk in the dean’s office located in the ground floor—a euphemism for basement—of the M. D. Anderson building in April, 1952.

I had no idea what sort of person Lou Russell had arranged for me to meet. I knew nothing about law schools, and I had no basis for comparing the University of Houston with Baylor, SMU, UT, or Harvard. The promise of a day job brought me to Houston, and choice of a law school was secondary. I was not prepared when Dean White gently turned our conversation to unexpected connections between my early life and his new College of Law. He
said two of his best students also came from Nacogdoches County. The first he mentioned, Eugene Pitman, had posted the highest grade average in the history of the young school—an “A” average Dean White said would probably never be matched, and certainly not beat. I came to attention, not because I felt challenged to beat Gene Pitman’s grade average, but because Gene’s family lived about four miles from our farm. The Pitman patriarch, probably Gene’s dad, was referred to as “Preacher Pitman.” Although nicknames and titles in East Texas are not always rationally bestowed, I think he was a farmer and Methodist minister in a church outside of town. I had played cowboys and Indians with Gene’s cousin, Puggy, who was a year younger than I.

Hearing Eugene Pitman’s name was surprise enough, but it did not prepare me for A.A.’s next Cushing reference. Only slightly behind Gene’s unbeatable law grades stood Bill Irwin’s. It took a few seconds to register this was not just any Bill Irwin. It had to be Billy Brax Irwin, who was the “manager” on Cushing’s 1936 state championship basketball team. He and Gene Pitman had endured the same red dirt and pine tree landscape that so troubled my mother and from which I wanted to escape. Both had survived the Great Depression. Both were older than I, and both were World War II veterans. Most important, they had traveled the road to the professional life I sought. I already felt at home in this law school.

A.A. White’s journey to our meeting was a bit more complex. The founding dean’s history parallels Gene Pitman’s, Bill Irwin’s, and mine only in that he was raised near a small East Texas


town, and he did well in law school. The two A’s are a fluke. He was christened Ardine White. Once, when he had to fill out a form, some bureaucrat said he had to have a middle initial. So Ardine White put down another A. It stuck. 23

A.A. never wore welfare overalls. His family’s farm near Vann, Texas, located 85 miles away from Cushing, overlay a producing oil field. He graduated from North Texas University with a B.S. and then finished at the top of his SMU law class in 1935. 24 His nephew, Dean White, 25 told me, “Uncle Ardine’s family paid his tuition and keep,” so he did not have to work his way through SMU’s law school.

A.A.’s early life hardly foreshadowed his serious commitment to legal education. When I knew him, A.A. was a

23 This information comes from a telephone interview with A.A.’s nephew, Dean White, on June 15, 2011. According to PATRICK J. NICHOLSON, IN TIME, a similar event gave “Colonel” W. B. Bates his middle initial. In TIME, note 28, page 254 states “Colonel Bates told me that he sat next to his brother Jesse Watson Bates, in law school at the University of Texas, and “Judge (Dudley) Tarleton would read out your entire name when he called the roll. When I told him that I had no middle name, he said that ‘we will have to look into that.’ At the next class, he asked me what I thought about William Bartholomew Bates. That sounded fine to me, so that was it.”

John Mixon was my dad’s name, and it was also mine, with a “Jr.” tacked on. I always wanted a middle name so I could fit in with the Billy Bobs, Willie B., John Rays, and Vester Genes in my class. In college, I tried to promote the Jr. at the end of my name to become the middle initial, “J.” The administrator in charge of records at SFA said I couldn’t do it without a birth certificate. In the Coast Guard, I was “John (NMI) Mixon.” The NMI stood for no middle initial. One of my fellow officers called me John paren Mixon, a shorthand reference for the pervasive parenthesis.


25 This is not a misprint. Dean White was a law student at Bates College of Law. I thought he was A.A.’s son, but discovered he was A.A.’s nephew. He referred to A.A. as “Uncle Ardine.” Telephone interview with Dean White, June 15, 2011.
teetotaler, though not entirely by choice. It was his good fortune that Roy Ray, an SMU law professor, took note both of A.A.’s talent for law and his affection for alcohol. The deadly appetite, though controlled when I knew him, remained strong in his memory. As dean, he did not conceal it. When I told A.A. in the 1970s that I was planning a trip to Germany, a faraway look came into his eyes and he said wistfully, “Oh, how I used to love those sweet German wines.”

After practicing law for a time in Tyler, A.A. spent a graduate year at Columbia University Law School, where he met Walter Gellhorn, one of legal education’s monumental figures. That 1941 experience undoubtedly shaped A.A.’s vision of legal education. World War II sidetracked whatever A. A had in mind for his Columbia graduate training, and in 1942, he joined his law school mentor, Roy Ray, as a lawyer and bureaucrat in the wartime Office of Price Administration. The War ended in 1945, but A.A.’s government job continued until 1947. He told me he quit the agency when his colleagues began discussing how to perpetuate their jobs in peacetime.

Legal education was on A.A.’s mind in 1947, when E. E. Oberholtzer advertised for a dean to start his new law school. By then, whatever excesses A.A. manifested in law school had matured into strong character and self-discipline. A single interview told University of Houston administrators that A.A. was their dean if they wanted a first-rate law school. Creating a lesser law school would never have crossed his mind. Years later, A.A. confided to me he told Oberholtzer at the outset that he was determined to make


the law school better than the University of which it was a part. This was not exactly what the university’s president wanted to hear, but he hired A.A. anyway.

The University of Houston and its predecessor, Houston Junior College, were created to provide affordable higher education for local high school graduates who could not qualify for Houston’s highly selective Rice Institute. E. E. Oberholtzer, an enterprising Houston public school superintendent, founded and presided over the Junior College when it opened in 1927. Classes met after regular hours in San Jacinto High School’s classroom building at 1300 Holman Street, largely staffed by moonlighting public school teachers. Oberholtzer continued as President when the junior college morphed into the four year University of Houston in 1934. The new university sat on land donated by Julius Settegast and Ben Taub, and it held classes in buildings funded by oilman H. R. Cullen, who saw the open-door university as a godsend for working students seeking upward mobility.

For years, a ruling triumvirate of President E. E. Oberholtzer, his assistant, W. W. Kemmerer, and business manager, C. F. McElhinney, presided over the University. For this trio, academic quality was less important than tuition income. If UH

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started a law school, they expected it to produce its share of tuition dollars. The more law students the new College of Law\textsuperscript{29} enrolled, the more income it would produce. C. F. McElhinney was the force behind finances at University of Houston at the beginning, and he was still in charge for a couple of decades into my years at UH (he was hired in 1934 and retired in 1974). He faced a daunting challenge to make ends meet. If Oberholtzer or Kemmerer had any doubt about the balance between solvency and academic quality, “Mr. Mac” was there to set them right.

Night classes staffed by part-time professors produced tuition income without much cost except for air conditioning. Whatever might have been his independent choice, A.A. White had to have an evening division. I was glad he did because it accommodated my need to work to cover law school expenses. Many of today’s law students will graduate with $100,000 in student loan debt.\textsuperscript{30} I graduated with One thousand dollars saved from my day job. That was more than I accumulated in savings during the next ten years.

Day or night, graduates of the new law school had to be enterprising, competent, and independent. They were also very capable. At a time when other Texas law schools admitted students with 90 college hours and a flat C average, Dean White set his entry requirement at 90 hours with C+ average. The difference between C and C+ was significant before grade inflation virtually eliminated the grade of C, and the requirement probably limited enrollment to the upper half of potential applicants. A.A. told me his entry

\begin{footnotesize}
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\item[A.A. White had to negotiate the “college” designation to prevent administrative supervision by the College of Arts and Science instead of direct reporting to the University’s executive dean.]
\item[Including my own granddaughter, a third year student at The University of Texas Law School in 2012.]
\end{itemize}
\end{footnotesize}
requirement was aimed primarily at screening out marginal students from the University of Houston, whose grading A.A. saw as less rigorous than other schools of the day. He said he departed from the C+ requirement in only one case: a Yale graduate with a bare C average was accepted in my evening class. A.A. believed a C from Yale was at least equal to a C+ from UH. His faith was justified. The C student graduated near the top of his law class and enjoyed a long and successful practice with a California law firm. Any disparity in UH undergraduate quality has diminished over the years, and today’s graduates from UH, and particularly from the Honors College, are very competitive.\footnote{A 1977 Law Center publication indicates that the law school began in 1947 with 28 students and one unnamed faculty member. A more credible number is the 66 student count through the efforts of the current administration, the University has moved into Tier 1 status as measured by the Carnegie assessment of Research Institutions and by the Princeton study of Best Universities. The undergraduate student body remains spotty but becomes increasingly strong each year. Along with one of the nation’s most successful Honors Colleges, JD student at the Law Center remain among the best students on campus. While some of our best students come from UH undergraduate, our primary undergraduate feeders for the JD program are University of Texas and Texas A&M.}

Dean White could not run his new law school without staff, faculty, and students. He filled the single staff position with multi-talented Mabel Smith, who served as dean’s secretary, librarian, and assistant professor. Petite and grey, Mabel must have worn her radiant smile 24 hours a day. In her spare time, she made everybody feel at home. Ruby Cordrey took over part of Mabel’s tasks by serving as Dean White’s part-time secretary. Along with most other male students, I had an unfulfilled crush on this tall, pretty, light-red-haired undergraduate student.

A 1977 Law Center publication indicates that the law school began in 1947 with 28 students and one unnamed faculty member. A more credible number is the 66 student count...
contained in Dean Newell Blakely’s 1957-58 report to the University. Either number would put a heavy teaching burden on the founding dean who also hired teachers, dealt with University administrators, interviewed students, determined curriculum, oversaw finances, and started a law library. For years, I knew the unnamed faculty member only as “Dr. Roberts.” I learned that his first name was Lewis while preparing this chapter. When he joined the new law school as its only faculty member, Roberts was a 77-year-old retiree from the University of Kentucky Law School.\textsuperscript{33} He had a national reputation as a legal scholar, and he was the bedrock on which A.A. built his law school faculty. Roberts had left the faculty when I arrived in 1952, but his immediate successors were worthy and impressive. The full-time faculty I met had expanded by four members, Newell Blakely, Simon Frank, Dwight Olds, and C. W. (Bill) Wellen.\textsuperscript{34} During my student years, Dean White added Barksdale Stevens and David Vernon.

Dean White was a calm, considerate, and thoughtful teacher, best illustrated by my own embarrassing experience in his Torts class. I was doodling and getting the drift of material that others were discussing in excruciating detail. Dean White had not called on me all semester, and I was only half awake when I heard my name. The case was Palsgraf v. Long Island Railroad,\textsuperscript{35} the most important case we would study during the semester. Palsgraf was decided by Judge Benjamin Cardozo, an inventive judge with

\textsuperscript{33} See Dedication to Lewis Roberts, 36 KY.L.J. 3 (1947-48).


\textsuperscript{35} 248 N.Y. 339, 162 N.E. 99 (N.Y. 1928).
an unerring sense of justice. When traditional rules of law stood in his way, Cardozo’s genius enabled him to pick bits and pieces from traditionally decided cases and reassemble them so deftly a casual reader would never see that the judicial craftsman had changed prior law beyond all recognition, presumably for the better. I had heard my classmates talk about Palsgraf, and that familiarity lulled me into thinking I understood the case. Unfortunately, I didn’t.

*Palsgraf* involved a passenger who ran to catch a train while carrying a bag of fireworks. A railroad employee gave a hand, but the passenger’s package fell, exploded, and caused a falling scale to injure Mrs. Palsgraf, who was standing on the platform. She sued the railroad. A child could tell that the Long Island Railroad had done nothing wrong, but the lower court held for Palsgraf. Precedent and traditional tort law did not provide a clear rationale for the commonsense conclusion that the railroad was free of fault. This vacuum enabled the great judge to develop new doctrine, and Cardozo did so with relish. His opinion is a pastiche of cause and effect, limitations of human thought, and common sense that has to be read several times to be comprehended.

On the way to a standing position, I skimmed the first page and did a pretty good job on the facts. But I hadn’t the slightest idea how Cardozo decided the case, much less comprehend his monumental analysis of proximate cause. A.A. spent forty-five minutes delicately feeding words to me instead of hanging me out to dry as I deserved. As gentle as he was, the entire class knew the truth. The experiment taught me more than proximate cause. I read the assigned cases more carefully from then on.

I would like to characterize A.A. as a dynamic teacher, but memory of early morning Anti-Trust classes keeps me from doing so. I took the course while studying for the bar exam and working forty hours a week at my “part-time” job. A.A.’s thoughtful and balanced discussion whether aggressive market behavior amounted
to healthy competition or monopoly behavior could not keep me from nodding off at 7:30 a.m.

Concern about justice and law’s interaction with society pervaded all of A.A.’s classes. In Torts, he asked searching questions about how law ought to allocate losses, not merely how traditional rules did allocate them. Classroom discussion about such issues often became tedious, and we students longed for a simple statement of what the law “is,” without worrying about what it “ought to be.” Ignoring what ought to be was not possible, because, for A.A., law was not static. He was always ready to expand traditional law into new territory if justice or good sense required. For example, he once assigned my fellow student, Roland Baker, and me parallel research papers inquiring whether United States courts might enforce the Universal Declaration of Human Rights provisions of the United Nations’ Charter\(^{36}\) without implementing legislation. The question was not a benign intellectual exercise. Joe McCarthy was in his ascendancy, and right-wing politicians were vigorously attacking the United Nations in general and the Charter’s human rights provisions in particular. Strident demands to impeach left-leaning Chief Justice Earl Warren were everywhere. So was criticism of the United Nations. On my route from Union Oil Company’s office on Holcombe Boulevard to the law school, I passed a block-long wall on North McGregor Drive with four-foot letters asking enigmatically “Get US Out of UN and Why not?” Houston lagged behind Dallas in its hatred of liberals, but A.A. still risked criticism for looking at the Human Rights issue without a predetermined bias against it. Not fully understanding the significance of the matter, I read twenty or so Supreme Court cases searching for a rule based in precedent to answer the question. Both Roland and I wrote traditional research papers concluding that

precedent supported enforcement of the Human Rights provisions as a self-executing treaty without Congressional legislation. A.A. liked our conclusion, and he urged us to submit a co-authored paper to *Yale Law Journal*. The journal turned it down with a note saying we did a nice job describing reported cases, but we did not sufficiently examine what the law *should* be. It was puzzling to me because at the time I did not see a difference between what law “is” and what it “ought” to be. Neither did Newell Blakely.

Newell Blakely, not A.A. White, was the College of Law’s most respected teacher of law. He taught my evening section of Contracts before leaving for a year of graduate law study at University of Michigan in September, 1953. When I first saw Newell, I was struck by his gaunt appearance. I was a 135 pounder at 5’8”, but I recall Newell as even thinner and a bit taller. His dark hair was cut to two or three inches on top, shingled on the sides, and combed straight back. He later adopted a crew cut. His skinny and fairly long neck stuck straight out of an oversized collar that occasionally sported a black bow tie. He sometimes wore a seersucker suit of the style I so longed for when I practiced law without a license in Nacogdoches. Newell’s youthful appearance did not diminish students’ respect for his ability as a teacher. By the time I arrived, Newell was already a legend.

Newell was born and raised in Gurdon, Arkansas. If you didn’t know where Gurdon was, he would tell you it was fifteen miles from Arkadelphia, as if that helped. He earned a B.A. from Ouachita Baptist College, a Ph.M. in speech and drama at the University of Wisconsin, and in 1947, an LL.B from UT law school. In 1949, A.A. White plucked thirty-year-old Newell from his two years of law practice in Harlingen, near the Mexican border,

and put him in the classroom.\footnote{1970 A.A.L.S. Directory of Law Teachers 100.} Professor Dwight Olds said he thought Newell ranked second in his summer graduating class. Newell’s biography does not indicate law review experience or graduation with honors, but, whether from training as a Baptist preacher at Ouachita, a thespian at Wisconsin, lawyer at UT, or natural talent, Newell possessed a sense of timing that he used perfectly as a teacher. Clearly, teaching law was his forte, and he was master of the art.

Over-prepared and formal to an extreme, Newell began class by turning to the blackboard and erasing whatever marks remained from the last class, and then, at the tick of the hour, he placed his watch on the desk to signal the importance of time and attention. He took a mechanical pencil from his breast pocket, held it 18-1/2 inches in front of his focused eyes, adjusted the length of the lead, and said in a soft, yet commanding voice, “Please answer the roll.” If he had been a character in Genesis, you would expect him to call, “Mr. Adam . . . Miss Eve . . . ,” as students depicted in a law school follies presentation some twenty years later.

Newell did not lecture. His class was strictly Socratic, but the answer he expected was not open-ended. He wanted a precise response that had to be defended against his razor-sharp questions. After choosing a student at random, Newell issued a deceptively polite invitation: Miss Smith, would you please stand and recite the case of \textit{Hadley v. Baxendale}? He listened respectfully as Miss Smith stumbled through the mill owner’s suit against a transporter to recover profits that were lost on account of delay in delivery, and then he asked that inevitable, probing question, so softly voiced and
polite that in retrospect, she would wonder why she was so intimidated.\(^{39}\)

His questions always began with the same terrifying word, following a perceptible pause: “Suuuuuppose. . . Miss Smith, that. . . .” The introductory word was drawn out to give the student a few seconds of unmitigated terror while wondering what the question would be. When the query finally emerged and the student responded, success was confirmed if Newell asked a follow up question. He would begin with a long pause, then say, . . . now, Miss Smith, suppose instead that. . . The “suppose instead” signaled victory of a sort, because the alternative was crushing public humiliation if Newell said, again from the soul of Southern gentility, “Thank you, Miss Smith. You may be seated,” followed by “Mr. Adams, how would you answer that question?” That was, of course, Miss Smith’s signal she would forever live with the disgrace of not having been as prepared as Newell expected. At least, she could now relax and watch Adams jump to a standing position and march down the demanding path of further “supposing.” Newell would not give her a chance for redemption by calling on her a second time. It is not clear whether student questions were allowed because none of my classmates dared display less than full understanding, and nobody wanted to challenge Newell.\(^{40}\) The experience was so powerful that some students dropped out of school after their first encounter, even if they performed capably.

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\(^{40}\) A former student reports that she did question the constitutionality of Texas’ law criminalizing homosexual conduct in Newell’s Criminal Law class, and she said that he displayed some irritation and sat her down promptly. Interview with Lisa B. on January 20, 2012.
Stupid answers were no sin in Blakely’s class. They were expected. Unpreparedness, on the other hand, was never acceptable. A first semester classmate in Contracts, when invited to recite, said humbly but honestly, “I’m sorry, Professor, but I haven’t read the case.” Blakely paused, reached into his pocket, took out his mechanical pencil, adjusted it once again 18-1/2 inches in front of his focused eyes, and said with his kindest voice, “Well, this happens so seldom we must make a note of it. You may be seated.” It didn’t happen again. Another student tried to recite by reading his commercial brief, but got so flustered he referred to the parties as “P” and “D.” Newell listened patiently and thanked the hapless pretender without asking a question. His wry smile signaled that this fellow was not long for the law. He was right.

As much as I admired Newell’s teaching as a matter of technique, it was Professor Simon Frank who was the most influential for my personal legal education.

Simon Frank differed from Newell in appearance, teaching style, and legal philosophy, except for one thing. Like Newell, Simon wore dark frame eyeglasses that heightened his intellectual presence. Unlike Newell, who always stood for the entire hour, Simon sat at a table in the front of the room. Newell displayed no emotion in class, but Simon waved his hands in exasperation when he disagreed with a judge’s opinion.

Simon Frank had a straight A law school record, and he was a member of UT’s very successful debate team. But it wasn’t

41 Email from Simon’s son, Robert Frank, to John Mixon, dated March 7, 2012. Robert also states, “To the best of my knowledge, he was the first Jew to be hired by a large firm. That happened because Judge Elkins wanted to get in the Banking and Savings and Loan legal representation. He went to Isadore Friedlander, who owned the largest S&L (Gibraltar) in Houston to get their business, and Friedlander told him he could have some if he would hire a Jewish attorney. I. Friedlander (as he was known) told Elkins that he knew just the one (my father was somehow
pure intellect or his discussion of justice that made Simon Frank my most influential law teacher. It was that he gave a midterm examination in my first semester. That exam shaped my entire academic career. I made a reasonable grade, but Simon did us the favor of reviewing our feeble efforts at the next class meeting. The first five minutes of his review revealed to me the secret of getting high grades. Enlightenment came suddenly when, waving his arms in mild disgust, Simon said “Most of you didn’t even mention negligence. You just started writing about the facts.” Aha, that was it. I should write an exam that showed I remembered the rules, reasons, and applications of the Tort law that we had spent the semester studying. I never again answered a law school exam without first putting on paper the “meat of the coconut” as another favorite teacher, Barksdale Stevens, called it. Fundamentals count in law, or at least on law school exams. And a long essay that starts with those fundamentals gets more points from most law teachers than a rifle-shot short answer that, no matter how “correct,” does not display an understanding of the structure, content, and policy issues fairly raised by the question.

Simon also taught Court Observation, an exam-free, two-week course that herded some twenty students through downtown courtrooms watching trials. Guided by Simon’s explanation of what was happening, I saw Houston’s best personal injury lawyer at the time, John Hill, engage in ritual battle with Butler & Binion’s best defense lawyer, Frank Knapp and his protégé Jack McConn. We watched the swearing-in of witnesses, direct and cross examinations, depositions read with dramatic emphasis, expert testimony with exhibits, objections, arguments to the jury, charges read, and jury verdicts returned. With law courses sandwiched related to the Friedlander family by marriage of a relative). After returning from the war, there was an issue between my father and Elkins about returning salary, and my father left. He came to teach several years later.”
between working hours, I never took Newell’s course in Evidence. Because I spent two weeks at the courthouse in Simon Frank’s course, I was able to prosecute and defend seamen before military lawyers as judges, and with lawyers on the other side with a fair amount of success. I have likened his course to learning to milk a cow. You don’t learn it out of a book. You learn by watching someone else do it, and then doing it yourself.

After I began teaching, Simon showed me I could write. He worked for a Big Time Oil and Gas lawyer who volunteered to write an oil and gas article, but didn’t want to do the work. Big Time delegated the writing to Simon, who paid me five dollars an hour to produce text tilted to what Big Time wanted to say. The value of this experience was not the five hundred dollars I earned as ghost writer, but the realization I could write a coherent article. Today’s law students get writing experience on law reviews and in seminars. We had no law review, and apart from A.A.’s paper, I never wrote anything but final exams. My name is not on Big Time’s article. Neither is Simon’s. But we both knew who wrote it.

As a student, I did not entirely appreciate the depth of Simon’s wisdom when he implanted the notions that my own opinion counted and I was a legitimate participant in the law game. These notions grew through the years and the search for the underlying soul of law came to absorb most of my academic career. When Simon Frank left law teaching in 1959 to provide more income for his growing family, legal education was the clear loser.

A combination of circumstances allowed me to thank Simon in an unusual way after his death in 1976.42 I was not disciplined

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42 Simon Moritz Frank, ancestry.com—Hous. Jewish Herald, buried at Woodlawn Cemetery, Beth Israel section, 1913-76
enough in law school to brief cases or take notes during class. Law, in its broad outline, came easy. I made good grades because I had a good memory and could type coherent—and very long—exam answers. At one hundred words per minute, I could produce twenty or more pages on my Smith & Corona portable to answer a three hour exam. My fellow students complained that the buzz of my typewriter made them nervous, so I took my exams in a room away from the rest. With Simon’s instruction to cover all bases, I put it all down and it paid off.

Instead of briefing cases, I drew cartoon figures in the margins of the casebooks. I was a decent cartoonist, and my images provided a personal shorthand that visually prompted me with the facts and holding of a case. If I had read *Palsgraf*, for example, I would have drawn a figure running after a train, a woman standing on the platform, and a package falling in her direction. That would remind me of the facts, and I would have used T/C: *J/Π* to say judgment for plaintiff in the trial court, then *Rev* to prompt that Cardozo’s opinion reversed the trial court. For a more complete brief on *Palsgraf*, I would have put down *Ø P/C*, for no proximate cause. That would be enough to wing an answer if called on to recite. When Dean White caught me without a cartoon, I was left hanging. Later, as a teacher, I developed a set of familiar characters that I drew on the board before or during class, hoping to reinforce students’ neural patterns by visual stimuli as well as by spoken and written words, but mostly to give me prompts for my own presentation.

I sometimes sketched other students or the professor. One night, I sketched Simon Frank. Years later, his son, Robert, was my student. After Simon died in 1976, I ran across the sketch. It was a reasonable likeness.
The Alumni Director framed the sketch and gave it to Robert Frank at an event honoring him for outstanding service to the Law Center. That memorial of Simon was more valuable to me than any notes I could have taken that night. Years later, Robert Frank’s daughter, Jennifer was also my student. I am honored that Robert’s will bequeaths the sketch to her.

I found Professor Dwight Olds impossible to draw. Dwight was an energetic, chisel-faced, middle-aged intellectual. His jaw line was too strong for a straight drawing, and a cartoon made him look like a monster. Any penciled representation of Dwight’s rimless glasses overemphasized their presence. His clinched smile was impossible to depict. Besides, I had to listen more and draw less in Dwight’s class. For Dwight, pure reason was a playground, and law was the only game he wanted to play. Students had to play it his way to pass his course.

Dwight graduated from the University of Kansas Law School in 1932, with Order of the Coif (top ten percent) honors. He taught law part-time at Tulsa University while examining land titles for Shell Oil Company. Dwight became so intrigued by a Texas real estate recording act problem that he quit his law job with Shell and enrolled in the University of Michigan’s graduate law program. His 1948 LL.M. enabled him to land a full-time job teaching law at Wake Forest University. Dwight spent the rest of his professional life trying to find all the answers to the entire law of property. And he believed there were answers that could be produced through reason and logic.
In 1950, A.A. enticed Dwight away from Wake Forest Law School after he had taught there two years. Recruitment was easy because Dwight didn’t like the Baptist university’s opposition to alcohol, and Houston was a better venue for him to study and write about the Texas Recording Act. Dwight was a Formalist legal scholar who produced dense law review articles that ordinary mortals had to read several times before they began to make sense—maybe. He assumed that readers knew all about his subject except for that single, obscure point his article was about to make. Dwight told me he read some 1100 cases for his masterpiece, a monumental tome on the Texas Recording Act that far exceeded most readers’ interest in the subject.

Students in the 1950s rarely questioned any professor’s classroom authority. The tradition that students stand to recite was reinforced by sharp commands when necessary. It produced at least one embarrassing incident when Dwight demanded that five-foot tall Arthur Slaughter stand when reciting. Art replied, “But, Professor Olds, I am standing.” A similar story that Fred Gaeke, who required crutches, rose unassisted at Dwight’s command is undoubtedly apocryphal.

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45 Gladys Jurchak Oakley remembers the event differently. She recalls it was David Vernon who commanded Fred Gaeke, who braced himself against the classroom wall when standing, not to slouch.
Try as he might, Dwight could not intimidate Roland Baker, my fellow author on the UN Charter paper. Roland had a varied background as radio announcer, wise guy, and stage hypnotist. I once tried to peddle a Law School banquet ticket to Roland, and he refused with the excuse, “I am sorry John, but all my assets are tied up in cash.” It took me a minute to figure that one out. Roland told me he performed his first stage hypnosis without any practice. He just read a how-to-do-it book, sold tickets, strode onto the stage, and called up volunteers who went into a trance at his command. Roland looked the part of a stage master with his jet-black hair, dark, deep-set eyes, and pale round face perched atop a large and somewhat unkempt torso. Roland’s chutzpah helped him deal with Dwight when Olds assigned us Future Interests cases to outline overnight and put them on the blackboard the next day. When Dwight assigned Roland a case, Roland said he didn’t have time to do it. Olds asked how he expected to pass the course. The answer was “I won’t have any trouble. I have a copy of your old exam.” That was true. Both Roland and I made A’s.

“Daddy Olds” preached his ideal rules with the bombastic delivery of a revivalist preacher seeking to save souls or condemn the wicked to eternal damnation. He earned students’ love, respect, and fear. The fear was well-founded. One group of students in a Future Interests course (now barely covered in basic Property, but then meriting a full three hour course) did not measure up to Dwight’s standards. The top grade in that class of six to eight students was 65—the minimum for staying in law school. The rest got probation-level grades.

Dwight was better at teaching law than at marriage. Sometime in the late 1950s or early 1960s, he telephoned me to come to his apartment, located a half-mile from the law school. On arrival, I found Dwight and his few possessions sitting on the stairway, waiting for me to drive him to a downtown single room occupancy hotel. His wife had physically evicted him before filing
for divorce. Dwight’s second marriage a couple of years later worked no better. He spent several years and many dollars trying to cure her various mental problems, even paying law students to play tennis with her as therapy for depression. After his second divorce, Dwight found happiness with Taftita, who owned a few producing oil wells in the East Texas oil field town of Kilgore. During an ill-fated courtship visit, Dwight drank too much, went to sleep on a sofa, and awoke with his right eye paralyzed, staring directly at his nose. The left eye worked fine. For several years, he trained his right eye to follow a penlight beam, back and forth, until it regained its focus. He and Taftita married and lived happily in a house near the University, within walking distance of the Law School.

Olds was a treasured mentor during my early teaching years, patiently explaining the property law I should have learned in his course. He never forgave me for allowing liberals to brainwash me in Yale’s LL.M. program, but he remained a close friend until he retired to live near Taftita’s oil wells some two hundred miles from Houston. Dwight spent his last years pushing a book cart in a Kilgore hospital.

A.A. White worked hard to select and hire his first faculty. He had recruited Newell from practice in Harlingen, Simon from Houston practice, and Dwight from Wake Forest’s law faculty. What he did not have was a professor with an Ivy League degree. In 1948, A.A. telephoned Harvard’s dean, Erwin Griswold, and said he wanted to add a Harvard graduate to the faculty. Griswold was not ready to send a prized LL.B. to Houston, but he did tell Clyde W. “Bill” Wellen about the opportunity. Bill had enrolled in Harvard’s LL.M. class to polish his top-of-the-class LL.B. from West Virginia University Law School. He was a World War II veteran who used his G.I. Bill to finance his law degrees, and he didn’t have a job. Griswold told Bill that Houston would be a good place to practice tax law, and he could build a law practice while teaching. Bill moved to Houston on that recommendation. After agreeing to teach
Oil and Gas Taxation, he discovered there was no book on the subject. Undaunted, Bill, Simon Frank, and a law student, Owen Lipscomb (a 1956 graduate), wrote a book that Prentice-Hall published, and that for some time remained the only work in the field.46 Robert Frank reports that royalties were still coming in as late as 1980.

One semester, prominent Houston attorney “Colonel” William B. Bates dropped by the law school. He wanted to discuss an oil and gas transfer proposed by H. R. Cullen to benefit the University and reduce his own taxes. Bill Wellen looked at the documentation and told Bates the deal was improperly structured and would subject all participants to substantial tax liability. Colonel Bates was incredulous, declaring that his best tax lawyer had designed the transaction. A few days later, Colonel Bates called Bill Wellen and told him to report for work at his law firm immediately. Bill had been right about the defective donation. When Bill replied that he had already signed a contract to teach the next year, Bates told him not to worry—he could do both jobs. Bill left teaching a year later and joined Bates’ firm, Fulbright & Jaworski, where he practiced tax law for more than fifty years.47

A.A. hired David Vernon when I was a second-year student. He was a spectacular professor. Dave was a Yankee, as any Texan could tell from his first spoken word. A Boston high school dropout, he joined the navy, went to college on the G.I. Bill, and earned a Harvard LL.B. in 1952.


47 Interview with Bill Wellen, February 17, 2012.
Dave capped his LL.B. with a J.S.D. from New York University, where he was a Food and Drug Fellow. He taught at the College of Law only for the 1954-1955 academic year, but left a permanent impression on all students who took any of his courses. We students tried to figure out what a Food and Drug Fellow was. It was, in fact, Dave’s ticket into law teaching. The fellowship provided money for his graduate study and did not imply any great interest in food or drugs beyond moderate and legal consumption. Although Dave taught a class or so as an instructor at NYU, we were the first school to enjoy his performance as a tenure track professor.

Dave was a joyous human for whom law teaching was high theater. He wore red socks every day, and years later, as Dean at the University of Iowa’s law school, red suspenders as well. The classroom was his performance hall where he and his audience had fun while talking about cases and the issues they raised. Unlike Newell’s class, Dave’s classes were open and free-flowing. His intellect was intimidating, but he did not intimidate. When not teaching, he sat in his office with collar open and tie askew, banging away on a Royal manual typewriter and spewing out law review articles to satisfy his J.S.D. requirements. As with any new professor, Dave could sometimes be caught in error by students. I once flagged him down on some point or another in class, and Dave

48 Photo and information about David Vernon
bombastically declared me wrong, wrong, wrong. That spurred me to do my first real research in law school. I worked late into the night to prove my position. More as show than substance, I stacked a half dozen library books at my classroom table, just waiting to revisit the point and declare victory. Dave denied me that satisfaction by keeping his gaze on the other side of the room until, at the end of class, he looked my way and his broad smile acknowledged that he had also done his research.

I took Dave’s class in Conflicts of Law and learned to pronounce *renvoi* almost as well as he did. The word itself impressed me, an East Texan who could barely speak English, let alone French which I guessed *renvoi* was. Dave was our first faculty alumnus to become a legal education star. He left at the end of the spring semester in 1955 for the University of New Mexico’s law school, whence he traveled to the University of Washington, and then, as Dean, to the University of Iowa. Along the way, he wrote six books and thirty articles and served a term as president of the Association of American Law Schools. Dave died in 2001. His son practices law in Houston. Dave’s sudden departure in 1955 for New Mexico created a faculty vacancy that I filled immediately after my own graduation.

The kindest of all my law professors was gravel-voiced and scholarly Barksdale Stevens. Barksdale had done it all before joining A.A. White’s faculty in 1954.50 He was short, his face was wrinkled and rugged, and he smoked constantly. Barksdale was smart. His law degree was from the University of Michigan, and he had done graduate study at Cambridge and Harvard. Barksdale had practiced law with Vinson & Elkins and Baker Botts before becoming a trial lawyer for Shell Oil Company. Barksdale taught part-time at South Texas College of Law and spent a short time on our faculty before his death in 1956. Barksdale provided a down-to-earth touch to go with scholarly classroom performance. He was never as scary as Newell or as idiosyncratic as Dwight. Barksdale’s trademark was an enormous black 1950 Buick four door sedan that, after Barksdale’s death, his widow sold to John Neibel, who was by then an active faculty member.51

Dean White hired former Court of Civil Appeals Judge Charles B. Walker, who had been involuntarily retired by voters in his judicial district, as a part-time Lecturer. In 1956, Newell Blakely hired the judge as a full-time, tenure-track professor. That was not a good move. Walker was a living example of legal induction, and

50 Barksdale Stevens (1893-1956), practiced law with the well-known Houston firms of Baker Botts and Vinson & Elkins before becoming a trial attorney for Shell Oil Co., and later was a law professor at the University of Houston: http://www.stcl.edu/library/archives.html.

one of my few really dull professors. He was willing to follow precedent without questioning the outcome in any case. Instead of extending or examining the conceptual reasoning of a case, he would listen patiently as a student recited, and then, without comment, he would read a half dozen supporting citations that we dutifully wrote down but never read. His only claim to scholarship was that he refuted Dwight Olds’ reasoned position that Texas’ five-year adverse possession statute protected only good faith claimants. Dwight said that, otherwise, there was no purpose in cutting the limitation period from ten years to five. Walker won the argument by telling Olds he had decided a case to the contrary in an apparently unreported opinion. And that was that.

A.A. White had to rely on a number of part-time teachers to staff classes, particularly at night. The common lore in the elite law school community is that part-time teachers do not measure up to full-time standards, and part-time students are not up to full-time standards. I did not find either to be true in A.A. White’s law school. Apart from Judge Walker, all of my part-time teachers were as qualified by education, temperament, and experience to teach law as any full-time professor.

Among my adjunct professors were Percy Don Williams, a top Harvard law graduate and former U.S. Supreme Court clerk, and Malcolm Wilkey, another Harvard graduate, who was later U.S. Attorney for the Southern District of Texas, a member of President Nixon’s legal staff, and a federal judge. One of the very best was

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Gibson Gayle, a young lawyer who had just graduated from Baylor Law School and practiced with Fulbright & Jaworski. After a few years, he was as well known as Jaworski himself.\textsuperscript{54}

Jack McConn became a part-time teacher when the assigned teacher, a young lawyer named Wood Taylor, learned he had brain cancer. McConn was a first rate teacher and a worthy successor to Frank Knapp as one of Houston’s elite insurance defense lawyers.\textsuperscript{55} Ben Schleider, a 1950 University of Houston College of Law graduate, taught Bills and Notes (now known as Commercial Paper), which provided my only serious grade challenge in law school. I had a leg up on negotiable paper because I approved payment of drafts attached to oil and gas leases in my day job after verifying we had signed up the right farmer. I knew what they looked like, I knew how they worked, and I knew Ben’s course as well as any I took in law school. My day-to-day acquaintance with the documents made me overconfident, and I didn’t study for Ben’s final exam. When I got the exam questions, I spent the first hour staring at them instead of banging away on my trusty typewriter. I learned that office knowledge did not take the place of serious study. By the time I got my act together, there was barely enough time to make a B.

Studying law with these marvelous teachers and students turned out to be more fun than working for an oil company. As a result, my priorities reversed, and sometime in my first year, I began to think of myself as a law student who worked, and not as an oil company employee who was a part-time student. Unfortunately,
after my first full year, it looked as if I would have to shut down both activities because my draft number was coming up. The Korean conflict had wound down in the summer of 1953, so I was not likely to be shot, but military service, even in peacetime, sounded as bad as life on the farm. Student deferments were available only for full-time students. Anticipating a call for induction, I dropped out of law school at the end of the 1953 fall semester, worked, and sulked.

The more I thought about boot camp, the more I missed law school. I could get a draft deferment by taking twelve hours per semester, but that could not be done in evening classes. I persuaded Union Oil Company to put me on an hourly basis so I could take a single day course and qualify as a full-time student. The draft board agreed, and I returned to law school as a full-time student and part-time worker in spring of 1954. In truth, I worked almost a 40 hour week by going to the office on Saturday, while regularly registering for 15 hour law course loads. If the school had a strict rule about working too many hours, I broke it.

My flexible schedule enabled me to graduate in 1955 while working almost full-time. It might appear that this left no time for social life, but that would not be true. I was close friend with several night students who rented a penthouse in a building next door to my modest apartment. Their front room sported a fourteen foot bar modeled after one built for movie star Esther Williams. The penthouse and its bar often accommodated twenty to thirty students and professors who drank whiskey and told lies about law school. David Vernon was a regular visitor. Newell Blakely and Dwight Olds dropped by occasionally.

The corps of students in the penthouse included Fred Sullins, a night student who came from Fruitland, Idaho, worked first at a Houston bank and later for Internal Revenue Service during the day, earned a J.D. and M.B.A. in evening classes at University
of Houston and started his own law firm after graduation; Bob Humphrey, a Texas A&M graduate I introduced to Union Oil Company, where he worked for forty years before retiring in the mid-2000s; and Prentice Hapgood, who, as a schoolboy had moved from Connecticut to Santa Fe after the death of his father, a Hartford architect. Prentice’s mother had taken a casual trip to New Mexico, and she was entranced by the low humidity that dried her freshly washed clothes overnight. Before he came to Houston to work for Hartford Insurance Company and attend law school, Prentice and his brother-in-law, Andy, made a tidy sum assembling New Mexico real estate for Glorietta’s Baptist encampment. Another tenant, John England, worked days at a freight forwarding company and spent nights studying law. John had a Galveston girlfriend, and one Sunday night he was too sleepy to drive back to Houston. He parked on the Houston side of the Galveston causeway, slept in his car, and woke the next morning ready to drive to work in Houston. Unfortunately, the causeway looks the same on both sides, and in his sleepy state he thought he was on the Galveston side. He panicked, turned his car around, and drove back to Galveston, making him a half-hour late to work.

Several law students paired with nursing students at St. Joseph’s Hospital, and four marriages resulted. These included Prentice Hapgood’s, John England’s, Joe Malloy’s, and my own.

As part of the penthouse crowd’s inner circle, I was introduced to Ballantine’s scotch, Playboy Magazine’s first issue, Mozart’s Polonaise, and late night parties. One story ought not to be told because the main character is still alive. Considering the circumstances, he is not likely to identify himself and sue. The penthouse oversaw a next-door building with an apartment occupied by an exotic dancer who left her blinds tilted upward, providing a clear view of her practice dances from above. After class, the penthouse residents bought popcorn at a nearby theater, sat on the third floor parapet, and provided their neighbor an appreciative
audience. One night, in an outrageous act of hypocrisy, one of the student-tenants, a pistol-carrying member of the Air Force Military Police Reserve, saw a passer-by Peeping Tom two floors down stealing a free show outside the dancer’s window. He put down his popcorn, picked up his service .45 automatic and fired a round successfully aimed to miss, but scare, the intruder. The shooter lost favor with the other tenants because the gunshot alerted the dancer as well as the peeper. She closed her blinds and ended the show—for good.
Faculty and First Graduating Class, May 1950.

Far left: Newell Blakely, Bill Wellen, Simon Frank, and A.A. White

File Photo, UH Law Center
CHAPTER 3. STUDENTS REARED LIKE ME, BUT MORE SO, 1947-1955

[Criss Cole was] one of ten children of sharecroppers James M. and Drucy Cole. He spent his childhood on a farm near Avery, Texas. He worked in the Civilian Conservation Corps near Golden, Colorado, before joining the United States Marines in 1940. He served in Iceland, New Zealand, and Guadalcanal. As a corporal, he was blinded in 1943 during a beach attack at Tarawa in the Gilbert Islands by a Japanese grenade, an injury for which he was later awarded a Purple Heart. He returned to civilian life, moved to Houston, completed high school work, worked for Reed Roller Bit and as a legal stenographer for the city's legal department, and took prelaw courses at the University of Saint Thomas. He received his law degree in June 1954 from the University of Houston law school.

Texas State Historical Association, memorial for Criss Cole (1918-1985)\textsuperscript{56}

\begin{figure}[h]
\centering
\includegraphics[width=0.3\textwidth]{Criss_Cole.jpg}
\caption{Criss Cole}
\end{figure}

When Criss Cole came to law school, A.A. White allowed him three concessions. \textit{First}, he could bring his guide dog to class if she behaved; \textit{second}, his wife Joanne or a student volunteer could read him the assigned cases so he could participate in class discussion, and \textit{third},

\textsuperscript{56} http://www.tshaonline.org/handbook/online/articles/fcobm. Photo provided by UHLC.
Joanne could read the exam questions aloud and transcribe the exact answer Criss dictated. She could not attend class and take notes. Other than that, Criss was held to the same preparation and exam standards as the rest of us. Criss graduated in 1954, served in the Texas Legislature from 1955 to 1970, and was district judge from 1971 until his death in 1985. I once called Criss for advice after a blind law student rebelled when I refused to let her set her own rules for transcribing exam answers. He said, “Tell her to get over it. She will have to work by other people’s rules if she practices law. The best thing that ever happened to me was when Dean White told me I could not have extra time on the exam.”

Criss Cole was, of course, a magnificent human being, and he could be the subject of an entire history. I have written at length about my own challenges, but how can my history or any history match Criss Cole’s? An answer is that each story is different, and there is no competition for the hardest life story. Criss, like many of my fellow students, stepped straight out of Tom Brokaw’s book. In my mind, they were, and they still are, *The Greatest Generation*. Consider Howard Pollock, who graduated with my class.

Howard was born in Chicago in 1920 and raised in New Orleans. He enlisted as a seaman in World War II and rose through the ranks to Lt. Commander before a grenade blew off most of his right forearm. In 1948, Howard and his wife drove the Alaskan Highway and homesteaded in Rabbit Creek. He left Alaska briefly in 1952 to begin law school at Santa Clara, California. Two months into his first year of law study, Alaska voters elected him to the Territorial Legislature. He returned to Juneau for the legislative term, and then resumed his law studies in Houston, partly to be closer to his New Orleans family. Howard used his hinged hook as a utilitarian appliance and for occasional comic relief, snapping it at anyone inclined toward pity. He introduced himself to strangers as “Captain Hook” and claimed to have killed a grizzly with a pistol. He displayed the rug as proof in the little space he somehow
Students Reared Like Me, But More So, 1947-1955

negotiated from Dean White as an office. Howard was a born politician. His fellow students elected him to represent the College of Law at a national meeting, and Howard returned as the national Student Bar President.

Howard was a wise and generous person. I was standing near the bar at a law school fraternity event and heard the bartender scoff when a youthful student innocently asked for Scotch and Coke. Howard was next in line, and at thirty-plus years with a hook for an arm, no bartender would mistake him for a novice drinker. Howard said, “Scotch and Ginger Ale, please. I always like to sweeten my scotch a little.” Never was so strong a message so softly delivered. The bartender lowered his head and poured. After graduation, Howard returned to Alaska, practiced law, and served two terms in the Alaska state senate. In 1966, he was elected to fill Alaska’s single U.S. Congressional seat, and then easily re-elected. 57 Howard lost a later race for Governor, and President Nixon named him Deputy Administrator of the National Oceanic and Atmospheric Administration. 58 Howard continued his illustrious career as a lawyer and political consultant, but never abandoned his love of the outdoors. On a trip to Alaska some twenty years ago, I learned he was leading safaris in Africa. Howard died in 2011 at age

57 http://www.boston.com/bostonglobe/obituaries/articles/2011/01/18/howard_pollock_congressman_who_loved_adventure_at_90/?page=full
90 after earning a black belt in Taekwondo when he was 75.\textsuperscript{59} During practice, he thoughtfully removed his hook so as not to startle onlookers.

A member of the first graduating class, Ben Schleider, was a former army officer who registered and attended one semester at The University of Texas Law School. He decided their large classes did not provide what he wanted from law school. He talked with A.A. White and switched to the University of Houston College of Law. After he graduated in 1950, Ben continued a close relationship with the law school and with A.A. White. They worked together on legal matters for Texas Gas Corporation, and, partly from Ben’s doing, A.A. became general counsel for the company. Ben was a moving force in getting my writing project started, and he is writing a book of his own about a controversial court martial that resulted from World War II.

No book on the law school would be complete without homage to my classmate, famed criminal lawyer Richard “Racehorse” Haynes.\textsuperscript{60} Harvard Law School accepted Richard, but delayed his admission for a year for a technical reason. Instead of waiting, he enrolled at A.A. White’s law school. Harvard’s loss was our gain. What I remember most about this


\textsuperscript{60} Photo of Richard Haynes: http://www.abajournal.com/magazine/article/richard_racehorse_haynes.
courtroom wizard is his overall command of whatever situation he was in. He can read people perfectly, and his skill and cynical humor have persuaded many juries to turn his (always innocent) clients loose. Racehorse was so talented he did not need to go to law school—he could have gone directly into the courtroom without wasting time trying to figure out Dwight Olds’ multiple choice questions. Richard’s ability to entertain was on annual display at the University’s Frontier Fiesta, where he honed his great talents by telling jokes, both ribald and ordinary. He even talked a pregnant law student, Beverly Rudy, into riding a horse in the Fiesta parade to get the law school more involved in campus activities. Richard was active in campus affairs and athletics, and he was elected Student Body President. He took the unpopular stand of challenging the anti-communist oath during Joe McCarthy’s heyday, and he never backed down from his strong belief in “the document” as he called the Constitution. He was named a Super Lawyer so many times they should have retired the cup. As allowed by the rules of the day, Richard passed the bar exam before graduating, and he practiced for years afterward without a law degree. We convinced him to return to the law school, albeit reluctantly, and he earned the few credits required for us to claim him as our graduate, not just former student.

In the late 1960s, the State Bar of Texas hired me to run a How to Practice Law course using the state’s top practicing lawyers to show-and-tell practice simulations. The best production of all time was when Racehorse and Erwin Ernst, Harris County’s death penalty prosecutor, pulled closing death penalty arguments out of their storehouse of memories and left the newly licensed lawyers open-mouthed by their dramatic demonstration.

Another classmate, Charles Runnels, also grew up during the Great Depression on a small farm near Nacogdoches. He rose before daylight to milk cows and pick cotton, corn, and peas. He cut and sold firewood to neighbors to pay for shoes and school supplies.
His dad bought a service station when Charles entered high school, and Charles pumped gas after classes. At age sixteen, he registered at Stephen F. Austin State College and worked as a hotel bellhop in Nacogdoches to meet college expenses. In 1941, his parents consented to his enlistment in the Navy, where he flew seaplanes for rescue and transport. After the War, Charles worked for Tenneco, a gas pipeline company, and attended the College of Law at night. He graduated in 1956, and Tenneco sent him to Los Angeles, where Charles became a volunteer for Pepperdine College. From the time he first met Charles, Pepperdine’s president tried to hire him. In 1967, Charles joined the Pepperdine University administration. He was named Vice-Chancellor in 1971 and served as Chancellor from 1985 until his recent retirement.\textsuperscript{61}

My evening division classmate, Vern Thrower, was wounded more than once during World War II. After the War, he worked days and attended evening classes at the College of Law.\textsuperscript{62} He graduated in 1954 and began a law school dynasty. His son Gregory graduated in 1970, his son Lynn graduated in 1975, and granddaughter Lilly in 1991. Greg shares honors with Neville Fitch’s son, Charles, as the first “second generation” law graduates. Greg’s daughter, Lilly, was the first “third generation” law graduate.

\textsuperscript{61} Charles Runnels Photo and information, Pepperdine University: http://www.pepperdine.edu/pr/stories/runnels.htm .

\textsuperscript{62} http://www.chron.com/CDA/archives/archive.mpl/obits_4297407_thower.html (last visited March 14, 2012). Robert Frank says “Vern Thrower always told me that he would have never gotten through law school had my father not sat down with him and taught him how to take an exam.”
Judge Ross Sears, a 1970 graduate lays claim for the most graduates from a single family, identified in Chapter 22.

Honored Houston lawyer Leonard Rosenberg was one of the few 1950s law students who did not go war. He enlisted in the Navy, but was deferred from active duty while he went to law school. After graduation, the Navy surprised him with a letter that congratulated him for his promotion from Seaman to Ensign, but still did not call him to active duty. Ten years later, he got another letter saying he had been promoted to Lieutenant. Leonard had never worn a uniform. He didn’t even own one since he never served a day on active duty. Leonard sped through college and law school and succeeded grandly as a lawyer. He has generously given money, time, and financial acumen to the Law School from the day he helped organize and fund the Law Foundation, of which he was still a director 45 years later.

My fellow student Tony Farris’s Bronx brogue hid the fact he was born in El Paso and christened Anthony Joseph Perez Farris. Tony proved that clogged arteries do not always require bypass surgery. While in law school, he carried nitroglycerine pills to relieve occasional angina attacks, and then he survived more than thirty years of active practice. My close friendship with Tony inadvertently contributed to his divorce from his wife, whose ancestral lineage traced back to the family that owned Waterman Steamship Company. It was about nine at night when I noticed Tony had left his book in my car. He lived close to the law school, so I drove by, rang the doorbell, and handed the book to his wife. She was dumbfounded and said, “But I just hung up from talking with Tony, and he said the two of you are drinking beer at the Algerian.” Oops.

Tony had modest success as a practicing lawyer before politics fell his way. He was a faithful Republican, and Richard Nixon rewarded his loyalty by appointing him United States
Attorney for the Southern District of Texas. Tony held that office until 1974, when Watergate cost Nixon his job, and a new appointee replaced Tony. With his enhanced resume, Tony rode the Conservative wave into a Harris County District judgeship. This fact would not merit mention in a law school narrative, except that Tony’s court is where *Texaco, Inc. v. Pennzoil* went to trial. *Pennzoil* was the blockbuster case in which Joe Jamail made a $335,000,000 million fee by convincing a Houston jury that Texaco tortuously interfered with an informal deal between John Paul Getty and Houston-based Pennzoil. Jamail’s ten billion dollar judgment sent Texaco into bankruptcy, where they negotiated the claim down to a mere three billion. Tony was the judge who heard the first part of the case; but a health problem caused him to step aside. San Antonio Judge Solomon Casseb completed the trial. The University of Texas got a fair share of Jamail’s fee, named a football field and a swimming pool for him, and erected two statues celebrating his donations. We got nothing but memories for Tony’s presiding over the jury selection and the early, critical part of the famous trial.

Several married couples attended night classes and took classes as a pair, including Phil and Naomi Harney. Phil was an Internal Revenue Agent who told over beer at the Algerian Lounge how IRS agents estimated bordello income by counting the sheets the madam hung out to dry. Phil had been shot at in the line of duty, but never hit. Naomi was a skinny, tough woman who gripped filtered cigarettes in her teeth, peeled back her lips, smiled, and

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64 729 S.W.2d 768 (Tex. App. 1987).

65 School of Law, University of Texas, [http://www.utexas.edu/law/alumni/seize_the_day/joe_jamail_breaks_another_record.php](http://www.utexas.edu/law/alumni/seize_the_day/joe_jamail_breaks_another_record.php). (December 2, 2011).
Students Reared Like Me, But More So, 1947-1955

puffed away. Phil and Naomi split after law school, and Naomi went west to become a popular State District Judge in Amarillo.66

Classmate James P. “Jim” Wallace is an Arkansan who worked for IBM while attending evening division law school. His wife worked at Union Oil Company while I also worked there. Jim graduated in 1957, practiced law, served in the Texas Legislature and served as a District Judge, then a Justice in the Supreme Court of Texas.67 Jim was the College of Law’s first graduate to be elected to the state’s highest court. His son, Jim Jr., also a judge, and his daughter, Jill, graduated from the College of Law. Ruby Kless Sondock, Raul Gonzalez, Eugene Cook, and Mike Schneider followed Jim as Supreme Court justices. Mike Schneider is a fellow Stephen F. Austin graduate.

Some students made lasting connections in law school. For example, Carl Gramatzky worked days as an IRS agent and studied law at night. He became a good friend of another classmate, Fred Rizk, who moved to Houston from Des Moines and started night school in 1953.


Fred arrived with just a few dollars in his pocket, driving a 1949 Pontiac four-door sedan with a broken front spring that caused the car to list to the left as it moved down the street. He had some practical experience as an apartment builder, and he spent most of his first year trying to promote a project in Houston. Fred’s Lebanese ancestry encouraged him to call everybody he met “cousin.” Fred raised enough cash from his real relatives and his adopted “cousins” to buy an apartment site near today’s Highway 288 on North MacGregor, across from Herman Park. He started construction, but ran out of money. Carl Gramatzky and a few other students who had tucked away modest nest eggs pooled their money to save Fred’s project from foreclosure. Fred showed his gratitude by making his cousins, and Carl in particular, investment partners in his shaky apartment company. Twenty years later, that shaky company was the second largest apartment enterprise in Houston.

Fred never forgot his cousins. When another major apartment owner neared bankruptcy, Fred put his own business at risk by mortgaging his best projects to bail that friend out. Those mortgages eventually cost Fred his apartment empire when the downturn continued. When I interviewed Fred in 2011 in his small dwelling, he was in an advanced stage of cancer. He said he could have kept his properties if he had declared bankruptcy. It is a measure of the man that he chose to pay his debts. Shortly after our interview, Fred moved to Austin, determined to live long enough to complete a townhouse project he had under construction. He didn’t.

Fred Rizk

Fred finished law study at South Texas College of Law, not University of Houston. There are two stories. One is that Fred’s apartment ventures and the Law School’s attendance requirements were incompatible. Another is that Fred was living in his car and had no telephone, so he took calls in the little office occupied by Ruby Cordrey, the dean’s secretary. A.A. said he had to find another phone, and, to save his business, Fred moved on. Fred maintained that the attendance requirement did him in. Fred’s shift to another law school did not diminish his affection for the University of Houston. When business was good, he contributed more than his share to the school, primarily for student scholarships.

Several Rice University (then Rice Institute) graduates came across town to attend law school. Leonard Childs was a day student who had played varsity basketball at Rice. I told Leonard that I saw Rice play Stephen F. Austin State College the night Ted Asimos scored 50 points to lead SFA’s victory. Leonard groaned and replied, “Yes, I remember. I guarded him that night.” Asimos ended up in SFA’s basketball hall of fame. Leonard did not make Rice’s basketball hall of fame, but he formed a very successful law firm with Ray Fortenbach and Jack Trotter soon after they graduated. Leonard Childs’s firm prospered, and, in time, it became Childs, Fortenbach, Beck & Guyton. Bob Beck was the third partner.

Bob and Lucy Beck were a married couple from New York. Both were very good law students. We three were classmates through 1955, and, in the spring of 1956, Lucy sat as a student in my Constitutional and Administrative Law class. She delicately waited until class was over to correct my pronunciation of irreparable. After Bob joined Childs & Fortenbach, Lucy dropped out of law school to be a supportive wife. A few years later, she and Bob split, and years later, Lucy returned to law school and finished her degree.
Disaster struck the firm when a farm tractor tipped over and killed Leonard Childs in the early 1970s. The firm found a corporate law replacement in Carolyn Dineen Randall, who had come to Houston in 1962, after graduating from Yale Law School. She had established herself as a blue-chip lawyer at Fulbright & Jaworski, but learned in 1972 the firm would not name her or any other woman partner in the firm.\(^{69}\) Childs & Fortenbach was probably the largest firm that was clearly identified with University of Houston College of Law, and when Carolyn Randall joined it in 1973, a link between Yale Law School and the University of Houston was formed. In 1979, Jimmy Carter named Carolyn Randall to the Fifth Circuit Court of Appeals.\(^{70}\) Tom Reavley, the former Nacogdoches lawyer, was named to the Fifth Circuit on the same day.\(^{71}\)

Not many women attended law school in the 1940s, and not many women practiced law. When a law firm hired a woman, it would likely assign her to some “womanlike” specialty such as domestic relations practice or collections. Making partner in a major law firm was not a serious option. Some law schools simply excluded women from admission. We never did. The Law school news, \textit{Obiter Dictum}, for December 1953 shows that Clara Bell Thompson passed the bar that year. My 1952 entering class had several women students, and there were women in every graduating class thereafter. They neither asked for nor received quarter. They


stood to recite, suffered the same gentle abuse as their male counterparts, and performed nobly. With fewer employment opportunities than male graduates, a fair number opened their own law offices and achieved remarkable successes. I never saw direct discrimination against women students, but my sensitivities might not have been as keen as some.

Two women graduates remember things differently. Beverly Rudy is convinced there was sexual discrimination in admissions and disparate treatment in law school. There was at least a lack of sensitivity in the profession at large. Beverly angrily recounts her character interview with a lawyer who later became a federal judge. When she entered his law office, he was smoking a cigarette with a long holder, he had his crossed feet on top of his desk, and he called out “Well, my dear, what is a beautiful young girl like you doing in law school?” Bailiffs and clerks in her early practice often greeted her with “What can we do to help you, darling? All you have to do is bat your pretty eyes, and you can get whatever you want. Whose secretary are you, anyway?”

Another woman graduate, Gladys Jurchak Oakley has a pointed reference. She once asked a popular law professor about her grade in Criminal Law. His response was, “Well, the problem wasn’t your paper. You are just too pretty to be in law school. You needed to be brought down a peg.” Maybe it was said in jest and reflected bad taste, not substantive discrimination. Then again, maybe not.

Some of my classmates were married when they came to law school. A few found mates among fellow students. Gladys

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72 Beverly gladly served a traditional role one Saturday morning when Simon Frank brought his son, Robert, to school, and he sat on Beverly’s lap the entire class, helping Robert color.
Jurchak married our fellow law student, Charles “Chuck” Oakley, several years after both graduated. Chuck came to Houston from Illinois while he was still in the United States Air Force. During World War II and the Korean conflict, he earned the Distinguished Flying Cross and Bronze Star flying cargo planes and bombers. Chuck was 33 years old when he began law school in 1953. He got his J.D. in 1957, retired from the Air Force in 1965, and he and Gladys Jurchak married in 1967. They established a general law practice in Bellville, Texas, in 1969. Gladys was appointed County Court at Law Judge in 1985 and elected to the office five times. She served until retirement and still lives in Bellville.73

Gizella Salomon might have slugged Gladys’ professor if he had made the sexist comment to her. Gizella was a Women’s Army Corp (WAC) veteran and tough as nails. Gizella always had a broad smile, and she was one of the most convivial students in the class. But she was savvy, smart, and a fighter when she needed to be. She also was a top flight lawyer.

Marian Rosen was our most visible female law student, driving daily from Port Arthur in her light blue Cadillac convertible and, when required, spending overnights in the famed Shamrock Hotel.74 Beverly Rudy and Marian once worked on a joint paper project in A.A. White’s class, and they stored their final draft in the trunk of the convertible. Sadly, the car and the only copy of the paper were stolen long before photocopies and computer

backup would have preserved their work product. A.A. worked out an alternative grade based on the course exam without deducting for the paper loss. A national magazine carried a full page picture of Marian coming down the Supreme Court steps when she was admitted to practice before the Court. She graduated too young to take the bar exam, solidly nudging me out as the youngest graduate. Marian and Clyde Woody opened a law partnership, and she became one of Houston’s foremost criminal and domestic relations lawyers.  

A 1962 graduate, Ruby Kless Sondock, could inspire any woman coming to law school. She had a commanding manner as a student and lawyer, she was elected to a district judgeship, and she was the first woman to sit on the Supreme Court of Texas. Her Lincoln was the equal of Marian Rosen’s blue Cadillac.

Classmates Beverly Rudy and Sybil Balasco had great fun practicing law after graduation. Beverly laments that she broke the College of Law’s nine year tradition of passing the bar on the first sitting. She was a top student, but, as Beverly admits, she was overwhelmed with the problems of motherhood and didn’t prepare for the bar examination. Her 1956 bar score landed a couple of points below passing, and she turned


76 Photo of Judge Ruby Kless Sondock: [http://tarlton.law.utexas.edu/justices/profile/portrait/102.](http://tarlton.law.utexas.edu/justices/profile/portrait/102.)

77 Beverly is too hard on herself. A 1953 student newspaper, Obiter Dictum, tabulates 94 who took the bar from 1949 to 1952, and only 85 passed on the first attempt.
her attention to raising a family. Almost twenty years later, she visited Ruby Sondock in Ruby’s office. By then a judge, and always a strong personality, Ruby chided Beverly about not re-taking the bar exam. Beverly said she had waited so long she doubted she was eligible for a second run. Judge Sondock picked up the phone and called the Bar Examiners to ask whether Beverly could take the bar so long after graduation. Saying no to Judge Sondock was clearly not an option. Beverly took the exam, scored one of the top grades, and had a very satisfying law practice for a number of years.

Classmate Sybil Balasco graduated and spent most of her law career working out complex deals for a Houston developer. Judge Sondock, Beverly and Sybil have been three of the Law Center’s most faithful contributing alumni, giving generously of their time, advice, and money. Sybil arranged the gift that supported the sumptuous furnishing of the Frankel Room, and Newell Blakely artfully negotiated the details. The room is appropriately named for the donor, Maurice Frankel.

Juanita Puckett came to law school to get beyond an unpleasant divorce. She worked days as a secretary at a real estate law firm and attended law school at night. She was a note-taking member of my study group. Juanita graduated and practiced real estate law until she found greater happiness by marrying Bob Keen, who worked for an oil company. Their son is a Country and Western singer with a unique voice and style. My daughter sent me one of his CDs some years back. If I had known he was Juanita’s son, I might have liked the record.

Some of my women classmates had unique attributes. Classmate Bettye Lambert could drink more beer at the Algerian and the Frat Club than anybody but Redfield Matson. After evening classes, law students streamed down Cullen Boulevard to the Algerian Lounge, located near the Gulf Freeway, or crossed Calhoun Road for ritual libation at the Frat Club. Redfield
constantly looked for character weaknesses he could exploit. He found mine and derisively called me “Two-beer,” correctly noting that was my capacity. The Frat Club’s owner and proprietor, Grace Hunsaker dispensed thousands of gallons of beer to law students and their professors over a forty-year period, constantly warning them not to tip her chairs back on their delicate legs. When Grace shut down the Frat Club and retired, the law school awarded her an honorary degree at that year’s commencement.

These early law students were mature, but playful enough to know some rules were there to be broken. For example, the University’s official hours for opening and closing did not leave law students enough time to do their library work. All of us understood that a designated library window would be left unlocked at closing time to accommodate the earliest scholar who needed access. That early morning student had a sacred duty to crawl through the window and unlock the library door. The privilege was never abused, to my knowledge.

Some rules, on the other hand, were inviolable. The Honor Code was at the top of the list. Only once to my knowledge did a fellow student intentionally break a serious rule and escape punishment. He worked part-time in the office where he had access to exams yet to be administered, and the information that he peeked at one did not surface before he graduated. As we would have predicted, the State Bar caught him on another matter soon after he was licensed. He was assessed a temporary suspension of his license, but he was sly enough to schedule the punishment for a time he was out of the country.

The most spectacular breach of decorum was just plain fun—not dishonesty. The Devil once told Howard White, a former circus barker, to set off a firecracker in the library. After lighting the fuse, he turned and headed for the door, and the firecracker exploded just as Dean White walked in. A.A. did not miss a beat,
and he said patiently, “Mr. White, we need to go to my office.” Howard graduated and became a judge in Illinois.

These early classes produced judges, United States Attorneys, and legislators, as well as enterprising and independent lawyers. A.A. White’s high admission standards, top flight professors, and disciplined study produced really good graduates, cohesion, and a sense of self-worth in the decade of his deanship.
Professor Simon M. Frank

Image provided by Robert Frank
CHAPTER 4. LEARNING LAW BY THE CASE METHOD AT THE FEET OF LOCAL GIANTS, 1952-1955

Mr. Hart, here is a dime. Take it, call your mother, and tell her there is serious doubt about you ever becoming a lawyer.

Professor Kingsfield in the film The Paper Chase (1973)

In The Paper Chase, Professor Kingsfield greeted his first year class with the salutation “You come in here with a skull full of mush.” Neither that line nor “Here is a dime” is realistic. Even in the 1950s, at the height of what was called Socratic method in law schools, I never saw a professor bully students just for the sake of demeaning them. Nevertheless, the method itself could be intimidating.

Law schools in the 1950s assumed that lawyers, particularly trial lawyers, had to be tough and control their emotions. Many professors considered a certain amount of classroom pressure to be essential, assuming that, when a judge cuts off an advocate’s head and hands it back, the severed face has to smile and say, “Thank you, Your Honor.” Tears are not acceptable. Thus justified, professors required students to stand and recite cases before leading

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them down logical dead-end alleys with a succession of questions that had no answers. It was seldom fun for the students, whose every effort prompted the professor to ask yet another question that made any response look inadequate at best, or stupid at worst. What was called Socratic Method was not devoted to finding truth. It was instead a way to prod students to read the assigned cases carefully and learn to think quickly and respond to every question with some answer, no matter how weak.

The process did not bother me. Sometimes it was fun, sometimes boring, and sometimes exciting. I simply absorbed whatever was served up on the law school platter, placing unquestioned faith in the professor and the system I had dropped into. I didn’t doubt my teachers knew more about the subject than I, and it was easy to regard law as a game that might be fun to play for real. Later, as a beginning teacher, I modeled my own classroom performance after my best professors without questioning the philosophical underpinnings of the traditional law school approach.

As a law student, I was not entirely clear whether we were supposed to learn black-letter rules of law or “how to think like a lawyer,” on the other. We assumed thinking like a lawyer was different from thinking like an auto mechanic, shopkeeper, secretary, accountant, or other ordinary mortal. In any event, the question-response procedure had already converted hundreds of thousands of students into lawyers, and we assumed it would work for us as well.

I think I picked up subliminally that law is something that can be discovered by reading cases and statutes, and the product, law, is valid, just, and true because it is based on reason, and we could treat it as an existent, stable reality.

As the first semester unfolded, my fellow students and I got the message to read the cases closely so we could stand and recite in
Learning Law by the Case Method at the Feet of Local Giants, 1952-1955

front of our peers, state the precise holding, and come up with “reasons” for the decision. If we did these things, recognized the issues on the essay exam, and applied the right legal rule, we would become lawyers without ever knowing what turned the trick.

The casebook was just that—a series of reported appellate opinions that giants such as William Prosser, Samuel Williston, Lon Fuller, James Casner, and Barton Leach had mercifully edited to manageable size. Case method was concocted by Christopher Columbus Langdell, who was Dean of Harvard Law School from 1870 to 1895, during the heyday of scientific method. In 1871, Harvard’s president, Charles Eliot, a scientist, challenged Dean Langdell to apply scientific method in study. It is not clear whether Langdell really believed law was a branch of natural science or wanted to please his boss. Either theory supports what he did next: invent the practice of teaching law from published judicial opinions instead of traditional treatises or lectures.  

Langdell expected students to learn law through inductive reasoning by studying reported opinions as raw data for distilling general principles to apply in similar cases. The product of case method is both a procedure and a compilation of rules that provide a formal basis for deductive reasoning. The system can be called Legal Formalism.

Learning Law by the Case Method at the Feet of Local Giants, 1952-1955

Whatever its value, the case method is nowhere close to true scientific inquiry. Scientific method begins with an observation of empirical facts. An appellate opinion is a fact of sort, but it is not a reliable indicator of what really happened or what drove the decision. Induction itself is not reliable. Consider Bertrand Russell’s hypothetical turkey. The turkey observed that the farmer brought food every morning, hypothesized that the farmer would always feed him, and validated the hypothesis day after day, all the way to Thanksgiving, when the farmer brought an axe. All practicing lawyers have seen judges apply an axe to the conclusions they derived from impeccable legal induction.

However weak Langdell’s case was for converting law study into scientific inquiry, every law school in the country adopted it. Paradoxically, widespread teaching by case method made Langdell’s assertions true in an operational sense. Lawyers and judges who learned Formalism in law school came to believe that the system they studied provided a rational structure for analyzing and judging disputes, and the authority of precedent became true when players in the law game acted as if the authority of precedent were true. The underlying assumptions of law are therefore true in much the same way the rules of baseball are true. The rules are internally consistent, and everybody who plays the game of law or baseball tacitly agrees to follow the rules. Today, lawyers trained in case method examine precedent to find rules to persuade judges to hold for their clients, and judges write appellate opinions as if their decisions were inexorably driven by prior appellate opinions and statutes.

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Learning Law by the Case Method at the Feet of Local Giants, 1952-1955

Why does the case method still survive, and even thrive in law school? My own notion is that case-based Formalism survives because it is easy to teach, and the cases provide stories, that, like childhood fables, make a point that students can remember through the final exam and bar examination. After teaching a couple of years, professors know enough about the preselected cases to outwit students at every turn and put on a good show while doing it. If a professor wants to appear exceedingly wise, a brief summary of the rules at the end of a chapter will do the job. Whatever its weaknesses, case study that engages students is better than the pure classroom lecture that preceded Langdell’s leap of faith. In practice, it provides a structure for arguing cases and deciding them. The structure of law is open-ended because precedent ordinarily allows more than one resolution of a complex case, leaving room for both plaintiffs and defendants to argue their cases.

It is comforting to think of law as a revealed product of Langdellian science. If law truly has a substantive reality that can be discovered by scientific examination of prior opinions, then law and its logical extensions lie outside of mere mortals’ control, and we have no responsibility for how it affects real people. We are therefore blameless when cruel, bizarre, or outrageous outcomes follow. Moreover, we do not need to condemn existing legal practices when they lead to economic disaster, as with the mostly legal mortgage finance manipulations of the recent decade.

A true believer might conclude that, if there is no case on point and no statute to provide direction, there is no law. In that light, legal education cannot say anything about newly developing issues until some judge decides how to deal with them. Such issues, by definition, can’t be solved by logical extension of old rules, so some overarching principle, policy, or idea has to provide direction. To a Langdellian Formalist, that is dangerous territory. If cases are the raw facts of law’s scientific inquiry, and there is no case to study, then there is nothing to put in the book for students to learn.
Newell Blakely was a master at teaching legal Formalism by the case method. We students believed that, if we could only answer all his questions, law would be revealed to us, and we could safely rely on legal induction in practice.

Newell instilled in students an instinct for careful analysis and sharp distinctions between hypothetical situations. He did not teach “law” as much as the skill of classifying facts and defending the classification against his razor-sharp questions. Law was something students were supposed to learn by induction, by piecing together the rules gleaned from the assigned cases. We felt secure in the notion that the law underlying Newell’s questions was a logical, neutral, and almost tangible reality. What was at issue in class was the delicate task of classifying and categorizing facts. His constant “supposes” were designed to force students to classify facts to feed into a purely analytical system of law and produce a mathematically correct answer. Students had to defend their classifications of fact, but never the underlying rule of law itself.

Newell used a rotten egg metaphor to imply that law’s reality is discoverable by library research and common sense. He said as a boy he could never remember whether the rotten eggs or the good eggs floated when put in water. But what was important was to know that some eggs floated to the top and some didn’t. *He could always look up the rule.*

Unlike A.A. White, Newell would entertain no critical discussion whether a rule of, say Contracts, Criminal Law, or Creditors’ Rights was good or bad policy. He accepted Criminal Law commands as he found them, and we spent class time working with gradations of facts that subtly eroded the paradigm, thereby challenging students to place each new set of supposed facts in one precisely defined category or another and accept the consequences of the classification. For example, in the last few minutes of a Criminal Law class, Newell posed a hypothetical fact situation in
which he submerged our classmate, Gerald Coley, in a drum of water in front of the class. He put a lid on the drum, and then dismissed class with the question whether the State could prove he killed Jerry without producing a dead body. The hypothetical Jerry was never seen again, but the last anybody saw, he was alive. True to form, Newell never answered the question. We were supposed to pick up the absolute requirement that conviction required a *corpus delicti*, and Newell never asked whether the criminal law system *should* require a body. That question would be irrelevant if law were a constant and stable reality. We could reasonably argue whether the *corpus delicti* requirement was met, but the requirement itself was beyond question. Law was absolute; only fact classifications were open to argument. We walked out of class wondering how the rule applied to the case, but not whether the rule itself made sense.

In the early 1960s, Newell gave an exam in Criminal Law that required students to apply a particular case they had studied. Before he posted grades, the Texas Court of Criminal Appeals overruled the case and announced the opposite rule. Students who missed the answer asked him to give them credit for accurately predicting the decision. Newell’s answer was revealing: the law when you took the exam was what I taught. The fact the court changed its mind did not matter for the exam. This point of view prompted some faculty discussion, but no challenge to Newell’s position. For Newell, the implicit function of law teaching was to transfer law’s unquestioned content at the time of class to students who were supposed to learn the rule and acquire the skill of classifying facts to fit within it.

I did not foresee it at the time, but Newell’s legal and educational philosophy turned out to be much more important for Law Center history than that of any of his colleagues when he became dean in 1966 and put his own brand on the College of Law.
Dwight Olds had a different spin on case method and law’s content. Newell took the rules as given, and he accepted them as law without question. Dwight, on the other hand, took precedent as a beginning point for building an internally consistent analytical structure that might or might not be the same as the Formalist rules announced and applied by courts.

Dwight stood ready to criticize any decision that departed from his own fully developed, perfectly reasoned determination of what the rule ought to be, and therefore in Dwight’s estimation what it had to be. Dwight, like Immanuel Kant, believed any competent scholar would reach the same conclusions after enough thought and research. Precedent and history were important, but if the judge didn’t get it right, Dwight provided a “correct” analysis that students had to accept, regardless of what the court said. Dwight occasionally reached outside the legal system for informative data while working out his rules of pure Property law. For example, in his article about interpreting words used in a will, Dwight told me he ventured into linguistic theory to support the proposition that judges should look for the testator’s own, personal meaning for words used in a will, which might or might not be the same as the dictionary meaning. Yet, his article on testamentary expression cites traditional law sources to support his conclusions, and a reader would not guess how deep his outside-the-law research had been.

Dwight did some serious research when he wrote his monumental articles on the Texas Recording Act. He accepted the

81 IMMANUEL KANT, CRITIQUE OF PURE REASON (1781).


83 D. A. Olds, The Scope of The Texas Recording Act, 8 SW. L.J. 36 (1954); Dwight A. Olds, Recording Act—The Object of Search & the Period of Search, 2 HOUS. L. REV. 169 (1964); Dwight A. Olds, Land Contracts—Status as to Conflicting
goal of making courthouse title searches more efficient, and he produced logical legal principles to accomplish that end. But once Dwight figured out the “correct” rule that best reached that goal, his analysis and his conclusions became absolute, at least for the inevitable multiple choice exam. Dwight was not coy about what his rules of law were, constantly repeating them as he paced from left to right in front of the class.

Thus, even though Dwight looked outside of case law to start his personal analysis, he produced a final set of concrete rules that were, for him, definitive statements of positive law. A student’s obvious task was to learn his rules well enough to pick the right alternatives on his multiple choice questions. For Dwight, classroom facts were not as malleable as they were for Newell. They had black and white classifications that gave even his essay questions rifle-shot answers. I remember one student who said he got full credit for writing “No res, no trust” as an essay answer. I don’t doubt it.

Dwight expected students to learn his version of law well enough to select the right answers on his impossible multiple choice exams. Those answers might change from year to year, depending on his latest divine revelation, but the questions stayed the same.

The overwhelming notion I got from these two powerful professors was that I was supposed to learn law by inductive reasoning as a complete, closed logical system, and the law I learned was enough for organizing legal issues and solving legal puzzles.\(^{84}\) That is often as true in law as it is true in engineering.

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84 This is also the point of view of legal philosopher Hans Kelsen, for whom an act or an event gains its legal-normative meaning if it is created in accordance with another, “higher” legal norm that authorizes its creation in that way. And the “higher” legal norm, in turn, is legally valid if and only if it has been created in
Engineers do not question the basic laws of physics and science that apply in their work. Law is much the same in simple applications. In ordinary real estate practice, for example, lawyers and judges need not venture outside accepted legal doctrine to resolve simple disputes and draft basic documents. But complex issues are different. One of the things that bothered me when I resumed teaching after a few military trials was that, as hard as I studied, I could not resolve complex legal problems by applying the rules of law I had learned. Dwight, by comparison, had no problem doing so, and he provided me a string of logical answers to all property problems I laid at his feet. I accepted his specific answers on faith and taught them to my students as revealed truth, but I worried about their validity. A political science acquaintance once commented on legal dogmatism by saying, “Lawyers have a system. Just having a system gives power, without regard to whether the answers it produces are right or wrong, good or bad, logical or arbitrary.” Dwight and Newell had that sort of power, which was strengthened by our assumptions as students that what they taught was neutral, objective, and existed independently of personal bias.

I should have listened more carefully to Simon Frank, whose view of law stood in sharpest contrast to Newell and

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accord with yet another, “higher” norm that authorizes its enactment in that way. In other words: it is the law in the United States that the California legislature can enact certain types of laws. But what makes this the law? HANS Kelsen, General Theory of Law and State (1945). The California Constitution confers this power on the state legislature to enact laws within certain prescribed boundaries of content and jurisdiction. But then what makes the California Constitution legally valid? The answer is that the legal validity of the Constitution of California derives from an authorization granted by the U.S. Constitution. What makes the U.S. Constitution legally valid? Surely, not the fact that the U.S. Constitution proclaims itself to be “the supreme law of the land.” Any document can say that, but only the particular document of the U.S. Constitution is actually the supreme law in the United States.
Dwight’s. Simon regularly shared his “situation sense” about why one party or the other won a case, and whether the decision itself was just. He invited us to look inward and apply our personal judgment, freed from the strict constraints of Formalist law. Simon taught that human values count, and judges should peek at the outcome before making a decision.

Simon talked about justice and reason more than abstract rules of law. I remember in particular his passionate commentary on a trade territory case, Smart Shop v. Colbert’s. Simon referred to Smart Shop several times during the semester, sitting at the front of the room with a pained expression, stroking the few remaining strands of hair on top of his head, and saying in a raised voice, “If this is the law, I don’t see how anyone can protect his trade territory.” We understood his criticism, but somehow found greater comfort in Newell’s implicit message that there was an unquestioned law “out there.” Newell gave me the impression that, if I learned his law, I would be a lawyer, and whether a rule was good or bad, right or wrong, was beyond discussion. Simon, on the other hand, rejected this limited view and legitimated classroom discussion of justice as an aspect of law that transcended formalist rules. By doing so, he challenged us to evaluate legal outcomes and even the rules themselves. That freedom was troubling. Events such as C. K.’s taking the piece of fried steak that belonged to my mother had imprinted a meaning for fairness in my brain, but I did not assume I had personal authority to say a court’s decision was just or unjust. Simon legitimated that inquiry, but it took me a decade to believe it.


86 250 S.W.2d, 431(Tex. Civ.App. 1951 writ refused, n.r.e.).

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A.A. White and Simon Frank did not accept the authority of legal rules as received truth. Instead, they criticized decisions they regarded as unjust or out of touch and looked for better answers. In this sense, they were not “neutral” in their law teaching, and they imparted the notion that lawyers and judges were obliged to make the system respond to the needs of society. In doing so, they consciously or intuitively adopted the notions of O. W. Holmes, Jr., and the American Legal Realists. Holmes’ 1898 essay, The Path of the Law, urged judges to consider social advantage when deciding cases, and not be guided by precedent and history alone. This idea was later captured by Roscoe Pound’s sociological jurisprudence that characterized law, including judges’ decisions, as an instrument of social policy.

This discussion of Langdellian Formalism and American Legal Realism may seem strangely out of place in a narrative devoted to the life of a regional law school. But the division between two schools of thought—between (1) Newell’s view that we should teach law as a self-sufficient, neutral practice in which judges decide cases according to precedent and authority without peeking at social effect; and (2) A.A. White and Simon Frank’s view that we should teach law as an interactive part of society, and teach social policy and justice as indispensable considerations in formulating the rules themselves—underlay a decade-long struggle for the soul of the law school.

My last year of law school confirmed that even Formalist legal education could not ignore social policy forever. I took David Vernon’s Constitutional law course in the spring semester of 1955.

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87 O. W. Holmes, Jr., The Path of the Law, 10 Harv. L. Rev. 457 (1897).
Brown v. Board of Education of Topeka,\textsuperscript{89} decided in 1954, barely made our casebook. In Brown, the Supreme Court rejected Newell’s precedent-based Formalism by refusing to follow Plessy v. Ferguson.\textsuperscript{90} Instead, the Court adopted A.A. White and Simon Frank’s policy approach by taking social interests into account when it held racial discrimination in public schools unconstitutional. The Brown decision reached the law classrooms, but it did not affect the College of Law’s admission policies for another ten years, when Taxpayer support made the University of Houston an undeniable arm of the State and subject to Brown’s rule.

Today, more than a half century after Brown v. Board of Education held racial segregation unconstitutional, it is appropriate to ask why A.A. and Simon didn’t include that glaring injustice in their class discussions of justice and social policy. I don’t have an easy answer, although I am sure that issue was in A.A.’s mind when he assigned the UN Charter paper to Roland and me. Outside the Deep South, de jure racial segregation was clearly viewed as a bad thing, but I never heard either of these two scholars openly question the practice. It may be that, like water to a fish, they just didn’t take account of it. Or maybe they felt that dealing openly with racial discrimination would have lost half the class. The University of Houston administration did not challenge its own racial policies, even though they could reasonably assume that Brown applied because tax dollars flowed to students through Junior College aid.

Most of the penthouse crowd of fellow students opposed segregation. They once took in a new renter who attacked integration as a threat to “his Irish heritage.” He and I had it out one night (verbally—he was twice my size), and I ended with some


\textsuperscript{90} 163 U.S. 537 (1896).
zinger that another tenant posted on the wall. The new renter moved his Irish heritage out shortly after.

What Brown stood for did have some influence within the College of Law. One night in David Vernon’s class, a classmate stood and began a recitation on the *Scottsboro case* with “This bunch of niggers. . . .” It was near the end of the hour, and Dave said nothing, but he talked with Dean White before the next class. At our next meeting, with A.A.’s blessing, Dave made it clear that such words were off limits. I sat in silence, but reflected that after Brown, the legal system had finally acknowledged that Demps and Mertie McGowan, and Thad, Thelma, and Bill Tips were persons, and the system was supposed to protect their rights.

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Instructor in Law John Mixon

University of Houston Archive photo
CHAPTER 5. STUDENTS TEACHING STUDENTS, 1955-56

Mr. Cowart, please recite Pierson v. Post.\(^2\)

Instructor in Law John Mixon, 9:04 a.m.,
September 6, 1955.

In spring of 1955, my immediate future seemed clear. I would sit for the June bar examination, graduate at the end of August, and spend two years in the army. Employment as a lawyer or in any other civilian job was not on the immediate agenda. That future changed abruptly when David Vernon took a job at the University of New Mexico’s law school after A.A. did not match their salary offer.

Dave had been scheduled to teach Conflicts, Constitutional and Administrative Law, Property, and Corporations for the 1955-56 academic year. I have no idea what conversations Dean White had before telephoning me on a weekend morning in April. I do remember answering the phone with a smartass greeting, thinking it was a law school buddy calling. After brief pleasantries, A.A. got to

\(^2\) Memory has failed me. For years, I declared that the first student I called on was Jack Babchick, and the course was Property. But when I called Jack to verify this, he said he took Property from Dwight Olds in the spring semester, not the fall. I know Bob Cowart was a student in my first class, so by fiat, he has become the first student I called on. The course may even have been Contracts, not Property. The University’s records are not accessible. The basic story is true; the details are suspect.
Students Teaching Students, 1955-1956

the point: if he could get me a draft deferment, would I teach Dave’s courses in the fall semester beginning immediately after my summer graduation? Given such an offer, any damn fool would say yes without thinking. But I didn’t. Instead, I asked for time to think and call him back.

Cold, numbing fear kept me from saying yes. I knew I had skated through law school on quick study, fast typing, and superficial absorption of legal doctrine that, in its basic and fundamental aspects, came easy. The fact I had outscored Eugene Pitman’s unbeatable grade average didn’t matter. I was a fraud, and I knew it.

I had done law teaching of a sort. Because I doodled instead of taking notes, I had nothing to review at the end of the semester. Several classmates, on the other hand, took copious notes, and I would slip into their study groups to sponge off their work products. But after five minutes or so, I would take over the review because my uncluttered memory could make sense out of the class discussion they had recorded in unmanageable detail. That was my best, and maybe my only talent in law—putting minutiae in a broad framework and connecting it with law just as Simon Frank had taught me to do. I got a modest boost in social status when word about our study group spread and attendance increased. My ego was further enhanced by good grades posted openly in the hall right along with the names of those who flunked. Public posting violates federal law today, but even a reported fainting by a student who saw his F on the hallway bulletin board did not limit the practice in the 1950s and 1960s.

My ability to spot issues, grasp broad principles, and type like a demon were a far reach from the intellectual preparedness and

93 Such records never stand. Steven Segal broke mine in 1971.
Students Teaching Students, 1955-1956

discipline required to teach cases I had not predigested in class and review sessions. I spent a restless night contemplating boot camp before accepting the offer. I was fully aware that saying yes meant that, in a classroom with some thirty to forty people, I would be the youngest in the room and I would be the teacher. I was still twenty-one years old when I called A.A. back and agreed to teach two courses in the fall semester. 94 I was scared stiff.

Another concern loomed. I had not yet taken the June bar examination. What if I flunked? I could picture standing before the fall class without credentials or even being fired when the results were published. My bar review consisted of listening to tape recordings of Arthur Mitchell’s lectures at the Harris County courthouse. One of my fellow bar reviewers was Carl Walker, Jr., an African-American who had just graduated from Texas Southern University. Carl later became U.S. Attorney and at the end of his career an elected Harris County District Judge.95 We stayed in touch until sometime before he died in 2002. The Fourteenth Amendment allowed Carl to sit with white graduates in an after-hours public courtroom and listen to bar review tapes, but he could not join us in a private cafe for coffee afterward. I invited him to my law class several years later to describe the times he looked for a place to sleep while travelling with white colleagues as Assistant U.S. Attorney in aggressively segregated South Texas. When he could not find alternative accommodations, he slept in his car.

94 The youthful picture at the beginning of this chapter was probably taken in 1959, four years after teaching my first class.

Mitchell’s canned lectures didn’t tell me much new, and my confidence rose. But the worries came back on the trip to Austin, the only place the bar exam was administered. While skimming a bar review outline, a passenger in Howard Pollack’s 1952 Ford station wagon said “Did you know the State of Texas can’t make a gift? It’s in the Constitution.” That was news to me, and providence was on my side when that very question appeared on the next day’s bar exam. I aced the question that I would have missed without that chance comment. Instead of being comforted by the good fortune, I was terrified. How much more did I not know?

I passed the bar with a score that was undoubtedly enhanced by the ride to Austin. I did not savor bar success, knowing that, in a few weeks, I would conduct my first class as a professor. That is not quite true. I was not a professor. My contract designated me an Instructor in Law, far less prestigious than the lowest professorial rank, Assistant Professor of Law. I neither knew nor cared about titles at that point, and only later realized that I was one of a select group of law teachers who began as a lowly instructor. Instructor is not a tenure track position—a fact brought home fifty years later when the University calculated my service without credit for my first year of teaching.

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97 TEX. CONST. art. XVI § 50; art. III § 52.

98 Even if my time were calculated from my first class, I would still lag behind Chemistry Professor Mamie Moy. Mamie got her MS in chemistry at UH in 1952 and began her march up the tenure track in 1954, while I was still in school.
Now that I had a contract and a lowly title, I still had to face those thirty students. I spent Sunday trying to get facts and holdings straight on the cases I had assigned to a first year class in Property. I got up at five a.m. on Monday and walked a couple of miles to clear my head. It didn’t work. As class hour drew near, I overloaded my brain with details about the assigned cases. The first two minutes would be easy. At the appointed hour, I would stand at the front of the room and say, as Newell always said, “Please answer the roll” in as authoritative a voice as I could muster. When the moment arrived, after calling, “Mr. Adam, Miss Eve . . .,” I picked Bob Cowart at random to begin his and my first class by reciting the case of *Pierson v. Post.*

Bob jumped to his feet and described Post’s chasing a fox that Pierson killed and took away. This case has been used for generations to introduce students to the serious study of law, despite the paucity of reported fox cases since it was decided in 1805. We were not supposed to address the practical question why these two Long Islanders didn’t just settle the matter in the field by combat or negotiation instead of wasting hundreds of dollars in legal fees to get a final decision from the highest court in New York. Such matters were not relevant at this point in a law student’s education.

The fox case introduces notions of possession, capture, wild animals, and the fundamental concept of title to property. It is a perfect case for teaching law as inductive science. Post lost because he had not acquired title to the fox by taking possession, and nobody owned the wild animal when Pierson killed it. It therefore belonged to Pierson. The principle can even be stretched to let an oil company drain oil from a neighbors land. Bob Cowart was well prepared, performed nobly, and he gave my new career a good send-off.

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I had survived my first classroom encounter, and I was eager to go to the next case. To my surprise, nobody seemed to notice how young and nervous I was. By now, the bulk of first year students were not seasoned veterans of war, and in retrospect, I can see they were just as nervous, though not as young, as I was. True to the custom of the day, when I called out the next name, the student stood up, and all I had to do, just as Blakely did on my first day three years earlier, was say “Please recite Young v. Hitchens,” a case where fish were more or less contained in a net by one fishing vessel when another vessel sailed inside the net and made the capture. Or “Please compare Pierson v. Post with Ghen v. Rich,” a contest over ownership of a whale that had been harpooned by a whaler and found dead a few days later by another party.

By getting those few words out, by saying “Please recite the case” or “Please compare this case with . . . ,” I could shift focus away from my own fear and inadequacy and prey on some student’s fear and inadequacy. If the recitation didn’t produce anything to pounce on, I could call on another student. This was even more fun than acting as master of ceremonies at a Baptist revival when I was fourteen. Before introducing the visiting preacher, I could surprise some member of the congregation by commanding him to lead us in prayer, and he would jump to his feet and start praying, just as law students jumped to their feet and started reciting. Acting as master of ceremonies at a revival and teaching law are similar power trips.

Today’s beginning professors teach only one course in their first semester. The standard teaching load in 1955 was eight hard hours or ten soft hours. Soft hours counted at one-half the assigned course credit when the same course was taught twice. In my first

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101 8 Fed 159 (U.S.D.C. MA 1881)
academic year, I taught a full load, including, as I recall, Property, Conflicts of Law, Administrative Law, two sections of Corporations, and, in the summer of 1956, Anti-Trust.

I spent late night hours trying to stay one case ahead of the next day’s students. In advanced courses, many students had been my classmates from the semester before. They were kind, pretending I was a real professor when they knew I was as green as they were. I was so busy with my own challenges I had little time to take note of what was happening in the school outside my little office.

Bad things were happening. A.A. White was about to resign as dean. I know of two events that prompted his departure. The first was that a transfer student organized a law fraternity with an Aryan clause (no Jews allowed). A.A. was dead set against it, but the University approved the charter. Dwight told me Newell had carried the charter to the administration, maybe without knowing about A.A.’s opposition. When A.A. protested, the University refused to rescind its approval. Dean White could not ignore this insult to his person, position, and principle. Another disappointment may have hurt just as much, but in a different way.

The second blow was rejection of A.A. ’s proposal for a new law building. The law school had upgraded when it moved from drafty barracks to the M. D. Anderson Library basement, which was euphemistically called the ground floor. Coming from the farm, I thought the basement looked pretty good in 1952, but it was not appropriate for a law school with higher aspirations. It was too small to accommodate a growing student population, it leaked in a heavy rain, it didn’t look like a law school, and the pink asbestos floor tile produced an ever-present dust that crawled up the pant legs of anyone who walked through, making law students identifiable anywhere on campus.
After talking with real estate and tax professionals, Dean White proposed to build or buy a downtown building that somehow capitalized on the University’s tax-exempt status. The building would accommodate the law school and provide space for appellate courts and offices to rent to selected practitioners who would agree to mentor students. Law students would thus have direct access to the place where law was really practiced and to the professionals who practiced it. Years later, South Texas College of Law built such a complex and used it much as A.A. had envisioned. With hope of taking the law school above ground, A.A. presented the downtown building proposal to the University. They turned it down flat.

First insulted and then disappointed by university administrators, A.A. resigned during the spring semester of 1956 and took a position as general counsel for Texas Gas Corporation.

I was vaguely aware of the downtown building plan, and I knew about the fraternity flap, but A.A.’s sudden departure stunned me. It was as if the mountain had moved, and the bare earth lay unsettled. The law school that had so impressed me when I first met A.A. White was disintegrating before me. I was a silent observer as Newell stepped up from his assistant dean position and became acting dean. I would not experience the full consequences of the change until three and a half years later.

Some problems were immediate. We were stretched thin to cover courses to meet students’ graduation requirements. The faculty shortage had already enabled me to earn an extra four hundred dollars by teaching a spring semester Corporations course that met for four hours every Saturday morning. The course counted only for soft hours because I taught the same classes during the week. I must have thought I was indestructible when I agreed to the overload without realizing I would be hoarse for weeks afterwards.
In the 1950s, a law dean’s teaching load was only slightly reduced by administrative duties, and A.A.’s scheduled classes had to be covered. Going into the hiring market in the middle of the spring semester to find a replacement was impossible, so the school had to look within. A.A.’s last act as dean was to hire John Neibel, then in his last semester, to take over his classes.

Like me, John was hired as an instructor, not a professor. John was far better qualified to teach A.A.’s courses than I was to step into Dave Vernon’s shoes. John had a spectacular record as a collegiate debater and he had graduated from the University of Houston with honors. A.A. convinced him to attend our law school instead of Harvard, which also recruited him. John was the College of Law’s first successful regional and national moot court champion. He had been my classmate, and he was my student in the Conflicts of Law course I inherited from Dave Vernon. He would soon be my colleague, and eventually my dean. John was a few years older than I. He stood in the top ten or fifteen percent of his class, and he had an imposing presence and commanding personality. A.A.’s untimely resignation destined him for a career in law teaching, just as Dave’s departure had done for me.

It was almost a relief that I was about to make a dramatic shift from Instructor in Law to Coast Guard Officer Candidate in the fall of 1956. Even so, I had one last course to teach. The need to cover classes was so desperate that I taught Anti-Trust Law in the summer with virtually no qualification to do so. Unlike Property, for which I had some background from both the abstract company and oil company, I had barely skimmed Anti-Trust while preparing for the bar exam. I opened the book a week before summer classes began, struggled through the accelerated semester, and wrote a final exam to be administered after I departed for New London, Connecticut, to learn how to be an officer and maybe a gentleman.
Law school was left behind in late August when, along with another recent law graduate, Henry Scott, I took the Coast Guard oath in 1956 to avoid the draft. Henry and I would spend four months in Officer Candidate School in New London, Connecticut, and then three years on active duty as Coast Guard officers. Presumably, I would look for a job using my law degree after military service.

My immediate attention in the fall of 1956 focused on doing what the Coast Guard told me to do. That meant polishing linoleum in my barracks cubicle, trying to march in formation without stumbling, sitting in navigation classes, and, almost incidentally, contemplating an impending wedding. These challenges left me little time to grade the stack of exam answers that grew more forbidding day by ungraded day. I finally read them, assigned grades between A- and B, and forgot about law school for three years.

I spent a fair amount of my four months restricted to the base while fellow officer candidates were on liberty in New London, eating pizza at Lamporelli’s or drinking beer at Seven Seas. My problem was not bad acting as much as bad marching. I could not keep time well enough to count cadence on the day I was platoon leader. A chief petty officer told me to watch his left foot and say hut every time it hit the ground. I was busily watching his foot when Lieutenant Commander McCullough strode by. I didn’t see him and didn’t salute. That failure cost me a weekend on base. Bad housekeeping cost me another. My lack of rhythm made me a permanent member of the “goony bird squad” that was assigned extra drill after hours.

I came close to getting into serious trouble when, about midway through the four-month officer candidates’ school, a new bunch of wannabe officers showed up. They were happy sailors because the Coast Guard had reduced the active duty requirement
from three years to six months after Officer Candidate School. I was angry. I tried to get some of the other three-year reservists to join me in petitioning for the shorter term, complaining to Congress if necessary. When word of my effort got around, a chief petty officer called me aside and said, “Mixon, what you are doing is called mutiny. Cool it unless you want to be court martialed.” I listened, I cooled it, and I served my three years of commissioned active duty quietly. A few of the six-month officers were later assigned to my duty post. I watched them come, and I sadly watched them go when I had more than two years of active duty left.

My new dress blue Ensign’s uniform served one purpose well. When I returned to Texas as an officer, I didn’t have to rent a tuxedo for my wedding.

The Coast Guard did not assign Ensign Mixon to a weather ship in the North Atlantic—a sensible decision in light of a steering disaster when I rammed another make-believe vessel in a mock-up ship command exercise. Instead of real military duty, I helped guard the Port of New Orleans from a command post housed in an old barracks on the shore of Lake Pontchartrain. My task was to protect a fearful nation from nasty Russians who might sail neutrally licensed ships into every major U.S. port, deposit underwater nuclear devices timed to detonate simultaneously, and depart in unison before the blast. When not changing my new daughter’s cloth diapers and rinsing dirties in the toilet bowl, I performed faithfully as a boarding officer who was supposedly qualified to search ships for nuclear devices. The mission did not take all of my time. I also acted as supply officer, gunnery officer, operations officer, and commissary officer. These jobs, honorable though they were, had little to do with my law degree, but they left extra time to act as a Law Specialist, for which I was marginally qualified. For the first time, I undertook law practice, albeit of a specialized sort.
The Coast Guard was serious about military law. It demanded that its Law Specialists be, first and foremost, regular line officers, and pesky, but essential, lawyers only as a distant second priority. To assure “duty-to-the-Guard” loyalty, they selected top academy graduates with several years’ shipboard duty and sent them to law school at government expense. Those picked ordinarily attended George Washington University’s law school, and they were obliged to return to line duty after graduation and run the legal system in their spare time. As a reserve officer, I was lucky to associate with these very competent professionals, albeit as an outsider. I conducted investigations, prosecuted and defended hapless seamen charged with minor crimes, defended an officer charged with a serious crime, and served as judge on several Special Courts Martial. One trial pitted me against Forrest Stewart, a former classmate. He was also my student in my first year of teaching and it was he who talked me into volunteering for the Coast Guard instead of being drafted. He was prosecutor, and I was defense counsel. The seaman was charged with stealing ship’s property, and he had gone absent without leave to avoid the consequences. Forrest and I fought to a draw, with the seaman convicted of the minor offense of AWOL, but acquitted of the more serious charge of theft. I gained enough reputation as defender of the (not so) innocent seaman that enlisted men charged with offenses began to ask for me. The District Legal Officer responded to my budding career as Lt.(Jg) Perry Mason by assigning me to a permanent judicial panel, thereby disabling me from defending my eager clients. While it lasted, my trial career was almost as much fun as running a revival or teaching a law class. I could even imagine being a real lawyer when civilian life resumed.

I didn’t find out whether I could make a living as a real lawyer. In 1958, one year before the end of my active duty commitment, Newell telephoned and asked whether I would return to the faculty if he could spring me from the Guard. I didn’t have
the same reservations as when A.A. had called in 1955. I was ready to go, but the military would not turn me loose.

In 1959, Newell renewed the offer. My active duty would be completed by the middle of the fall semester, and I had accumulated enough leave time to accept the offer and begin the fall semester on time. I did so without hesitation. In August of 1959, our family of four left New Orleans, heading for Houston in a 1957 Ford. I now knew I could command a classroom, but I still didn’t feel at ease with my understanding of law in a broader sense. I knew how to do it, but I didn’t know what I was doing when I did it. There wasn’t much time to ponder such issues. Renting a house was first priority because our meager household furniture was on the way from New Orleans in a government-paid moving van.

Once back in Houston, I joined a reserve unit and made what could have been a disastrous mistake. My six-year military obligation was satisfied in August 1962, but I neglected to resign my commission. My only military specialty was boarding and searching ships suspected of carrying nuclear weapons, and I figured that specialty was not likely to be needed. Then, in October, 1962, Robert McNamara recommended that President Kennedy institute a naval blockade of Cuba to intercept, guess what—Russian ships carrying missiles with atomic warheads. I was frozen in the reserves, expecting to be activated any day to start searching ships. Fortunately, JFK and Khrushchev’s last minute telephone conversations saved me from active duty and the world from nuclear destruction. The first day I could resign after that crisis ended, I did.

But Cuba is far ahead of the story. I had to prepare for classes to start in September 1959. I hadn’t read a law book in three

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years. I also had not kept up with what happened in three years at the law school with Newell as dean. I was not prepared for what I would find.
A much misunderstood phenomenon in the history of philosophy is the refutation of one system by another, of an earlier by a later. Most commonly the refutation is taken in a purely negative sense to mean that the system refuted has ceased to count for anything, has been set aside and done for. Were it so, the history of philosophy would be, of all studies, most saddening, displaying, as it does, the refutation of every system which time has brought forth. Now although it may be admitted that every philosophy has been refuted, it must be in an equal degree maintained that no philosophy has been refuted. And that in two ways. For first, every philosophy that deserves the name always embodies the idea and secondly, every system represents one particular factor or particular stage in the evolution of the idea. The refutation of a philosophy, therefore, only means that its barriers are crossed, and its special principle reduced to a factor in the complete principle that follows.

Georg Hegel, the Encyclopedia of Philosophical Sciences, Part One

For a quarter century, from 1947 to 1974, few people noticed that two conflicting views about legal education were playing out their differences at the College of Law. The opposing views were personified by Dean A.A. White, who shaped the school’s first decade, from 1947 to 1956, and his successor, Dean
Newell Blakely, who controlled the second decade, from 1956 to 1966.

For A.A. White, law existed in a societal context, and legal education was bound to consider whether particular judicial decisions and the legal system itself served society well. That meant judges should follow O. W. Holmes’s admonition to go beyond precedent and peek at social effects before making a decision. Roscoe Pound, a Harvard Law dean from 1916 to 1936, was more explicit. He characterized law itself, including judges’ decisions, as an instrument of social policy. All quality law schools paid some attention to law’s effect on society, and A.A. and half of his early faculty spent classroom time discussing justice and social policy implications of legal decisions.

A.A.’s year of graduate law study at Columbia University provided a blueprint for the new law school he created in 1947. Columbia and other national law schools admitted only students whose pre-law records indicated they could learn law and graduate. Dean White’s admission standard of ninety college hours with a C+ average equaled or surpassed all law schools in the state. His graduates posted a remarkable record of success on the Texas Bar Examination that may have been the best in the state.

Columbia’s highly-credentialed faculty was selected from the country’s best law graduates. A.A. followed that lead and hired a remarkably credentialed faculty that would have been at home teaching at Columbia or at today’s Law Center.

Columbia expected its faculty to publish scholarly articles, and so did A.A. White. During their active careers, Lewis Roberts, Simon Frank, Dwight Olds, David Vernon, Bill Wellen, and A.A. White published scholarly works in addition to teaching heavy course loads.
Dean White’s founding principles shaped the College of Law’s first decade, from 1947 to 1956. Dean Newell Blakely reversed all of them in 1956 when he became dean. The next ten years belonged to Newell and his law school ideals.

For Newell, law was a self-referential and neutral system whose formal content was independent of social and community interests. The purpose of law was to provide order so individuals could pursue their own destinies. Law carried its own authority and justification, and any change in its rules was the business of the Legislature, not “activist” courts.

Newell was, either intuitively or consciously, a Formalist and follower of John Austin’s Analytical Positivism. To Newell, the purpose of a law school was to teach the rules as they were written and not to question them. His goal was to train students to practice law competently and honorably. Graduates had neither obligation nor authority as lawyers and judges to use judicial decisions as instruments of social policy.

Newell rejected A.A.’s selective admission requirements as elitist. As dean, he opened admission to all applicants who presented 90 college hours with a C average, and he depended on Darwinian selection to determine who was fit to graduate and practice law. Newell visualized a “great” law school that would teach traditional doctrine to large numbers of unscreened students, with tough grading to identify those worthy to practice law.

Newell rejected the national law teacher market as a source for new teachers, and he turned instead to the local bar and more specifically to our own recent graduates to fill open teaching
positions. With one exception,\textsuperscript{103} neither Newell nor his personally chosen faculty published between 1955 and 1962.

Newell’s vision of legal education was popular in his local market and in proprietary schools nationwide, but it had little currency in nationally prominent law schools, where A.A. White’s educational principles prevailed. Newell’s tight control over educational policy diminished after 1963 when a growing number of faculty members rejected his open-admission and local practice vision. Newell resigned as dean in 1966 when the law faculty rejected his limited view of law school purpose and John Neibel became dean.

The convulsive change that began in 1963 extended into John Neibel’s deanship and ended decisively in 1974 when John Neibel resigned as dean and Interim Dean A.A. White and Associate Dean Michael T. Johnson ran the school for two years.

In the fall of 1976, Dean George Hardy took office and firmly embraced A.A. White’s early vision. Today’s Law Center is committed to that vision. But the Law Center also carries significant strains of Newell Blakely and E. E. Oberholtzer’s populist ideals by, for example, serving a large student body with both a full-time and part-time division.

\textsuperscript{103} Jim Gough published three articles in \textit{South Texas Law Journal}. Email from Mon Yin Lung to John Mixon dated April 5, 2012.
Newell H. Blakely

File Photo, UH Law Center
CHAPTER 6. NEWELL BLAKELY’S LAW SCHOOL, 1956-1966

Look to your right, look to your left—one of them won’t be here next year.


Dwight Olds stated his disdain simply: “Newell may admit them, but I’m going to flunk half of them.” Dwight was reacting to the announcement by Acting Dean Newell Blakely in spring of 1956 that he would abandon A.A. White’s C+ admission requirement and drop to a flat C. Newell’s announcement came just when other Texas law schools were raising their admission standards. In short order, we would abandon the state’s highest admission standards and match the lowest. Dwight and I knew our amazing bar exam success would take a significant hit, and our prediction was soon verified. Newell noted our opposition, looked thoughtful, and put the new admission policy into effect.

I griped once to Newell it was easy to make a minimum C college average, implying that we should be more selective. Newell’s answer was, “How would you know, John? You never made a C.” He had me there. What I didn’t know was that Newell’s
first year at Ouachita College was an academic disaster, and he was determined to give all aspirants the same chance for a new start that he got. Getting admitted to Newell’s school did not guarantee graduation. His own metaphor was a big front door and a small exit. Following Dwight’s admonition, the grade line was drawn so half of every entering class got grades above 65; the other half went on probation, probably to flunk out. Newell gladly sacrificed the unfit so survivors could prove in combat they were fit to be certified.

Newell did not believe in coddling students. He did not believe in paternalistic government, either. Newell told how his own life’s philosophy was influenced by a truck driver who picked him up while hitchhiking back to Gurdon, Arkansas. The truck driver complained during the entire trip that government was not doing enough for him. That bit of whining solidified Newell’s nascent dislike of anybody wanting government to do for them what they should, in his view, do for themselves.

Newell also described watching a Mexican worker in Edinburg carrying a sheet of plate glass up a ladder. The glass was so large the worker risked stumbling and breaking it. I was skeptical about the value of such extreme individual effort, and opined that, considering the consequences, he should have asked for help. Newell’s response showed right to his soul: we cannot say how much it meant to the worker that he made it to the top of his ladder without help. I had read Ayn Rand’s Fountainhead and Atlas

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105 Another story reinforced Newell’s belief in personal initiative. An angry client once came into the Harlingen law office Newell shared with an older lawyer and asked what he could do about a creditor who had chained the client’s car to a post. The senior lawyer’s revered answer was, “Do you have a hacksaw?”
Shrugged, and she could not have said it more succinctly. Her ideal people were self-sufficient competitors, just like Newell’s law students who survived their world of struggle.

During the three years I protected New Orleans from Russian nuclear attack, Newell put his personal brand on the law school. Bill Wellen and Simon Frank left for downtown practice, and, when I returned in 1959, only Dwight Olds and Newell himself remained from the top-flight faculty A.A. White had assembled. The school firmly belonged to Dean Newell Blakely. A.A. White taught a few part-time courses, but the former dean was not involved in law school governance or academic policy.

Newell’s open-admission policy produced a student body with wide variations of talent. Some students who should not have survived the Darwinian competition graduated and passed the bar examination. Some top students transferred to other law schools, most often The University of Texas, after their first semester, presumably seeking a more challenging environment. The College of Law’s high bar pass rate became distant history.

We made some progress in convincing prestigious local firms to hire our top graduates, but the effort hit a snag in 1960 when a blue chip firm hired our top graduating student. The new associate practiced long enough to be listed as lawyer in a reported case, but his career ended abruptly the day he dictated, signed, and mailed letters to clients criticizing the firm. He left town before the telephone calls began. It took seven years to convince that firm to hire another UH graduate. Rumor has it that, after the disaster, the firm assigned a seasoned secretary to screen every lawyer’s letter before it was posted. That practice, if true, has been discontinued, according to one of the firm’s current partners.

John O’Quinn is the exception who justifies Newell’s faith in second chances. John was raised by his father, who ran an auto

repair shop near Rice Village Shopping Center. His mother deserted the family when John was four years old. John was very bright, and he entered Rice and accumulated 90 hours on and off academic probation. The 90 hours with poor grades qualified him to enter the College of Law under Newell’s rules, but might not have met A.A. White’s C+ standard.

John caught fire in law school. He finished at the top of his class, was a Law Review editor, won a national Moot Court competition, and he was the second UH graduate hired by Baker Botts. John left Baker Botts for plaintiffs’ practice, where he became a big case lawyer with remarkable successes in gas royalty disputes, breast implant cases, and tobacco litigation. Many physicians hated John because of the breast implant suits, and John must have enjoyed great satisfaction when he funded a medical center building with his name attached. Environmental law was very important to John, and he funded an Environmental Law chair at the Law Center. A drive to Galveston takes one through the John M. O’Quinn Estuarial Corridor.

John created a powerful law firm, and he made headlines and a lot of money in law practice. His ability to persuade juries complemented his brilliant legal mind perfectly. His firm was a major participant in the class action that extracted billions from Tobacco Companies in class action suits.

John celebrated his success with extravagant Christmas parties, but he dealt daily with personal demons and addictions. He died in a single car accident in 2009 when his SUV skidded on wet pavement and crashed into a tree. John’s personal life was not tidy, but his death was a great loss to the profession and to those of us who knew, liked, and respected him. Automobiles were an important part of John’s life. It has been said that the winner in the game of life is the one who dies with the most toys. John drove a high-powered Dodge Viper and he acquired 670 antique autos, some of which were exhibited at his funeral. The collection was broken up and the cars were offered for sale after John’s death.\footnote{http://www.oldcarsweekly.com/news/auction-news/john_oquinn_car_collection_liquidation (May 20, 2012).}

John O’Quinn’s good friend T. Gerald Treece, who graduated in 1969, is probably better known among Houston television viewers than O’Quinn. Jerry wore a freshman beanie for an entire semester declaring his first year status. He was one of our few early graduates to become a law professor, first at Pepperdine Law School, and then at South Texas College of Law, where he became a popular television personality who shared information about any legal issue. Jerry was so successful in running South Texas’ Moot Court program that a Presidential candidate employed him to prep for public debates. Jerry’s friendship with John O’Quinn led to his serving as executor of

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John’s will, which left his entire estate to the John O’Quinn Foundation.108

John Black was another notable student in Newell’s school. John Black had a different story. He loved debate in high school, college, and law school. John was an enthusiastic participant in the College of Law’s moot court competition, he was good at it, and he kept fighting and debating as we watched him lose an arm to cancer and die before graduation. His name lives on through the John Black Moot Court competition that annually attracts an eager group of lawyers-to-be.

Jim Perdue graduated from Newell’s law school in 1963. He was by no means an open-admission product. Jim was a cum laude graduate from both the University of Houston and the College of Law. He is a highly successful trial lawyer specializing in medical malpractice and adjunct professor at the Law Center. He received the State Bar Association’s Lifetime Excellence in Advocacy Award in 2012. His son, Jim Perdue, Jr., is a 1993 graduate who has been named on lists of the 100 best lawyers in the country and has been a Texas Monthly Superlawyer every year since 2004.

Open-admission was important to Newell, but keeping tight control over faculty appointments was just as important. Every new hire posed a potential threat to his iconic view of legal education. He carefully filled vacancies in A.A. White’s credentialed faculty with local lawyers who shared his politics and his vision. Counting part-time teachers, more than half of Newell’s chosen professors

were my former night school classmates. Newell’s local practitioners-turned-professors may have been good lawyers and effective teachers. Some were very popular. But for seven years, there was little infusion of thought from anywhere outside Houston. We were one of the most inbred regional law schools in the country.

Newell did not abandon the faculty that A.A. White had assembled. He succeeded in getting an M. D. Anderson Chair to supplement Dwight Olds’ salary, and when Simon Frank signaled he was leaving for downtown practice, Newell personally solicited virtually every alumnus for annual contributions to a Law Alumni Professorship to encourage him to stay. The fund-raising effort was successful, and some ninety percent of alumni pledged annual contributions. The salary supplement was not enough to persuade Simon to stay, but Newell applied it to encourage A.A. White to return to the faculty.

The Law Alumni Professorship was funded by annual pledges that, over time, began to lapse. In 1979, after A.A. retired, Newell took the title of Law Alumni Professor. Newell retired in

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109 The 1960 AALS LAW TEACHERS’ DIRECTORY, one year after I returned from military service, lists seven out of twelve faculty members as UH law graduates. The only non-UH graduates Newell hired were Ray Britton, an SMU graduate who had practiced locally with a big law firm; Jim Gough, a Columbia graduate who practiced locally; former Judge Charles Walker, who had taught part-time when I was a student; and Charles Collier, a one year visitor. The 1961 Directory shows he hired three, and maybe four, more UH graduates. The 1962 Directory lists three additional UH graduates. The listing is padded because adjunct (part-time) teachers were included without being clearly distinguished from full-time faculty. Six of those listed were my night school classmates. There is one name I do not recognize.

110 Recognizing that salaries at UH were not competitive, in 1956 the M. D. Anderson Foundation donated $1,500,000 to fund six chairs to recruit and retain distinguished professors. Newell secured one of these positions for Dwight Olds in 1958, even though Dwight wasn’t about to go anywhere. Dwight was actually a little embarrassed by the $12,000 salary. He said his needs were small, and the money should really go to us young guys. But he didn’t hand it over.
1987, and the Law Alumni title passed to me. By the time I got the professorship, the pledges had lapsed entirely, and there was no money attached—only the title. If it is not funded after my retirement, it will likely disappear. Universities now require that named professorships be endowed to assure annual income will be sufficient to pay salary supplements.

The Houston Law Foundation was created in 1960 to receive and manage the Law Alumni Chair pledges. Its obvious purpose was to benefit the College of Law, but an intentionally broad charter authorized it to dispense money to other entities. Newell did not intend money to be distributed to other recipients, but he wanted to establish a formal separation between the College of Law and the Foundation to ward off claims by UH administrators who might assert power over its assets. Newell maintained personal control over Foundation activity by appointing alumni who would do his bidding as directors.

The early Foundation achieved its initial purpose by supporting the Law Alumni Professorship, but it did not generate funds to supplement other faculty salaries or support research. That may not have been a particular disappointment to Newell, because he did not need salary supplements to hire local practitioners who were not interested in research and publication.

To a remarkable degree, Newell relied on “drop-in” teaching applicants to fill vacant faculty positions. From time to time, a local practitioner, most often one of our own night school graduates, would drop in to talk about teaching, and Newell would offer him a job. Class rank was marginally important, but Newell’s requirement was somewhere in the top fifteen percent. In one case, I remember “top seventeen percent” from our school was sufficient. It was no accident that Newell selected faculty members he thought would be personally loyal and support his law school vision.
Newell had good reason not to hire law teachers from the national market. He was intent on putting his personal brand on the school, and he did not like the contradictions he found outside the South, outside Texas, or even outside Houston. In fairness, Newell would have found hiring in the national market difficult. The College of Law had State Bar accreditation that qualified its graduates to sit for the Texas bar, but it was not then a member of the Association of American Law Schools (AALS). Career teachers in the national market will not consider teaching at a non-member school if they have another choice.

Newell made one concession to the world of legal education outside Houston. He ritually sent his locally-hired professors to prestigious schools for graduate law study. That tradition began with A.A. White’s year of graduate study at Columbia, and it

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111 Newell pointed out in his report to the University in 1957-58 that several barriers stood in the way of AALS admission. One was that the University itself was not approved by the Southern Association in 1953, when the College of Law would have first applied. A totally disabling requirement was that the University systematically excluded African-Americans from its inception, but no other group. Even after Brown v. Board of Education, the University claimed, as a private school, it was not subject to Fourteenth Amendment prohibition against racial discrimination. The law school was bound to follow the university’s policy. Newell noted that AALS exclusion treated us unfairly, because other southern law schools had been grandfathered, even though they were equally discriminatory. The truth was that we never actually refused an African-American applicant because none had applied.

Another disabling problem was inadequate physical facilities. The M. D. Anderson basement that looked so clean and fresh when I first saw it had not held up well. Heavy usage by a student body that had tripled in size after my 1952 visit took its toll. The building itself was badly engineered, and our ground floor took water with every heavy rain. Inadequate classrooms were carved haphazardly out of any possible space to accommodate the increased enrollment. The law library became less adequate with every passing year and each enrollment jump.

112 The University of Houston as a non-member was not included in the faculty listing of the AALS DIRECTORY OF LAW TEACHERS until 1956, when the policy on non-member listings was relaxed.

continued when A.A. encouraged Newell to take a year off in 1953 to earn an LL.M. from the University of Michigan. Nothing in his own graduate law study threatened Newell’s parochialism. He expected his locally hired teachers to take a similar path, going north to be polished, then returning with better credentials and knowing more about their subjects, but fundamentally unchanged. This was a fatal error for Newell’s vision. Instead of playing their assigned roles, most of the newly minted LL.M. graduates came back determined to change the fundamental nature of his local practice school.

An LL.M. degree was an important credential for entering law teaching in the 1950s and 1960s, and elite law schools offered generous financial support to enable law teachers from outlying regions to get Northern polishing for their outlying degrees. The graduate schools were not motivated entirely by altruism. The Ford Foundation and other funding entities provided the cash, and graduate schools got status points vis a vis each other by expanding their influence around the country. At Harvard, graduate study meant sitting in undergraduate classes and absorbing wisdom by osmosis. Columbia required substantial writing under tutelage of interested faculty members. At New York University, it meant taking courses to learn teaching techniques. Stanford and the University of Chicago put graduate students to work as research and writing instructors. I was never clear what it meant at the University of Michigan.

After I returned to teaching as a tenure-track faculty member, I was an ideal candidate for one of these graduate programs. Because I could return to my job at the College of Law, the graduate school would not have to merchandise me to another school as a beginning assistant professor. That fact assured both admission to an LL.M. program and a healthy stipend to cover living costs for the year. It also required that I select among law schools I knew only by name. I had long assumed Harvard was the

ultimate in education, and I could not imagine turning them down if I had the opportunity. But then a strange thing happened. I mentioned Yale as a second choice, and both Newell and Dwight bristled. To me, Yale was just a name, but to them it was a bad name.

To Newell Blakely and Dwight Olds, Yale Law School was located in the inner regions of hell, and Yale Professor Myres McDougal, who headed their graduate program, was the devil incarnate. They did not have all the particulars, but Newell knew that McDougal and his Yale cronies rejected his idea that law was a neutral, value-free Formalist system based entirely on rules and tradition. Dwight was equally clear that Mac rejected his view that law can be perfected through careful and reasoned inquiry.

Yale was indeed to the left of the national norm, but Newell and Dwight refused to acknowledge that virtually all respectable legal educators outside Harris County saw law through a lens that was different from theirs. For example, Al Conard, director of Michigan’s graduate program, replied to my LL.M. application by asking what I expected to write about during my residence. I had never thought about it. Dwight suggested exploring a conceptual inconsistency between cases restricting bona fide purchase protection to purchasers of legal title, and a parallel line of cases giving identical protection to purchasers of mere equitable title. Such esoteric inquiry sounds a little silly today. It must have seemed silly to Al Conard in 1961, because his reply letter said he didn’t understand what I was talking about, but he would interview me at the Chicago law teachers’ convention anyway. If the head of the University of Michigan’s graduate law program didn’t buy into our view of law, what would the Yale demons do?

Newell talked the University into paying my way to the 1961 AALS convention to interview with the graduate directors, hoping I would go anywhere but Yale. He made the rogue school more enticing with every warning against it.

The thousand mile flight to Chicago on a Lockheed Constellation was my second round trip commercial flight. The first was to Coast Guard officers’ candidate school in a DC-7. The AALS convention, as was its tradition, occupied most of Chicago’s storied, but aging, Edgewater Beach Hotel. The AALS chose it, not because it was still one of the country’s finest, but because it had fallen so low that law teachers could afford its off-season rates. In January 1961, Chicago was the coldest place on earth. Six years later, I attended the last AALS convention immediately before the hotel was torn down. Demolition was delayed long enough to get the final AALS dollar. The plumbing was so rusty that Dale Agata, wife of our Professor Burton Agata, ruined her undies by washing them in the red liquid gushing out of the bathroom sink.


113 Photo of Edgewater Beach Hotel: http://www.cardcow.com/246694/edgewater-beach-hotel-chicago-illinois/

114 LAURA ENRIGHT, CHICAGO’S MOST WANTED: THE TOP 10 BOOK OF MURDEROUS MOBSTERS, MIDWAY MONSTERS, AND WINDY CITY ODDITIES 31 (2005) : “The Edgewater Beach Hotel was like having a piece of the French Riviera or Monaco in Chicago’s own backyard. It spoke to the glamour of the early part of the century. But glamour eventually fades, as did the popularity of Edgewater. . . . Eventually, in 1967, the great resort was demolished.”
The Edgewater Beach in 1961 still showed remains of its elegant past, and it was the most impressive hotel I had seen. The bed was comfortable, but I knew that the next day, I would audition with the devil himself. I didn’t sleep well. I was a little disappointed after breakfast coffee when I met Myres McDougal face to face. He did not look like a devil at all. Instead, he looked deceptively like a tall, pale, slightly out of condition, genteel southerner with jar-lid glasses and thinning sandy gray hair that was combed straight back. Mac and Quintin Johnstone, the youthful associate director of Yale’s LL.M. program, had staked out their traditional corner on the convention floor where they could spot a dean one hundred feet away in any direction.115 Yale’s corner was well away from Michigan and Columbia territory. Mac used his weak eyes to maximum advantage, constantly darting over my shoulder hoping to capture a dean to introduce to the three or four graduate students huddled around hoping for an interview. Minutes into our first meeting, Mac introduced me to a few deans and students, treating me as if I were already an LL.M. graduate and ready for prime time. I was hooked. Quintin said I would hear from them shortly.

Mac, along with other graduate program directors, interviewed LL.M. applicants at what we called the “hiring”


class because that is what it was. Schools looking for new
faculty members came to the convention where they could find an
abundant supply of eager candidates. Teaching applicants with
LL.B. degrees from ordinary law schools would get few interviews
without a strong marketing push from the director of an elite
school’s graduate program. Elite schools filled their own faculty
positions by hiring top scholars from other schools or bringing their
very best graduates back to teach after a Supreme Court judicial
clerkship or practice with a top firm. Their next rank of LL.B.
graduates found jobs through direct recommendations to good
schools just outside the elite circle. We were not in the loop for top
law graduates from elite schools, but if Newell had been willing, we
could have hired graduates of middle-run schools whose LL.B.s had
been polished by an LL.M. at an elite school. Mac had a special
interest in schools such as ours. Yale had polished his own
University of Mississippi law degree with a J.S.D., hired him as a
professor, and given him an opportunity to become a significant
player in national and international legal scholarship. I am
convinced he was partial to southerners.

I barely remember the Harvard interview with Ernest
Brown, who ran their program. I doubt I would have recognized him
five minutes later. The Michigan interview was short, and Al
Conard assured me I would be admitted with a decent stipend. He
didn’t ask again about the research topic. My most memorable
interview was with two or three Columbia professors that took
place, not on the convention floor, but in a hotel room. Charlie
Meyers was the leader of the Columbia pack. I was surprised to see

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116 When she presided over the AALS, Soia Mentchikoff killed the fun of the
convention by trying to separate the “scholarly” discussions from the hiring
function. Accordingly, hiring was pushed to an earlier date and separate location.
For old timers, the fun of the convention was meeting and interviewing candidates.
After separation, both meetings were too dull to invite attendance except for hiring
committee members, who had to go to the hiring convention. Grudgingly.
that he was a mere mortal, and a rather skinny one at that. I had used the Oil and Gas casebook that he, Howard Williams, and Dick Maxwell prepared for the only law course I felt competent to teach. I still consider their casebook and treatise the best ever written, not just in Oil and Gas law, but in any subject. Charlie was even from Houston. He had a Rice undergraduate degree, and he had taught at UT’s law school before Columbia whisked him away.\textsuperscript{117} Columbia might have run Yale a close race in my preference derby except for one fact: my time at Columbia would be spent in heavy research, unlike Yale’s loose rein. Charlie never understood why I chose Yale over Columbia.

After the heady Chicago experience, I flew back home to teach a short week or so after Christmas break and write final exams. What was most on my mind was not teaching. My thoughts and full attention were focused on learning in graduate school what I didn’t understand about the law that I spouted from the front of the room.

All four schools offered generous financial stipends ranging upward from $6,000. I think Columbia offered $7,000, and Yale came in second at $6,500. Quintin later told me it was the most money Yale had offered any LL.M. candidate. That isn’t why I chose Yale Law School, but the extra money helped.

\textsuperscript{117} “Meyers taught at the University of Texas, the University of Minnesota and Columbia before joining the Stanford law faculty in 1962. When chosen dean in 1976, he was the school’s Charles A. Beardsley Professor of Law.” http://news.stanford.edu/pr/94/940822Arc4151.html (last visited March 20, 2012).
Mid-January to late August was a blur. There were three children, including a new baby, to relocate to Connecticut. I bought a small trailer to pull behind our 1959 Buick with Batmobile tailfins.\footnote{118} At the end of the summer semester, I rented a big trailer and hooked it to the Buick to carry household furniture to a distant East Texas town. The ride destroyed the Buick’s rear shock absorbers. My own move was capped by a long solo drive to New Haven. Yale’s graduate school office provided information about a house in Hotchkiss Grove, a seaside section of Branford, Connecticut, and we rented it sight unseen. It was situated on Long Island Sound, some ten miles outside New Haven. The family flew up later, and I learned another lesson, this time about New York police.

When I drove from Branford to pick up the family at what is now JFK airport, a New York trooper trailed my Texas license plates several miles into New York. I had no reason to speed and couldn’t understand why he stopped me. He explained that if I didn’t show my Texas title, he would impound the car and hold me in jail until they proved the Batmobile wasn’t stolen. Any New Yorker would recognize the opportunity to buy permission on the spot and keep driving, but I had never been shaken down by police. So I started telling my entire story, how Texans don’t carry titles around in their cars, I was a lawyer and law teacher, I was a Yale graduate student, and I was on my way to pick up my family at the airport. He just stood there in disbelief. He couldn’t get it that I

\footnote{118 1959 Buick photo: http://www.cargurus.com/Cars/1959-Buick-LeSabre-Pictures-c8782.}
didn’t get it. Finally, in disgust, he told me to drive on. A month later, I got it. It was just as well. I probably didn’t have enough cash on me anyhow.119

Shortly after we moved into the Branford house, our next door neighbor, Mary Ryan, told me a story that made southern discrimination sound simplistic. I understood the three social classes in East Texas: white people who counted, white people who didn’t, and black people. Connecticut had, as I remember, eight identifiable classes. I can’t reconstruct them exactly, but Old Yankee was at the top, with subclasses depending on whether the Old Yankee was Congregationalist or Presbyterian; all other Protestants followed; then Irish Catholics, Italian Catholics, Jews, and black people (of whom there were very few). Mary, who was Irish Catholic, explained how my landlord, Fishbein, came to own the house we rented in Hotchkiss Grove. Jews were ordinarily excluded from Hotchkiss Grove, but Catholics were allowed. Jews could buy in Indian Neck, a half-mile down Long Island Sound. The story of my rented house was that a Catholic woman married a Jewish husband named Fishbein, and she later inherited the Hotchkiss Grove house.

I was flabbergasted that the morally superior North was in its less legalistic way more discriminatory than the morally deficient South. I had no idea there were so many different categories to put people in. It hadn’t even reached my consciousness that Fishbein was Jewish, or that there was any significance in it. I first heard about Jews from the Baptist pulpit when I was growing up, but the

119 A few years later, I spent four hours in the Houston police department’s tank with about twenty-five other guys who probably belonged there. My crime was telling Police Sergeant B. M. Jordy to get off my foot after he bellied up to me at the scene of my own auto accident. I was charged with failure to move on (loitering). The municipal court judge knew me, and he was amused when he heard the story. The case was dismissed, but a recent internet search reveals that the arrest record was preserved.
only reference I could remember was to “a converted Jew,” whatever that was. I had been told that the only Jew in my hometown was F.P. Williamson. That was confusing, because he was a Methodist. He was also the saint who sold dry goods to us on credit during the really hard times. I didn’t understand what was behind the legal fraternity’s Aryan clause that caused A.A. White to resign as dean. Apparently, I had a lot to learn.

Before classes commenced, Mary offered to come over from next door and babysit our three children while my then wife and I went to a movie. We gladly accepted. We knew Mary smoked, but we didn’t know how much she drank. The combination turned out to be a near disaster. My middle child, John, three years old, was upstairs in bed when he smelled smoke. He went downstairs and found Mary in a drunken sleep on the sofa, totally unaware her cigarette had caught the cushion on fire. John roused her, and they put water on the smoldering cushion. When we returned from the movie, Mary said John saved her and the house, and she telephoned the Fishbeins to take responsibility for the damage. We didn’t see another movie all year.
CHAPTER 7. AMERICAN LEGAL REALISM AT YALE, 1961-1962

The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law. . . I think that the judges themselves have failed adequately to recognize their duty of weighing considerations of social advantage....I cannot but believe that if the training of lawyers led them habitually to consider more definitely and explicitly the social advantage on which the rule they lay down must be justified, they sometimes would hesitate where now they are confident, and see that really they were taking sides upon debatable and often burning questions.

O. W. Holmes, Jr., The Path of the Law

The trouble with the nineteenth century, said the realists, was that lawyers believed, and law professors taught, that law was a symmetrical structure of logical propositions, all neatly dovetailed. The truth or error, the rightness or wrongness, of a judicial decision could be determined by merely checking to see whether it fitted into the symmetrical structure; if it fitted, it was right; if it did not fit, it was wrong and could, or at least should, be disregarded....The predictive value of past cases for future decisions is therefore slight or nil: the theory of precedent is simply a gimmick by which clever judges fool other people and stupid judges occasionally fool themselves. The study of doctrine—of rules of law—is sterile and absurd.

Grant Gilmore, Legal Realism: Its Cause and Cure

120 10 Harv. L. Rev. 457 (1897).
Grant Gilmore declared that Legal Realism was passé in 1961, the year I began studying it. I read his article twenty years later. When I got settled in Branford, I wanted to look at Yale’s campus. At first sight, New Haven looked more like a grimy industrial enclave than the home of a great American university. The off-ramp from I-95 led me to the town square, which provided a decent front yard for the University. Some nearby institutional buildings were more factory-like than I expected for an ivy campus, but they were certainly better than the M. D. Anderson Library basement. I hadn’t any idea where the law school was located, so I parked at the town square and walked into the campus, which came closer to my expectations. Neatly mowed grass separated Yale’s Gothic buildings, and handy sidewalks connected them. Classes hadn’t started, and the campus was mostly deserted. I found someone who could point me toward the law school. The half-mile walk took me by the cathedral-like Sterling Memorial Library and a big excavation that someday would house the university’s rare manuscripts and books.

Yale’s law building was indeed grand. Modeled after the Inns of Court, it looked old, but wasn’t. Sterling Law Building had been completed in 1931, making it a mere thirty years old. I walked into the law school complex and experienced the sense of permanence only stone and wood can provide.

121 70 Yale L. Journal 1037, 1038 (1961).

A courtyard separated classrooms and offices from a law student dormitory. I walked out to Grove Street and saw an old cemetery with an entry sign declaring, “The Dead Shall Be Raised.” I hadn’t yet heard the joke that when a distinguished visitor asked Yale President A. Whitney Griswold, “Just when will the dead be raised?” Griswold answered, “When Yale needs the land.”

I could easily believe this temple of learning had power to raise the dead. Even the drive from Branford to New Haven in our graduate student carpool provided a spiritual experience when the gentle hills turned on the colors of fall. But it wasn’t New England, it wasn’t Branford, and it wasn’t the foliage that brought me two thousand miles from home. I was here to learn what law was about, and what I should be teaching. Courts Martial showed I could do law, at least at the trial level. But there had to be more than advocacy skills and Restatement rules if we wanted our students to be more than legal technicians and mechanics.

Yale’s brief and efficient registration extracted a fair amount of my stipend for tuition and books. Income tax law worked to my advantage because the $6,500 grant was tax exempt, and tuition and expenses (including rent) were deductible. The tax loophole applied because I was honing my skills as a teacher and not trying to qualify for a new job. All told, I had more cash left over from my graduate stipend than from my ten and one-half month $6,500 Houston salary.

McDougal encouraged LL.M. students to sample several classes before settling on a semester schedule. I sat in one of Ashbel Gulliver’s Future Interest classes and saw him teaching his last course before retirement. I had taught Future Interests from his casebook, which declared no one could understand the course in Future Interests without previously taking it. I did not register for Gulliver’s class or sit through the entire semester. That wasn’t what I had come to Yale for, but I did notice the atmosphere was different.
from Dwight Olds’ Future Interest classes. Gulliver did not stand, as most of my professors had. Instead, like A.A. White and Simon Frank, he sat at a desk in front of class. Students did not jump to their feet when called on. Instead, they discussed assigned materials in a conversational voice. I was not sure I could handle such an informal setting.

Contracts had become my regular course, and I wanted to see how a master would teach it. Fritz Kessler was a master. I thought I would get a free ride by taking his first year Contracts for credit. Yale assigned every first-year student one course that was taught in a small section. Kessler’s 1961 Contracts class was one of these, and he sat at a big table with a dozen or so students. The setting was informal, and discussion was open and enlightening. The master did not feel bound by the details of any particular case or Restatement rule. All rules, he said, were tentative. He did not try to answer questions with front-of-the-room authority. Every student’s idea seemed to be as valuable as his own, and he invited the class to discuss what should be done. I felt a little lost without the security of established law and an authoritative answer from the teacher. Kessler did acknowledge the traditional rules, but not as the end of fruitful inquiry. They were just the beginning.

Kessler’s Contracts course was very different from the one Newell taught from Lon Fuller’s Harvard casebook and that I taught from Samuel Williston’s Harvard casebook. Newell and I taught

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every case as if all parties were equally knowledgeable and competent, like farmers who bargained hard over the sale of a cow. Kessler, in contrast, did not assume sellers and buyers were equal. Instead, he dealt head-on with justice and with the imbalance of power between weak parties and powerful parties in contract negotiation. Kessler had fled Nazi Germany in 1934, and he was convinced that indiscriminate enforcement of contracts of adhesion—those dictated by powerful industries—would eventually produce a form of economic fascism through monopoly capitalism.124 His 1943 article, “Contracts of Adhesion—Some Thoughts About Freedom of Contract,”125 was a driving force behind Uniform Commercial Code §2-302, which empowers courts to refuse enforcement of unconscionable contract terms. For me in 1961, it was a radical thought. I had been schooled in Newell’s world of libertarian Formalism, and I preached that the entire purpose of contract law was to discover what the terms of contract agreements were and to enforce them strictly. Now, I was being told that fairness was important, and some contracts shouldn’t be enforced. This was indeed a new world, and it was more akin to Simon Frank’s and A.A. White’s than to Newell’s and mine.

Fritz Kessler taught his heresy with a warmth and understanding I had not yet mastered. I came to understand from him that law cannot be discovered as an objective and formal reality, but it can be discussed gently and thoughtfully—as something in constant motion. When I returned to teaching Contracts a year later, I did not feel I had to give an authoritative answer to every question. Instead, I looked more at the broad issues in contracts, such as the nature of agreement itself, and the policies


125 43 COLUM. L. REV.629 (1943).
inherent in the requirement for consideration. I looked for simple and basic examples such as the sale of a cow or playground exchange of marbles to explain the difficult doctrines of tender and condition law. I even began to feel at ease looking at issues from several points of view, leaving the outcome open. In spring, I took Kessler’s Jurisprudence course, read about Positive Law and Natural Law, and pondered what should be done to people who got lost in a cave and ate a chosen victim to survive.

Kessler was not alone in talking about justice. All Yale classes I sat in dealt with how a case ought to turn out, or which party ought to win, without limiting the inquiry to logical consistency with established rules. Simon Frank and A.A. White would have been at home in that environment. Newell Blakely and Dwight Olds would not.

Guido Calabresi, later dean of Yale Law School and now a Second Circuit Court of Appeals Judge, had just returned from a Supreme Court clerkship to teach his first course as a faculty member. I met him and audited his class in Real Estate Transactions, where I came to realize that teaching fox cases in Property was less useful than covering what “dirt lawyers” (lawyers who specialize in real estate transactions) actually do.

Calabresi’s course covered very few reported appellate opinions because there were none in the emerging subject areas he taught. Besides, lawsuits that end up, years after the dispute, in a reported appellate opinion are, for real estate lawyers, signs of failure. Litigation indicates somebody didn’t think things through or do the drafting job properly.

Even before Yale, I wondered why our Property course didn’t cover the right way to handle real estate conveyancing, and I assigned minor drafting projects aimed at that end. I asked Dwight about studying correct practice instead of lawyers’ failures, and I
was not satisfied by his answer that, if students learned how not to draft a document or structure a real estate deal, they would automatically know how to do it.\textsuperscript{126} It also began to dawn that, in Dwight’s world, if there were no cases, there was no law to study. In Calabresi’s world, the world without precedent was the right one to study. Calabresi’s course covered land development, condominiums, mortgages, government programs, subsidized housing, and other matters that were not in any casebook. There were no reported opinions on condominium law because the concept was new to the United States. There were also no reported cases to tell law students about contemporary mortgage financing, leases, development entities, office buildings, shopping centers, and subdivisions. I tried to copy Calabresi’s teaching style when I introduced a modern Land Finance course a few years later at UH. I was humbled that my best teacher in graduate law school was only one year my senior and he knew so much more.

I took Grant Gilmore and Ellen Peters’ Commercial Law course for credit. That was a mistake. I should have audited it. Grant Gilmore was a legend. He was one of the drafters of the Uniform Commercial Code (UCC) and a marvelous writer about law, but his classroom delivery was awful. Gilmore would begin a sentence with a voice like thunder, but then subside to a whisper nobody back of the fourth row could hear. I moved up to second row, next to John Danforth, a future Missouri Senator. At least from that chair, I could hear what Gilmore and Ellen Peters, later a Connecticut Supreme

\textsuperscript{126} Photo of Guido Calabresi: http://ts3.mm.bing.net/images/thumbnail.aspx?Q=5039985738844782&ID=5bb95d800a8b618d02b8d4f087cd9d
Court Justice, had to say about the forthcoming UCC that would soon replace the expiring law I taught in Sales and Creditors’ Rights. The UCC had just been promulgated as a code, and Texas, along with most states, had not yet adopted it. I was convinced the College of Law should immediately abandon the old courses and shift to a UCC course that would be relevant when our current students graduated.

Fred Rodell’s writing seminar got my attention because my Houston colleague, Ray Britton, had tagged him “Fred the Red.” I hope what I learned in his “Law and Public Opinion” course makes this narrative readable. Fred wanted us to call him by his first name—quite a change from my accustomed formality. Fred was an outsider by choice. He was a Yale graduate and an American Legal Realist with a bite. He was also a very influential teacher. There were maybe six to ten students in his writing seminar, including a Taft from Ohio. Fred railed against law reviews, legal writing, and legal pomposity. He also railed against the non-communist loyalty oath I had to sign to get my paycheck at University of Houston. I asked Newell what would happen if I didn’t sign. He replied, “Nothing. But you won’t get paid.” I signed. Fred didn’t sign his. He and I were, at some level, kindred spirits. But his spiritual level was much higher. He was a compassionate friend, and enemy, of Supreme Court justices. He idolized some, William O. Douglas, for example, and detested others, notably Felix Frankfurter.

Fred wrote for lay readers, not stodgy law reviews. When I was in high school, I wrote reasonably well. I verified this by

127 Photo of Fred Rodell: http://fredrodell.com/
Looking back at early essays my mother had stored in a box. But then I went to law school and learned “legal writing.” My sentences grew longer, more complex, and less comprehensible. Fred brought me and the other seminar students back home to pre-legal writing. He said if we wrote so laymen could understand, judges could also follow what we had to say. His course book was Strunk and White’s *Elements of Style*. To this day, I remember subject, verb, object. Short sentences. And keep it simple. No idea is so complex it can’t be expressed so a fifth grader can understand it. We met once a week, read aloud our five hundred word essays on the assigned subject, then withstood gentle comments, first from other students, and last from Fred. My final paper was “Thou Shalt Kill,” describing circumstances when killing another human was privileged. I included Texas’ Old Sparky and the criminal statute that allowed husbands, but not wives, to shoot and kill paramours caught with the *res in rem*, as Newell described it. Killing the faithless wife was not privileged and constituted murder without malice. Law and Public Opinion was a marvelous course, and I tried to duplicate it when I returned to Houston. Alas, I could not reproduce Fred’s warmth, kindness, style, and skill. I gave up after a couple of tries.

So far, Yale was different, but not as different as expected. Then I sat in F. S. C. Northrop’s course, *The Complexities of Modern Legal and Ethical Relationships*. Northrop’s kindly demeanor underplayed his position as both Sterling Professor of Philosophy and Sterling Professor of Law. He did not have a law degree, but he was well-known as a philosopher of the sciences and contemporary of Alfred North Whitehead, Ludwig Wittgenstein, and “Bertie” Russell.

Yale Law School hired Northrop in 1932 to construct a jurisprudence of American law, starting from scratch. I registered for the course without realizing my classmates had strong backgrounds in philosophy. Some were law students; others were
Ph.D. candidates. Northrop began class by talking about epistemology as if I knew what the word meant. He declared that English Jurisprudence was based on naïve realism, which he said was the same as radical empiricism. That was no help, even after I read an incomprehensible dictionary definition. His story about Thomas Hobbes made a bit more sense.

Hobbes wrote a book, *Leviathan*, published in 1651, declaring that people in nature, before government, were in a constant state of warfare. I could understand the state of warfare from elementary school recess, where I was the youngest and weakest fighter in playground brawls that ordinarily happened out of the teacher’s sight. So I could identify with Hobbes’s next step, which had these warlike creatures delegating absolute power to an all-powerful sovereign who issued commands (laws) to keep them from killing and robbing each other. Those who disobeyed were punished. Hobbes defined law as a command from a governing sovereign to a subject. Commands could be enforced by punishment. It didn’t matter whether a sovereign’s command was good or bad, just or unjust. It was, by definition, law. Now this made sense. When the teacher came by, her command to stop fighting was law, and bad behavior sometimes got punished. I came to accept that a sovereign’s command is law, and it is meaningless to ask whether the sovereign’s command is good or bad. It is law either way.

I had observed Hobbesian commands in the Coast Guard, where orders had the force of law and disobedience was punished. The New York trooper who pulled me over had used the power of

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law, even if corruptly, to make me stop. If I sued him and recovered damages for shaking me down, the system would command him to pay me. Power, in the world I lived in, seemed to define law. But I had no idea how to deal with the question “What should the sovereign command?” I had picked up from Newell and Dwight that this question was one for the Legislature, but that just kicked the question down the road. What should a legislature do?

Utilitarianism, as described by Jeremy Bentham, provided an answer. Pleasure is good; pain is bad. This equivalence conformed to my personal use of the words. Moreover, the definition converted the foggy notion of “ought” into a handy and measurable “is.” What was good for me was what brought me pleasure. What was bad for me was what caused me pain. What was good for the public was what the majority wanted. Bentham taught that Parliament should enact legislation to increase people’s pleasure or alleviate their pain. That was also what FDR’s New Deal legislation had attempted during the Great Depression, although it barely reached my personal needs.

In just a half-semester, I had found answers to my two burning questions: (1) what is law, and (2) what should law be?

When Northrop assigned the semester’s task of writing a paper on one of the legal philosophies covered in class, I jumped at the chance to write about a new hero, John Austin. Austin was a nineteenth century law teacher whose jurisprudence combined Hobbes’ definition of law—the command of a sovereign—with Bentham’s Utilitarianism as a guide for legislation. Law was an “is;” the majority pleasure expressed as legislative act was both an “ought” and an “is.” Austin’s ideas resembled what I had learned from Newell Blakely and Dwight Olds, and this version of Positivism made sense. The sovereign command was law, and it made no sense to ask whether it was good or bad. It was just law unless and until the legislature changed it.
My excitement about John Austin’s Legal Positivism caused me to overlook the fact I had brought conflicting ideas about law to Yale. One was Newell Blakely’s notion that people are individualistic and responsible for their own welfare, and government’s limited function is to provide order and stability so they can make their own fortunes. The conflict was that I thought courts could exercise a positive social influence without legislation, and some decisions were good and some were just plain wrong. Brown v. Board of Education had changed the lives of people like Demps McGowan and Thad and Thelma Tips for the better. I was firmly convinced that Brown was a good decision and Plessy was bad, and that point of view didn’t fit Austin’s Positivism.

I didn’t worry about the conflict until later. By mid-semester, I had spent a lot of time reading John Austin’s book, Province of Jurisprudence Determined, and I had a vested interest in its being right. I thought my term paper was a masterpiece, worth an A+.

My joy was short-lived. I submitted the term paper describing Austin’s Analytical Jurisprudence brilliantly and said glowing things about it. But I flunked the course. Not really—I made a B+. For LL.M. students, anything below an A or A- looked bad because our grades were inflated to make us look polished. The B+ stung enough that I took Northrop’s spring semester course as an audit, no credit, student. I knew he was saying something important, and I wanted to understand what I didn’t get. The second semester was about as dense as the first, but I came to realize why my paper praising John Austin was wrong.

I had missed Northrop’s entire point that Hobbes’ command theory of law is just plain wrong. Hobbes assumed that people are mechanistic, warlike creatures who have to be controlled by raw power. The definition ignores entirely the equally strong communitarian, empathic and rational nature of humans. Moreover,
the Utilitarian definition of “good” as personal pleasure commits G.E. Moore’s naturalistic fallacy by defining the evaluative “ought” in purely descriptive “is” terms. If “law” is defined as a command by a sovereign government and it makes no sense to ask whether it is good or bad, then Hitler’s commands qualified as law, and the Nuremberg trials were wrong in declaring otherwise. The Old South’s segregation laws represented the pleasure of a majority of voters and satisfied the Utilitarian standard. In Austin’s world, *Plessy v. Ferguson* was precedent, courts were bound to follow it, and *Brown v. Board of Education* would never have happened. I didn’t like that conclusion, so I had to abandon my newly discovered jurisprudence and find another.

Halfway through the spring semester, I began to get Northrop’s point. An adequate theory of law has to begin with a correct theory of person. Hobbesian and Austinian Jurisprudence are based on Hobbes’ incomplete theory of person as mechanistic, warlike, self-seeking creatures who have to be controlled by arbitrary command. So what is the theory on which personhood is properly based? Northrop’s answer was twofold.

*First*, Northrop pulled a concept from science, where reality is described by purely conceptual constructs, which he called “concepts by postulation.” In law, we define legal “persons” conceptually according to principles of American government. The Declaration of Independence and the Constitution establish the American concept of universal person as possessing natural rights to life, liberty, and property. These concepts came from John Locke’s

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129 There is a fundamental difference between the function of describing and the function of judging. When we say “candy is good,” we mean that it satisfies us in some very personal way. But when we say a law is good, we mean something else entirely. We evaluate a law by some standard other than whether it pleases us. When a Utilitarian says “pleasure is good,” it is the same as saying “pleasure is pleasure.” And that tautology really says nothing.
Second Essay on Government, which was a point of reference when the founders drafted the nation’s basic documents. Locke said the function of government is to protect those universal “natural” rights. This notion contradicts Hobbes and Austin’s proposition that whatever government commands is properly called “law.” A command is not law if the command is contrary to the fundamental nature of person as defined in the Constitution. By American law, such commands’ standing as “law” can be challenged—as by Brown v. Board of Education.

Unlike Hobbes’ unconstrained sovereign that was entitled to do bad things under the cover of law, U.S. governments are constitutionally forbidden from infringing the rights of persons. Persons are defined as universal abstract constructs. Their rights do not depend on race, religion, or anything but “personhood,” and they are constitutionally protected from oppressive majority will. By this analysis, the Old South’s racial discrimination violated fundamental precepts of science as well as the natural rights affirmed in the Declaration of Independence and the Constitution. For Northrop, Brown v. Board of Education rested on the firm foundation of natural rights. Plessy was wrong and should not be followed as precedent. The Austinian Positivism I had praised in my first semester’s paper would have validated Plessy and Hitler’s depredations. I saw why I had headed in the wrong direction in my first semester.

Second, by mid-spring semester, Northrop casually revealed that, as Albert Einstein, Alfred North Whitehead, and Bertrand Russell came closer to understanding theoretical physics, they began to comprehend the deep truths of Eastern religion. Buddhist teaching emphasizes firsthand, intuitive knowledge of ourselves and others as part of a greater process. All people participate directly in an aesthetic continuum, both as individuals and as part of the whole. For Northrop, an adequate theory of law had to be based on two assumptions. First, people are defined in law as legal constructs,
implying treatment must be equal, and, second, all people participate in the immediately apprehended reality that we are all one. From comprehending that oneness, we intuitively understand the necessity of acting with respect and kindness. If I harm another, I harm myself as well. It makes sense of John Donne’s poem “For Whom the Bell Tolls.” It makes sense of 1 John 4:8, “God is love.” It makes sense of Tennyson’s “Flower in the Crannied Wall.” That then, is Northrop’s basis for oughtness in the world: understanding the reality that we are all equal and we are all one, both as universally valid scientific constructs and as intuitively understood universal beings. That intuitive understanding of oneness underlies the Golden Rule, which is simply an admonition to act with empathy and acknowledge the universality of law and justice. It is expressed in the joke about the Buddhist who asked a New York hot dog vendor to “Make me one with everything.”

130 “No man is an iland, intire of itselfe; every man is a peece of the Continent, a part of the maine; if a clod bee washed away by the Sea, Europe is the lesse, as well as if a Promontorie were, as well as if a Mannor of thy friends or of thine owne were; any man’s death diminishes me, because I am involved in Mankinde; And therefore never send to know for whom the bell tolls; It tolls for thee. . . .” John Donne, Meditation 17, DEVOTIONS ON EMERGENT OCCASIONS.

131 Flower in the crannied wall,
I pluck you out of the crannies,
I hold you here, root and all, in my hand,
Little flower—but if I could understand
What you are, root and all, and all in all,
I should know what God and man is.

132 Several years later, Northrop’s teaching provided a conceptual foundation for UH graduate Michael Maness to overturn a Texas law prohibiting acupuncturists from practicing their skill except in the office of a supervising licensed physician. A Buddhist acquaintance asked me about challenging the prohibition in court. I pulled the concept of person out of Northrop’s class and stretched it to imply that the requirement that Eastern medicine be practiced through a Western-trained doctor’s theory of person violated patients’ constitutional right to choose treatment that is based on an Eastern theory of healthy person as one connected to the universe. Eastern notions of energy flow, yin and yang do not appear in Western medical science, which thereby rejects their reality. Michael took this claim to a
F. S. C. Northrop spent most of his academic life developing his philosophical theory of the “ought” aspect of American law. My spring class was the last he taught at Yale Law School. A couple of years later, I found him in his emeritus office and told him how important his course had been for me. He handed me a copy of his latest book on Vedanta, which he saw as a further explanation of the intuitive understanding of “person” in law. According to the Vedas, ultimate reality is all-pervading, uncreated, self-luminous, eternal spirit, the final cause of the universe, the power behind all tangible forces, the consciousness which animates all conscious beings.\footnote{\textit{Vedanta}, \url{http://www.ramakrishna.org/catalog/catalog.pdf} (November 5, 2011).} F. S. C. Northrop’s search for an adequate theory of American Jurisprudence had gone full circle from science to religion.

Northrop’s class inspired me to teach Jurisprudence when I returned to Houston, not because I knew much about it, but as a way of learning more about legal philosophy. Over the next half-century, I expanded my classroom focus to include, for example, basic notions from both Hobbes and Locke when covering government regulation of land use in Property.

Northrop’s philosophical treatment of what “ought to be” was entirely different from that of Yale’s American Legal Realists who were inspired by O. W. Holmes, Jr. and Roscoe Pound’s Federal Judge and won, giving acupuncturists the right to practice their skill without supervision by a licensed physician. The Judge held that depriving patients of treatment based on their chosen theory of person would be unconstitutional. State licensing requirements were changed to respond to the holding, but legislation diminished its significance by forcing acupuncturists to undergo a prescribed course in Western style medicine. Texas reacted by attempting to re-Westernize acupuncture in Chapter 20(c) of the Texas Occupations Code, which requires certification by an acupuncture board and training in Western medical courses as a condition for licensing. The Federal District Court opinion is not reported. Later cases do not pay particular attention to the East-West difference.
pragmatism. As Grant Gilmore described in the quote that begins this chapter, Realists rejected the definition of law as a logical extension of unexamined doctrine, and they wanted to study law as a social science. They studied what law “ought to be” pragmatically by assessing whether legal decisions produced better social policy, or, using Holmes’ term, “social advantage.”

Quintin Johnstone required his Property students to apply the Realist imperative that judges consider the likely effects of a pending legal decision and then choose the alternative that brings the greatest social advantage. Lawyers should argue their cases by pointing out the policy considerations that apply to their case. Constant attention to the social policy imperative makes all rules tentative, subject to inquiry, improvement, or reinforcement. In his coverage of land use zoning, for example, Quintin challenged students to identify precise social and economic issues at stake and to draw connections between those issues and the case under study. Newell and Dwight’s fears were well founded. I was about to become an American Legal Realist with Buddhist overtones.

The distinction between the “is” of Formalist law and the “ought” of social policy was new and exciting, but daunting. How could I (or anyone) know what was the best social outcome? That responsibility was even more disconcerting than giving up the security of traditional rules and John Austin’s simple definitions. Social policy analysis required a prediction of the consequences if a judge held one way, and then comparing what would follow if the judge held the other way, and finally choosing the better outcome. Predicting outcomes would be tough enough, but choosing the better outcome seemed overwhelming.

In an American Legal Realist’s world, lawyers and judges need valid social data, not hip-pocket notions, to sort good policy from bad policy. Scientific information about social behavior is hard to come by, but some is available. For example, microeconomics, a
branch of social science, advances a rational self-interest model of human behavior to predict what people will do and, implicitly, to define what laws ought to do through the construct of “efficiency,” or maximization of personal utility (pleasure). Economic analysis of law is accepted by conservatives, as represented by the great one himself, Richard Posner. Sociology as a science has fewer advocates, but there is still an active Law and Society movement.

Some years after my stint at Yale, a conversation with Newell provided some insight. I remarked that our law courses should examine whether the rules we taught were good rules or bad rules. Newell twinkled when he replied, “But John, don’t you think it is more convincing if you just describe what you think ought to be the rule as if it were the rule?” Aha! Newell saw no need to address the “is-ought” distinction because, if rules and precedent need to be changed, we should pretend they are different, advance the argument, and they will correct themselves.

Newell was not alone in his attachment to the pure Langdellian law school model, Formalism, and John Austin’s Positivism. Most legal educators agreed with A.A.’s vision of the good law school, but only a few agreed wholeheartedly with Yale Law School’s. Newell was not wrong to teach disciplined legal

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135 Harvard was viewed in the 1950s and 1960s as a Formalist holdout that rejected the Holmesian challenge. But sometime in the 1960s, Dean Erwin Griswold, dean of Harvard Law School, visited Houston and dropped by the law school. He told the assembled faculty he was convinced Harvard had been wrong in so limiting itself. Unfortunately for Harvard, the Critical Legal Studies ideas that latter day. Realism produced some twenty years later divided the Harvard faculty and caused a monumental uproar. See Critical Legal Studies Movement, http://cyber.law.harvard.edu/bridge/CriticalTheory/critical2.htm.
analysis. To the contrary, his respect for tradition, attention to the importance of facts, and linguistic dissecting of rules generated and sharpened the primary talents required for law practice. Rick Ewing, a former classmate and fellow professor who followed my path to Yale, said if a school did not have a Newell Blakely, it should invent one.

The newness of Realist theory was overwhelming, especially when I entered the really strange world of systematic policy analysis that looked intensely and operationally at what rules “ought” to be, and what judges, legislators, and administrators “ought” to do. This inquiry destroyed any notion that law is, or can be, based entirely on neutral principles or exist as a totally self-sufficient system apart from society. Myres McDougal’s Law, Science, and Policy class put this in stark relief.

The devil deserves his own chapter.
Myres S. McDougal

CHAPTER 8. MYRES McDOUGAL
AND HAROLD LASSWELL’S LAW,
SCIENCE AND POLICY, 1961-1962

Consider, for a moment, the following statement uttered by a law
teacher who is expounding a case, a legal adviser who is arguing
with a client, or an advocate who is addressing the court: “This is
the law (followed by a statement of a ‘doctrine’).” This statement
may be treated as a summary of past statements made by sources
that are treated as qualified spokesmen (authorities). It may also be
taken to refer to future events, predicting what certain authorities
will say (even though there is doubt about what they have said in the
past); or it may be construed as a declaration of preference by the
professor, adviser, advocate—a statement of what the speaker
thinks the law should be even though the authorities (before or
after) dissent. . . . Under some circumstances the statement goes
beyond a simple preference and becomes a volition to do whatever
is feasible to get the "should" accepted as an "is."

Hence if we take the statement of the "law" at face value we may
find it ambiguous; and we can call it normative-ambiguous. . . .

Myres McDougal, “Law as a Process of Decision:
A Policy Oriented Approach to Legal Study,” 1
Natural Law Forum 52, 59-60 (1956).
All Yale graduate students had to take McDougal and Lasswell’s course, so I couldn’t opt out even if I wanted to. But I didn’t want to opt out; I wanted to sup with the devil. Otherwise, I could have saved myself a two thousand mile trip.

I came to Mac’s first class in Law, Science, and Policy (LSP) without any idea what was about to happen. I was disappointed that the “other half” of the McDougal-Lasswell duo would not be at Yale in the 1961-62 academic year. Harold Lasswell was rumored to be in Taiwan spying on the Chinese Communists. When I met him a few years later, I saw why he was a Political Science god. My first reaction was amusement. Today’s teenagers fill in conversational gaps with “uh” or “I mean, you know.” When Lasswell got stuck, he started saying “the, the, the, the, the, the, the, the” until his mental motor settled on a word to start a new thought. Once he got going again, he could frame any proposition, no matter how complex or simple, in a way that was wholly different and entirely more elucidating than the customary view. Whatever Lasswell said sounded profound, even if in retrospect it seemed commonplace. In Lasswell’s absence, Mary Ellen Caldwell, a recent LL.M. graduate, acted as Mac’s helper and taught about a third of the classes. Mac said that, before he met Lasswell and got hooked on social science, he was a

pretty good teacher. After taking a few years to digest LSP, I realized Mac was still a pretty good teacher.

McDougal and Lasswell sought to create a universal scientific analysis that could apply to, for example, Torts, Contracts, Constitutional Law, International Law, Law of the Sea, and Law of Outer Space, or creating a government. In the 1950s and 1960s, with Ford Foundation backing, they spread their system internationally by training foreign LL.M. students, hoping to offer an alternative democratic ideology and thereby avoid Communist takeover in developing countries. Mac also wanted to expand Yale’s domestic influence by bringing law teachers from outlying schools to New Haven, exposing them to LSP for a year, and sending them back to their law schools, hoping they would change legal education from within.

It escaped me at the time, but the name of the course tells what it is about: Law, Science, and Policy. It is about law because it focuses on legal process, and not, for example, on economics or warfare. It is about science because it applies social science methods to describe, predict, and influence human behavior. It is about policy because it addresses operationally O. W. Holmes’s notion that judges ought to take account of social advantage when they make decisions. In some respects, it is a checklist of action steps. Using Roscoe Pound’s politically volatile term, it is a framework for social engineering.

*Law.*

Like most lawyers and law teachers, I had thought of law as statutes, regulations, rules, procedures, and cases. John Austin’s definition of law as the enforceable command of a sovereign made sense. I had a hard time accepting LSP’s more inclusive definition
of law as a process of authoritative decision.\textsuperscript{137} I was accustomed to thinking that words had specific referents in space and time. The word process was fuzzy. I finally got that it refers to organized activity. Atoms that organize into what we call “water” do so as a system, or process. A baseball game is organized activity. The game at play is process. Austin’s definition of law as a command of a sovereign was easier to grasp, but for LSP, Austin’s definition was too narrow. In addition to being normative-ambiguous, Austin’s definition does not, for example, encompass the entire process of enacting laws, invoking authority, advocating claims, deciding disputes, enforcing decisions, and evaluating outcomes. Most important, Austinian Positivism does not foster judicial policymaking.\textsuperscript{138} LSP incorporates all of these elements in its comprehensive definition of law as process.\textsuperscript{139}

LSP does not limit its focus to courts or legislatures. Instead, it provides a mechanism for analyzing all authorized public decisions, but with particular attention to judicial, legislative, and administrative activity. LSP also assumes, along with Holmes, that courts, not just legislatures, are authorized to make and enforce policy decisions. Once I grasped these fundamentals, I began to follow the discussion. I did resent that LSP called law’s maxims, principles, and constructs “myth.” That seemed to reduce all of my law school learning to fairy tale status. It took a while to accept that


\textsuperscript{138} Ibid.at 53, 104-106, (1992).

\textsuperscript{139} “Law will be regarded not merely as rules or as isolated decisions, but as a continuous process of authoritative decision, including both the constitutive and public order decisions by which a community’s policies are made and remade. The processes of authoritative decision in any particular community will be seen to be an integral part, in an endless sequence of causes and effects, of the whole social process of that community.” HAROLD D. LASSWELL AND MYRES S. McDougAL, JURISPRUDENCE FOR A FREE SOCIETY 25 (1992).
calling law myth does not mean legal rules and traditions are unimportant or irrelevant. The point is that rules influence behavior only because lawyers, judges, and others share the same mental constructs (myths), and act as if they were true. If the goal is to predict an outcome, for example, it helps to know whether the decision-maker operates according to liberal or conservative myths.\textsuperscript{140}

\textit{Science.}

My early teaching vocabulary regularly employed law words such as “right” and “duty” that referred to other law words or abstract constructs without worrying that they had no empirical referents that could be assigned scientific meaning. At the outset, I did not understand that LSP restricted its language to words that had sense-verifiable (empirical) referents. I finally understood that the word empirical implied sense-validation or objective measurement, though it took a while to understand why LSP was so dedicated to empiricism. Their purpose was to replace ambiguity with

\textsuperscript{140} Ibid., at 346-347. Legal myths are indeed true in a sort of “rules of the game” sense, like baseball. The rules of baseball have no scientific validity or truth, as such. Yet, the rules are important to those who play the game for fun and for profit. Some aspects of the rules of baseball are based on practical reason, such as the distance from the pitcher’s mound to the batter’s box and the infield fly rule. If too far away, no pitcher can reach it; if too close, no batter can hit the pitched ball. Others, such as three strikes, are arbitrary. Some early Realists assigned an even less flattering label to legal rules, calling them “transcendental nonsense.” Felix S. Cohen, \textit{Transcendental Nonsense and the Functional Approach}, 35 \textit{COLUMBIA L. REV.} 809, 815 (1935). Mac and Lasswell, along with Karl Llewellyn, wanted to replace traditional law terms, which they viewed as normative-ambiguous, with words that had empirical, sense-verifiable or measurable referents. Karl N. Llewellyn, \textit{Some Realism about Realism--Responding to Dean Pound}, 44 \textit{HARV. L. REV.} 1222 (1931) explored use of statistical, textual analysis in order to discover whether a common school of legal realism existed.
measurable constructs so law could be subjected to (social) science examination and discourse.\textsuperscript{141}

Most words used in legal discourse, such as “negligence,” do not refer to measurable qualities. Instead, they refer to other law words and concepts that have no direct, immediate, sense-verifiable, empirical referents.\textsuperscript{142} Lawyers are comfortable dealing with non-scientific legal terms because the community of lawyers has its special vocabulary and they use law words in context.\textsuperscript{143} Lawyers’ words may work very well in that limited context, but the ambiguity of law words makes law language incapable of scientific examination, measurement, and discourse. That is, law words do not refer to events or things that can be seen, touched, or measured, and they cannot provide a format for scientific policy development.\textsuperscript{144}

O. W. Holmes, in \textit{The Path of the Law}, tried to reduce ambiguity, exclude metaphysics, and provide an empirical referent for the term “law” when he said that, by law, he meant a prophesy,

\begin{quote}
\textsuperscript{141} H\textsc{arold} D. \textsc{lasswell} and M\textsc{yres} S. M\textsc{cDougal}, \textsc{Jurisprudence for a Free Society} 865-884 (1992).

\textsuperscript{142} \textit{Ibid.} at 353-355 (1992).

\textsuperscript{143} I have found an acceptable explanation for the linguistics of law in Ludwig Wittgenstein’s notion that we learn language as a game, and we acquire the rules and understandings of our language in a way that cannot be described by language itself. Law language is the same way. We are able to deal with law’s normative ambiguity, which so troubled McDougal, because the language game allows us to deal seamlessly with the descriptive, predictive, and normative aspect of legal terms as we play the law game itself. See \textsc{Ludwig Wittgenstein}, \textsc{Philosophical Investigations} § 7, 5e (G.E.M. Anscombe trans., 3d ed., Macmillan Co. 1970) “We can also think of the whole process of using words ... as one of those games by means of which children learn their native language.”

\textsuperscript{144} See the introductory quotation from Myres McDougal, “Law as a Process of Decision: A Policy Oriented Approach to Legal Study,” 1 \textsc{Natural Law Forum} 52, 59-60 (1956).
\end{quote}
nothing more or less.\textsuperscript{145} McDougal and Lasswell went Holmes one better and tried to provide empirical referents for each and every law term they used. It was a monumental undertaking.

One way of explaining LSP is to visualize an anthropologist visiting a tribal village.\textsuperscript{146} As a scientific observer, she might ask a sample of tribal members, “Who do you expect to make decisions of a certain type— for example, that the tribe will make war on another group?” If tribal members identify a medicine man, a tribal council, a chief, or an elected parliament, their measurable expectations give an empirical meaning for that entity’s authority to make decisions of that type. If the authorized decisions are hortatory only, they might qualify as moral propositions, but not as “law.” But if the tribe enforces the decisions, the addition of power and control qualifies the decision process as “law.”\textsuperscript{147}

If tribal decision-makers justify a particular decision by saying the sky god sent them a message by changing the positions of stars, the anthropologist will record the metaphysical explanation as a tribal belief, or myth, but she will not accept as scientific truth that there really is a sky god.\textsuperscript{148}

LSP undertook the same scientific analysis of sophisticated legal processes that the anthropologist makes of tribal customs and behaviors. A scientific description of the American legal process

\textsuperscript{145} O. W. Holmes, Jr., \textit{The Path of the Law}, 10 Harv. L. Rev. 457 (1897).

\textsuperscript{146} LSP postulates an idealized scholarly (objective, scientific) observer as an essential policy formulation participant. HAROLD D. LASWELL AND MYRES S. McDOUGAL, JURISPRUDENCE FOR A FREE SOCIETY 17-18 (1992).

\textsuperscript{147} Ibid. at 26 (1992).

\textsuperscript{148} Navigational relationships between stars and geographical position on earth, on the other hand, are accepted as scientific truth because the correlations are based on constructs that have been verified empirically.
would therefore consign most of law’s conceptual underpinnings to the same metaphysical category as the tribe’s reference to the Sky God, as “myth,” as, for example, “The plaintiff will win if the defendant was negligent.” Many Realists doubted that myths of law really decide concrete cases. Karl Llewellyn, one of the authors of the Uniform Commercial Code, pointed out the weakness of rules to predict judicial decisions and looked for more scientific explanations. Felix Cohen called legal doctrine Transcendental Nonsense. Jerome Frank looked for psychological motivations for legal decisions and he downplayed the reasons judges gave in their opinions, calling them rationalizations in the Freudian sense.

Pure science deals only with what “is,” not what “ought to be.” The anthropologist, for example, aims only to observe and describe the culture she studies, and she avoids intervention. But intervention is a primary aim of LSP. LSP admonishes its


150 Karl N. Llewellyn, A Realistic Jurisprudence: The Next Step, 30 COLUM. L. REV. 431 (1930); Karl N. Llewellyn, Some Realism About Realism: Responding to Dean Pound, 44 HARV. L. REV. 1256 (1931). As Carl J. Friedrich describes it in Remarks on Llewellyn’s View of Law, Official Behavior, and Political Science, POLITICAL SCIENCE QUARTERLY Vol. 50 No. 3, Sep 1935, “Llewellyn would investigate actual conduct in terms of existing words, precepts and rules, in order to determine whether these words, precepts and rules correspond to the actual behavior of officials (more particularly judges) in given and territorially defined jurisdictions. . . .”


152 JEROME FRANK, LAW AND THE MODERN MIND, 2nd ed. (1949)

153 LSP uses the concept of an activist scholarly observer to formulate policy by performing five problem-solving steps. The first step is clarifying the goals in terms of human dignity. “In lay terms the value question is a problem of “ought.” What value outcomes ought I (we) seek in particular circumstances? The succeeding steps are instrumental to achieving the goal. They are (2) trend description
adherents to first observe and describe, and then to intervene in the social process to implement its overarching goal of Greater Human Dignity.\footnote{\textit{Ibid.}} Intervention is appropriate in any decision arena to accomplish the pragmatic social ends O. W. Holmes called “social advantage,” defined by LSP with empirical (scientific) content as “policy.”\footnote{\textit{Ibid.}, at 311-326. 1033-1128 (1992).}

\textit{Policy.}

LSP undertakes to respond to O. W. Holmes, Jr.’s admonition to judges to consider the social advantage and Roscoe Pound’s notion that law is an instrument of social policy. Policy thinking requires clarification of goals and formulation of strategies to accomplish those goals, followed by constant reexamining and rethinking the outcome in a continual progression toward social betterment. LSP is about policy because the entire effort aims pragmatically at societal improvement to achieve what McDougal and Lasswell called “greater human dignity.”\footnote{\textit{Ibid.}, at 728 (1992).} They postulated human dignity as their personal choice, without claiming any metaphysical justification.\footnote{\textit{Ibid.}, at 339-340 (1992).} They did, however, identify similar aspirational statements in virtually every civilized country’s political rhetoric.\footnote{\textit{Ibid.}, at 740, 1017-1031 (1992).} Following economic doctrine, LSP adopts the

\begin{quote}
(determining what direction events are leading, whether toward or away from the postulated goal); (3) analyzing conditioning factors to see what effect contextual events will have on the trend; (4) projecting the trend into the future as a prediction; (5) recommending alternatives to bring about the preferred outcomes.” \textsc{Harold D. Lasswell and Myres S. McDougal}, \textit{Jurisprudence for a Free Society} 727-737 (1992).\footnote{\textit{Ibid.}}
\end{quote}
Maximization Postulate, affirming policies that are expected to yield net value advantages. In short, this means increasing the quantum of individual satisfactions and sharing them more widely.

LSP’s goal statement sounds left-leaning, but it need not be. Their goal is defined in measurable, empirical terms—as maximizing the production of eight human values (preferred events, goods, or happenings) and sharing them widely. The value categories are power, enlightenment, wealth, well-being, skill, affection, respect, and rectitude. There is no magic in either the listing order or the number eight. The number could be three, with less precise divisions, or it could be fifty, with more detailed categorical divisions. The number eight is manageable and easy to remember by the mnemonic PEWWSARR.

LSP employed Phase Analysis to describe the people who are being observed (participants); what they want (objectives); what assets they can use (base values); what the setting is (situations); what they are doing to attain the values they seek (strategies); whether they succeed (outcomes); and what effects their actions have on the greater community’s values (effects).

Most people accept some aspects of LSP’s overarching goal statement. For example, providing safe drinking water and sewerage

162 The term was more in vogue during my time in the course. In JURISPRUDENCE FOR A FREE SOCIETY (1992), it seems to have been downgraded as a meaningful category, although the general elements of inquiry were retained.
163 For an example of phase analysis of shared power, see JURISPRUDENCE FOR A FREE SOCIETY 741-745 (1992).
treatment for a community is widely accepted as a function of government. The Texas Constitution authorizes unincorporated communities to vote to create special districts that can issue municipal bonds to finance water wells and sewerage treatment facilities. \(^{164}\) The district applies user fees and property taxes to pay debt service on the bonds. A traditional analysis of this procedure is likely to begin with non-empirical ideological abstractions, such as “government should do whatever the majority want,” or “government should not provide a service that can be provided by private enterprise.” LSP would call these propositions “myth” and shift focus to measurable outcomes by noting that the law increases the power of communities to provide services more efficiently than if each family handled water treatment and sewage treatment individually; the community water system conserves wealth by drilling only one well instead of hundreds of individual wells; and it enhances community well-being by providing pure, treated drinking water.

My well-being as a child might have been enhanced by pure drinking water instead of the contaminated cistern supply, and by indoor plumbing instead of the drafty, spider-infested outhouse I visited on cold mornings. I had rotten teeth as a kid. My tooth rot might have been prevented by adding fluoride to the community drinking water. Political ideologies of the left and right address social issues such as fluoridation by referring to popular political myths such as paternalism or freedom, or by calling for more or less government spending, more or less regulation, higher or lower taxes, etc. LSP rejects objections that are based on ideology “government should not medicate people” or bad science “fluoride is harmful.” LSP would call these non-scientific ideological notions “metaphysical beliefs,” like the tribal myths about the stars, because

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\(^{164}\) TEX. CONST. art. XVI § 59.
they are not grounded in empirical fact. LSP advocated scientific studies to guide policy decisions. When I last heard Mac and Lasswell discuss their grand design, they proposed a federally funded institute to conduct extensive social science studies to provide accurate data to guide social policy decisions.

LSP outreach had a great deal of influence in the 1960s. Many law deans gladly hired Mac’s LL.M. graduates, not knowing that some would be subversive missionaries who wanted to change legal education from within. LSP is still in the vocabulary, maintained by a Stanford law journal bearing its name. Mac and Lasswell’s formulation is now called the New Haven School, and their work retains credibility in international law. It has been virtually forgotten as an important factor in legal education.

If he had wanted to criticize his colleague, F.S.C. Northrop might logically have characterized LSP as committing G. E. Moore’s naturalistic fallacy—using the “is” of human pleasure (satisfaction of value preferences) as a normative standard for “oughtness.” Gerhard Casper, a German-law-trained classmate who later became dean of University of Chicago’s law school and

165 HAROLD D. LASWELL AND MYRES S. MCDougAL, JURISPRUDENCE FOR A FREE SOCIETY 264 (1992). LSP’s authors accept economics as a useful source of data, but criticize its tunnel vision. Ibid., at 259-260.

166 Ibid., at 1184 provides a more modest call for continued social research.


169 LSP’s authors were keenly aware of the “is-ought” distinction and they deny they commit the naturalistic fallacy. HAROLD D. LASWELL AND MYRES S. MCDougAL, JURISPRUDENCE FOR A FREE SOCIETY 730, “The goal of human dignity, then, is emphatically not presented as a derivative of an ‘is’. . . .” (1992).
President of Stanford University, declared LSP was simply a branch of Utilitarianism. This notion is supported by my recollection that McDougal once answered a question about value conflicts by saying they should be put to a vote. Another criticism is that LSP is a naïve effort to apply natural law, simply adopting human happiness as a final cause. My University of Houston colleague Rick Ewing called Mac and Lasswell “megalomaniacs trying to control the world by reclassifying events.” I think the criticisms are valid, but irrelevant. As I look back on the course some fifty years later, I am amazed by its ambitious endeavor to apply scientific method to analyze social policy. I was not as impressed when I took the course in 1961, and I still don’t think it directly helps people learn to practice law. It can, though, change one’s perspective about law. Appendix III describes the system in greater detail for those who want to get a better idea of how LSP proposed to carry out Holmes’s and Roscoe Pound’s grand vision.

In 1961, LSP seemed a strange way to look at law, and not at all related to anything I had studied, taught, or heard about. At best, it struck me as an overly structured way of using common sense by providing a check list to look at and categorize events. It was easy to comprehend the basic notions, such as people wanting things like power and wealth. The eight values (power, enlightenment, wealth, well-being, skill, affection, respect, and rectitude) could cover what I was after when I left the farm to go to law school. My preferred event was to wear a seersucker suit in the summer and white shirt and tie all year around. Enlightenment appeared to be why I was at Yale, but that particular value seemed beyond my reach early on in LSP and Northrop’s class.

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170 LSP’s authors acknowledge the contribution of Jeremy Bentham in advancing individual pursuit of happiness as a desirable policy. Ibid. at 222.

171 LSP’s authors deny any grounding in natural law. Ibid. at 6.
Phase analysis was easy. I could understand watching people try to get power, wealth, etc., and I could describe whether they succeeded or failed. Memories of farmers with tears in their eyes when the rains didn’t come helped me relate to outcomes. Phase analysis and its highly structured categories appeared to be an unnecessarily complex way of stating the obvious. As with courses in public school, college, and law school, I avoided deep inquiry or extensive reading, and soaked up what I could through skimming the material and sitting in class. That wasn’t enough to hook me on LSP. It certainly didn’t prepare me for the fortuitous event that got me unexpected acclaim and mentorship from Mac, and even the absent Lasswell.

Early in the fall semester, Mac assigned the class the task of writing term papers that applied LSP to some area of law. He was using our work products to generate material for his overdue book describing LSP’s application in legal education. I held myself out as a Contract Law teacher, so my topic was predestined. Unfortunately, I didn’t have any idea what LSP had to do with the Contracts course I had taught three or four times without it. I could have memorized LSP categories and definitions and fed them back on an exam, but I couldn’t imagine any class of law students sitting still for a complete phase and policy analysis on buying and selling cows.

I was relieved to learn my term paper didn’t have to start from scratch. All I had to do was flesh out a paper written by a Contracts professor in the previous year. Mac handed me a copy of the model paper, and terror overcame confusion. I couldn’t make any sense out of it. There was not a single declarative sentence or text that I could expand to earn the ritual A all LL.M. candidates expected in LSP. All I could find in the model paper were incomprehensible questions placed in the familiar categories.

Confusion gave way to expediency. I guessed the model paper concentrated on contract formation because the questions
were “Who are the parties? What are their value positions? What do they regard as consideration,” etc.? That gave me an idea. I would add some incoherent questions about the last half of the course dealing with breach of contracts to complement the other guy’s incoherent questions about the first half of the course. That is what I did, and, as instructed, I handed Mac my draft version of Contracts according to LSP, hoping it would suffice.

A week or so later, I was called to the office. Mac was uncharacteristically agitated. He held up my paper and asked “What is this?” At least I didn’t try to fake it. I told the truth. I had no idea what the model paper was trying to do, and I tried to supplement its garbage with garbage of my own, using words relating to the performance half of contract law. My response was respectful enough in tone, but the substance was insulting. I had not only condemned the efforts of one of Mac’s favorite students; I had called the Master’s own teaching into question by expressing pure ignorance of what he had been talking about for six weeks or so.

To his great credit, Mac listened as I told him why I thought the other guy’s effort and my own additions were totally worthless. Fortunately, instead of dropping me from the program, he said I should start from scratch and write what made sense to me.

It took only a couple of hours to produce ten pages of declarative sentences to place contract formation, performance, conditions, damages, etc., in a phase analysis framework. The good thing about LSP’s fill-in-the-blank categories is that I just had to drop basic Contract law into the LSP categories. I handed the paper to Mac’s secretary, not wanting to risk rejection face-to-face.

When I met with Mac a second time, I explained my new draft in LSP terms. There is a time difference between Part I (or Phase I) of Contract Law and Part II (or Phase II) of Contract Law as revealed in Contract books. Part I deals with creating contract
commitments; Part II deals with either performing those commitments or paying the price for breach. Changed conditions may alter the perceived value of earlier objectives and trigger totally different strategies. Accordingly, two separate phase analyses are required. That is about all I said.

When I explained the difference between creating obligations and performing them in LSP terms, Mac’s weak eyes brightened. He had not included time flow in his descriptive formulations of process analysis. What I said about private contract law mattered less to Mac than its potential application to his primary interest, International Law. What we would thereafter call “Phase I” described formation of private contracts, and it applied equally to negotiating and creating international commitments among nations; Phase II referred in private contract law to performing the contract promises by delivering widgets and paying the price—or breaching and paying damages. In International Law, Phase II applied to honoring or breaching treaties. The remedy in private contract law might be specific performance or monetary damages; in International Law, it might be war, trade sanctions, or exclusion from favored status.

I did not see that what I said was significant apart from satisfying course requirements, and I certainly didn’t anticipate that Mac would phone Lasswell and tell him they had to change their International Law materials to take my insight into account. But that is what he did. I got my A. I also got a sort of footnote in LSP history for the contracts outline that lasted through several LL.M. classes after 1962. Most important, a lifelong friendship with Myres McDougal provided a recommendation for any job to which I aspired.\footnote{Mac also acknowledged my unexpected contribution in JURISPRUDENCE FOR A FREE SOCIETY: STUDIES FOR LAW, SCIENCE AND POLICY xxxix (1992).}
After he got my point, Mac began to praise me to every dean who passed through New Haven looking for a beginning teacher. The University of Iowa’s Dean Mason Ladd asked me point-blank what I had done to get Mac so excited. I had to tell him honestly I didn’t know. That did not impress Dean Ladd, but in fact, I had not absorbed the impact of my paper on Mac’s analytic system. Mentored or not, nobody made me an offer before the hiring convention. I did get enough attention to swell my head and raise the possibility I might leave warm and welcoming Houston for the cold Northland. I had mixed feelings about that.

I have been told Mac pushed me for a spot at Yale, probably to stay over for a year as a research fellow in LSP like Mary Ellen Caldwell. I totally blew any chance of a Yale research fellowship when, out of the blue, Ellen Peters, who was co-teaching Commercial Law with Grant Gilmore, asked me a classroom question about the bulk sales provision in the Uniform Commercial Code. I had taught the pre-UCC version of secured transactions, and I knew there were two types of Bulk Sales laws. I described the two out of memory, but then she verified I had not read the assignment by asking which version the UCC had adopted. Not recognizing I had a 50-50 chance of getting it right, I admitted I didn’t know.

If Yale had hired me in any capacity, it would have been a personal and professional disaster. I didn’t believe in LSP with the dedication required to write within its categories. I am glad I never had the chance to say no. Besides, I was tired of perpetually cloudy skies, cold damp weather, and living in a rented house with three children. I wanted to go home.

My biggest concern was explaining to the Fishbeins why there were yellow stains on the upstairs bathroom’s fiber rug where my younger son, Stephen, was still perfecting his aim.
John F. Kennedy, Yale Commencement 1962

http://www.americanrhetoric.com/speeches/jfkyalecommencement.htm

*It might be said that now I have the best of both worlds. A Harvard education and a Yale degree.*

President John F. Kennedy, Yale Commencement speech, June 11, 1962.

During my graduate year, John Glenn became the first man to orbit the earth and John Kennedy made his famous Yale commencement speech. I heard news of the orbit on the streets of New Haven. I missed the speech because I headed home a week or so before graduation, eager to escape a Connecticut sky that was six months overcast without a single ray of sun. Houston’s heat promised a respite from New England’s extended winter.

I had made some good friends among the students in the LL.M. class. One was Al Utton, who returned to the University of New Mexico, where he taught environmental law and was honored by having their environmental research program named for him. A few years later, I saw Al at an AALS meeting with his head wrapped in bandages. I was so possessed by fear he had brain cancer that I avoided looking at his face. If I had asked, he would have told me he was undergoing a hair transplant. Another good friend was Arthur Murphey, with whom I suffered through Commercial Law and studied for Gilmore’s impossible examination. He returned to the University of Arkansas at Little
Rock after graduation. Arthur Bonfield, a Yale graduate whose J.D. needed a little polishing to enter teaching, was a close friend. He got the job with Dean Mason Ladd at the University of Iowa. I met a few other Yale J.D.’s, including Carolyn Dineen Randall, who was about to become a reluctant Houstonian because her husband, Jim, landed a job with Baker Botts. Quintin Johnstone introduced me to George Lefcoe, soon to become a nationally known Land Use and Property teacher at the University of Southern California. I met Christopher Stone, who became a noted legal philosopher at University of California. In a couple of years, I would use George Lefcoe’s Property book and Chris Stone’s Jurisprudence books in draft form with an invitation to give feedback on their efforts. Unfortunately, I didn’t know enough about the subjects to be of much use as a reviewer.

Renewing such acquaintances provided a reason to attend the annual AALS conventions for several years. But that was for the future. My task in 1962 was packing up and transporting my family and new ideas back to Houston.

It was a cloudy and chilly day in May when our family of five headed south in the Batmobile with the tiny trailer in tow. Passing through Alabama, I saw first-hand what Freedom Riders had to expect in the 1960s. About a half-mile ahead, two cars filled with state troopers trailed an out-of-state sedan a couple of car lengths from its back bumper. The slow motion tail went on for about twenty miles, with the target staying at least five miles below the speed limit. I bravely kept a half-mile distance, fantasizing that I would step forward as a scholarly observer and record any injustice if the troopers pulled the freedom riders over. My wife warned me against impetuous action that might have been privileged in the land we just left, but not in the state we were traveling through. Luckily, my Texas license plate, loaded trailer, and traditional family did not raise any suspicions. We rode through Mississippi and Louisiana into Texas. It was good to be home.
I taught some course or another in summer of 1962. It didn’t matter which because in those first few years I taught at least eleven different courses totaling more than 30 semester hours. That is about one-third of the semester hours required for a law degree. Every course was superficial and basic. The stipend from Yale had been spent, and bills had to be paid. But the boy teacher who left Houston in September was not the boy teacher who returned in May. My head was now full of ideas about what a law school should be and what it should do.

Unless the aspirations of every law school I had heard about in graduate school were wrong, our school was due for change. A first order was to expand our curriculum and provide room for courses such as Commercial Law, Jurisprudence, and Land Use. Highest on my personal agenda was reinstating A.A.’s admission standards. Newell, of course, took note of my point of view, smiled, and went on about his business. Dwight told me what I could have guessed—that top students stayed one year and transferred to The University of Texas or somewhere else. Our bar pass rate was down. Dwight was resigned to our status. I was not.

My head was not full of McDougal and Lasswell when I got back to Houston. I sometimes referred to LSP, and I discussed social policy as a basis for deciding cases, but not as a framework for teaching law. I did not think it was teachable. LSP had so many compartments that a user would forget what the task was halfway through the exercise. The categories made everything seem equally important and actually impeded problem-solving instead of facilitating it.

One thing about LSP was clear then and it is clear now. It is not what people come to law school to learn. I knew this sort of analysis could not be sold to law students, even if I thought it was the greatest system going. Students wanted to learn how to use what LSP called myth—the traditional memes of law, logically connected
by Restatement-like rules and examples. When I went to the first faculty meeting in the fall of 1962 after returning to Houston, I was intent on expanding the curriculum to include Land Finance, Uniform Commercial Code (UCC), Jurisprudence, and other courses that were taught in modern law schools. Part of my wish was granted when I was assigned to teach the UCC course. Teaching UCC turned out to be tough—so tough I announced it would be difficult to flunk the exam because so much of what we covered in class was pure speculation. One student took me at my word. I told him later his failing paper was so bad it left me no choice. His response was that I provided the challenge, and he rose to meet it. I surrendered the course as soon as Rick Ewing agreed to teach it.

Bringing A.A. White back as a full-time faculty member in 1962 did not signal any change in Newell’s opinion that the College of Law was a training ground for local law practice, not for legal scholarship. I had not published a page in the fall of 1962 when Assistant Dean John Neibel told me in the parking lot the University had just awarded me tenure. I didn’t know what tenure was. Newell never mentioned publication when negotiating with potential professors. By contrast, today’s beginning law teachers, even those hired by bottom tier schools, know they must produce scholarly articles at a yearly clip as a condition of promotion, tenure, and future salary increases.

One day as we were walking across campus, Newell said out of the blue, “John, I will tell you how to get national attention. Just hire a bunch of New York liberals who want to write law review articles. That would do it. But I wouldn’t want to teach in a school like that.” I kept quiet.

In 1962 Newell reluctantly approved creation of the student-edited *Houston Law Review*. A.A. White, as a faculty member, had suggested that we establish a law review, but Newell said the school
was not ready for such a step. The issue did not die. A committee from the Student Bar Association stepped forward with a formal request that demanded attention and Newell conceded. But he hedged approval by requiring students to raise enough cash to cover start-up costs. The students located willing financial backers, and the law review published its first issue in 1963.

Reluctant or not, Newell did a good thing when he set the law review in motion. The first board members were mostly evening students, reflecting the relative strength of those part-time students who were in Houston for reasons of employment, not choice of school. The students who started the Review undertook three overwhelming obligations—day work, law school, and law review. The founders included several students who were headed for illustrious careers after graduation.\(^\text{173}\) The first volume began with an eleven page article by John Neibel, *The Implications of Robinson v. California*, praising a Supreme Court holding that narcotics addiction is an illness, not a crime. This article, modest in length by today’s standards, manifests John’s early interest in Law and Medicine and foreshadows the Law Center’s prestigious Health Law and Policy Institute and LL.M. program in Health Law. John placed the Robinson decision in a medical and social context that supported the Court’s conclusion that drug addiction is a health

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\(^{173}\) Dan G. Matthews was Editor-in-Chief. He became a partner at Fulbright & Jaworski. Staff member Darrell Morrow became a partner at Vinson & Elkins. Richard Strahan was a UH College of Education faculty member who practiced education law and was later selected President of San Jacinto College. Harry Lieberman starred in a local television teenage dance show during the afternoon and attended law school at night. He practiced entertainment law in California after graduation. Robert Felsman married a fellow law student and opened his own firm in Fort Worth. Morley White practiced in Houston. Mike Willatt was not an American citizen when he graduated. He had to delay bar admission for a year or so, during which he began to work with John Hill’s gubernatorial campaign. That took him to Austin, where he still practices administrative law. Morley White practices in Houston. Don Gaucher had an amazing career at Exxon, using his talents as engineer and lawyer in various corporate positions.
A Prodigal Returns, 1962 - 1964

problem, not a crime. John Neibel thus displayed American Legal Realist leanings as well as Health Law interests.

Eugene Pitman, identified earlier as my Cushing neighbor whose grade average A.A. White declared as unbeatable, wrote the second article. Gene described how bogus home improvement liens that are voided by the Texas constitution nevertheless become enforceable in the hands of a holder in due course. Gene described the legal issue capably, but uncritically, without examining the utility and policy of an exemption that can be so easily avoided by strategic drafting and fraudulent documentation, and without considering the ethics of doing so. In this respect, Gene’s article applies the descriptive Formalism of Newell Blakely and Dwight Olds.

I wrote a book review disagreeing with Sidney Hook’s majoritarian trashing of Supreme Court expansion of Constitutional liberties. I visualized Fred Rodell gently whispering to keep my sentences short and simple.

The second issue of Volume 1 included an article by Ray Britton that fifty years ago recognized a problem that remains in today’s political debate: abuse of Mexican migrant farm workers. Ray’s article is replete with statistics and factual references outside the Formalist’s “pure law” system, marking him as a Legal Realist.

The third issue led off with an article by William. E. McCurdy, a retired Harvard Law Professor and occasional co-author with Samuel Williston. McCurdy was filling a visiting position at the College of Law, and students invited him to write an article. He agreed, and law review editors learned that big names are not bound by conventional rules of scholarship. They spent long nights searching for authority to support assertions McCurdy had dashed off without a footnote. Sometimes their research produced the exact opposite of his propositions.
My forty-page article describing Co-op and Condominium law in Texas barely made the first volume at page 226. The article’s timing assured it would garner citations in the annotated statutes because there wasn’t anything else in print to explain the new condominium statute. I had followed the lead of Guido Calabresi, not Dwight Olds, by writing about an emerging subject with no case law for guidance. The most memorable citation of my article was by Carolyn Bratt, a Kentucky professor, who quoted from it extensively (a good thing) but with “(sic)” after my constant references to “he” and “his”—not a good thing except to teach me to be more sensitive to gender and include “she” and “her” in the text.

B.R. Pravel, a noted Houston intellectual property lawyer, contributed an article on impartial experts in patent litigation foreshadowing today’s IPIL program and Pravel’s own valuable contributions to it. My colleague Richard Ewing wrote a book review on Freedom of Speech and Press in America, commenting on natural law as an underlying foundation for traditional constitutional freedoms. Rick’s interest in constitutional jurisprudence was later enriched by Professor Ronald Dworkin’s courses at Yale.

Some student comments come to mind as I reflect on the review’s fifty year history. One is Eugene Marshall’s piece on the disaster-prone Corvair, General Motors’ hastily designed effort to replicate Volkswagen’s rear engine success.


\[175\] Photo of Corvair: http://commons.wikimedia.org/wiki/File:Chevrolet_Corvair_BW_3.JPG.
Gene worked for a GM parts supply house while attending law school, and I was afraid they would fire him after the piece was published. They didn’t, and Corvairs became a life-long hobby for Gene. He even rebuilt a Corvair engine and displayed it in his living room.

One of the most memorable student works is Randal Hendricks’ brilliant comment on term life insurance. Randy is one of the all-time stars in my teaching career. After law school, he worked as an associate at Baker Botts, and then he and his brother, Alan, formed one of the country’s most successful sports law practices. I urged the review to allow him to write a comment comparing term life insurance with more costly whole life offerings and, over the faculty advisor’s objection, to let him retain the copyright. His lengthy product, “A Legal Analysis of the Sale of Life Insurance,” discussed the state of disclosure law in the U.S. It was so good that he bound it and sold it in the commercial market as a book. The Supreme Court of Nebraska cited the comment as authority even before Randy graduated from law school, and The Law Review Digest cited it as one of the three best student works in the U.S. in 1969. A Senate Subcommittee used it in their hearings, and a recruiter for Ralph Nadar offered him a job based on it. Randy elected instead to take the offer from Baker Botts. A few years ago, Randy funded the conversion of a space in the Law Center to a general purpose meeting room called appropriately the Hendricks Heritage Room. Randy’s son, Bret, graduated from UHLC in 2003 and joined the Sports Management firm in 2005.

176 Baseball America called them “perhaps the most respected agents ever. And that includes respect from ownership, not just their clients.” Investor’s Business Daily said they were “the most prolific and, arguably, the best” of all baseball agents. The Los Angeles Times said “only a few people have as much influence on and control of club rosters and economics as the Hendricks brothers. . . ."

Volume 1 contained 312 pages. This modest beginning bore much fruit over the next 49 years. I pulled up the Law Review’s web site and noted that, in 2011, a rating of law reviews by Washington and Lee placed Houston Law Review 39th among some 1660 journals worldwide. It is second only to UT in Texas schools. That is a fair accomplishment in a half-century.

The Law Center houses several law journals, but the lead journal is still the Houston Law Review. All Law Center publications are enormously beneficial for students who participate. The discipline, research, and writing skills feed directly into law practice. Job competition among top graduates often turns on law review positions and publication.

Creating the law review increased the likelihood faculty members would publish, but it did not alter Newell’s thinking about the general value of scholarship. In particular, he did not abandon his preference for hiring local lawyers and former students for his faculty. My ideas about new courses, hiring faculty from the national market, and writing articles about emerging issues seemed unlikely to gain any traction.

It did not matter what I wanted to do, or what anybody wanted to do at the College of Law if it cost money. The law school and the University were broke. Survival itself was at issue.

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177 The Law Center lists:
Environmental and Energy Law and Policy Journal
Houston Business and Tax Law Journal
Houston Journal of Health Law and Policy
Houston Journal of International Law
Houston Law Review
Journal of Consumer & Commercial Law
http://www.law.uh.edu/academic/journals-and-publications.asp.
Then a miracle occurred.

Almost out of the blue, the University of Houston became part of the State of Texas system of higher education, effective in 1963. “Colonel” W. B. Bates, chairman of the Board of Regents and Fulbright partner, deserves much of the credit for pulling off the biggest financial coup in University of Houston history. Colonel Bates’ military title was bestowed by his friend, Dan Moody, a former Governor. It is real, honorary, or bogus, depending on one’s deference to Southern custom. What is not bogus is that the Colonel was born and raised in the Nacogdoches County town of Nat, just eight miles from my home town of Cushing. The road from Cushing passes through Looneyville on the way to Bates’ birthplace. Barbara Bates—a relative of the Colonel—and I were in school together and once or twice shared a movie and popcorn. A few years after obtaining state support, the law school was named Bates College of Law to honor the Colonel’s service as Chairman of the Board of Regents and savior of the University. It was renamed in the 1980s University of Houston Law Center, and the Colonel’s name was assigned to the first teaching unit in the law complex.

Getting UH into the state system was not easy. High on the list of problems was the law school itself. Page Keeton, the powerful long-time dean of the University of Texas Law School, did not welcome having to compete for students with another tax-


\[179\] NICHOLSON, IN TIME 170, note 50.
supported law school. State Senator Criss Cole maneuvered the critical procedural move by getting Governor Preston Smith, whose Texas Tech constituency opposed UH, to tell the Lieutenant Governor to allow the legislation to move forward. A. R. (Babe) Schwartz, Senator from Galveston, lent vital support. UH law student Eugene Cook, a future Justice of the Supreme Court of Texas, spoke to the Legislature in favor of the bill. The vote was close, and victory or defeat would be a matter of a single vote or two. Colonel Bates called in some markers, and the legislation providing taxpayer funding squeaked by with the College of Law intact.

State funding brought new life, new opportunities, and new freedom for Oberholtzer and Cullen’s university and for Newell’s law school. C. F. McElhinney had kept the university on a tight budget, and state aid brought a comparative fountain of new money. Students would pay lower tuition. More dollars would enable the school to hire more professors and pay them better. Racial discrimination would become a mere historical embarrassment when state support swept away all pretenses that the University of Houston was exempt from Brown v. Board of Education’s desegregation requirements. Integration was so noncontroversial by 1963 that it was a relief, made even more so when the basketball coach, Guy Lewis, recruited two future NBL stars, Elvin Hayes and

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180 Keeton was prescient. Today, fifty years later, the Law Center provides head-to-head competition with UT in several areas, including Health Law, Intellectual Property, and International Law.

181 Interview with Gregg Thrower on December 3, 2011.

182 Babe Schwartz and I share joint grandfather status for Elizabeth Schwartz, Samuel Schwartz, and Joseph Schwartz, children of my daughter Jeanne and Babe’s son, John.
Don Chaney. A few years before, I had heard the Cougar basketball team described as the best all-white team in the country. In 1968, Hayes, Chaney, and the Cougars beat UCLA and Lew Alcindor (later known as Kareem Abdul-Jabbar) in the Astrodome before 52,693 fans, but lost the rematch to UCLA in the semi-finals.

I was assigned enrollment duties and personally registered the College of Law’s first African-American law student in 1964. The Houston mail carrier did not make the required 65 point average and dropped out after his first semester. Not many black applicants followed him, and it was seven years before Jim LeMond graduated, and three years later that Xavier LeMond graduated and afterward became a University of Houston regent. Jim’s son, Scott, graduated in 1994, his daughter Connica in 2001, and his son-in-law, Clifton Kyle, in 2011.

Racial integration was only one benefit of state support. We would soon have money to hire new faculty, buy books, and relieve the venerable Mabel Smith of part of her workload. She had served faithfully from the beginning as A.A. White’s secretary, manager, librarian, and blithe spirit, and she could now hire help in the library, which had become her full time job. Maybe more important than cash, with racial discrimination ended, we could apply for AALS membership. It became essential to decide what we wanted to be when we grew up. My own goals for the school remained constant, and they now seemed possible. Newell had his goals, and they differed substantially from mine.

Newell wanted to build “a great law school.” His words gave me one of my first lessons in linguistics. By “great” law

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183 The football coach recruited Warren McVey, the most heavily recruited high school footballer in the state, and who, as I remember, ran for negative yards and fumbled in the season’s first game in the Astrodome.
school, Newell meant a great big open-admission law school, enrolling 1,500 full-time law students as soon as possible, committing heavily to an evening division, and staffing faculty with lots of part-time teachers drawn from the local bar. He once described his ideal learning experience. A “great” teacher would lecture a class of several hundred students sitting reverently in an auditorium. There would then be tutors, lesser teachers, to take students in tow and help them understand in smaller classes what the great teacher had said. The greater and lesser teachers would presumably follow Newell’s example of concocting challenging fact situations for students to fit into accepted legal rules. The underlying assumption of the “great teacher” notion is that law teaching involves a transfer of skills and information from professor to student. That makes sense if we accept Newell’s view that law is a set of rules to be learned and applied, not as process in action that can be expanded or challenged. When I finally comprehended Newell’s definition of “great,” I realized that, even in a small community such as ours, identical words can convey entirely different meanings. It should not have been a revelation this late in my academic seasoning, but it was.

Newell knew we needed membership in the Association of American Law Schools to give his great law school the patina of respectability and attract top students. With racial discrimination behind us, what we needed for AALS membership was a new building. Newell picked up A.A. White’s proposal for a downtown building and adopted it as his own. A.A. was just looking for respectable space to house his school, but a downtown building fit Newell’s legal education model perfectly by formalizing the connection between his teaching program and the local bar. Newell

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published a pamphlet restating A.A.’s downtown proposal, hoping for University approval and funding.

In 1963, Newell seemed fully in command, and he was poised to create his great law school. If he could get University approval, he would put his master teachers and lesser tutors in a downtown building big enough to assure open-admission forever. Equally important, he would run his school in a community that provided an endless supply of part-time faculty and night students. He planned to swamp South Texas College of Law and become the only local supplier of Houston lawyers.

The next three years, 1963 through 1966, saw Newell’s vision for a great big downtown law school crumble. Instead of his open-admission, Darwinian law school devoted to local practice, the Law School unexpectedly shifted back to A.A. White’s vision—a nationally respectable law school with reasonable admission requirements, expanded course offerings, and a scholarly faculty hired from the national market. New teachers hired in the mid-1960s even came close to establishing an avant-garde, policy-oriented program following a model set by Yale, the University of Wisconsin, and Northwestern law schools. But that’s another chapter.

I must now explain why the next few chapters of this book are framed with Newell on one side and me on the other. Being the survivor lets me write the story, but it carries a responsibility to tell the truth. Our opposing goals put us on a collision course, and the differences were so fundamental that there was really no room for compromise. One version or the other would emerge.

Newell was dean. That position gave him power and influence. But he was an honorable dean who exercised power in a very principled way. Both of us took faculty governance seriously. I knew that, if I could get a majority of faculty to vote for a
proposition, Newell would ordinarily carry it out, regardless of how he felt personally. If he had been more manipulative, the story might have turned out differently. If I had been less headstrong, or if the legal education world outside Houston had provided any support for Newell’s vision, the story might have been different. But the story is the story.

John Neibel once gave me a bit of Freudian analysis. He opined that I had a problem with the weakness of my father, who was disabled for the first twelve years of my life, then died. John thought I set up a new father, the dean of the law school, and then ritually set about to kill him. I can see why he held that point of view. I viewed Newell Blakely as many students before had viewed him—as a master teacher, a mentor, a country philosopher, and a champion of the common man. All of us held him in great esteem as a human being. I had voted along with Dwight Olds to ask the University to name Newell dean after A.A. resigned. But once he took office and I saw his vision, I opposed it. It is a matter of simple fact.

The transition away from Newell Blakely’s vision was not peaceful.
Daniel Rotenberg
File Photo, UH Law Center

In a now classic essay, Professor Rotenberg grounded these “commonsense” perceptions in scientific theory by applying Stanley Milgram's obedience experiments to consent searches. . . . (arguing that “fear of authority” may often motivate a suspect's decision to consent).


Newell selected most of his full-time and part-time faculty members from Houston law practice. Some had been his students. Some were good teachers. Some were not. One newly hired tenure-track professor, for example, regularly took a nip before class. One night, he struggled through roll call and asked a student to recite. The classroom was warm and the recitation uninspiring. After enduring as long as he could, the professor put his head down on the desk and fell asleep. The class sat waiting to see what would happen. A student summoned Newell from his office. Newell came in, woke him up, and summarily fired him. He was not one of our graduates. He apparently left practice because of whisky. He left teaching for the same reason.
Newell moved John Neibel to tenure-track in 1956, and he hired me in a tenure-track position in 1959. We were both his former students. By 1959, Newell’s chosen faculty was in place. Simon Frank and Bill Wellen, short-time holdovers from A.A. White’s faculty, were gone. That left only Newell and Dwight as tenured faculty members who had been personally chosen by A.A. White. Newell filled eleven more tenure-track positions between 1956 and 1961, with a strong preference for capable local practitioners and UH degree holders.\[185\]

Only five out of the eleven tenure-track faculty members Newell hired did not fit the local practice, UH graduate mold. None of them stayed long enough to become part of the core faculty. One short-term faculty member was John Wiley Mitchell, a UT graduate with an LL.M. from New York University, who taught one year. A second, Charles S. Collier, a retired George Washington University Professor, taught two years. A third, Albert Robbins, a University of Chicago law graduate and an English Barrister, visited in 1958 and returned in 1961 for a single year.

The fourth was Charles Dillingham, who was a long-time Houston practitioner, a political liberal, and a Yale law school graduate. He wanted badly to leave local law practice and teach law.

\[185\] Seven of the fourteen teachers shown in the 1959 DIRECTORY OF LAW TEACHERS were UH graduates. The list includes four part-time Lecturers: Robert Blanar '53, John Murray '50, Ralph Shepley '52, and Sam Sterrett ‘50.

The 1962-63 AALS DIRECTORY OF LAW TEACHERS lists ten UH College of Law graduates among Newell’s sixteen full-time faculty and part-time Lecturers. During the seven year period between 1957 and 1964, eighteen different UH graduates were listed as either tenure-track faculty or part-time Lecturers. Eight of the eighteen were night school graduates. Most were Newell’s former students. The list includes Robert Blanar ’53, Lloyd Lunsford ’54, Ben Schleider ‘50, Sam Sterrett ‘50, J. L. Cox '56, Jim Wright ‘56, Rick Ewing ‘57, J. J. Hippard ’57, John Murray ‘50, Ralph Shepley ‘52, Jerry Coley ‘56, Bill Crouch ‘57, Gay Brinson ‘57, Wendell Odom ’51, Dave Nagle ‘58, John Kiibler ’54, Jetta Jarvis ’59, John Neibel ’56, and John Mixon ’55.
and Newell accommodated him. Charles never took an active interest in faculty governance or school direction, and never said much except in polite conversation. By the time I returned from Yale, he was no longer on the faculty.

The fifth was Jim Gough, a faculty member from 1958 through 1961. He was a Columbia law graduate, but his law practice home was Houston. Jim had bull’s eye glasses with clear plastic rims and a round belly. His biggest delight was finding someone to sit still while he talked. And talked. And talked. In 1958, Newell hired Charles Collier, as a visiting professor. Collier, aka “The Red Rambler,” was Jim’s conversational equal. Maybe even better. Jim’s office was next to Newell’s office. When Collier arrived and Newell realized what a talker he was, Newell knocked on Gough’s door, introduced Collier, and left. Newell listened and laughed outside the door for an hour as they carried on two separate and unrelated monologues. Apart from talking, Jim’s greatest interest was railroads. He memorized timetables for major railroads and recited them at the slightest invitation—or none at all.

Jim’s other love was abundant food to sustain his 260 or so pounds. From the balcony at the Rice Hotel, I watched Jim cross the street to a luncheon, happily munching a sandwich he had brought as an appetizer. Jim owned a 1937 Packard sedan I still covet. Jim left the faculty in 1962. He was not a significant factor in the impending struggles over the soul of the law school, but he was the most scholarly of Newell’s chosen faculty, and the only one to publish anything before 1963.

Newell hired two of my classmates, J. L. Cox in 1958, and Jim Wright in 1960. In 1961, when I began graduate study, only Albert Robbins who left after one year and Dwight Olds did not fit Newell’s norm of hiring UH graduates or lawyers drawn from local practice. When I returned from graduate study in 1962, the full-time faculty consisted of Newell Blakely, Dwight Olds, John Neibel, Judge Charles Walker, A.A. White, Raymond Britton, Jim Wright, and W. E. McCurdy, a one year visitor. John Cox had left temporarily for law practice, but he returned in 1966. Newell hired A.A. White back in 1962 to fill the Law Alumni Professorship.

Ray Britton, hired in 1958, presented worthy credentials for faculty position. He was a top graduate and law review member at SMU Law School, and he had practiced locally with Butler & Binion. Ray taught part-time before Newell hired him in 1958 as a tenure track professor. He obtained his LL.M. from Harvard in 1961. Ray was the first of the faculty to join the computer generation with his state-of-the-art Wang word processor. He and I are the only surviving faculty members of that era, and by January 2013, only he will remain at the Law Center. Ray has attended every law graduation ceremony since he joined the faculty. Stretching A.A. White’s comment about Gene Pitman, Ray’s record may be tied, but never beaten.

187 By comparison, A.A. hired only one local lawyer, Barksdale Stevens, in a tenure-track position. He hired John Neibel and me as non-tenure-track Instructors.

188 The 1962 DIRECTORY OF LAW TEACHERS lists six adjuncts and a visitor, C. E. McCurdy. That is a misprint. It was William E. McCurdy, an emeritus Harvard Law Professor, who visited for a year.

189 Photo of Ray Britton: http://www.law.uh.edu/faculty/
Former classmate Jim Wright taught tax from 1959 to 1986. His round face always carried a pleasant smile, and he handled his 250 pounds or so reasonably well. Jim started at Rice, but graduated from University of Houston before entering night law school with me. At the students’ production of Faculty Follies, students once depicted Jim as a snake-handling revivalist admonishing his congregation to put their faith in the Internal Revenue Code, from which he preached. Jim knew the tax code quite well and taught a competent course. He was also a thoroughly good human being. Jim died in 2012 before I could interview him for this narrative.

Former classmate John (J.L) Cox was a tall redhead from Lake Charles, Louisiana. He was conservative in politics and lifestyle. John worked as a claims adjuster during the day when he was my fellow night student, and he switched between full-time teaching and full-time practice, depending on his need for income. He was a popular teacher. With his soft voice and folksy classroom manner, he began almost every contracts hypothetical with “suppose I offer to sell you a cow for a hundred dollars.” I picked up the cow example and used it without attribution for fifty years, adorned with blackboard drawings. John Cox’s cow apparently made a greater impression than mine. At an end-of-the-semester party, John’s Contracts class presented him with a live calf. I don’t know what happened to the calf after the party.

Jim Wright and J. L. Cox were Newell’s closest faculty friends, and they supported him on every issue. I saw that only John Neibel, A.A. White, and Ray Britton were potential allies for bringing about change, but none would likely oppose any policy that Newell strongly defended. A.A. was self-conscious about his position as former dean, and John Neibel was Newell’s Assistant Dean and not likely to cross his boss. Ray Britton was not a faculty activist. Change in fundamental policy would have to come from new faculty members, hopefully hired from the national market. It was clear from my 1956 objection to open-admissions that I rejected
that aspect of Newell’s vision. But Newell knew I was young, respectful, and grateful that he had saved me from honest work by bringing me back to the classroom in 1959. For the first year after returning from New Haven, I taught my courses without openly pushing any academic agenda. Jim Wright left for the University of Michigan for his year of graduate study and returned a year later with an LL.M., knowing more about the Internal Revenue Code but fundamentally unchanged.

Despite the brewing storm, the academic year of 1962-1963 was a time of good feeling. State funding brought high expectations and likely AALS membership if the University approved Newell’s revived version of A.A. White’s downtown law building. The infusion of state money enabled us to look for new faculty. If Newell continued to hire UH graduates and local practitioners, we would never break out of the local mode, but even Newell knew that his “great” law school needed nominal representation from the outside world.

I gained ground as a reliable contact for new teachers by recommending three people who impressed Newell. The first was a brand new Yale graduate, Carolyn Dineen Randall, now Fifth Circuit Judge Carolyn King. Newell was so impressed that he offered her a job after taking some time to contemplate having a woman on the faculty. She declined and accepted an offer to join the prestigious law firm that is now Fulbright & Jaworski. I also recommended Jerry LaPlante, a Yale classmate who shared my carrel at Yale Law School. Newell interviewed him at the AALS convention and offered him a job, but Jerry decided to stay at University of Connecticut.

The third was Tom Clingan, my 1956 Navigation teacher at the Coast Guard Academy. Anybody who can teach me to steer a ship by the stars has to be good, and Tom was one of the best I have seen. Lieutenant Clingan and I had chatted briefly about law at the
Officer Candidates School before the Coast Guard sent him to George Washington University, where he earned his J.D. In 1962, the George Washington faculty recruitment committee brought me to their campus for a recruiting visit. I learned that Tom had finished first in his class, but a health problem required him to leave the military. I located Tom, asked him about teaching at Houston, and Newell invited him to fly to Houston for an interview. Newell liked him and made an offer, but Tom got a better deal from George Washington, which suddenly became aware of his potential as a law professor. After ten years at George Washington, Tom became a distinguished professor at University of Miami Law School.

Newell interviewed a few people at the 1962 AALS convention and found some he liked. He rejected one good candidate whose name sounded too much like a vulgar reference to intercourse. The image of students standing in front of posted grades saying “I was f--d” was too great a risk. Then, in a real breakthrough, we hired Richard Barndt, the first faculty member selected from the national market in the half dozen years since A.A. White resigned as dean.

Dick Barndt had been a house painter before law school. He and Dorothy were Mormons who had been married in the Temple. Dick always wore a dark suit, white shirt, and conservative tie. He sported a small moustache and a crooked grin. Newell had no reason to suspect he was a rebel. But Dick was a rebel, and he was smart. He had been Editor-in-Chief of University of Utah’s law review and a graduate fellow at Michigan, and he had taught at University of Montana’s law school.

Like virtually everyone in legal education outside Houston, Dick rejected Newell’s open-admission, purely local vision. Soon after he arrived in the fall of 1962, Dick challenged Newell’s Darwinian policy of admitting unscreened first-year students and then flunking out half of them. We had established a requirement
that applicants take the Law School Admission Test (LSAT). It was a meaningless formality because we accepted every applicant who presented ninety semester hours with a C average, but the test scores provided a potential basis for identifying applicants who were destined to fail. Dick volunteered to study correlations between LSAT and law school performance and recommend an alternative to Newell’s open-admission policy to the faculty. Newell listened passively.

Dick and a group of students spent a week preparing a matrix that showed a decent correlation between combined undergraduate GPA and LSAT and law school success. They found one hapless student who stood at the bottom five percent of GPA and bottom five percent of LSAT and did not pass a single law course. That student, Dick declared, should not have been admitted. Newell was unimpressed. His observation was, “Yes, Dick, but someday someone in that category may graduate and become a great lawyer.” That sort of reasoning was hard to refute. Newell rejected the study’s obvious implication, saying he would keep admissions open. Dick nevertheless presented an admission screening proposal at the next faculty meeting. He recalls that

190 NICHOLSON, IN TIME 438, erroneously says the College of Law began requiring the LSAT in 1966.

191 Newell’s position isn’t entirely far-fetched. We had a marginal student who skated through law school with a 65 average all the way to his last semester. The faculty watched intently semester to see whether “Old 65,” as we called him, would drop below his 65.000 average and go on probation or maintain it and graduate. His final average for the last semester? 65. So he graduated. Some years later, the State Bar of Texas hired me to organize and direct a week-long how-to-practice-law course using the state’s best lawyers to do how-to-do-it sessions with newly licensed graduates. The bar chose the teaching team members from the best respected practitioners in the state. Imagine my surprise when Old 65 was at the top of the list for his practice specialty.
faculty voted for his proposal, but Newell ignored the study and continued open-admissions.\footnote{Telephone interview with Richard V. Barndt, September 23, 2011. My recollection is the same as Richard’s, except I do not remember that the faculty voted to reject Newell’s policy.}

Richard got in more trouble with Newell when a middle-aged student complained Dick had dismissed her classroom contribution as “bullshit.” In spring 1963, Newell gave Dick a $500 raise when the rest of faculty got $1500. Shortly afterward, Newell told Richard he was about to receive a call from the Dean at University of Washington Law School offering him a job. Newell had obviously praised Dick away. Dick visited at Washington for a year and then moved to a tenure-track position at the University of Texas Law School.

Dick remained an iconoclast and a fighter. When he arrived at UT Law School in 1964, he had grown a beard. Page Keeton’s secretary warned him the dean was afraid the beard would offend potential donors. True to form, Dick replied that donors were the dean’s problem, not his. He kept the beard and retired with it from UT some thirty-two years later.\footnote{Ibid.}

While he was in Newell’s good grace, Dick Barndt told Newell that his friend, Burton Agata, then a graduate fellow at the University of Wisconsin, was looking for a permanent job. Dick and Burt had taught together at Montana, and Burt had also been a visiting professor at New Mexico’s law school. Newell called his New Mexico friends, Dave Vernon and Vern Countryman, and, as Newell described it, they were “high” on Burt. Burt had a J.D. from the University of Michigan and an LL.M. from New York University. From Newell’s perspective, Burt looked safe. NYU had
an evening division, so our night school would not disturb him. Burt had a substantial practice background. Newell offered the job, and Burt joined the faculty in the fall of 1963. Burt was taciturn, smoked a pipe, taught fabulously, and wrote articles in his area of primary interest, Criminal Law. He became a local television personality with regular appearances on a late night television talk show, *Midnight with Marietta*. Burt may have been a New York Republican, but that didn’t mean much in Texas terms. He said he and his law partner flipped a coin to see which would be Republican and which would be Democrat.

Burt was both bright and wise.\(^{194}\) He had been a *Michigan Law Review* editor, and he studied social policy research at the University of Wisconsin. Burt did not wear his national proclivities on his sleeve. Coming from the outside world, though, he had little use for Newell’s open-admission, local practice focus. He once said optimistically that the only thing that could keep the College of Law from becoming great was bad luck or bad faith. Burt’s definition of “great” differed dramatically from Newell’s. Newell viewed Burt as an important addition, but that did not encourage him to go back to the national market. Instead, he instituted a formal policy of matching each new hire from the national market with one from local practice. Accordingly, he hired two local lawyers to balance Barndt and Agata. One was Rick Ewing, also hired in 1963.

Rick Ewing was my fourth UH classmate to became a tenure-track colleague. Rick was soft-spoken, had a ready smile, and

\(^{194}\) Photo of Burton Agata: http://lawarchive.hofstra.edu/Directory/Faculty/EmeritusFaculty/emefac_agata.html.
he came from local law practice. Newell expected him to support his Darwinian selection, Austinian model, but Rick was far more sophisticated than Newell suspected. He was a capable teacher who was willing to look beyond the simple black letter rules and case holdings. Rick began to be a threat to Newell’s vision when he became close friends with Burt Agata. The three of us began to discuss moving gently away from Newell’s local focus and open-admissions policy. There was no particular plan, but our common ground gave cohesion to a Young Turk movement. To Newell’s dismay, Rick eventually followed my path to Yale, where he was profoundly influenced, not by McDougal, but by a Jurisprudence Professor, Ronald Dworkin. Dworkin left Yale to fill the H. L. A. Hart Chair at Oxford, where he wrote perhaps the most important books on Jurisprudence published in the last half century. Rick was not impressed with Law, Science, and Policy. Rick returned to UH law school in 1966 with his LL.M.

Rick was a reliable Turk who voted for the school’s new direction, but he was distressed by the divisiveness. He left teaching and returned to practice in 1973.

The other local balance also appeared in 1963 when Houston practitioner and Bellaire Municipal Judge Joe Hensley dropped by Newell’s office to talk about teaching. Newell invited him to teach a trial class and we hired him. Joe was a graduate of the Merchant Marine Academy and the University of Kansas Law School. During World War II, Joe sailed on cargo ships, after which he practiced law in Houston long enough to count as local balance. Joe was never part of the social circle that developed around Burt Agata and Rick Ewing, but he was a regular lunchtime companion and he agreed with most of our positions. Joe did graduate law study at NYU, where he lost faith in Newell’s vision. Although he liked and respected Newell as a person, Joe drifted into the Turk’s camp on several important issues, including selective admissions and instituting a broader curriculum.
Burt Agata did not risk his influence by directly challenging Newell’s local emphasis. Newell trusted Burt’s judgment, and when Burt said his friend, Dan Rotenberg, was a good teacher who was looking for a job, Newell was interested. After an interview, Newell agreed to make an offer, faculty approved, and Dan accepted our offer to begin in the fall of 1964.

Hiring Dan was a big mistake for Newell. Dan Rotenberg was raised in working-class Gary, Indiana. He received his J.D. from Indiana University in 1955. He was an honor law school graduate, member of Coif, and Note Editor of the *Indiana Law Journal*. Dan was not a Republican, he was not a traditionalist, and he was a radical even by today’s standards. Dan had a strong academic background in sociology. He was well known in the world of social policy research, which was very big in the 1960s. Dan was a favorite with students. He would stride into class smoking a short cigar, take a drag, think for a minute, then engage a student in very deep discussion about law that challenged the core of Formalist doctrine. Dan wanted students to view law study as a liberating opportunity to experience a wide range of ideas about society and government. He did not see law as a trade, as mechanical application of rigid rules, or as a vehicle for personal enrichment. Instead, he saw it as the ultimate intellectual challenge for those who were lucky enough to be called to the profession. His students felt this inspiration.

Newell doubted that people with social science and policy interests could teach what students needed for practice. Dan and Burt proved him wrong, but the suspicion remained. Dan quickly became the unquestioned intellectual leader of the Young Turks. Our corps of young professors knew we wanted a New Age law school, but only Dan had a clear vision of what that meant. He gave content to our Law and Society ideas and put meat on our clichés about policy development.
Newell needed another local match, and he probably thought he had found one in Jim Covington. When Jim dropped by in 1964 to talk about teaching, he was a trial lawyer at Fulbright & Jaworski. Jim had been a fighter pilot in Korea, and he was an active Republican. Newell pushed him quickly for a faculty spot. On the surface, Jim was a perfect choice for Newell. But Jim also met the Turks’ criteria. He graduated second in his class at UT law school, he was a law review officer, and he was very, very bright. I convinced Burt that this local lawyer might be a good hire, and Jim turned out to be a great stealth candidate. He quickly fell in with the Turks, and he proved to be the most intellectually curious member of the entire faculty. Jim chose Yale for graduate study, and he absorbed the policy and science materials far more enthusiastically than I had. Jim was especially taken with Yale’s spirit of intellectual inquiry. Even before he returned from graduate study in 1968, Jim was firmly convinced that we had to abandon the limited, local practice orientation of the school.195

All told, 1964 was a good year for the emerging Turks. I was a vote-counter, and I knew Newell could no longer depend on unquestioning faculty support for his open-admission law school. Burt Agata had become the guru of the newly hired faculty. Rick Ewing, Burt Agata, Jim Covington, and I were social friends. Joe Hensley, Ray Britton, and John Neibel often cast substantive votes with us on issues that would broaden the scope of the school, such as adding elective advanced courses and eliminating required

courses beyond the first year. Dan Rotenberg’s arrival in 1964 boosted the Turks’ voting strength and provided a philosophical framework for serious social policy study.

The balance of voting power shifted to the Turks in 1964. With Dan’s arrival, we had a half-dozen solid votes. A.A. White was a silent, but supportive vote on hiring and policy matters. Ray Britton often voted with the Turks. Although John Neibel was Newell’s assistant dean, he voted on critical issues with us. After the balance shifted, Newell could only count on Jim Wright, Dwight Olds, and sometimes Joe Hensley. Olds, though objecting to open-admissions, had no use for social policy and thought the rest of us were crazy.

Faculty votes began to follow a pattern. The Turks would spring some unannounced proposal at a faculty meeting and carry the day with a vote of, say, 6-3 or 5-4. Newell found himself presiding over a faculty he could not control by persuasion, vision, or vote. We began—however politely and innocently—to do things that hurt him to the core. Eliminate Saturday classes. A.A. White voted against that one. Eliminate required courses beyond the first year. Add a few courses in specialized subjects to broaden the curriculum and serve particular student interests. Reduce the number of hours devoted to Contracts and Property to make room for more modern subjects and advanced courses. Push to hire new teachers from the AALS convention without balancing them with local hires. Newell’s law school was changing right before his eyes, and the people he had hired were doing it. For him, it was almost like witnessing the death of a child. For me, it was like watching a father figure in decline. At a less tense time, Newell said to me, “John, the very genes that make a man want to be dean are the same genes that ensure he will not be a good dean.” I have often reflected on that statement.
During the fall of 1964, Newell gradually became less visible outside his office. Losing control over law school policy hurt him deeply, and he took it as personal rejection. His physical health deteriorated. We learned later he was diabetic. Newell did not discuss problems openly, and it was a surprise when he announced his resignation to take effect at the end of the school year in 1965.\textsuperscript{196} Assistant Dean John Neibel began to take charge, and he ran the school from January of 1965. Newell did not give up without trying to control decanal succession by naming his trusted faculty to the Dean Search Committee, knowing they would follow his direction. The lame duck committee produced a very conservative professor with political and educational views that mirrored Newell’s own. The Turks vetoed him, the search failed, and we turned inward.

John Neibel was Acting Dean from 1965 to 1966, and he exhibited considerable talent for the job. He clearly wanted to be dean, and it was an easy decision for the Turks. After thwarting Newell’s effort to choose his successor, we did not want to risk hiring someone who would turn the school backward. The Old Guard opposed John, but by majority vote we recommended that the University Administration abandon the search for an outside dean and name him as permanent dean. The administration was relieved not to have to deal with an outsider who would demand more faculty, a new building, and salary increases. Universities don’t like that. John also had cultivated friends at high levels in UH administration. After his year as Acting Dean, they knew how to deal with John, and he with them. He took office on January 4, 1966.

\textsuperscript{196} Nicholson, in Time 428 describes the event as “John B. Neibel became dean of the Bates College of Law on September 1, 1965, after Dean Newell Blakely asked to return to teaching following a successful administration marked by constant growth in enrollment and recognition accorded the College.”
I was enjoying law school politics too much to look forward to January of 1965, when I would spend the spring semester as a visitor at Northwestern’s Law School. Myres McDougal had pressed John Ritchie, Dean of Northwestern’s Law School, to offer me a semester’s visit in the spring of 1965. I accepted with trepidation, remembering Chicago’s cold 1961 convention. Visiting positions are useful, but grueling. We were renters in Houston, so leaving for a semester was not a major problem. The furniture went back into storage, and the entire family headed north in a 1962 Chevrolet station wagon that was better suited for the family of five than the two door Batmobile hardtop coupe.¹⁹⁷ We carried a vinyl bag on top of the wagon that the kids called a “worm” for years after. We encountered early January weather in Missouri and Kansas that barely foreshadowed what waited in Chicago.

We arrived in the middle of a record-breaking winter storm. Glare ice was everywhere. I foolishly steered and skidded the station wagon around Chicago looking for a place to live. I wondered why nobody else was on the streets. We rented a coach house apartment for the semester in a North Chicago neighborhood called Rogers Park, which lies near Lake Michigan, just south of Evanston, where Northwestern’s main campus is located. The “El” stop was a short block away, and the train delivered me within a half-mile walk from the Law School located on Chicago Avenue. I learned proudly how to fold the pages of a tabloid like a Chicago native on the short commute.

The station wagon was parked on the street and didn’t move for a month or so. I learned Texas cars are not serviced properly for daily high temperatures of zero, which we endured for the entire month of January. Texas mechanics lubricated car locks with grease that freezes in extremely low temperatures. People in Chicago knew to use graphite lubricant. It doesn’t freeze. When I tried to move the car after a month or so, I found the doors frozen shut. Hot water melted the superficial ice and I opened the doors, but the now-open doors wouldn’t stay shut because the latching mechanism was frozen. For months, I stretched seat belts through the interior door pulls to keep them from flying open. I was not dressed for the cold. I foolishly wore Texas boxer shorts in Chicago, and my wool suits chafed my legs below the skimpy fabric. My wife sewed cloth extensions to protect my raw skin from the abrasive wool pant legs. I don’t know why I didn’t just buy long underwear. The Chicago air inside the apartment was so dry we had to use a cold air vaporizer. When water vapor hit the single pane windows, it froze instantly, producing a two inch rim of ice on the bottom foot of glass.

When two feet of snow thawed in late spring, I found out what happens to dog poop in a Chicago winter. It freezes, and the spring thaw produced a tan river that fouled my shoes when I walked from house to street. It reminded me of feeding cows in a soggy cow pen, where the soft black muck gets three or four inches deep. The bog would grab my rubber boots when I picked up a foot to walk from one feeding trough to another. Occasionally my foot would come completely out of the boot, and I would have to balance on one foot while trying to insert the other into the now collapsed boot. Half the time, the sock-clad foot would sink in cow dung up to my ankle. Melted dog poop was bad, but not as bad as a soggy cow pen.

Northwestern’s law students were fun, and they liked my traditional Property course. The class petitioned Dean Ritchie to hire me as a permanent teacher. Given Northwestern’s status as a
law school, I didn’t see how I could turn them down if they actually made an offer. I was relieved when Dean Ritchie told me he couldn’t hire me because my University of Houston degree would not look good on their masthead. He said we could talk if I finished a J.S.D. from Yale. Avoiding Chicago winters gave me another excuse for abandoning that J.S.D. thesis.

The Northwestern Law Review invited me to write an article, and I produced a piece applying Jane Jacobs’ notion that zoning should be used to increase diversity of land uses. The article came to the attention of Fred Bosselman, a Chicago land use scholar, and it gave me a modest academic boost and a few speaking opportunities outside Houston.

While I was in Chicago, Page Keeton phoned and offered a semester’s visit at The University of Texas. I turned him down, saying a second leave to teach at UT was not feasible. Truthfully, my interests lay in the University of Houston, which promised to move in the Turks’ direction with the newly hired teachers. In particular, I wanted to see if we could improve our program so a degree from The University of Houston College of Law would be an advantage, not a disability.

During my spring semester at Northwestern’s law school, I recruited a new faculty member for UH. Robert Bowmar was a graduating senior with law review and Coif honors. Bob had been a math teacher, and he wanted to be a law teacher, but Northwestern’s faculty discouraged him from going into teaching without practicing law for five years or so. I had no shame. Always entrepreneurial, I urged Bob to forget law practice and start having fun. I called John Neibel, who invited Bob to interview. We hired Bob on his

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graduation in 1966. He was a popular teacher, but a family health problem prompted him to take a position at Albany Law School, where he succeeded grandly as a teacher and scholar.

In May of 1965, I returned to Houston and affirmed my commitment to the College of Law by buying a house in Highland Village, near the intersection of Westheimer and the railroad tracks. I was glad to rejoin the circle of young faculty members that had begun to gather socially and strategically around Burt Agata. During his short tenure, Burt had made a significant impression on students and school policy. It was our great loss when he left in 1968 to work for John Dean (of Watergate fame) to help draft a Federal Penal Code. Before John Dean went to jail, Burt left government and accepted a position at Hofstra’s Law School, where he finished his career.

The power to hire was obviously the key to change. When I joined as a tenure track faculty member in 1959, the law school required unanimous agreement to hire. When that became unwieldy, we went to a veto vote. An ordinary negative vote would not disable a candidate, but a veto indicating strong personal disagreement would. When the Old Guard began to blackball Turk candidates, we adopted a “two-thirds plus one” rule that avoided an easy veto on hiring new faculty members. From 1965 forward, the Old Guard could count on three solid votes from Newell, Jim Wright, and maybe Dwight Olds. The Turks had five solid votes on most issues from Burt Agata, Jim Covington, Rick Ewing, Dan Rotenberg and me. John Neibel, Ray Britton, Joe Hensley, and A.A. White were not entirely predictable. This gave Turks a likely majority on law school policy votes, but not necessarily the number required for hiring new faculty. Two-thirds of twelve is eight; plus one makes nine. We didn’t have a reliable nine votes.

199 Some years later, the vote to hire was changed to a simple majority.
The social policy capability was strengthened when Alan Cullison, another Yale LL.M., was hired in 1965. Al had graduated at the top of his University of Iowa Law School class, but his Yale LL.M. drew fire from the Old Guard. Al was a brilliant math major and a policy enthusiast. His father was a respected Iowa judge, and Al’s placid Midwestern countenance concealed a truly quirky nature. He drove an ancient four-door black Mercury Phaeton sedan he called the Phantom. Al told of parking it one day in Iowa City in a way that upset a bystander. Al responded by getting out of his car, walking over to the complainer and saying, “You know I have a closet in my house. That closet has a whole lot of buttons. If you keep complaining, I am going back home and push one of those buttons, and then you’ll be sorry.” The dumfounded objector walked away.

Al was a deep intellectual whose talents in mathematics and logic were crucial for Dan’s budding social policy ambitions. The bespectacled Midwesterner always looked uncomfortable in the dress shirt that hung loosely from his ample shoulders, shirttail trying to escape the leather belt that surrounded his ample girth, and a tie hanging at half-mast below an open collar. He could easily be mistaken for a stocky, smiling, owl-faced farmer. That deceptive appearance masked a truly brilliant mind that was equally at home with mathematics or law.

In 1966, J. L. Cox returned to the faculty after a year or so practicing law. I remember some discussion that, after so many losses, Newell deserved a friend on the faculty. The vote on both Al

and J. L. Cox may have occurred when I was visiting at Northwestern. The 1965 hiring success gave the Turks a brilliant statistician, but J. L.’s return gave the Old Guard a significant vote that changed the numbers on hiring new faculty and weakened the Turks’ net voting strength.

The potential problem in hiring new faculty was eclipsed by the great news in 1966 that the University had agreed to fund a new law building on campus, and on the basis of that commitment, the College of Law had been approved for AALS membership.

With racial discrimination eliminated and a new law building assured, a final AALS inspection declared the academic program acceptable. Newell, as former dean, sat on the sidelines while John Neibel, the new dean, presided over the ceremonial events. The joy of the occasion was reduced by sadness at losing Newell’s enthusiasm and participation. We disagreed with his policies, but took no pleasure in seeing him lose his dream and withdraw from personal association.

John Neibel’s ascent gave the Turks the additional strength of support from the dean. The momentum helped us hire Tom Newhouse from the national market in 1966. Tom’s Tulsa J.D. was polished by an LL.M. from NYU. He quickly joined the Turks.

It is hard to believe that Tom Newhouse was born in New York. It is easy to believe he was raised in Oklahoma and graduated from Notre Dame. Tom is aggressively Irish, with wit, humor, and a love of people that enables him to stand in front of any classroom, anywhere. Or pulpit. As a lay Catholic minister, Tom demonstrated his great empathy and ability by giving popular homilies and making hospital visitations as a lay deacon.

Tom’s entry into Houston was different from most. He rented a house in Houston’s Sharpstown subdivision from a former
law student who was suspended from UH for plagiarism in my 1956 Research and Writing class, but mysteriously graduated a year later from The University of Texas Law School. He was disbarred in 1980 after a conviction for felony theft.

Tom and Emma had just settled into their rent house when they got a letter warning that the mortgagee was foreclosing and Tom had to move in sixty days. Tom did not want to move. We checked title and found the first mortgage debt was about $19,000. The house was worth something over $20,000, but it was burdened with about $9,000 in judgment liens against their landlord for unpaid gasoline credit card charges, department store charges, and miscellaneous claims. Judgment creditors were not threatening to foreclose, but their liens made the mortgaged property unsalable and worthless as an economic asset. The mortgagee agreed to reinstate the loan if Tom cured the $1,200 or so in missed payments and penalties and took title to the house. Tom’s defaulting landlord had nothing to lose, so he gladly signed a deed conveying the house to Tom “subject to” the mortgage without assumption of the mortgage debt. Tom had everything to gain, and he had no personal liability on the “subject to the debt” deed.²⁰¹ If the other lien creditors showed up or the value of the house dropped, we figured Tom could simply hand the keys to the lender and walk

²⁰¹ Photo from UH Law Center files. My interest in mortgage deficiencies after home mortgage foreclosure produced several law review articles, first of which was John Mixon, Deficiency Judgments Following Home Mortgage Foreclosure, 22 Texas Tech Law Rev. 1 (1991), followed by John Mixon and Ira Shepard, Antideficiency Relief for Foreclosed Homeowners: ULSIA Section 511(b), 27 Wake Forest L. Rev. 455 (1992), and John Mixon, Fannie Mae/Freddie Mac Home Mortgage Documents Interpreted as Nonrecourse Debt (With Poetic Comments Lifted from Carl Sandburg), 45 Cal. Western L. Rev. 35 (2008).
away without liability. We also confirmed that adverse possession would extinguish the judgment liens if Tom recorded his deed, maintained possession for five years, and paid his taxes without action by the lienholders. Tom recorded his deed, went into possession, and paid his taxes faithfully.

For years, I told Tom’s story to my Property class to illustrate the difference between a deed conveying land title “subject to” mortgage debt and one “assuming” mortgage debt. They had difficulty understanding how Tom could own the house if he was not personally obligated on the debt, but most of them took the proposition on faith. I lied to them when I said we had a wiener roast in Tom’s back yard on the fifth anniversary, and at midnight we watched the liens flutter to the ground, leaving his house free of their burden. When Tom taught my students in his second year courses, they got to see the owner of the “Newhouse house” and verify at least part of the story.

Tom bought a fancier house and rented out the “subject to” house, faithfully applying rents to the mortgage debt. Over the next forty years, his sons lived there when they worked in Houston, and the mortgage debt was eventually paid. Tom convinced a title insurance company to insure his title that was cleared of judgment liens by adverse possession, and he used the proceeds of a new mortgage loan to put his sons through Notre Dame. He still owns the house, which at its peak was worth around $100,000, free and clear of any liens.

For his entire teaching career, Tom went to student and alumni events, he sponsored student organizations, and he drank an enormous quantity of beer, undoubtedly for the sole purpose of keeping communication open between faculty and students. Tom really came into his own when he took over the Law Center’s mediation program. His courses were popular and effective. For almost his entire law school career, Tom participated in marriage
counseling for newlyweds as part of his church commitment. Although he became an immediate Turk, Tom maintained good personal relations with the Old Guard.

Tom and my car also had an encounter. He had mangled his middle finger in a lawnmower, and the doctor gave him a choice. He could live the rest of his life with either a permanently straight middle finger or a permanent crook at the first knuckle. There was no way it would bend again. Tom wisely chose the crook after short consideration. Several months after the finger healed, Tom was getting into my 1961 Lincoln.202 His crooked finger was still in the passenger door when somebody slammed it shut. We thought the blow might cure the finger, but it stayed crooked. Tom retired in 2004, but remains an important participant in the school’s mediation program.

The Lincoln has a history of its own. It was stolen one night from my Reba Drive driveway, but it called to me telepathically a day or so later. I drove straight east from my house about two miles up Fairview, which is Reba Drive with a different name. There was my car. I called the police, and the officer said “Oh yes. I know who stole the car because I talked with him last night about another matter.” He picked up the thief, and I drove my car home. A few nights later the thief came to my door to get me to drop charges. His lawyer was Jerry Patchen, a former student. Jerry had already talked with me to get the facts, and I telephoned him.

while his client was at my door. Jerry asked to talk to his client, and he read him the riot act. Jerry’s pre-law background had equipped him to deal with tough guys, and I never heard from his client again. I cannot explain rationally my telepathy that emerges occasionally, then disappears for years. I didn’t have time to try to figure it out. We were having too much fun creating a social policy curriculum.

We Turks were convinced we could go beyond simply joining the national standard for legal education. We could set the standard by creating a law curriculum that would incorporate social science in a designer curriculum for those who wanted to study policy. For others, solid and traditional courses would be available. Our brashness, certainly not any realistic potential, attracted attention from big time schools with Law and Society programs, including Yale, Northwestern, and Wisconsin. Dan Rotenberg’s national reputation added credibility to our venture into social policy research and expansive law teaching. We were the buzz at a couple of AALS conventions. In a significant and aggressive move, we voted to hire a social scientist—a sociologist, an economist, or philosopher—every fourth or fifth faculty addition. Dan Rotenberg and Al Cullison viewed these professionals as essential for guiding policy research and law study.

We should have taken note of the different voting requirements for two types of actions. We had established a hiring policy by majority vote. But filling the specific position would require a supermajority of two-thirds. We had made a dreadful miscalculation.

Except for Jim Wright, all new LL.M. graduates wanted to reinstate A.A. White’s selective admissions. Newell’s vision of a large, open-admission school with heavy attrition dimmed, even in the eyes of his supporters. We tightened admissions by requiring minimum scores on the LSAT and GPA. To allow for special circumstance admissions, which included minority applicants,
alumni children, and Governor’s recommendations, we established a discretionary “five-percent category.”

The next year, 1967, we hired Sidney Buchanan.203 Sidney had dropped by in an earlier year to chat with Newell about his growing ambition to teach law. Newell would have pegged Sidney as a safe local hire and an unlikely Turk. He was a Goldwater Republican, a native Houstonian, and a Trust and Wills lawyer for Vinson & Elkins. Newell would likely have hired Sidney on the spot if he had been ready to teach, but Sid took a year or so to decide. By 1967, Sidney had to deal with Turks who were skeptical about local hiring, and with John Neibel, who was named dean in 1966. The Old Guard liked Sidney, and John Neibel liked him, but I had to convince the Turks that this local practitioner was not necessarily a bad bet. Sidney had the requisite academic credentials—Michigan J.D., Coif and Law Review membership. Because Michigan was an elite school, Sidney did not need an LL.M. to meet the Turks’ informal hiring standard. If we had found him in the AALS register, we would have jumped to hire him. But most Turks were afraid he was too conservative and too tied to Houston. They did not trust “drop by” teaching candidates, and local practice had become a danger sign, not a bonus.

I promised to scout Sidney out, and we met by appointment at his house, which was near mine. We chatted about law schools and legal education, and we barely touched on his support of Barry Goldwater three years before. I was convinced Sidney would be an excellent faculty member. He had a strong interest in research and

203 Photo: http://www.law.uh.edu/faculty/.
publication, and he was eager to teach. I reported favorably to the skeptical Turks. Most of them grudgingly gave Sidney the benefit of the doubt, and he was hired. He turned out fabulously.

Sidney wasn’t just an acceptable faculty choice. He was a superstar teacher, scholar, and colleague. From 1967 to 2009, he picked up multiple teaching awards from law students and the University. Sidney’s first love may have been the stage, judging by his a cappella classroom renditions of songs about Supreme Court cases that he set to the tune and meter of Broadway shows. The Turks need not have worried about his scholarship. Sidney started writing articles as soon as he signed his contract, and he produced more than one article per year in his last decade of teaching. Sidney was a moderating influence on the faculty. He voted with the Turks, but he was not a doctrinaire Realist or social policy activist. For that reason, all faculty members trusted him, and he could handle delicate administrative tasks without the disability of Turk or Guard identification.

When he began teaching, Sidney was a rock-solid Republican. Most Turks were liberal Democrats, and every day at lunch they beat up on Sid for his politics. He took it all in good humor. Then Sidney outdid all of the liberals on free speech. When teaching a First Amendment class one semester, Sidney decided his students needed an empirical reference for pornography. Library Director Al Coco had established a library collection of every book that courts had declared pornographic, and Sidney tapped the collection and came to class with a stack of Playboy, Hustler, and similar magazines that he scattered around during class. He ended the semester with a laboratory visit to a local movie showing Deep Throat. That’s a long way from Vinson & Elkins Trusts and Wills practice.

A law school icon, Mabel Smith, retired in 1967. She could never be replaced as a person, but we had found a credentialed
Library Director, Al Coco, in 1966. Al presided over a small professional staff in the M. D. Anderson basement, awaiting construction of our new building. He took charge of library planning for the new building, hired personnel, expanded the collection, and applied for every federal and state grant available. Al hired Pat Kehoe, who later took a job at Yale law library, and UH graduate Laura Nell “Lolly” Gasaway, who is now a Law Professor and Associate Dean at the University of North Carolina. Lolly had a spectacular career after UH, including a term as president of the AALL, 48 scholarly articles in 89 publications, four books, and many tributes.204

Dan Rotenberg provided a motto for the Turks by declaring we should only hire people who were better than we were—people who would not have hired us. Dan and Al Cullison, in particular, were intent on forming a faculty that was capable of serious social science and policy research, and thereby set sail in a new world of legal education. Al wanted to revive Wesley Hohfeld’s categorization of legal relationships and formulate them in symbolic logic to enable empirical study of legal decisions. To increase our policy capability, we hired Tom Dienes, a joint J.D. and Ph.D. from Northwestern University’s Law and Society program. To attract Tom, we oversold the College of Law’s commitment to social policy research. Vic Rosenblum, arguably the nation’s top social policy scholar, was very careful where he placed his prized products, but he decided to recommend us to Tom. Tom was excited about the prospect of working with Dan and Al in creating a serious social policy program.

We even mustered a vote to phase out the night school. That was high on our agenda for several reasons, the most important being that it hurt us in attracting top faculty. Nobody wanted to

204 http://www.law.unc.edu/faculty/directory/gasawaylauran/
teach at night. It also created an image problem. Virtually no ranking law schools except George Washington, Georgetown, and NYU had evening divisions. South Texas College of Law had gained academic respectability and would gladly serve evening students. We did not see that we served a public interest by continuing the program. The faculty voted to eliminate the night J.D. program, and admissions closed.

In 1969, the Association of American Law Librarians held its annual meeting in Houston. Al Coco and his staff led planning for the event and made all local arrangements for the convention. Al was a voting member of the faculty, and he joined enthusiastically in the push for national prominence.

In 1966 or 1967, I met Leonard Kaplan, an impressive young law professor with a strong interest in psychoanalysis. Leonard was one of my all-time favorite colleagues. He held a J.D. from Temple Law School, an LL.M. from Yale, and he was working on his Ph.D. in psychology from University of Chicago. We Turks were fully in charge of hiring, and I persuaded John Neibel to offer Len a visiting job to fill a vacant position.205

Len was clean shaven and wore a three piece suit when we first met, but when he stepped off the plane in Houston, I was stunned by his faded jeans, his thick, black, and unruly beard, and his matching long hair. Because of his style, there was no chance to get him a regular position, and he did not plan to change his dress.

Perceptions aside, the Turks were a fairly conservative lot, and they were not impressed by pop psychology.

Leonard Kaplan is a remarkably talented scholar. He once wrote a law review article from beginning to end in only four days to meet a deadline. I regard him as a minor guru for a great insight I shared from time to time with my classes. He said, “If I had my choice of positions in law, I would want to be a Federal District Judge.” I was incredulous. “Why would you not want to be an appellate judge where you could make law?” I asked. His response stuck with me. “If I were a Federal District Judge, I would take all sorts of worthy liberal cases, hold for the plaintiffs, and write opinions that would put the appellate courts in such a corner they would have to face the issues directly. Only a District Judge has power to do that.” “Oh,” I said with sudden understanding. Len left after his year’s visit, and he spent most of his teaching career at the University of Wisconsin’s law school where he earned an international reputation in several fields.

Chance plays a big role in any institutional history. Eliezer Ereli had graduated from Yale with a J.D. in 1962, the same year I received my LL.M. Eli had been McDougal’s research assistant, though he did not acquire a strong taste for LSP. Eli was heavily credentialed, with a Ph.D. from the Fletcher School of Diplomacy and Yale Law Journal Editor position. Eli had been hired initially at UCLA Law School as a visitor, and then he moved to Tulane’s law school. He was passing through Houston in 1969, and he dropped in to say hello. Eli was ready to move from Tulane, and I proposed he consider joining our school. He agreed, we agreed, and we had our first Ph.D. and Yale Law Journal editor. Eli strengthened our International Law and Environmental Programs and taught several courses until his retirement in 1999. Eli’s Israeli accent reminded us of Henry Kissinger. That, plus his constant bumming of cigarettes during class, gave students fodder for Faculty Follies. Politically, Eli was a survivor who would work easily with anyone. He did not
Young Turks and The Old Guard, 1962-1970

get heavily involved in law school politics. Diplomacy runs in the family. Eli’s son, Adam, was a spokesman for American foreign policy during President George W. Bush’s administration.

After abandoning Newell’s tight focus on local practice and with John Neibel’s support, the law school expanded the curriculum by inaugurating a joint Legal History program with Rice University, as well as a Mexican Legal Studies program, a District Attorney training program, and a venture into Health Law.

The school’s interest in Legal History began in 1969, when Charles Heckman, a University of Chicago J.D. and Law Review Editor, joined the faculty. Charles developed a friendship with Harold Hyman, head of Rice University’s Legal History program, and their association resulted in the College of Law and Rice’s offering a joint degree program in Legal History. Our Legal History connection continues with strong representation in 2012 through Craig Joyce, who was recruited in 1986, and Bob Palmer, who joined the faculty as Cullen Professor of Law and History in 1987.

A visiting Oxford professor, F. H. “Harry” Lawson, produced an idea that sparked long-term involvement of UH law school with Mexican Legal Studies. Harry noted our proximity to Mexico, and said we should offer law courses in Mexico that would attract students from other law schools. We created a program and made a cooperative arrangement with a Mexican law school. The program was a success for several years, and the international focus eventually expanded into an LL.M. program for foreign students, as well as a cooperative arrangement with Canadian law schools when the North American Free Trade Agreement (NAFTA) became law. The string of program directors included Charles Heckman, Eli Ereli, Jim Herget, Steve Zamora, and Sandra Thompson.

In 1971, John Neibel and the faculty agreed to house the National College of District Attorneys training program at the law
Young Turks and The Old Guard, 1962-1970

school. The Dean of the College, George Van Hoomissen, became a half-time member of the law faculty. The college had a significant presence in the Law Center until it moved to South Carolina in 1999. In 1974, John Jay Douglass assumed deanship of the program and was a faculty member until he retired in 2011.

Dean John Neibel established a professional connection with his personal friend, Phil Bohnert, a psychiatrist at Baylor College of Medicine. At first, Neibel’s interest ran to law and the aging because he had a family member with age-related medical problems. The association with Bohnert, combined with John’s independent interest in medicine, inspired John to teach a Law and Medicine course and to write his article on Robinson v. California. This early connection prompted later deans to build a greater association with the Medical Center, and this involvement produced the Law Center’s nationally ranked Health Law program.

At the end of the 1960s, the College of Law seemed destined to move vigorously into the national arena and make its mark with an avant-garde social policy presence.

I must guard against excessive enthusiasm in describing our outright rejection of Newell’s Law School vision. A great number of UH graduates then and now agree with his open-admission, local practice, and part-time model. Just as the University itself has a strong constituency for giving everyone an opportunity, so does the law school. It is a perfectly defensible position. It is a legacy from the time E. E. Oberholtzer began the Junior College that became the

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207 For a current description of what the Turks were pursuing, see Christopher Tomlins, What Would Langdell Have Thought? UC Irvine’s New Law School and The Question of History, 1 UC IRVINE LAW REV. 185 (2011).
University of Houston. When I describe our shift toward a broader curriculum and rejection of open-admissions, I do not claim any higher morality. The choice simply represents different values. But one connection is absolute. Newell’s open-admission policy and dislike of social policy disabled the school from achieving any national prominence or having any influence beyond the local market. Even in the local hiring market, top firms were not enthusiastic about most of our graduates. By contrast, returning to A.A. White’s vision of quality did not interfere with preparing students to practice in the local market. The Turks never anticipated eliminating traditional law courses or interfering with the way other professors taught. Most Turks were excellent teachers in their traditional fields, and social policy was significant mostly for research.

We advanced several justifications for restricting admissions and following the national model of legal education. I will focus on what we thought was the strongest reason.

Houston has three law schools. One was committed to part-time and evening education. One was open to students who need remedial education during their law study. What Houston did not have during the 1960s was a strong, nationally recognized law school producing graduates for major local and national law firms. The message of Northwestern Dean John Ritchie’s was clear: instead of being an asset, my UH law degree was a liability. Top employment opportunities, both locally and nationally, were not open to our graduates, and that market would be closed as long as we competed head-on with the other two local law schools on their own terms. We needed to shift our competitive focus to law schools of recognized quality and give our degree the status it deserved.

Eliminating the night school was as important to the Turks as increasing admission standards. Keeping night school was as important to Newell as open-admissions. Maybe more so. I am sure
he felt betrayed by me, by John, by his hand-picked faculty, and by the law school he had cast in his own image. It was no consolation to Newell that he had destroyed the vision of the founder, A.A. White. But creation, destruction, rebirth, and continuation are how institutions grow and change.

Hegel cautions that refutation of a philosophy does not mean that it is fully negated, and vestiges of Newell’s school were unavoidably incorporated in the new vision. But the open-admission, locally-focused law school that shunned national interests was consigned to history. Or so we thought.
The Tinkertoy Model

Freeman and VanNess, Architects
CHAPTER 11. PLANNING A NEW LAW BUILDING, 1966-1968

The thing always happens that you really believe in, and the belief in a thing makes it happen.

Frank Lloyd Wright, Architecture Is Politics.

In the early 1960s, Newell had picked up on A.A.’s original downtown law center idea with even greater enthusiasm than its author. Newell tried to sell the concept to institutional donors and the University, but the Administration rejected his proposal, just as it had rejected A.A.’s original plan for replacing the cramped, leaky basement space. That was the bad news.

The good news was the University’s 1966 announcement that it would fund a law building on campus with federal grants and a gift from the M.D. Anderson Foundation. This commitment was enough to get AALS membership.

The Anderson Foundation was controlled by John H. Freeman, a Fulbright lawyer, and his partner Colonel William B. Bates, the Regent who shepherded the University through the Legislature and saved us from bankruptcy. The University decided it was time to commission a UH architecture graduate to

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208 Nicholson, In Time 368.
design a major campus building. They selected the Houston firm of Freeman and Van Ness. John Freeman, Jr., was a 1950 Yale architecture graduate; John Van Ness was the UH graduate. Warren S. Bellows, who got the construction contract, was a trustee of M. D. Anderson Foundation and a member of the governing board of the University. No conflicts there, just overlapping interests.

The question of how many students the new building would accommodate was still open. Would we build for 500 full-time students, a modest increase over the then full-time enrollment, or would we build Newell’s great (big) law school for 1500 full-time and 500 part-time students? We could not avoid that issue once planning commenced. If Newell had still been dean, he would have appointed a committee favoring a big building. But John Neibel was dean, and he strategically named a building committee chaired by Jim Wright, but controlled by Turks who favored a smaller school.

The UH administration had apparently accepted Newell’s notion that 1500 day and 500 night students would be about right. That many students would provide a lot of income from state formula funding, which was still the University’s priority. Regardless of size, everyone assumed the building would have a big footprint. That was a problem because most large sites in the inner campus were already committed to other buildings.

An available site at the corner of Wheeler and Cullen attracted an immediate objection. It was too close to Texas Southern University. TSU’s Thurgood Marshall Law School was created in 1950 when Heman Sweatt successfully challenged Texas’ prohibition against integrated education after The University of

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209 Nicholson, In Time 253 (note 40).

Texas Law School denied him admission. Relying on *Plessy v. Ferguson*, the Legislature built a new “separate but equal” law school in Houston, not Austin. It is part of Texas Southern University, which stands a few blocks away from the University of Houston campus. When the University of Houston became public, both universities began to worry. How long would the Legislature maintain two full-fledged universities a half mile apart, when it could save money by combining the two? Texas Southern no more wanted to disappear into the University of Houston than the University of Houston wanted to absorb it. The polite reason we did not build on that corner is that its proximity would increase TSU’s concern and attract unwanted attention from the Legislature.

The Building Committee combed the campus for an acceptable site. John Van Ness smoked his pipe and John Freeman, Jr., sat quietly without revealing that they had identified the only feasible location, several acres situated in the armpit of Elgin and Calhoun Streets. The faculty committee finally settled on it as well, since we couldn’t find any other. The site was large and unclaimed. It was also in a flood-prone area with an unknown subsurface water formation. Burt Agata complained about the distance from the University library, but he had to accept that there was no inner campus site. Distance from the central campus did have the advantage of removing us from too close a view by administrators and other departments. Some parts of the University were undecided whether a law school was like Technology, training students how to type deeds, or a worthy academic unit like Arts and Science. Tucking us out of sight in a campus corner finessed the issue neatly.

In true professional form, the architects scheduled meetings with our building committee to begin the planning process. Chairman Jim Wright had little stomach for getting in the way of a train full of Turks going full steam down the planning track, so he presided over meetings without getting involved in details. This was the Turks’ committee and we were ready to shape the law school in
Planning A New Law Building, 1966-1968

our image. The architects knew that design and educational vision were totally intertwined, and they put us through several meetings to find out what our vision was. We gave a pretty good response. We wanted a standout building, we wanted a lot of space, we wanted an auditorium big enough to hold the entire student body, we wanted a comfortable faculty lounge, etc. But we had not made a final decision on what size student body it would serve. That decision was essential, but troublesome.

The Turks had at best a shaky faculty consensus to build a quality law school that limited enrollment to about 500 day students. The Old Guard was united on accommodating at least three times that number. Middle-of-the-road faculty would probably have split the difference. The Turks knew that building for 1500 full-time students would mean open-admissions forever. Newell had an untapped source of power in alumni, and if we pushed small size too far, he might play that card. It was touch-and-go on the most important decision we would make, perhaps ever.

One night while looking for a convincing strategy to avoid a 1500 student building, I sat watching my two young sons play with Tinkertoy. They made a model of a wheel with a spool in the center and spokes leading out to spools at the end. I began to visualize the center spool as the administrative center of a large complex and the extensions as satellite schools.211

In 1964, Myres McDougal had called a dozen or so former LL.M. students back to New Haven to work on his long-delayed book on LSP. He housed us in Yale’s Morse College—a dormitory

where students assigned to the college lived, ate, and I guess hung out together during the academic year. I had a vague understanding that Rice also had something called a college system. I mistakenly thought the residential colleges at Rice and Yale included classroom instruction as well as housing. My ignorance served me well. As I sat on the floor with my sons, I pondered, “Would a college system work in law school?” I did not anticipate that law students would live in the separate colleges, but I did propose that they could take classes in their separate teaching colleges, later called “satellites,” and still later, “teaching units.” Each college would in most respects contain a separate and complete law school. Each would serve the Turks’ desired 500 students, with its own faculty and classrooms. We could start with a single college and a separate administrative core, and, if demand justified, add another college, and then another if needed.

The Tinkertoys provided a model I later traced for an article in the 1968 Law Library Journal. My erroneously conceived college system had a central facility, the hub spool, and five spokes crowned by five separate teaching units. Tinkertoy spools have eight openings to hold eight spokes, but eight seemed a little ungainly. Besides, not even Newell would demand eight teaching units with 4,000 students.

The satellite concept turned out to be salable, and it brought both sides of the size issue together. Newell wanted 1,500 day students, and I could give him 2,500, 500 now, and 2,000 more when market demand justified them. He was a free market economist at heart, so supply and demand made sense. I don’t remember whether I took my Tinkertoy model to school or just drew the outline on paper. To depict the concept later for

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publication, I drew a quarter-sized circle for the central facility and surrounded it with nickel sized teaching units.

As far as I was concerned, the problem was solved. As presented, it was a fraud. No Turk had any notion of expanding beyond 500 students in the foreseeable future. We had about 500 students, half day and half night, so we could barely fill 500 day seats with reasonably qualified students. Maybe 750 would work in a few years, but any more would unacceptably weaken the student pool. Newell’s 1965 Self-Study projected an enrollment of 2000 law students by 1970-1975. The Old Guard wanted an immediate expansion to 1500 students, but they didn’t have much choice but to agree to the expandable building and bide time until they could build more units and create their big, open-admission school. Their time did come, and the Law Center added another teaching unit, but that story is best saved for chapter fifteen. The architects were overwhelmed by my intense attachment to the Tinkertoy concept. They once met secretly with the rest of the committee to verify that the satellite law school had a consensus, and was not just the product of, as John Neibel once called me, a Svengali who could cloud people’s minds. The architects were finally satisfied when the committee gave approval, the faculty agreed, and we had a campus location and a quirky concept with a real consensus. It was time for the architects to go to work.

We discovered early in the process that satisfying the AALS library seating requirements would be a problem. The central library, as planned, could accommodate 500 students and provide seating for that size student body. But that was not enough to serve four more teaching units. It would be senseless to provide library seats for 2500 students right away, because the extra seats would be

pure waste if we held to the Turks’ agenda and restricted size to 500 full-time students. John Neibel came up with an ingenious solution: provide a separate carrel for each full-time student in the teaching units. That way, we could solve the library seating issue by offering something no other law school had. We could provide 500 carrels incrementally with every new teaching unit, and we did not have to build them in advance of need. We adopted John’s proposal, and the solution got us national attention for giving every student a separate space. Of course, such solutions do not last. In the mid-80s, a variety of administrative and student uses invaded the carrel area, but the Law Center still provides a carrel for all entering students. Library seating space is less important now that Westlaw and Lexis bring a complete library into a living room.

The rest of the design process was easy. The architects visited a few other law schools, and they came back impressed with the University of Chicago’s law library. It was constructed of site-poured reinforced concrete, with ceilings cast on upside-down plastic tubs that provided structural strength and an airy (to the extent solid concrete can be airy) overhead. Tub centers wired for lighting provided a nice effect. The design is called brutalist because of its stark exposure of reinforced concrete. The building style was influenced by several academic buildings designed by Eero Saarinen, Dean of Yale architecture school. The influence is not surprising, given that John Freeman, Jr., was a Yale Architecture graduate.

Our committee wanted a brick building (red like Harvard), but the architects preferred pre-cast concrete walls. Brick, they said, would be downgraded to brick veneer, which lacked the integrity of thicker and more expensive load bearing brick. We deferred.

The final design also changed the Tinkertoy model somewhat. Instead of round silos, the architects sensibly designed square doughnut satellite teaching units that connected underground
with the central facility. The central structure would accommodate administrative offices and house a law dean, admissions offices, and a major research library. Each teaching unit would have an office for an associate dean and a working library.

True to our request, the architects incorporated a 500 student auditorium to hold the entire student body. This turned out to be a serious mistake. We almost never convened the entire student body for anything, and the cavernous space makes a decent audience of 150 people look puny. Even worse, the University immediately began to schedule the space for large undergraduate classes. Currently, the auditorium is virtually unused by the law school, and it is in danger of collapsing from aging concrete beams that span the enormous distance from side to side without middle support.

The auditorium error is dwarfed by another design solution that placed about a third of the building space underground, where it absorbs heavy leakage and seepage through the walls. The University estimates it would cost about $6,000,000 to waterproof the buildings. My Tinkertoy model had all structures above ground, with the central facility, auditorium and library as the major element. The architects noted that above-ground buildings would work through the first and maybe second teaching unit because the central facility provided a nice aesthetic dominance. But three, four, or five teaching units would form so massive a set of structures that, instead of being dominated by the central facility, they would clash with it. That made sense, but the solution did not. That solution was to place the library underground. I had taught too long in a basement with water seeping in during every heavy rain. I knew Houston buildings should be on top of the ground, not underground, and I raised my objection. “Not to worry,” the architects assured. “We will use the best water engineers in the state, and you will never flood.” I didn’t believe it, but it was fruitless to argue. In a way, it was a product of our own fraud. If we had been satisfied building
for, say 750 students and I had not produced the satellite teaching unit concept, the building might have been placed above-ground where it belonged. As built, the library had two floors below ground level. The roof provided a patio separating the central facility from the teaching units, and the teaching units from each other. It was really a neat design concept, but a leaky one.

The Law Center should offer a master’s degree in Water Law because its buildings provide a perpetual clinic. During excavation, Bellows Construction Company tapped into the underground river traversing our site. They realized we needed to engineer around it with pumps to prevent water pressure from pushing the floors upward and cracking. Their cost estimate was $50,000, and they asked the University for a Change Order. I was not there, but reliable hearsay has it C. F. McElhinney said, “No.” The University stood with the contract design and budget. The inevitable result was that underground water pressure did just what Bellows predicted, and within a very few years, the basement floor had to be jackhammered and bulldozed out, to be replaced by a better-engineered floor. Our original building cost some $4,000,000. The cost of replacing the installed floor under one teaching unit came to about one fourth of that figure.214

Bellows’ original construction was good, but not perfect. After spending several years looking for a persistent leak in dry

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214 During remedial construction, bulldozers in the basement produced diesel smoke filled with harmful gases and particulates. Life in the teaching unit was unpleasant and probably unhealthy. We called the campus department responsible for keeping the workplace safe. Their response: “Don’t worry; we are not covered by OSHA [the federal Occupational Safety and Health Administration].” Their only thought was whether they would get in trouble with federal administrators. We were worried about emphysema and cancer. As far as I know, nobody died from the exposure, but several folks were made sick.
weather as well as wet, a digging crew found the source. An underground water pipe had been uncapped and flowing since 1970. But capping the pipe did not stop the nicely tiled patio roofs from dripping rainwater into the library and teaching units. Removing the tiles and replacing them over neoprene finally reduced the flow.

In keeping with its Taj Mahal ambitions, the faculty committee wanted a hard, durable floor throughout the complex. The architects nixed that notion, saying good carpet was so inexpensive that it could be replaced every five years at a substantial saving over tile. The carpet solution might indeed have worked if the University had paid for periodic replacement. Of course, they didn’t. Ground water and roof leaks constantly stained the grey carpet, and, after twenty years or so, tile was sensibly installed in heavy-use areas.

The plans included a space for smaller meetings and rare books that was named the Frankel Room in honor of Maurice Frankel. Mr. Frankel was not a lawyer, but his foundation (thanks to Sybil Balasco) provided money to outfit a space we call the rare books room. The room was nicely outfitted with comfortable leather sofas, a specially designed and crafted rug, and a fireplace that was lit once, but had to be doused when it smoked everybody out. A large picture properly honoring the room’s benefactor hangs at the entrance. True to the habits of the day, he holds a smoking cigarette in his left hand.

The law school benefitted from a University policy that allocated a percent of project cost for public art. This policy has provided excellent sculpture around campus, and it gave the law school an icon, Gerhard Marcks’ magnificent bronze rendition of Albertus Magnus. Albertus sits at the main law building entry, welcoming students and providing a backdrop for graduation photos. His resemblance to law professor Jim Hippard was noted more than once.
The reinforced concrete framework that frames and supports the building’s pre-cast concrete slab walls produced an amusing aesthetic problem. During construction, cement for columns and beams was poured on site into a plywood form. To keep the liquid mix from exploding the forms outward during the pour, cables were strung through the forms and anchored at the ends by plastic thimbles inserted in the plywood. The thimbles kept the cables from breaking through the plywood, but after the plywood was removed, they left signature indentations about an inch across and an inch deep on the surface of the columns. Efforts to patch them left ugly splatters of off-color concrete. From ten feet away, columns looked as if they had a bad case of acne. The architects required the committee to decide whether patches or holes were uglier. We chose wisely, I think, to leave the holes not patched.

When I saw buildings in Bosnia pocked by shell fragments, I thought of our law building. Design aside, the building has held up reasonably well for forty years, though it is inadequate to handle all current demands for space.

Apart from leaks, my biggest design complaint is that the design assumptions of the day did not allow windows in the classrooms. The architectural-educational theory was that students would be distracted if they could see trees, sky, birds, and life outside the classroom. Little did they foresee that electronic gadgetry would leave trees, sky, birds, and professors themselves unnoticed. An anachronistic feature is that ashtrays were provided on the student desks in the classroom, euphemistically identified on the working drawings as “pencil holders” to satisfy federal funding restrictions.

The 1967 groundbreaking ceremony invoked a ritual from early English common law—an enfeoffment. Before writing was commonplace, English landowners conveyed land title to a new owner by handing over a twig or clod of dirt in the presence of witnesses. They then boxed the ears of bystanding children so they
would remember the change of ownership. The law building site was enfeoffed by the Regent, Colonel William B. Bates to Dean John B. Neibel, who then dutifully boxed the ears of a bystanding law student, William Soffar. After the enfeoffment, Colonel Bates and John Neibel used a ceremonial shovel to break the sod before Bellows Construction Company brought in the bulldozers. The shovel hangs in the Hendricks Heritage Room along with pictures of the event.

That is the story of Teaching Unit I. Every Law Center dean but Steve Zamora has tried to leave some sort of building as a permanent monument. Only John Neibel succeeded. He can claim credit for both the original structure and for the second Teaching Unit. The decision to build Teaching Unit II was purely political. Much of what I say about it in Chapter 15 is conjecture because I was not privy to the events that tell the full story. No such caveat is needed for Chapter 12, where I was fully involved.
MAYDAY!

If the government doesn’t stop the war, we will stop the government.


*Hell no, we won’t go.*

Anti-Vietnam war protest chant

*Why do they want frijoles?*

Preston Smith, Governor of Texas²¹⁵

The 1960s and early 1970s witnessed a tumultuous national demand for social change. Vietnam War protests and crowds of naked streakers were common occurrences at colleges around the country. The lone streaker I saw in Bates College of Law sped through Krost Hall foyer with her two hands barely covering what she considered too private to show. I did notice she had a butterfly tattoo on her left shoulder. Student carrels were rumored to have accommodated occasional sexual encounters, and there was enough student-faculty intimacy to produce stories that will not be told here.

The social revolution swept the country just as we were celebrating our successful law school revolution and almost-

²¹⁵ Nicholson, in Time 441 reports he was the one to whom the question was directed, and the question was “Whadda they got against frijoles?” My recollection of news reports at the time is different.
completed law building. It was a strange and exciting time. College students and other young adults saw no reason to die in a Vietnamese jungle for an undefined cause. Millions of women rebelled against lower pay, job discrimination, bras, and male-female stereotypes. World War II had ended the Great Depression, and postwar affluence produced surplus cash that amply fueled Baby Boomers’ appetites for hallucinogenic drugs and other luxuries. The new societal icon was a lid of Acapulco Gold marijuana; the pervasive political demand was freedom from societal constraints on nudity and sex; and the common mindset was open hostility to anyone over thirty and to authority in general. Although no footnotes support it, I have no reason to doubt the rumor that faculty at a top Midwestern law school engaged in wild mate swapping with law review members about this time. Protests moved from East to West and from California to Texas. The greatest excesses, though, ran out of steam and stalled at the Harris County line.

Houston’s power structure had a lot to do with damping the Protest Movement in Houston. Local business interests and government hung a metaphorical “Not Welcome” warning at the city limits. The key to keeping Houston cool was a brutal police chief who looked the other way when his officers broke heads or conducted preemptory executions. Houston police may not have invented throw-down guns, but they used the defense whenever they shot an antagonist in the line of duty. TSU students who reportedly threw a watermelon at a police car prompted a police riot of some 300 officers who poured hundreds of gunshot rounds into occupied student dormitories. Their aim was so bad that the only casualty was
a patrolman hit by a wayward round that was probably fired by a fellow officer.216

Houston rebels had to be satisfied by a few sparsely attended demonstrations, defecation on the American flag (reportedly by one of our future graduates), and smoking lots of dope. Black Power organizers could not persuade Third Ward homeowners near the University to emulate California and Chicago renters who burned their neighborhoods in protest. Many minority residents in the Third Ward were owners, not renters, and they were more likely to burn the protesters than the houses they were struggling to buy.217

A Black Power organizer named Lee Otis Johnson landed a thirty-year prison sentence as a drug dealer for passing one marijuana cigarette to a Narcotics officer. The Third Ward expressed its outrage one afternoon when Lubbock’s favorite son, Texas Governor Preston Smith, was campaigning in Houston. The crowd began to chant “Free Lee Otis, Free Lee Otis.” Smith, a West Texas conservative who was not familiar with the incident, asked, perplexed, “Why do they want frijoles?”218 That was one of the few laughs the protest era produced.

The outrageous protests had subsided by the time city administration passed into the hands of one of our graduates, Fred Hofheinz, in 1974. Fred appointed the venerable A.A. White to clean out the dossiers that police had prepared on anybody


218 Ibid.
suspected of being a troublemaker, liberal, or civil rights sympathizer. Reportedly, one file was titled simply, “Miscellaneous Niggers.”

The recently christened Bates College of Law benefitted in an unexpected way from the young generation’s assault on middle class morality and conservative traditions. Austin, not Houston, was the hotbed of Texas’ hippie and protest movement. Dope, long hair, beards, and bare feet marked “The Drag” on Guadalupe Street as a home for resident “dragworms” (drifters and drugged-out drop-outs). The University of Texas Law School forfeited its monopoly in the Houston hiring market when local firms sent their three-piece suits to interview in Austin, only to find long-haired and bearded job aspirants demanding released time so they could fight The Establishment, many of whom were the firm’s own clients. It was abundantly clear to the hiring firms that these students were not eager to defend insurance companies and draft wills for rich law firm clients.

Bates College of Law students were different.219 Virtually all night students and a majority of day students resented any interference with their climb up the professional and social ladder. They did not join the rebels’ ranks, and they occupied the substantial space between social protest and upward mobility. For the first time, major law firms began to look seriously at a significant number of our top graduates as potential associates. That is not to say the University of Houston and the law school were unaffected by the hippy movement.

A campus religion director created a noteworthy stir when he invited a group of students to his home to talk about religion. After the group assembled, he and his wife disappeared for a few

219 NICHOLSON, IN TIME 439 also makes the same point.
minutes, then returned naked. They casually invited students to disrobe and join them. The explanation? They wanted to overcome all barriers to open and honest conversation. The University fired him, and he moved on to a more accepting Northeastern college. Also at UH, a gay political science professor giving an athlete a rubdown was photographed by telephoto lens—through his high rise window. He was fired. California’s passion for hot tubs spread east to Texas, but nudity was not de rigueur in Houston as in California, where the only way to go was bare.

Students for a Democratic Society (SDS) had a modest presence on campus, and they barely influenced the law school. Everybody smoked dope. I looked out my front door one morning and found a potted cannabis seedling waiting to be planted. I don’t know whether it was a gift, evidence abandoned by some carrier, or a setup to get me in trouble. Whatever it was, I didn’t want to get caught in possession, so I trashed it. One colleague hid his baggie of cannabis in the water tank of his bathroom toilet. He was never caught with pot in his pot. A few colleagues risked snorting cocaine, but they were scared straight when they learned narcotics officers had tapped their source’s phone.

One of our graduates ran into a bar admission problem for violating an American flag at a public rally. He was eventually declared pure enough to practice law.

Braless female students provided a modest diversion. J. L. Cox, a genteel and conservative professor, said some students chastised him after class for making an insensitive comment about women. Next day, a nicely endowed student took a position on the front row wearing a gauze-like blouse through which she/they stared back at him as he stared at her/them. He was so distracted that further instruction became virtually impossible.
I was strangely attracted by the craziness, but not enough to get fully involved in it. I had no idea that my limited participation would derail the social policy movement for five years. The disaster began innocently enough.

In the 1960s, Clinical Psychology was one of the University of Houston’s strongest departments. Group process, as later described, was a core element of instruction. I understood nothing about clinical psychology or group process, but I accepted the Legal Realists’ notion that social science is a valid adjunct to law study, and we should employ anything that increased our understanding of law. Around 1968, a University counselor asked me to participate in undergraduate orientation at the student center. Nothing in my experience prepared me for what was coming. Without explanation, we were told to sit in a circle on the carpet, students and professors, and to follow instructions from the psychologist, who we supposed knew what he was doing.

The group leader said most of us interact with others at a very shallow level, and the resulting superficiality keeps us from understanding each other’s humanity, and even more important, from knowing who we, ourselves, are. Superficiality prevents us from working effectively in teams, threatens our personal relationships, and leads to personal and professional disaster. People who focus on the mechanical aspects of relationships begin to manipulate others instead of interacting with them. And that is a bad thing.

But, he said, there is another way. If people create an environment of trust by revealing their true inner selves, they will find success, now as students, and later as workers. This was all news to me. I could identify manipulative behavior, because that was what the Turks and Old Guard were engaged in. Here I was, sitting in a circle on the carpeted floor of the student center, and this authority figure was forecasting personal disaster unless we got with
his program. I was intrigued to learn how to avoid a sterile, unhappy, ineffective, and lonely future.

We began the session by telling who we were—not what we did, but who we were. I was not comfortable with deep personal revelations, but I made a modest attempt. Then the leader told us to play out an animal we identified with. Some of the students did birds, cats, dogs, etc. I did a snake. The group leader acted out an eagle. Then we talked about why we picked our animal to represent our inner selves. My reply that it was easy to squirm on the floor did not quite ring true, and it did not escape my attention that eagles eat snakes. The group leader then urged us to reveal information about ourselves that few, if any, people knew. I don’t remember what I said. Then the lights went out, and the leader told us to do anything we wanted to do. I overcame the temptation to reach out and hold hands with a pretty psychology major and instead sat lotus style and did nothing but feel uncomfortable. The session was finally over, the lights came on, and we left.

I didn’t sleep well that night. I kept going over in my head what I had experienced and tried to analyze why I chose a snake to represent my inner self. I thought the leader was grandstanding with his eagle, but why did I picked a snake? I confronted the idea that manipulating events at the law school had made me feel a little like a snake. Most of all, I wondered why a supposedly responsible university was putting on such a “counseling” session involving what I regarded as inappropriate student-faculty contact. What was I missing? This event happened well before the campus religion director invited students to take off their clothes. I did know the group experience was powerful, and it piqued my curiosity.

In search of some sort of truth, I inquired cautiously about this powerful new experience. The University’s Student Counseling Director assured me that what I had experienced was both effective and legitimate for introducing students to the university and training
them to work in groups. That was not enough. I met with the head of the University’s respected Clinical Psychology Department and asked him about the program. He assured me that the new movement was legitimate, safe, and effective. What really got my attention was when he said that major corporations, including the best known local oil company, sent executives to similar weekend training sessions run by National Training Lab (NTL) to develop management skills. NTL put the corporate managers through encounter groups to create trust in their departments, presumably enabling them to work more effectively together. This clicked in my brain. If psychology had something to say to business executives, it must have something to say to lawyers. He agreed. Hot damn. Let’s try it out. But first, I needed to find out more about it.

The next step was to involve myself in a more structured version of group training, called encounter group, sensitivity training, or T-group. The T was explained as shorthand for training, not therapy. This time, I observed what was going on as I participated. A group of about a dozen members of the university community, faculty from other departments, and maybe an administrator or so, sat with a professional facilitator in a circle on the floor. Everyone looked to the facilitator for instruction, but he provided none except to “stay in the here and now.” He simply said, “This is your group, and I am not going to tell you what to do.” This sort of facilitator “cop-out” counters the human tendency to seek a leader or authority figure and avoid personal responsibility. Then the group gets angry at the facilitator for refusing to tell them what to do. But since they have committed a half day or a weekend to sitting in a circle on the floor, they fill the silence with what is called “false community” or pseudo community.

False community produces cocktail party chatter, where strangers engage in light conversation about the weather, talk about their jobs, discuss who they know in common, etc. In this phase, people look for similarities with others. It is called false community
because it involves superficial relationships not based on “real” community. The next step is called “chaos.”

After the pleasantries are over, maybe an hour or two has passed. The facilitator then proposes a learning exercise and hands out a johari work sheet (named after two people, Joe and Harry) with four categories of personal knowledge data: (1) information known to self and to others, (2) information known to self and not others, (3) information known to others and not self, and (4) hidden information not known to self or others. The facilitator then recounts a personal learning experience involving feedback from others that filled his window No. 3 with new information. Feedback is always interesting, but sometimes threatening. Unlike false community’s surfacing of similarities, this stage reveals differences among the participants. The sessions get chaotic as people start getting and giving stronger feedback revealing uncomfortable truths and try to “fix” other group participants’ foibles. Typical feedback focuses on false smiles, running off at the mouth, giving too much advice to other group members, and not participating at all. After a time, the chaos leaves people, in Scott Peck’s words, empty. Anger has come and gone, efforts to fix others’ faults are exhausted, and there is nothing more to say. Individual egos escape into a different space.

At this juncture, there are two possible outcomes: a return to false community, which means the exercise failed, or achieving true community, a point of complete empathy, warmth, and tacit understanding within the group. I was told later that police are the

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221 Scott Peck (1936-2005) was an American psychiatrist and author, best known for his 1978 book, THE ROAD LESS TRAVELED.
only group that always falls back into false community. Our group reached real community and, after a few hours of training, we felt we understood and accepted all group members, and we could be open and honest with each other.  

At the end of our session, all participants said they had learned a great deal about group process, interpersonal skills, and themselves. My brain was churning with the importance to lawyers of being able to work effectively in law firms, in dealing with clients, and intuiting how juries work. I sensed that group process held useful information for both faculty and students, and it had implications for the profession itself. Years later, two deans, years apart, held retreats in efforts to get warring faculty members to act as a community. I went to both, but the little learning I got from T-groups told me they would fail. I was right. Group cohesion is very difficult to achieve, but I think our law faculty would have fallen back into false community after the best of training.

I didn’t know I had experienced a version of the “Tavistock” model of sensitivity training. Scott Peck’s book, A Different Drum, explains how he uses a modified Tavistock model to bring warring church factions together to work out common problems. Later, I attended a larger, Peck-type session at a business management seminar sponsored by M.I.T. It was boring by comparison with the more intense model I was introduced to.

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222 This is where T-groups really failed. The executives who went to the training sessions did experience a change in the way they dealt with other group members, but they did not automatically fit back into the work experience, where colleagues had not reached that point of openness and togetherness. Instead of facilitating workplace communication, the process often destroyed it.

223 Named for a British group process technique: http://www.tavinstihute.org/
Sex, Drugs, and Sensitivity Training, 1968-1970

Who knows what would have happened in our march toward social policy study if I had not told faculty about this new experiential way of learning—and teaching—communication skills, group understanding, and personality development. When I described the process, I said I thought it was worth looking at for whatever educational use it might be. A fair number of the faculty agreed to give it a try. These included A.A. White, Sidney Buchanan, Tom Newhouse, Dwight Olds, Jim Wright, Jim Covington, and Al Coco. I should have listened to Dan Rotenberg, who was the real social scientist in our group. He said, “That stuff is bullshit. The only real science is what you can measure. Touchy-feely has no place in law school.” He was right. Even the term “touchy-feely” hinted at the danger. But, as my colleague Sidney Buchanan reminds me from time to time, “History does not reveal its alternatives.”

I set up a session with a Clinical Psychology Professor who invited some psychology students to participate with the willing law faculty members in a full day of exercises. If the event had produced less serious consequences, it would have been funny. I could imagine faculty going through the same conversion I had experienced. Jim Covington, Tom Newhouse, Al Coco, and Sidney Buchanan did. Some of the others did not.

The strongest negative reaction came from Dwight Olds. Early in the session, the facilitator told us to lie on the floor, face-up. Dwight did as commanded. But when the facilitator told us to imagine we were in a cube six feet tall, six feet long, and three feet wide, Dwight sat up, stood straight, and said, “This is ridiculous. That’s a grave.” He walked out. Dwight was the only defector, but not the only skeptic. Jim Wright was noncommittal, but unimpressed. A.A. did not like the student interaction and, in particular, he resented feedback from a student who said A.A. acted as if he had truth in a brown paper bag. Sid Buchanan, Jim Covington, Al Coco, and Tom Newhouse were taken with the
experience. Sid almost immediately converted from an effective, but formal, teacher to a much softer person that students named “Captain Nice” after a then-current television series character. Eventually, Sidney became a Democrat, but that took a little longer.

Jim Covington had returned from Yale in the summer of 1968, and he was even more enthusiastic about the process than I. He, Sidney Buchanan, and I had contracted to conduct a summer institute in 1969 to introduce high school teachers to the legal system. We thought group process might be helpful. Jim and I talked with the Dean of the College of Education, who supported group process so strongly that he said he would not recommend a program that did not include it. Thus encouraged, we consulted with the Clinical Psychology Department, and they lined up their top group psychologists, all Ph.D.’s with extensive group experience. One of them was the head of the department. Another was a future Chancellor of University of Houston’s downtown college. The psychologists divided the thirty or so teachers into several T-groups and began Tavistock exercises. At the end of a couple of days of group process, most participants were enthusiastic members of a learning community. We had shown the utility of the process. But one failure provided a warning: group process is powerful, and it may be useful, but it is also dangerous.

The group exercise blew up, not with a high school teacher, but with a staff member from another university who had been brought in as an educational consultant. He left the group at a scheduled break and did not come back that day. Jim Covington found him later, drunk and tearful. The explanation was troubling. He was gay, and group openness was pushing him either to tell the group or leave. He left. He returned the next day, but never again participated in the intense exercises.

This disturbing incident sent Jim and me back to the University’s Clinical Psychology department head. He assured us
that group process could indeed induce stress, but from thousands of
groups conducted around the country, no serious damage had been
reported. He said facilitators were trained to take care of any such
problem. I was not sure. I should have followed my gut.

Jim’s Institute did a remarkable job, putting teachers
through a number of experiential learning situations. They sat in a
play-like law school class taught by Dan Rotenberg, our best
Socratic professor, observed real trials, participated in trust groups
with paroled convicts who told about their escapades, and heard a
narcotics officer talk openly about how he started friendly
discussions with dope dealers by sending a Karate chop to the gut.
The high school teachers gave the institute and all of its staff high
evaluations.

I still had reservations. I was troubled by the possibility our
troubled staff member might have killed himself instead of just
getting drunk. My reservations came too late to cancel a course in
“negotiation and persuasion” I would teach with a clinical
psychologist. We planned to use sensitivity training to train students
to deal more effectively with clients, opposing counsel, judges and
juries. Our Negotiation and Persuasion course included some
intellectual study because, as the psychologist said, “Remember
John, pooled ignorance is still ignorance.” The Law Center still
teaches a course in negotiation, but it is not tied to group process.
Professors sometimes use group exercises to engage their students
in a way that lectures cannot, but they are not intense. The
negotiation course got mixed, mostly positive student response.

I was ready to abandon Clinical Psychology and group
process, not because the exercise wasn’t effective, but because it
was too effective, dangerous, and too intrusive on people’s inner
selves. Informed consent is impossible. There is no way to explain
to people just what they are getting into because encounter groups
have no analogue in most people’s lives. In too many ways, it
Sex, Drugs, and Sensitivity Training, 1968-1970

resembles a religious experience, and several participants in our experiment came close to becoming true believers. The world does not treat true believers kindly.

Straight group process training has virtually disappeared, but vestiges remain in business counseling, focus groups for testing trial strategies, and professional assistance in picking juries. I have a close friend who has used group process based on the Tavistock model in management consulting for law firms and corporations for some thirty years. In the 1970s, she helped our law graduate David Berg pick a jury to decide the fate of a woman who shot her husband several times, then cut up his body, put the pieces in garbage bags, tossed them into her car trunk, and drove to her father’s home in California. I don’t suggest David needed the help, but the jury the psychologist helped pick declared the wife not guilty for reason of insanity.

Jim Covington and I didn’t register just how much the forays with clinical psychologists would damage our credibility with several faculty members who, while not signing on wholeheartedly to the policy and interdisciplinary movement, were at least silent fellow travelers. The Old Guard wasted no time in spreading information outside the law school about the “touchy-feely” nonsense in a successful effort to diminish the Turks’ credibility. There were also rumors of too much T-group closeness growing out of the artificial community that brought primal urges to the surface, unsuppressed by conventional morals and societal norms. Some rumors were true. Others were overblown.

The real damage from our experimentation was the widely advertised perception among alumni that the social policy advocates had gone off the deep end and could not be trusted to shape law school policy at any level. That perception cost us the support of uncommitted faculty members, alumni, and eventually Dean John Neibel.
The era of the Turks was growing to a close. The Old Guard succeeded in getting alumni to put pressure on John Neibel to stop us radicals from sitting on the floor and playing touchy-feely games. They did not understand that we had already decided that dog wouldn’t hunt. But our realization came too late to save the social policy movement from the pressures that had built up among the alumni. Newell and the Old Guard had waited patiently, and they knew their time had come.

The triggering event was an unexpected vote cast against a sociologist that came from our failure to appreciate the hazard of setting policy by majority vote when the by-laws required a two-thirds supermajority plus one to hire new faculty members.
James J. Hippard

University of Houston Archives
CHAPTER 13. JIM HIPPARD’S SURPRISE VOTE, 1969

He was like Don Quixote, always tilting at windmills and dragons and didn't know the difference between them.

Obituary for James J. Hippard, Sr. 224

It wasn’t just sensitivity training that killed the Law and Policy movement. That was only one of several factors that put pressure on John Neibel’s deanship and turned him away from the Turks’ curricular and research ambitions. A lot of Alumni blamed the Turks for abandoning Newell’s vision and closing the night school. None of us had the charisma and personal loyalty that Newell Blakely inspired. John felt his deanship was threatened from both within and without the College of Law, and the Turks were to blame. All grievances against the Turks coalesced in a single faculty

meeting and Jim Hippard’s unexpected vote that gave Newell and his supporters immediate retribution.

James J. Hippard, Sr., was a 1957 graduate of the evening division, and he was a born rebel. Jim was a powerful advocate for liberal causes in the years when Houston was not a friendly venue. He was the ACLU’s point lawyer when long-haired students were kicked out of school and when other constitutional rights called for protection. After twenty years in the courtroom, Jim was looking for something new to do. He had taught as an adjunct professor during Newell’s deanship, and in 1968 Dean John Neibel told the faculty that Jim wanted to teach with us for a year and then get an LL.M. so he could find a job at another law school.

That made marginally good sense. The national law school world had taken notice of our existence by the late 1960s. Turks had attended AALS conventions and bored everyone in earshot by talking about the Houston satellite law school concept and our commitment to policy study. New law buildings were a seldom event, and news about ours and the satellite concept spread quickly through the convention halls. Even more significantly, we had state funds to hire beginning teachers, and nothing got national attention like openings for assistant professors. State support by itself brought us new credibility.

We had improved our reputation to the point that a remarkable number of our graduates had indeed obtained teaching jobs at other law schools. Tom Reese was hired at Baylor in 1966, and he moved to Texas Tech Law School in 1968. Gerald Adler was

Jim was leaving a law partnership he had formed with Tom Newhouse’s landlord who, as mentioned earlier, sold the house to Tom to avoid foreclosure. 24 Texas B. J. 979 (1961). After Jim left the firm, his law partner was disbarred.

http://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&template=/Customsource/MemberDirectory/MemberDirectoryDetail.cfm&ContactID=242921
Jim Hippard’s Surprise Vote, 1969

hired by the University of California at Davis in 1968. Barry Berger was hired at University of Baltimore in 1969. All had polished their UH degrees with LL.M.s, and they had been accepted as worthy prospects in the academic world. The trend continued when Gerald Treece, a 1969 graduate, began his long teaching career by getting a position at Pepperdine in 1973. Jeremy Wicker got a Yale LL.M. and a job at Texas Tech Law School, and John Allen, a 1972 graduate, earned a Yale LL.M. and a job at the University of South Carolina Law School. We felt in the late 1960s that we were headed out of the basement in more ways than one. Jim Hippard had a different agenda.

Jim Hippard was a trial lawyer, and he tested the water carefully enough to learn the Turks would not hire him or anyone with local credentials under ordinary circumstances. Assured that Jim sought only to use UH to launch his career elsewhere, the Turks did not rise up and object to hiring the local lawyer who was also a UH graduate. Jim began teaching in 1968, but instead of seeking a regular year-long graduate law program, he enrolled in NYU’s summer program that took three years to complete. Newell was delighted. The Turks began to worry.

Jim was Newell’s idea of a perfect professor. His night school, local practice background was similar to Newell’s other faculty selections. Like them, he had been an above-average student in what must have been a remarkable class to produce five professors so soon after graduating. Jim was as politically liberal as Newell was conservative, but their support for open-admission and training law students for local practice coincided. Newell no longer ran the school, but Newell’s contact with disgruntled alumni probably influenced John Neibel’s sponsorship. John was growing weary of the criticism he was getting for some of the Turks’ actions, and he was looking for ways to preserve his deanship. Détente with Newell would help.
Jim Hippard’s Surprise Vote, 1969

Before Jim became a presence, the law faculty had decided by majority vote to hire a full-time social scientist and to fill every fourth or fifth position with a faculty member holding a doctorate in sociology, economics, psychology, or philosophy. A law degree, while desirable, was not deemed essential. In 1969, Dan Rotenberg began discussion with Peter Rose, a noted sociologist from Smith College. Rose was intrigued with the prospect of working inside a law faculty and applying social science to law and legal policy. It seemed a perfect match, and the Turks thought they had the votes to offer him a position. Our hiring rules had come a long way from the days that a single vote would blackball a candidate, but a vote to hire still required a two-thirds plus one supermajority.

We knew Newell’s Old Guard would oppose hiring anybody without a law degree, but they had grown accustomed to casting protest votes and accepting inevitable defeat. The vote would be close, but we counted enough supporters to make the offer. Our troops were present and ready to vote. I don’t remember what debate, if any, occurred. The positions were so familiar and predictable it was not necessary to lengthen a meeting by vocalizing positions so firmly held. When John Neibel called the question, A.A. joined our group, as expected, to vote yes. We had our supermajority. But when John called for nays, Jim Hippard unexpectedly raised his hand and joined the Old Guard to vote no.

Jim’s Hippard’s status on the faculty was not clear. I have assumed for forty years that he was hired as a visitor, but I found him listed in the 1968 AALS Law Teacher Directory as an Assistant Professor. I never saw his contract, and the AALS directory information is self-reported. If his vote counted, we were barely

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226 Robert Palmer, a valued Law Center faculty member, holds a Ph.D. in History, and no law degree.
short of the supermajority required to hire. I don’t know whether he had voted on anything before. A vote on an inconsequential matter would not have prompted us to ask why a visiting faculty member was voting. We were not familiar with the rules regarding visitors, anyway. John counted Jim’s negative vote, and the motion to hire Peter Rose failed. We looked at John to see whether he would cast a decisive affirmative vote. He sat silent and impassive.

The defeat was stunning. I moved to hire the sociologist by majority vote, which we had if everybody stood firm. This abrupt change in voting rules violated our by-laws, and several faculty members who favored Rose voted against it. The motion to offer Peter Rose a faculty position by majority vote failed.

The faculty’s sudden refusal to hire a social scientist to guide empirical faculty research, standing alone, would not have deflected our general trajectory toward national credibility. I would have settled for a really good, traditionally-directed school without the added panache of serious policy research capability. The social science direction was much more important to Dan Rotenberg, Al Cullison, Jim Covington, and Tom Dienes, all of whom were deeply invested in our fragile commitment to policy study.

Without a strong commitment to the social policy curriculum, I just played floor manager for faculty politics. I obviously failed when Jim’s vote sank our sociologist. My own interest was more in hiring a legitimate philosopher, either full-time or part-time, who could teach a credible course in Jurisprudence. The negative vote on the sociologist showed my horse was also dead. It takes no imagination to visualize the two faculty groups after the meeting, one rejoicing that they had saved the law school from radical left-wingers, and the other moving in stunned silence back to their offices. John Neibel’s face concealed his personal reaction. In a single move, Jim Hippard had turned the ship of Social Policy dead into the wind. Jim did not seek a job in the
national market, but remained on the faculty and was voted tenure and Associate Professorship in 1971.

I have often wondered what our history would have been if Jim’s vote had not counted. If we had hired Peter Rose and embarked on serious social policy research, it might not have been a good thing. Our students were not clamoring for social science courses. They wanted to be lawyers, not sociologists. The few schools in our league that tried to emulate social policy study as it was taught at Yale, Wisconsin, and Northwestern abandoned the effort when it failed to catch fire in legal education. The interrupted movement that produced today’s multi-disciplinary Law Center may have turned out better. I am sure that Newell Blakely and Jim Hippard would think so, and I will not argue the point.

Jim developed enough following as a professor that the Law Center’s Moot Court program now sponsors the Hippard Competition. Jim is a legitimate hero to those who subscribe to Newell’s vision and for training students to practice law. Jim’s sons, Claude, James, Jr., and George graduated from the Law Center in 1983, 1984, and 1990, respectively. Some of this history may come as a surprise to them.

More important than losing our sociologist, we showed John Neibel that the Turks could no longer swing a faculty vote on matters vital to keeping him safely in office.

We turn now to John Neibel, whose actions in the few days following the Peter Rose vote determined our immediate future and in a strange way led to realization of what we now call the Law Center.
John B. Neibel

UH Law Center Frankel Room Wall of Deans
CHAPTER 14. JOHN NEIBEL, DEAN
IN TROUBLED TIMES, 1966-1974

Our grandfathers had to run, run, run. My generation’s out of breath. We ain’t running no more.

Stokely Carmichael

In 1966, Stokely Carmichael terrified the white establishment by talking about “Black Power.” Carmichael may have meant economic power, but the term suggested less benign possibilities as well. I once tape-recorded a Black Power speech and played it for my Land Use class, explaining that land use and race were inextricably a part of the law school’s physical environment. The University of Houston is located in the Third Ward, which in the 1950s went through a violent conversion to a predominately African-American neighborhood. By 1966, the law school existed as a white island, and we wondered what our island would look like when things settled down.

John Brewster Neibel’s formal deanship that began in 1966 was as tumultuous as the Third Ward itself. The son of a minister, John was tall, bald, and gracious. When teaching a class, he sometimes stroked his head with his middle finger prominently displayed, prompting more than one student to remark he looked as if he were flipping them the bird. John looked like a dean, even as a student. His vocabulary was extensive. John once asked me if I had
had an “arduous” childhood. When I looked puzzled, he quickly rephrased the question, asking whether I had a hard life, a difficult time as a child, then resumed the conversation without a hitch.

John excelled as an undergraduate at the University of Houston, where he compiled an impressive record as a national debate champion. He was A.A.’s type of student. The UH debate coach encouraged A.A. to recruit John aggressively for the new law school. Harvard was the competition. A.A. won, and John registered in the College of Law. He interrupted his studies to satisfy his military obligation and returned to the law school in 1953 or 1954. He was the logical choice to teach the classes that A.A. abandoned in mid-year. As Assistant Dean, he was the logical choice to take charge when Newell withdrew.

John and I were in the same law fraternity, and that common ground provided intermittent social contact. We may have had a class or so together, but John ordinarily attended day classes and I went to school at night. He was one of the better students in the Conflicts class I taught in my first year. I supported him fully as Newell’s replacement in 1966.

If John had not been put in an untenable position with his warring constituencies, he might have been dean for a very long time, similar to Page Keeton at The University of Texas. He had all the attributes required for creating and running a first-rate law school. John had a national vision, and he supported the Turks’ program fully at the outset.

As dean, John represented the school capably inside and outside the University. He put on a good face for alumni and the local bar. He expanded the school’s curriculum by instituting a Mexican Legal Studies Program, and he inspired the Health Law specialty. As dean, John had two problems. One was me. We agreed on most issues, but John was cautious and I was not. His other
problem was Newell, who held both John and me responsible for turning the school away from his personal law school model, and particularly for shutting down the night school and nullifying his local hiring priority. Newell may have been angrier at John than at me. I think John respected Newell as a teacher, but I never heard him praise Newell’s vision for the law school. Newell was never comfortable with John Neibel, even when John was his Assistant Dean. John had been A.A. White’s last faculty selection, not Newell’s first. Newell was much more at ease with his personally chosen faculty, particularly Jim Wright and J. L. Cox. He knew John was attuned to A.A.’s vision of what a law school should be. John consistently supported hiring professors from the national market before his 1970 reversal, and he recognized the value of high admission standards.

John voted with the Turks on academic matters, and he liked to move in big circles. He attended the AALS convention and enjoyed mingling with Walter Gellhorn at Columbia and Ernest Brown at Harvard, urging them to send their LL.M. graduates our way. John met Al Conard in 1958 when he was an LL.M. student at Michigan and Conard was director of the program. He was acquainted with Stanford Law School’s noted professor from Texas, Charlie Meyers. John’s sophistication and bearing made him much more at home with the national law school community than with our own faculty. I think in some sense Newell was more in awe of John than I was, and after John turned his back on Newell’s open-admission, local practice law school, Newell felt he could not trust his former Assistant Dean. However he felt about John personally, by 1968 Newell knew the only way to derail the social policy movement was to enlist John to use his power as dean. He could do that only by threatening the deanship itself. I provided an opening for that move with our ill-advised venture into sensitivity training.

John knew he had to satisfy our local alumni community where Newell was regarded more highly than either of us. Early
alumni viewed John and me as fellow students. Newell, on the other hand, was their professor, mentor, and former dean. John assumed before 1970 that the Turks could produce a controlling faculty vote on any issue. As a political person, he knew that news of my nutty involvement with clinical psychologists had spread well beyond the walls of the law school, where it was described as a danger to good legal education. I was aware of a few complaints, and I am sure there were more. The key to what happened next is found in the balloon theory of leadership.

John confided once that Philip Hoffman, the UH president, had described to him the “balloon theory of leadership.” A university administrator is like a balloon held up by a lot of hands reaching up from the ground. A balloon does not know or care who is pushing it. It simply responds to pressure from below. If pressed in one direction, it moves in response. If pressed in another direction, it responds to that pressure. That is the way it was, and still is, with effective university administrators. One college will press for a worthwhile program. The best thing to do is to let it have its way. Then another will press for a worthwhile program. Within some limits, there is no way to determine whether one program is better for the university than another. But one thing is clear. If a balloon or a University President fights the pressure, it will eventually burst. Philip Hoffman ran UH for almost twenty years.

John’s balloon was pushed from three directions. The Turks pushed within the faculty for what we deemed important. Newell and his allies pushed for what they deemed important. Encouraged and recruited by Newell, law alumni began to push for what they deemed important. John’s balloon responded to pressure. Two forces—Newell and alumni—were aligned. We Turks had only our own votes and a few outside allies in national legal education. We had avoided trying to cultivate alumni support, knowing we would not have much luck anyway. Newell and many alumni did not trust any social policy consideration in law or legal education. They had
us two-to-one, and T-group gossip gave ammunition to both. Our vote to eliminate the evening division automatically turned about a quarter of the alumni against us. After we failed to hire Peter Rose, John warned me that he liked being dean, and he planned to stay dean. He did not say just how he intended to do so, but it became clear at a breakfast at Brennan’s in spring of 1970 after Tom Dienes was served an omelet.

Victor Rosenblum, Northwestern Law School’s powerful Law and Society guru, regarded C. Tomas Dienes as one of his program’s most promising graduates. Our commitment to a policy curriculum prompted Vic to recommend Tom to us and, more importantly, to advise Tom to accept our offer. Tom liked Houston, he liked the school, and he was excited to work with Dan Rotenberg and Al Cullison. He liked John Neibel. When he accepted John’s invitation to have breakfast at Brennan’s a few days after our failed attempt to hire the sociologist, Tom’s spirits lifted. The failed effort to hire the sociologist had disappointed him, but he was buoyed by the invitation. He thought it might bring news of early tenure, promotion, or something equally exciting. The news was exciting, all right.

After they were seated and served, John said, “Tom, the reason I called this meeting is to let you know the school will not have a position for you next year.” By now, I don’t remember whether John actually said the next line, or whether it has become true by repeated telling of the breakfast story, “How is your omelet, Tom?”

Word about Tom’s firing spread overnight. We were again the topic of AALS conversations, but this time the buzz was not good. Vic Rosenblum remembered the Dienes firing for at least thirty years, and he broadcast it widely. He never again advised a Northwestern Law and Society graduate to consider UH. In those days, faculty had a lot to say about hiring new professors, but not
much about firing them. John may as well have fired Dan Rotenberg and Al Cullison. Al was scheduled to spend a year as a visiting professor at University of Connecticut, and when word spread that Tom had been fired, Dan and Al announced they would resign in protest. Dan joined Al at the University of Connecticut in 1972.

I was aghast. I pled with them not to desert us. We could still have a good, traditional school, and we could gradually regain what we had let slip away just when it seemed to be in reach.

“John, you have shallow roots,” was Dan’s reply. He was right. I was focused not on a social policy curriculum, but on reinstating A.A.’s original vision. With or without a significant social policy component, we had come close to accomplishing my goal. My own vision could accommodate a specialized social policy focus, but didn’t require it. I was far more concerned about hiring quality faculty from the national market, encouraging scholarly research, and narrowing the open door to admit only students with a decent chance of graduating. If we did these things, maybe our graduates would be courted by prestigious law firms both in Houston and out of town. We didn’t need social policy for that.

Losing Tom was only one of three consecutive disasters. We were one or two years into phasing out the evening division when John Neibel told us UH President Philip Hoffman wanted to talk with the law faculty.
How is your omelet, Tom?

C. Thomas Dienes

http://www.law.gwu.edu/Faculty/Profile.aspx?id=1751
Abruptly fired as deputy chancellor of the Texas A&M University System, Jay Kimbrough, a longtime friend of Gov. Rick Perry’s, then displayed a pocketknife and told system lawyers to "bring it on."

Melissa Ludwig, “‘Bring it on,’ said fired A&M official,” Houston Chronicle, Friday, September 23, 2011

A reader of this text who is not acquainted with academic politics and intrigue may find Kimbrough’s reaction hard to understand. When I saw the item in the morning newspaper, I thought it was funny, bizarre, and easy to believe. People get wrapped up in institutions. Good universities are not run like the army, with heavy top-down administration. The reality or myth of faculty governance often makes administrators and faculties natural enemies. There is no single truth or right way to run a university or a law school. It is messy. Sometimes, strong deans need to ride herd on unproductive faculty. Sometimes, faculties need to get rid of deans. University administrators are not likely to fire incompetent deans unless some embarrassing event forces the move. Universities are shaped by ideas, personalities, conflicts, confrontations, funding, political pressure, and commitments to educational philosophy that come from all directions. It may take years to sort out the events themselves, and it is useless to ask who was right or wrong.
After Jim Hippard’s surprise vote and Tom Dienes firing, the dazed Turks’ first question was “What happened?” The T-group nonsense provided an excuse for John to take a rightward turn, but there was obviously a lot more in play. John Neibel had acted in accordance with some pact with Newell’s faculty. But what were its terms? Some hard facts are uncontested. The connections are pure inference.

Whether part of a deal or not, Newell got his night school back. We were about two years into phasing out evening admissions when John Neibel told us UH President Philip Hoffman wanted to talk with the law faculty. What Hoffman had to say devastated the Turks, but delighted the Old Guard. The message was that, in response to a supposed threat by A&M to take over South Texas College of Law, the night school would re-open. The supposed connection was that, if UH reinstated its night school, A&M could not make a political case for entering the local market to serve Houston’s working students. UH Administrators have raised the A&M specter several times to serve questionable agendas, and truth is both unknowable and relative. A&M undoubtedly sought an affiliation, but I don’t discount that John Neibel asked the UH administration to provide cover for appeasing Newell and disgruntled night alumni. Blaming A&M avoided a forthright examination of the night school on its merits and disarmed the Turks entirely. Whatever lay behind the scene, Newell got his night school back. We did not have to wait long for another shoe to fall.

227 There was some basis for the claim. NICHOLSON, IN TIME 437 says “I was forced to take a direct role in opposing . . . . moves. . . . to found a duplicative college of law for Texas A&M in downtown Houston, in 1967 and 1969.” The 1969 date fits. A&M’s role in the decision to reestablish the night school is less clear. Photo of Philip G. Hoffman: http://en.wikipedia.org/wiki/Philip_Guthrie_Hoffman.
Mopping Up the Mess, 1970-1974

Newell got his great (big) law school when John announced that construction of a second teaching unit would be commenced as soon as possible. Bates College of Law would double in size, and admissions would be increased to fill the new space. Planning was fast because the design for Teaching Unit II was identical to TU-I. The blueprints were not even flipped to allow faculty office windows to face the trees. Instead, the occupants stare out at the first teaching unit’s blank concrete wall on one side and the courtyard on the other. The second teaching unit was completed in 1975. Newell now had two things he wanted. He had his night school back, and the new teaching unit would assure virtually open-admissions for years to come. His next target was the social policy movement itself.

Newell’s third wish was granted when John revealed to us that no one with any Yale connection would be hired as a faculty member during his tenure. Part of the condition was assured with the departure of Al Cullison, Dan Rotenberg, and Tom Dienes, leaving us without the votes to hire over the Old Guard’s veto. John implemented the exclusion fully by naming only Old Guard faculty

228 NICOLSON, IN TIME 454.

229 The decision in 1971 to build the second teaching unit was a student selectivity disaster. For years, the Law Center responded to the University’s pleas for increased enrollment by creeping upward in student enrollment, even substantially exceeding the building’s programmed capacity of 1,000 students. This resulted in correspondingly lower admission standards and negative effect on US News ranking, which is sensitive to LSAT scores and student-faculty ratio. Over the thirty years after Teaching Unit II opened in 1975, a general upward trend in law school applications nationwide brought about an improvement in entry qualifications. When Ray Nimmer became dean in 2006, he negotiated a 15-20% reduction in class size while keeping the faculty numbers intact or increased. Combined with 85 or so graduate students, this entering class size produces a total student body of some 850, which maintains student quality at a good competitive level. The increased student headcount was not entirely bad. It eventually led to a bigger faculty, and that produced a reservoir of talent that a later dean, Bob Knauss, saw could support a sophisticated graduate law program.
to the faculty recruitment committee, knowing they would follow his anti-Yale policy.

Blaming Yale Law School is ironic in that Yale, as such, was not greatly involved in the social policy effort. Burt Agata, Dan Rotenberg, and Tom Dienes had no connection with Yale. Al Cullison had a Yale LL.M., but that was irrelevant to his contribution as a mathematician and statistician. Antipathy toward Yale was more a proxy for discrediting my own persistent challenge to both Newell and John Neibel’s authority. John once told me angrily, “Mixon, you want to act like a dean without taking responsibility for what you do.” I thought it was an interesting point. At least half of it was true. I never wanted to be dean at UH or anywhere else.

It is understandable that John Neibel cast his lot with the Old Guard, and the move sustained his deanship for four more years. The coalition with Newell reversed the trajectory of the school, but John did a reasonable job running the school for those four years under the toughest of circumstances. After 1970, he had to deal with a sharply divided faculty and a total lack of trust from everybody.

The Turks had held John in high regard before the Dienes affair. Newell’s faculty didn’t. John’s heart had been with us in the early days, and his vision for a law school was very close to ours, but the Turks’ deep support for John vanished when he fired Tom, and there was no way either of us would trust the other afterward. When construction of the new teaching unit was commenced and night school reinstated, the Old Guard had what it wanted. John held their shallow allegiance for a time by assuring them he would keep the Turks under control, but our numbers were so depleted that assurance was hardly necessary. Despite his political savvy, I don’t think John fully understood that Newell and his supporters would eventually pull away after they got what they wanted. A.A. White
sat wisely aside, not voicing an opinion as his former faculty and students struggled for the soul of his law school before his eyes. I was a grieving bystander, watching the prospect for resurrecting A.A. White’s foundational vision delayed indefinitely, if not destroyed forever.

Of the social policy group that stayed, Jim Covington was the most distressed. I was a pragmatist. I had carried water for the new wave, but I barely got wet. Dan Rotenberg was right. I had shallow roots. I was not committed to serious social policy study as an institutional requirement, although I agreed it should be part of our program. I opposed Newell’s monolithic local practice model, but I did not require total dedication to a structured social policy curriculum. I thought greater institutional strength lay in intellectual eclecticism, following the model of most high quality law schools. Newell’s local practice training would be a vital part of such a school, but not to the exclusion of other ways of looking at law. I put on a brave face and asserted that the reversal was only temporary, and we would eventually achieve our selective-admission, expanded curriculum law school, albeit of a traditional variety.

By contrast, Jim Covington believed fully in the social policy program. He was also the most supportive of sensitivity training. He had run the Bill of Rights Institute for local school teachers and a Council on Legal Education Opportunity (CLEO) program to prepare minority students for law study with modest group process involvement. Both were very successful. Jim was more attached to LSP than I had ever been. He felt betrayed, partly by John Neibel and partly by my political incompetence. Jim was more interested in rebuilding the social policy program than in waiting out a long-term resolution. He bought a copy of Machiavelli’s *The Prince* to learn philosophically and pragmatically how to deal with rulers, and he tried to work into John Neibel’s inner circle to reinstate policy study. It didn’t work. John Neibel
knew he could never again count on our support. In conversations with faculty and alumni, John Neibel constantly voiced his disdain for our touchy-feely, Yale connection. Jim Covington eventually withdrew from faculty intrigue and ran several business ventures while retaining his faculty position.

For four years, John Neibel’s deanship was delicately balanced on a tripod. He had to take into account the Old Guard, the ragged remnants of the Turks, and alumni who understood only the periphery of the philosophical and political debate. Although John’s middle-of-the-road administration did not satisfy any constituency, it was reasonably productive in hiring new faculty.

John knew that opening the second teaching unit in 1975 would require a substantial increase in faculty, but to hire anybody he had to produce consensus candidates. The remaining Turks were quiet as long as new faculty members were well-credentialed. The Old Guard was happy as long as they had no Yale connection or interest in interdisciplinary courses or serious policy study. Michael Johnson, a UT law review graduate, passed muster with both groups when he was hired in 1970 as Assistant Professor and Assistant Dean. The Old Guard did not object because Mike had no connection with Yale or social science. The Turks accepted his UT degree and Law Review credentials as worthy. Mike was a first-rate professor, he had taught at another law school, and he was an invaluable administrator during tough times that lay ahead. Mike is the subject of the chapter that follows.

John Leathers was a spectacular consensus hire in 1972. His University of New Mexico J.D. and Columbia LL.M. did not signal to the Old Guard that he was a closet liberal in legal education. John was volatile and very bright. He loved to teach, and he did not take kindly to poor classroom performance, sometimes throwing chalk at unprepared students. He had a fiery temper and no use for Jim Hippard, whom he once threatened to punch out in a TU-II faculty
suite. Better judgment and Jim’s threat to have Leathers in jail by nightfall kept the confrontation from making this story even juicier. John tired of the tension and departed to teach at the University of Kentucky’s law school in 1975.

Jim Herget was an excellent consensus newcomer hired in 1973. Jim is a graduate of University of Illinois Law School, and our only faculty member at the time to hold a terminal law degree, an S.J.D. from the University of Virginia. Jim wrote three books, he was a deep thinker, and he filled administrative positions capably. Jim was raised in Pekin, Illinois, which was also the home of Charles Heckman, who joined the UH law faculty in 1969. For a time, we could claim to have the only two law teachers to come out of Pekin, Illinois. Two of Jim Herget’s books were published by major University Presses, University of Pennsylvania and Rice University. Joe Williamson, a retired Shell Oil attorney who had taught me federal procedure as an adjunct professor, was hired as a full-time faculty member. Joe was a good teacher and a possible corporate politician.

John negotiated the middle of the road nicely in 1973 when he hired Richard Alderman, a Syracuse law graduate and law review officer with an LL.M. from the University of Virginia. Richard barely missed being in law school with Joe Biden, who got his Syracuse J.D. in 1968. They anchored both ends of their graduating classes. Richard was at the top of his class. Biden was not. Over time, Richard became a Consumer Protection expert, and he deservedly fills the Dwight Olds chair. Richard has written books on Deceptive Trade Practices, and he has been Associate Dean twice.
Richard rivals Jerry Treece in television exposure and public service. Richard is *The Peoples’ Lawyer* on a local station and newspaper, and he does a real public service by running an annual Peoples’ Law School that covers basic legal topics geared for a lay audience. The People’s Law School has served more than 50,000 people since its inception. Apart from his classroom ability and scholarly talents, Richard had blinding speed as a runner. He gave the faculty’s touch football team an edge over the students when paired with Jim Herget, who had been quarterback of the Pekin, Illinois football team. Jim’s passing talents and Alderman’s receiving and speed gave the faculty several years of victories over student teams.

In what could be regarded as a quarterback sneak, the Turks succeeded in slipping Yale Rosenberg past the Old Guard who would have vetoed him if they had paid attention. Yale Rosenberg was a Houstonian who graduated from Rice and earned a law degree at New York University, where he met his soul mate, Irene Merker. They worked on NYU’s law review and married. When Yale needed to return to Houston, Irene reluctantly followed to live in what she viewed as a backward wilderness. I met Yale in 1973, after the Turks had lost power. Former student Stuart Nelkin had telephoned John Neibel with news that Yale was a Law Review graduate from NYU, and he wanted to teach. Four years earlier, we Turks could easily have hired Yale. But I knew the now-resurrected

Old Guard would veto Yale if they really understood his proclivities.

John Neibel respected Stuart’s recommendation, but he was not about to risk offending the Old Guard who were gun-shy of anybody north of Conroe. At least Yale was his first name, not his law school. Yale’s chances were enhanced by his Houston roots and his Rice University degree. Jim Wright had been slightly acquainted with Yale at Rice, and Jim and I were still friendly. I mentioned Yale to Jim as a fellow Owl returned home. Jim didn’t ask about Yale’s politics, and he cleared him with the Old Guard for a visiting position. John Neibel hired Yale in 1972 as a visitor for the next year. Irene, Yale’s brash, left-wing, and opinionated wife, also taught a course as adjunct professor. Students loved her. After John Neibel left the dean’s office in 1974, we hired both Yale and Irene as tenure-track professors over the Old Guard’s objections that we should not have a husband-wife team on the faculty. By now, they had figured out the Rosenbergs’ liberal political and academic tendencies.

With Tom Dienes, Dan Rotenberg, and Al Cullison gone, the law school’s curriculum took a soft right turn, but Newell’s local practice school was not totally revitalized. The social policy team left some significant artifacts of our venture. Al Cullison wrote a brilliant article on probability theory in legal analysis,231 Tom

Dienes wrote on birth control, artificial insemination, social welfare, and judicial and legislative behavior.\textsuperscript{232} Dan Rotenberg published an article advocating experimental legalization of marijuana.\textsuperscript{233} These scholars were together on the faculty for only three or four years, but their publications were the most important our school produced in its early history. After they left, the law school had good teachers, but few scholarly writers for several years.

John Neibel acted reasonably in November, 1972 when he approved a change in the Law Foundation’s charter that renamed the Houston Law Foundation, which became the University of Houston Law Foundation. Newell had carefully provided a broad purpose clause for the Houston Law Foundation to deflect any claim by the UH administration that it was so much a part of the law school that it was subject to their control. A well-publicized rift between Southern Methodist University’s Law School and the Southwestern Legal Foundation in the early 1970s revealed that Newell’s plan had a potential downside.\textsuperscript{234} The Foundation abandoned SMU and took up residence at the University of Texas at Dallas, ending a long and


\textsuperscript{234} Joseph J. Norton, \textit{SMU Dedman Law School as a Global Law Center in the 21st Century} states, “The 1970s, however, presented an unfortunate event: the strains between the Law School and the Southwestern Legal Foundation increased to the point that the Foundation left the SMU campus to locate at the new University of Texas at Dallas.” \url{http://www.liamericas.org/smu/global-law-center/} (last visited November 12, 2011). Also see \url{http://www.lib.utexas.edu/taro/smu/00118.xml} (November 12, 2011), which shows the Foundation departed in 1974.
beneficial association. This news raised concern that an unrestricted Houston Law Foundation might do the same or actually begin to divert funds to other entities. Accordingly, the new charter limited the Foundation’s bounty to the College of Law. The change seemed innocuous. UH administrators had not made a serious effort to meddle, and donors might indeed want assurance their gifts were limited to Bates College of Law. The issue lay dormant until the early 2000s, when, as Newell had feared, the University began to get information about Foundation funds and expenditures. Neither the Foundation nor its charter had much relevance to me, given my shaky relationship with deans.

My life after John Neibel fired Tom Dienes was very different from before. When the Realist movement was dismantled and Yale Law School became a whipping boy, I lost all influence in law school matters during the remainder of John Neibel’s deanship. Withdrawal from active involvement was not necessarily bad as a personal matter, but it left the question of what to do with time outside the classroom. I got a surprising opportunity when a Greenville, Texas, lawyer, J. Harris Morgan, called about a State Bar project.

Harris Morgan had struggled for years with Dean Page Keeton to get UT law school to teach practice skills so graduates would know what their bodies should be doing and their mouths should be saying when they met their first client. Harris chaired the State Bar’s Professional Efficiency and Economics Research (PEER) Committee, and after Page Keeton’s final rebuff, he decided to institute a “how to practice law” course through his committee. He knew that nobody from UT would run the course after his public dispute with their dean, and somebody told him to call me. I had never heard of Harris Morgan, and I knew nothing about civilian law practice. But that was not a problem. Harris did not want a professor teaching practice skills. He wanted the best practitioners in the State, not law teachers, to instruct the newly licensed lawyers.
I would simply organize and direct the program. There was even a model to follow. Stuart Gullickson at the University of Wisconsin’s law school had devised an effective show-and-tell format that kept the course from turning into a series of war stories. I visited overnight with Stuart and learned what to do.

Following the Wisconsin model, we set up simple simulations of client interview, discussion of fee, *voir dire,* and trial vignettes to show newly licensed graduates what real lawyers do. The lawyers who provided instruction were the best in the State, selected by members of the PEER Committee. They did not need rehearsal to play their roles. The simulations provided a basis for meaningful discussions with the students. In six days, we covered the how-to of domestic relations, real estate, mortgage foreclosure, will execution, criminal law, torts, forming corporations, record keeping, and hourly billing. The teaching teams opened their files and allowed us to reproduce office forms for everything from client interviews to corporate charters. The course was a big success. It resembled Simon Frank’s court observation course that taught law by the “how to milk a cow” theory of watching and then doing. One attendee had qualified to take the bar exam by studying in a law office and never went to law school. He considered the Practice Skills Institute to be his alma mater, and for years he sent a donation as an alumnus.

Harris Morgan impressed on me the value of dealing with only the best lawyers in educational programs such as the Practice Skills Course. He said lawyers at the bottom of the food chain would not share information freely and honestly with newcomers for fear of enlightening the competition. But lawyers at the top are not afraid to give away their knowledge. They know newcomers are not competitors, and they can afford to be generous. I was surprised that one top lawyer was the UH graduate we called “Old 65” because he maintained and graduated with the barely passing 65
average. Creating and running the Skills course was fun, but I gladly turned it over to a full-time director after a couple of years.

The Practice Skills Institute was secondary to a moonlighting venture closer to home. In 1948, I had developed an interest in Zoning and Land Use while listening to radio reports and reading *Houston Post* articles about Houston’s referendum on zoning. H. R. Cullen, the fabled oilman whose name will forever be associated with the University of Houston, opposed zoning. Rumor had it that Cullen favored zoning initially, but when he learned it would not immediately terminate the stinky stockyards located across Calhoun Road from the University of Houston, he declared it an undue interference on personal liberty and property. One of Houston’s most distinguished civic and business leaders, Jesse Jones, favored zoning. A cynic might point out that Jones, who owned a great deal of downtown land, would have benefitted from restricting development in the outskirts. I prefer to think this architect of much of Franklin Roosevelt’s New Deal economic program had loftier reasons, such as bringing land use order to an unruly city.

This clash of titans fascinated me. I followed Houston’s zoning battle from 170 miles away, and watched as zoning went down to defeat in a “yes or no” referendum. I renewed my zoning interest in Quintin Johnstone’s Property class at Yale. Houston’s non-zoned land development was to be the subject of the J.S.D. thesis I never began. Even without the thesis, I covered zoning in my Property class and eventually wrote a book on Texas Municipal

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235 On occasions, a steer would escape the stockyard and cross Calhoun Road into campus. Campus jocks would gleefully play rodeo cowboy, bulldog the steer, and lead it back across the road to become hamburger.
In 1969, Rice University needed an adjunct professor to teach Zoning and Land Development law in their new Urban Design Graduate Program. In non-zoned Houston, there were no competitors for the post, and I taught in the Rice program for twenty years. To add interdisciplinary flavor and learn more about what I was teaching, I team-taught several courses with practicing professionals, including a land developer, a land economist, and an apartment developer. I talked John Neibel into allowing law students to team with Rice students in an Advanced Land Development course. Law students played lawyer, architects played architect, and together they played developer for simulated real estate projects. They studied the legal and financial structure of local office buildings, apartment projects, subdivisions, and Houston’s public housing. Their monumental reports should have been preserved, but they were discarded when the library ran out of space. Several law/urban design teams maintained contact after the course and formed long-term friendships and professional


relationships. A few students went into professional land development on a large scale.238

Two Urban Design graduates, Scott Ziegler and Michael Cooper, terrified me when they said at the end of the course, “Mixon, we are going to do this for real. We have a bank account, and we are going to start building townhouses in Montrose.” I said they had far too little information from my course to do so, but they were not deterred. I am glad they had more confidence than I did. They began their very successful careers by designing and building townhouse projects, then developing an imaginative party wall duplex concept to produce two separately owned housing units on split lots. The joined-at-the-hip houses could be built in Southampton Extension, an upscale subdivision near Rice University with deed restrictions that protected against commercial uses, but allowed duplex dwellings.

My interest in Land Use law led to involvement with a new research institute, Southwest Center for Urban Research (SCUR), founded in 1969. SCUR was an umbrella organization that combined UH, Rice, and UT Health Science Center. The questionable acronym, SCUR, may have had something to do with its ultimate demise. I also landed an invitation to join a General Land Office research effort to see how Texas would respond to a National Land Use Policy Act (NLUPA) that seemed sure to pass in the 1972 Congressional Session. SCUR and the General Land Office participated in a travelling information show that went from one Texas town to another with the message “The Feds are coming,” implying that Texas should prepare to meet the new...

238 Bill Maynard, one of the Law Center’s most successful graduates and most faithful supporters, reminds me from time to time that my enthusiasm about land development led me to emphasize the upside, but not the downside of leveraged financing.
planning and regulatory challenges. We spent about a million dollars of National Science Foundation money and produced a computerized land use analysis and a 1972 book\textsuperscript{239} telling how Chambers County, next door to Harris County, should prepare for the enormous industrial growth that a new US Steel rolling mill would bring. The mill folded, and Chambers County today has fewer people than it did in 1970, but the research project kept me busy with fifty or so talks in a two year period and provided extra income for my children’s’ college expenses.

The pending National Land Use Policy Act (NLUPA) would have provided consulting opportunities for at least twenty years if it had been enacted. Unfortunately, I made a “Feds Are Coming” presentation to the Chairman of the Houston Chamber of Commerce, and he promptly reported it to the US Chamber, which had not heard about the Act. The aroused Chamber put its considerable lobbying power behind killing the legislation. Even with President Nixon’s backing, NLUPA narrowly failed to pass, rendering much of my new learning irrelevant.

While spreading word about NLUPA, I developed my signature presentation technique. I am not good at making unscripted and concise public presentations. Reading a speech is boring. I cannot memorize talks. Notes and outlines are not useful. Then came the breakthrough. Throughout law school, I drew cartoons in the margin of my book to prompt me about facts and holdings in assigned cases. I decided to try large scale cartoons, mostly to prompt me, but with a side benefit for the audience.

\textsuperscript{239} PETER ROWE AND OTHERS, PRINCIPLES FOR LOCAL ENVIRONMENTAL MANAGEMENT (1972).
I bought a big newsprint tablet, an easel, and a box of Marks-A-Lots. A few large cartoons could remind me what I wanted to say, and sharing the drawings helped the audience get my point. I later adapted the technique to law classes by filling the entire board with chalk cartoons that related to the content of the day’s assignment. About ten years ago, a law student named Justin Schwartz spoke out in class, saying I should distribute my daily cartoons to students. It seemed a good idea, so I handed out a one-page set of cartoons for every class thereafter. This book’s fore and after pages show most of the chalk representations I used over the past thirty to forty years.\footnote{Photo of John Mixon: \url{http://www.uh.edu/giving/opportunities/endowed/chairs-professorships/index.php}.}

The Land Use activity was fun, but not real scholarship. That didn’t matter to Dean John Neibel, who was happy that I was doing anything that kept me out of his way.

John Neibel was doing an acceptable job as a middle-of-the-road-dean, but he had stepped on too many toes to survive for long. John had little personal support from anyone but his fellow administrators. The end of his deanship neared when the Faculty Recruitment Committee innocently produced a teaching applicant named Samuel Davis in late 1973 or early 1974. Sam Davis had never attended Yale. He was first in his class at the University of Mississippi’s law school, and he had an LL.M. from University of Virginia. He appeared to be a clear winner, but a Yale problem emerged. A single University of Mississippi professor who recommended Davis had a Yale LL.M. That tenuous connection...
was enough to produce a party line split on Sam Davis—the toothless Turks voted to hire him, but the Old Guard voted against him, and he did not get an offer. Davis did not suffer personally from our rejection. He taught at University of Georgia’s law school several years before becoming Dean at Ole Miss. He published four law books, spent twelve years as dean, and remains an honored Ole Miss faculty member. The Yale taint didn’t hold him back, except at Bates College of Law.

Samuel Davis is not likely to know how important he was in the history of Bates College of Law. Former Dean A.A. White was still our moral leader. Ever since the social policy movement’s self-destruction, A.A. had stood aside and ritually supported whatever decisions the divided faculty made, no matter how destructive.

When the Old Guard blocked Sam Davis because of his distant, strained Yale connection, A.A. spoke up. He said we had reached the point of absolute silliness by turning down a superb candidate for such a reason. The vote not to hire Davis stood, but A.A. had taken a stand. After that vote and A.A.’s declaration, it was clear to everyone but John Neibel that all he had left was the formal title of Dean, and he held that title only by Newell’s tenuous blessing. With the night school reinstated, the second teaching unit committed to be built, and the Turks decimated, Newell had what he wanted. His shallow support for John Neibel was history.

The end of John’s deanship came dressed in drama. Early in 1974, the Turks’ emissary, Jim Covington, and the Old Guard’s Jim Wright, met, struck a deal and rented a room at a nearby motel. The desk clerk must have wondered why a dozen or so guys in dark suits, white shirts, and ties paraded into a room rented for the day. The meeting was short. Everybody knew why we were there. Richard Alderman, who had been on the faculty a scant year, did not attend. Neither did Mike Johnson and Joe Hensley, John Neibel’s assistant deans. With one exception, the request for John’s
resignation was unanimous among those at the meeting. The exception was the former Shell Oil Company attorney who had been through too many corporate battles to take a position. His ambivalence was not rewarded. After the fray was over, he asked to stay on the faculty past his 65th birthday. He got no commitment, and he spent the remainder of his career as a valued faculty member at another law school.

The faculty selected A.A. White and Sidney Buchanan to deliver the message to John Neibel. I know it must have been painful for all three. I don't know who phoned Tom Dienes with the news. Philip Hoffman liked John, but the balloon theory of leadership left him no choice but to allow him to fall. At least he did not have to take formal action himself. Vice-President and Dean of Faculties Emmett Fields accepted the resignation after John took a few days to absorb the news.

Law school intrigue mattered less to me in the fall of 1973 than my wife’s announcement that she was going to marry the doctor she worked for. She gave me the choice of moving out immediately or waiting until his divorce was final. I dragged her and the three children to endless counseling sessions until one day the therapist said, “In cases like this, the chance of reconciliation is less than five percent.” Oh.
PART III: A MODERN LAW CENTER EMERGES, 1974-2013

With the philosophical leaders of the social policy movement gone, resurrecting a broad-based educational program was suspended until 1974 when Interim Dean A.A. White and Associate Dean Mike Johnson moved Bates College of Law vigorously back into the mainstream. Mike worked with the Legislature and secured a change in formula funding that still works to the Law Center’s advantage. When he took office in the fall of 1976, George Hardy continued the momentum, and he left a solid foundation for his successor, Bob Knauss, to develop today’s complete Law Center.

Later law deans adopted the general direction set by A.A. White, Mike Johnson, George Hardy, and Bob Knauss, but some were hindered by a lack of support at the University level. That support has changed for the better. Today, Raymond Nimmer and a supportive University Administration are carrying out the Law Center’s commitment to high quality instruction and broad-based traditional and interdisciplinary research.

A primary goal of the Turks was to hire faculty members with multidisciplinary credentials. The 2011 law faculty includes a Ph.D. sociologist, Ph.D. economist, Ph.D. in Religion, Ph.D. in history, Ph.D. in Earth Sciences, Ph.D. in international law, Ph.D. in
Business, and Ph.D. in Higher Education, and many J.D. holders with significant interdisciplinary interests and experience. The multidisciplinary effort that peaked in the late 1960s was premature. But it was on target, and it opened the door for the solid and stable programs in place today.

Today’s faculty jurisprudence has gone well beyond the simple division between Formalism and Legal Realism. It is anachronistic even to think in such terms in a world where, as attributed to Walter Gellhorn, “We are all Realists now.”
Michael T. Johnson

Photo furnished by Michael Johnson
CHAPTER 16. UNSUNG HERO MIKE JOHNSTON AND INTERIM DEAN A.A. WHITE, 1974-1976

A return to first principles in a republic is sometimes caused by the simple virtues of one man. His good example has such an influence that the good men strive to imitate him, and the wicked are ashamed to lead a life so contrary to his example.

Niccolo Machiavelli

George Van Hoomissen, Dean of the National College of District Attorneys, invited me to his Christmas party in December, 1973. George knew about my impending divorce, and he wanted to cheer me up. I wasn’t in a party mood, but he lived around the corner from my Reba Drive house and I dropped in. I tried to drown my sorrows too quickly and got into a heated discussion with an alumnus who was very critical of the Turks, particularly our venture into group process. Our voices were raised enough to catch the attention of another guest, University of Houston Executive Vice-President Emmett Fields.

I saw that we were too loud and invited the alumnus to continue the discussion at the house I would shortly cede to my successor in marriage. Emmett had heard enough to take note. In January, 1974, he invited me to his office to talk about the law school. My first thought was that I was about to be scolded for
giving the dean trouble, and I asked whether Sidney Buchanan could come along. Sidney and I walked across campus to Emmett’s office in the Ezekiel Cullen building, not knowing what to expect.

We arrived at the appointed hour, and Emmett surprised us. He already knew about the law faculty impasse, and he wanted to hear our version of what was going on. We gave him an earful, after which he volunteered that University administrators ordinarily respond to strong faculty sentiment when it is presented appropriately. This forthright invitation led to the motel meeting and John’s ultimate resignation. I remember Emmett’s precise words as we left his office, “Remember, whatever you decide should be done with grace and elegance.” I have occasionally used that phrase without crediting its source. I think the faculty did its duty at the motel with grace and elegance.  

Emmett accepted John Neibel’s resignation with grace and elegance, and the University issued the appropriate press release expressing regret at his departure and praising his deanship.  

241 Emmett Fields stands tall as one of the best university administrators I have known. He was Vice-President and Dean of Faculties at the University of Houston from 1969 to 1971 and Executive Vice-President from 1971 to 1975. Emmett is largely responsible for today’s requirement that UH professors produce measurable scholarship as a condition of tenure and promotion—a far cry from my award of tenure without publication of any sort, and without even knowing what tenure was. Emmett left UH in 1975 to become president of SUNY’s flagship campus at Albany, New York, and two years later he was named president of Vanderbilt, where he served until retirement. Photo Vanderbilt Register: http://www.vanderbilt.edu/register/articles?id= 22003.

242 NICOLSON, IN TIME 453 says “John C. (sic) Neibel became a special assistant to the president after 10 years of remarkable progress as dean. . .”
spring, 1974, Emmett made the easy decision and named A.A. White Interim Dean. Everybody trusted and respected A.A. He had avoided the extremes that tainted the Turks, even though he was a philosophical fellow traveler. The 66-year old founder of the law school agreed to serve on the condition that Mike Johnson would manage day-to-day operations as Associate Dean. Mike agreed, knowing he faced a tough job.

Michael Truitt Johnson was raised in Victoria, Texas, a two and one-half hour drive from Houston. His wife, Karen, had lived for a time in Cushing, and Karen’s sister was my mother’s student in second grade. Mike graduated from UT Law School, where he was Associate Editor of the Texas Law Review. He practiced law from 1963-1967, then took a position with the Texas Legislative Counsel working on a Penal Code Revision. After finishing the project, Mike taught for two years at the University of Oklahoma Law School, where he developed an interest in law school administration. Mike was named John Neibel’s Assistant Dean in 1970, and his effectiveness and even-handedness earned trust and respect from both the Turks and Old Guard.

John Neibel had been dean for eight years, a fairly long term in the law school world. He had two administrative deans, but only seventeen other faculty members. With some 800 students anticipated when the new teaching unit would open in 1975, the school had an unacceptable student-faculty ratio of about forty-to-one, well below the AALS target of twenty-to-one. The heady feeling that state money would make us rich had been supplanted by the disturbing reality that it wasn’t enough money to run a first-class law school.

Mike is the unsung hero who saved Bates College of Law from mediocrity and, incidentally, rescued Texas Tech and Texas Southern University as well. How did he do this? Almost singlehandedly, Mike persuaded the Texas legislature to increase
formula funding for all four public law schools dramatically. The increase meant more for Bates College of Law than for other state law schools that were better served by their universities. Texas Tech Law School was favored by its university’s internal allocation. The University of Texas was the least needful because its Law Foundation riches, established position, big classrooms, and Page Keeton’s monumental reputation eased the pressure.

The story of how Mike got the money may shock a purist, but it is a good lesson in practical politics. Mike did his research and discovered that the state allocated money to universities according to a student headcount formula. The formula differed for various programs. The headcount allocation for graduate programs, for example, was higher than for undergraduate programs. The Medical Student formula was the highest. Mike learned that Law Students were lumped with Liberal Arts undergraduates at the very bottom of the formula funding list, a holdover from the time a law degree was LL.B. instead of the postgraduate J.D. degree.243

It was clear that Bates College of Law needed more than an Arts and Sciences budget to bring its student-faculty ratio to the AALS-recommended 20-1 level and attract a new dean. Mike’s prior experience with the Legislative Council had educated him about the Legislative Budget Board’s importance in the legislative process. In his first effort, Mike played by all the political science rules and made a compelling case that appeared to succeed on policy and logic alone. The draft budget included a formula increase for the state’s four public law schools. But that increase mysteriously disappeared the night before final vote. Mike learned that legislators were not keen on making individual adjustments in

243 A 1973 College of Law Publication, Pro Facto, pegs the law school formula of $2.40 per student hour, compared with $17.80 at University of Colorado, $11.43 at UCLA, and $22.50 at University of New Mexico.
university budgets because it is easier to add a percent or so to the previous year’s budget than sift through specific programs.

Mike went back to work at the next biennium. Again, he succeeded in inserting the formula increase in the draft budget on its merits, but again it disappeared at the last minute just before the vote. Then Mike had a stroke of luck. A key figure told Mike his son had just been denied admission to UT law school and was looking for an alternative. There was no investigative journalist with camera and microphone poised when that son became a Bates College of Law student, probably on his merits. Coincidentally the dramatic increase for all state law schools reappeared in the final budget and this time it was still there when the Legislature passed it. More accurately, the universities to which the state’s law schools were attached got the increased funding. Law deans still had to wheedle for their share to pass through, but it helped that they could point to the cash that law students contributed to the university’s budget.

Mike was equally adroit working inside the law school. He found a disarmingly simple way to free faculty hiring from Newell’s veto. After noting that the vote to hire new teachers required a two-thirds majority, but the by-laws could be changed by majority vote, he proposed amending the by-laws to allow hiring by majority vote. A weary faculty agreed, and both Old Guard and Turks’ veto power ended.

With the prospect of greater funding and strong University support, A.A. White and Mike Johnson, and the next dean, George Hardy, orchestrated an explosion of hiring. The new faculty members brought excellent credentials and a promise of long-term success. All had strong backing from the few remaining Turks. A.A. and Mike searched national and local markets for talented teachers. From our own graduates, they selected only top-of-the-class 1973
Mike Johnson, unsung hero and Interim Dean A.A. White 1974-1976

graduate Suzanne Baker. With the Old Guards’ veto eliminated, Irene Rosenberg joined Yale with a tenure-track appointment. 244

Returning to the path also meant addressing the lack of diversity in our law faculty. When we hired the school’s first Hispanic law professor, Jorge Rangel, in 1975, I remembered a former Bates College of Law student, Juan Ramirez, fondly.

Juan was a gregarious and friendly warrior who championed Latino interests before they came to be called Latino. With a smile and a cigar, Juan had challenged Newell Blakely face-to-face to abandon “Jose McGinnis,” Newell’s ever-bumbling, often criminal character in Criminal Law, Contracts, Evidence, or whatever course he taught. Jose McGinnis was less an ethnic slam than might appear. When Newell practiced law in the valley, Irish-Mexican intermarriages produced a fair number of surname anomalies. If Newell was seriously prejudiced against Latinos, I never saw the evidence. During his deanship, we established what we called our “El Paso Connection” that enlisted West Texas UH graduates to encourage Latinos to come to Houston and register for our tuition-starved program. Nevertheless, Juan recognized the reference was an offensive stereotype. When called out on the usage, Newell reluctantly changed his classroom character to “Oglethorpe,” whom he identified as a pure Anglo-Saxon who would have no defenders if depicted as stupid or criminal. 245

244 Faculty members who began teaching in 1974 and 1975 would have been hired by A.A. White and Mike Johnson. These include Irene Rosenberg, Suzanne Baker, Tom Lund, Steve Huber, Leonard Riskin, Jorge Rangel, Ira Shepard, Jordan Paust, Philip Riley, Pernila Brown, David Crump, Jon Schultz, Ray Nimmer, and Eugene Smith. John Douglass became Dean of the National College of District Attorneys and half-time faculty member in 1974.

245 Juan also provided a story I faithfully told to forty years of property classes. The Texas deed of trust foreclosures during the 1970s were simply a formality, in that nobody but the foreclosing lender bid at the courthouse sale. After I told this to the
Juan’s complaint about not having a Latino professor on the faculty was substantive and serious. Texas law had systematically discriminated only against African-Americans, and politicians classified Hispanics as members of the majority Anglo population when convenient for statistical purposes, ignoring *de facto* discrimination. Juan was a student in the last days the Turks controlled hiring, and I asked him to find some prospects. That turned out to be difficult. Juan produced a list of notable Latino lawyers, but a quick look at their academic backgrounds revealed that none met the bare minimum academic standards for law teaching. Our general requirements for beginning professors required at least a top-half-of-the-class finish at an elite school or a top twenty percent at a middle-run law school if polished by an LL.M. Justifying these standards to a Latino advocate was a difficult and uncomfortable task.

Juan graduated in 1971, four years before we hired Jorge Rangel, who was a University of Houston honor graduate and Harvard Law graduate. Unfortunately, during his highly successful first year as a teacher, Jorge charged a Latina student with an honor code violation. She complained to a national Latino advocacy organization that he class, Juan rolled up a wad of dollar bills and put a hundred dollar bill on the outside. He and a buddy attended a “public” foreclosure sale at the courthouse and sidled up to trustees auctioning the property to their fellow employee from the foreclosing lender. In a loud voice, Juan asked his buddy whether this was “the property.” The foreclosing trustees became agitated, and several of them moved their “public sale” to another part of the courthouse to get away from the potential auction buyer. So much for “public” trustees’ sales.

246 Photo J. Rangel: WWW.LAWYER.COM; view: ylt=A0PDoX5SI7VPh1sAqd.
should have given her a pass, and the organization censored Jorge *ex parte*. Jorge decided law practice was less stressful than teaching law. He succeeded grandly as a lawyer, served as a state judge for a time, and was nominated to a Fifth Circuit position. Jorge ran into predictable and disabling Republican opposition at confirmation, and he now has a successful law practice in Corpus Christi. For years, he resisted regular invitations to rejoin the Law Center faculty.

We hired our first African-American faculty member, Pernila Brown, in 1975. I had met her a year or so earlier when I retained William Emerson Wright to represent me in my divorce. She was working at Wright’s office in the cupola of the Niels Esperson building, and Wright told me she was a Harvard law graduate. That conversation prompted me to ask Penny whether she had ever thought about teaching law. She was interested, faculty liked her, and she was hired.

William Emerson Wright did a lousy job as my divorce lawyer. Sometime in June, Huey O’Toole, a former student, left a message on my office phone saying, “Professor, I was in Judge Solito’s court today, and your wife divorced you. Your lawyer wasn’t there, and you weren’t there, but the judge went ahead with the divorce and property division.” It turns out Wright had set the case for trial, and then forgot about it. The *ex parte* property division left me with the one chair I had taken to my Parc IV rental apartment on Montrose. I fantasized that, without me or my lawyer present, the judge looked at the former Doris Mixon and asked “What property do you want?” and she said, “All of it,” to which the imaginary Peter Solito responded, “Are you sure that’s enough?”

The one good thing William Emerson Wright did was introducing Penny Brown. After we hired her and Jorge Rangel, Bates College of Law joined the rest of the law school world in welcoming diversity. Penny and law teaching were not entirely
compatible, and she left after a couple of years to work as a lawyer with the City of Houston, but the important step had been taken.

The path back to national respectability ran through the University of Georgia’s law school, where we found two experienced law teachers. The first was Tom Lund, a Columbia Law Review graduate who later obtained a Ph.D. from Oxford. Tom is one of the country’s few experts on wild animal law and a really good teacher. Tom left Houston in 1979 because skiing near the University of Utah is better that at Houston. I unwisely trusted Tom to teach me to ski on a visit to Utah. What he did was take me to the top of a Park City mountain and tell me to “snowplow down.” Then he skied off and I fell fifty or so times before picking up my skis and walking down to a ski school at the base.  

Tom Lund tipped us to his University of Georgia colleague, Ira Shepard, who was strongly recommended by former Secretary of State Dean Rusk. Ira was a Harvard Law Review member, he practiced with New York’s Paul, Weiss firm, and he became a mainstay of the UH tax law program and founder of the LL.M. now offered in tax. For his thirty-plus years, Ira was one of the best teachers on the faculty. He acquired a national reputation by organizing and presenting annual programs on current tax issues to tax professionals. Ira and I

247 Photo: http://www.law.utah.edu/faculty/faculty-profile/?id=thomas-lund.

248 Photo: http://www.law.uh.edu/faculty/.
co-authored a law review article on deficiency judgments published in Wake Forest Law Review. He retired in 2011, and in 2013 was named Outstanding Texas Tax Lawyer by the Tax Section Council.

Ira and I lived in the same Montrose mid-rise apartment project while both of us were, as Ira called it, “graduates of marriage.” I was still adjusting to single status in 1974, when Beverly Rudy gave me the phone number of her friend, Judith Lindley, a Spring Branch junior high school teacher. I called and we made a safe, easy-to-exit, breakfast date at Brennan’s Restaurant. I arrived to pick her up at her house before she returned from delivering her daughter, Millicent, to the baby sitter. I was standing at her front door when I saw this amazing blonde with long hair flowing in the wind whip into the driveway in her fire engine red Oldsmobile 442 convertible.249 I was impressed.

It was a good day for me to impress a new lady as well. I had spoken at a public meeting the night before about a proposal to drill for oil in Houston’s Memorial Park, and my picture was right there on the front page of the morning newspaper.

Our six-year courtship was tested in 1977 when I told Judy the 442 was beginning to rust and the cost of fixing it would be more than the car was worth. Judy did not want to hear that. Things picked up in 1979, when my former Rice students, Scott Ziegler and Michael Cooper, bought a lot in Southampton Extension and invited me to make a down payment on a new house. I did, and I used the new house to entice Judith into marriage. Ziegler-Cooper moved on from townhouse developing to become one of the nation’s top interior design and architectural firms.

During the time Ira and I lived at Parc IV, A.A. White and Mike Johnson hired Yale LL.M. graduate Len Risk. Len and his talented wife, Casey Damme, moved into the sister apartment building, Parc V. Both Len and Casey had a strong interest in Law and Medicine, and they worked to expand a formal relationship that Mike Johnson had developed with UT Health Sciences Center. In addition to the medical connection, Len achieved national prominence in alternative dispute resolution. He and Casey left Houston in 1984 to raise their son, Andrew, in the more manageable urban environment of Columbia, Missouri.

The Law and Medicine connection that began with John Neibel and Philip Bohnert in the 1960s was formalized by Mike Johnson and Margery Shaw, M.D., a geneticist at the University of Texas Health Science Center. Margery was more curious than interested in law when she registered for my evening Jurisprudence class in 1969. She liked it, and she continued her studies and graduated in 1973. Marjory’s time as a student coincided with Mike Johnson’s time as Associate Dean. Marjory and Mike saw an opportunity to expand the Law and Medicine connection, and with
the University’s blessing and participation, the relationship flourished. The initial idea was to hire a dual degree MD/JD to anchor the program. Philip Reilly answered the call in 1975. Philip holds a J.D. from Columbia and MD from Yale. He told us why pediatricians wear bow ties—to keep naked little boys from grabbing the doctor’s necktie and hosing him down. Philip pursued other opportunities after a year or so, and his departure caused some rethinking about how to structure the medical relationship. A short-lived effort to hire Yale’s law and medicine guru Jay Katz did not work out, but the commitment to Law and Medicine lasted and eventually produced today’s strong Health Law program when Bob Knauss became dean.

One of the Law Center’s true Renaissance scholars, David Crump, was hired in 1975. David had once teamed with fellow Harvard College student, Circuit Judge (and almost Supreme Court Justice) Douglas H. Ginsburg, to create a computer dating business. After a time as an aerospace engineer at NASA-MSC, David got his J.D. from The University of Texas, was Fifth Circuit judicial clerk, and taught law at the University of California at Davis.

David loved the courtroom experience as an Assistant District Attorney trying cases ranging from minor misdemeanors to capital murders. David strongly believes law school should prepare students to enter the legal profession, but not to the exclusion of traditional legal education. His “How to Reason”

course delves deep into policy. David relocated to South Texas College of Law in 1982, where he remained until Dean Robert Knauss brought him back to the Law Center in 1988.251

With Yale Law School no longer off limits, A.A. White and Mike Johnson hired Jordan Paust, one of Myres McDougall’s favorite International Law scholars.252 A Yale law student once introduced Jordan to another law student he said would someday be President of the U.S. Jordan laughed and said to Bill Clinton, “When you do, I want you to nominate me to the Supreme Court.” Jordan is one of the most prolific publishers in legal education and enjoys a worldwide

251 David offers an alternative view about the connections I have drawn with Yale Law School “As an overall observation, there's way too much Yale in this thing. This school isn't Yale, I hope. It shouldn't be. It's too easy to be Yale. Some of what passes for scholarship there is superficial and just plain foolish. The ranking of Yale as number 1 by US News is very strange, because Yale gets raw material that is among the best (at least by the numbers) and does the least with it. Yale should be fourth tier. A couple of times, I've been a committee chair of the kind that votes in the US News rankings, and I've been able to put Yale at the evaluation it should have. Yale graduates tend to agree that the school did poorly at preparing them to be lawyers, but they still are glad of having gone there; my inference is that the reason is the empty label, which supplies what a sound education should have done for them. Labels of that kind aren't a good thing. I should add that I have the same attitude toward people's reaction to my Harvard degree, although with legal education standards being what they are, I too benefit from a dysfunctional label, and I sometimes feel the need to tell people gently that I think it's not so impressive when they make too much of it. . . . Now, I don't suppose you would shrink that Yale stuff, nor should you if you think that it's an appropriate way to do this, since it's your memoir. But perhaps you should include an alternative view: that some people think that any Yale influence at any law school is likely to be a negative thing. Even if iconoclastic-appearing, that view does have some adherents.” Note from David Crump, February 2012.

252 Photo of Jordan Paust:
reputation in human rights law. Jordan is noted in the Leiter Study for 2000 to 2007 as among the ten most cited authors in a given field of law, and he is in the top 10 International Law professors in the Leiter study of 2005-2009. Two of his articles have been quoted by the Supreme Court. With Jordan in Public International Law and with the addition of Steve Zamora a few years later in International Economic Law, the school gained a strong intellectual base for launching its LL.M. in international law.

Eisuke Suzuki’s short teaching career at Bates College of Law reveals why LSP never really caught on in legal education.253 Eisuke is a brilliant Tokyo law school graduate who was entirely seduced by LSP during his Yale graduate year. Eisuke tried to teach first year Contracts by McDougal and Lasswell’s social science categories. It was a disaster and students rebelled. They loved Eisuke, but they hated LSP. Joined by a student from Eisuke’s class, Ira Shepard and I had an intervention at my townhouse to try to convince him that teaching LSP in Contracts was impossible. He listened politely, then told us he believed in the system, and if the students didn’t like it, that was their problem. Eisuke decided to shift from law teaching to a management position at the Asian Development Bank in the Philippines. In his first month at work, rebels kidnapped him. Luckily, when the kidnappers slowed down in traffic, Eisuke rolled out of the car and avoided whatever fate they had in mind. Eisuke had an artist’s eye, and he married a beautiful British stewardess and raised an impressive family in the Philippines. Banking paid well enough to enable him to take up polo as a hobby. After retiring from the Bank in 2005 as

Mike Johnson, unsung hero and Interim Dean A.A. White 1974-1976

Director General, Operations Evaluation Department, Eisuke returned to Japan, where he teaches at a Japanese law school.

Steve Huber is a University of Chicago law graduate who earned an LL.M. from Yale after teaching law at Dar es Salaam, Tanzania. Steve’s books on Banking Law were widely used by the profession for several years. During his active years at the Law Center, Steve was a faithful and respected faculty advocate in the University’s Faculty Senate, which he chaired on occasion.254

In 1974, John Jay Douglass255 replaced George Van Hoomissen as Dean of the National College of District Attorneys and member of the law faculty. John had been Jordan Paust’s commanding officer at the U.S. Army Judge Advocate General's School in Virginia. John added maturity and balance to the faculty for the next thirty years. For many years, John and Papoose Douglass hosted an annual event, a “Black-eye Pea Party” brunch for a group of faculty and downtown friends. He retired in 2011 at age ninety, still a popular professor, making me feel like a quitter for leaving at only seventy-nine.

254 Photo of Steve Huber: http://www.law.uh.edu/faculty/.

255 Photo of John Douglass: http://www.law.uh.edu/faculty/.
A.A. and Mike mended some fences by inviting back Alan Cullison for a visiting year. Al had left in protest after John Neibel fired Tom Dienes, and he had strong ties in Connecticut, and he returned to the University of Connecticut after a year’s visit. Next year, Dan Rotenberg returned and remained on the faculty until he retired in 2001. Dan was still an outspoken rebel, but the magic of our Social Policy years had passed both of us by. He taught his courses and needled deans occasionally, but never with the intensity of our earlier years.

We hired Jon Schultz, who was Director of Law Libraries from 1975 to 2002, and retired in 2005. Jon managed the growth of the library from 120,000 volumes to 500,000 at its peak. After Tropical Storm Allison destroyed some 150,000 volumes in 2001, Jon supervised rehabilitation and book replacement. In addition to his superb job in the library, Jon played guitar and drums in a country western band. He even played music at his own retirement ceremony. Jon once gave his wife, Suzette, a vintage MG TD that joined their stable of convertibles, pickup trucks, and a few other vehicles they actually used for transportation.

256 The library rebuilt its collection to 555,000 volumes in 2011. Email from Mon Yin Lung to John Mixon, April 2, 2012.

To me, personally, the most important person A.A. and Mike hired was Eugene Smith. Gene Smith was lucky to be alive. Shortly before the Salk vaccine made polio history, Gene contracted the disease in his late teens. He was among the last polio victims to survive by forced breathing in an iron lung. Gene said he once asked a nurse for a cigarette while the breathing apparatus was doing its inhale-exhale cycle. She said, “You can’t smoke. You’re in an iron lung.” He persisted, and she replied, “O.K. You’re going to die anyway, so what difference does it make?” She lit the cigarette and put it in his mouth. The breathing contraption sucked a full blast of Lucky Strike into fragile lungs that hadn’t dealt with tobacco for months. The explosion of smoke, nicotine, and tar discouraged Gene from smoking until he was free of the mechanical breathing device.

Gene eventually gained enough strength to leave the iron lung. He walked like a crab, swinging his almost useless arms to keep his balance. Somehow, he managed to drive with a knob attached to the steering wheel, and he could expertly leverage a martini to his mouth. Gene went from iron lung to SMU, where he obtained a law degree and served as Editor-in-Chief of the Law Review. After Law School, Gene spent a year as a graduate student at Columbia, worked as a teaching fellow at Stanford, and became an Associate Professor of Law at SMU. He was teaching at Texas Tech Law School when he telephoned me to get him out of Lubbock, away from sand storms, and closer to his consulting

258 UHLC File photo of Eugene L. Smith.
clients in Houston. Gene and I had met when both of us worked on State Bar committees. I passed his name to A. A. White and Mike Johnson who were delighted to get a lateral move by a well-known Texas law professor. So it was done.

Eugene Smith and I were both born in 1933, and we spent our early years in Nacogdoches County. We learned sometime in the 1980s that another 1933 Nacogdoches baby, Patricia Marschall, was teaching law at a school in North Carolina. We telephoned to ask whether she might want to join our faculty just for the Guinness Book of Records. She was intrigued, but decided to stay where she was.

When Gene moved his family to Houston, he bought a house in southwest Houston, but divorce moved him out. He remarried and bought a house near the law school in Riverside Terrace, a fancy subdivision abandoned in the 1950s by white flight. Law Professor Elwyn Lee and Sheila Jackson Lee lived nearby. The wooded area was near the site donated by the Settegast family to the University of Houston in 1936. In 1936, it was a high-income, predominately Jewish residential analogue to Southwest Houston’s exclusive River Oaks. In 1947, the Texas Legislature situated Texas Southern University’s Law School nearby to avoid integrating The University of Texas Law School. When black faculty and staff began buying houses near TSU, the established white neighborhoods went through an explosive (literally) transition. When I arrived in Houston in 1952, I would occasionally drive by the shell of a freshly burned house that sent a still-smoking message to unwelcome buyers and realtors. Over time, the area converted into an almost entirely African-American elite residential area. Gene was one of a few white residents to move back into the neighborhood. His bedroom was upstairs, and Gene struggled up nightly without realizing he was weakening his damaged muscles and hastening the onset of post-polio syndrome which eventually disabled him entirely, even from riding around in his electric cart.
Gene, Elwyn Lee, and the subdivision were stars in a documentary film called *This is our home. It is not for sale.* White homeowners had put that declaration on front yard signs to combat the racial transition. Always irascible and politically incorrect, Gene kidded about the perception that he lived in a high crime area by telling visitors to put their hubcaps in the car trunk when they came to visit him.

No professor took longer to grade exams than Gene Smith. Deans could plead, threaten, and complain, but Smith took his time. One night during grading season, Gene's car was stolen from his driveway. When it was recovered a few days later, Gene declared the only thing missing was a box of exams from the trunk. Saddest of all, he said, was that he had just finished grading them. Students got their grade averages. A few people believed the entire story.

One day, Gene’s stepson’s bicycle was taken away from him on the bike trail. I told Gene we could find it. Gene and I cruised the neighborhood and within fifteen minutes we spotted a kid riding it, tailed him to his home, and called police who recovered the bike and took its rider into custody. Next day, the thief appeared before Mary Craft, who was the victim’s mother, Gene’s wife, and Juvenile Court Judge. In commemoration of my telepathic talent, Mary’s sister painted a cardboard placard declaring me a wizard. It rests in my office, incomprehensible to the casual observer.
Gene refused to give in to post-polio syndrome’s increasingly debilitating return. He once bought a 1966 Lincoln four-door convertible that needed some parts available only in a junkyard. He and I rummaged through several wrecked Lincolns looking for electric window switches. He toppled over a couple of times, but we found the switches. The convertible was obviously well beyond its useful life as anything but a museum piece, but it was a joy for Gene. One day, he drove George Hardy to Intercontinental Airport and the enormous top opened, but wouldn’t go down. They motored on, but Gene finally surrendered his prized antique in favor of a newer, less glamorous Lincoln Town Car.

Gene fell frequently, and I learned how to pull him to a standing position. Most of the time. I once pulled him up, didn’t hold him long enough and he fell backwards, flat on his back in the Stables, his favorite restaurant. He called the Stables his private club. They knew him well enough that his personal waitress, Valera, always had a Martini waiting when he arrived to claim his reserved table. The Stables closed shortly after Gene died in 1997 after reaching what he had considered the unattainable age of 64.

Gene divorced again and spent his last years as a bachelor in his high-rise apartment, waiting (and wanting) to die. Post-polio syndrome had taken away his last bit of mobility. He viewed it as an omen when his pet Siamese sailed off the balcony and wasted all nine lives on the pavement many floors below. Gene had talked a doctor friend into giving him some pills that the Hemlock Society

recommended, and we discussed his using them. One day, he told me to telephone him the next morning and if he failed to answer, to call the police. That night, convinced Gene was dying by poison, I found my own legs thrashing around experiencing his death throes. As instructed, I made the morning telephone call, but instead of silence, I heard a cheery greeting, “This is Gene Smith.” He lived in a fog of scotch for another year and then died peacefully from natural causes. Gene left money in his will for a wake. As executor, I ensured that it was a worthy one. Gene loved classic Western movies, and he had always wanted to ride a horse, but couldn’t. In his last days, he asked me to design a horse and rider for his grave marker with the words “The ride was worth the falls.”
George W. Hardy III

UH Law Center Frankel Room Wall of Deans
CHAPTER 17. GEORGE W. HARDY III, DEAN, 1976-1980

Among those who knew him, it is no secret that my father was sartorially challenged. To say it was a source of embarrassment would be an understatement. When I would invite a friend over to spend the night for the first time, I would lie in bed wide awake, wracked with anxiety as I tried to anticipate how my friend would react to my father’s standard Saturday morning attire.

It wasn’t as though he had no sense of style. On the contrary, he had a definite, unmistakable sense of style. It just happened to be catastrophically deficient. He was a die-hard champion of the drab green jumpsuit, off-brand Velcro sneakers, and foam-dome, nylon-mesh hats that said things like “Under This Hat Stands One Mean S.O.B.” I suppose in some respects, he was a true pioneer in the field of ironic fashion.

G.W. Hardy IV

In addition to running the law school in partnership with A.A. White, Mike Johnson chaired the Search Committee to find a new dean. The timing of John Neibel’s departure lengthened the search, which could not get underway until fall of 1974 and consumed most of the 1974-1975 academic year. The contest was between George Hardy and Paul Verkuil.

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Paul Verkuil held an LL.B. from the University of Virginia and LL.M. from NYU. Columbia’s Walter Gellhorn was convinced that Paul would someday be one of the nation’s best administrators. Paul was young, but he already looked and acted like a dean. His personal interview revealed he was as urbane and sophisticated as John Neibel at his best. He was tall, trim, dark-haired, relaxed, and focused. Paul caught me off guard by asking about my research. At the time, I was making speeches and translating Real Estate and Land Use concepts for a lay land use audience. What I produced for SCUR was easy to write and profitable. The speeches were fun. Both provided an excuse for not doing real research and publishing in traditional law reviews. Paul chided me and said I needed to write for lawyers to establish credibility for myself and the school. I got the message and changed my ways. Paul didn’t become dean, but George Hardy, who got the job, had the same notion.

Paul was the unanimous and immediate choice of the remaining Turks for all the reasons that made him unacceptable to Newell’s faculty. The Old Guard had lost its veto power, but they made it clear that Paul was too East Coast for them. Fortunately, the sharp schism between Turk and Guard was now mediated by less doctrinaire faculty hired during John Neibel’s precarious balancing years, and their influence reduced the acrimony.

If Paul had not been a candidate, George Hardy would have been acceptable to most Turks. He was a top LSU graduate, Order of the Coif, Law Review Editor, Rhodes Scholar, Dean at University of Kentucky Law School, and a nationally recognized Oil and Gas expert.

Urbane and sophisticated, George was not. As his son later put it, his dad was sartorially challenged. George’s favorite tie was green on one side and blue on the other. It was reversible, and, depending on the way he tied it, he could complement either of his two sports jackets or three suits perfectly. George was a fantastic
cook and a great entertainer. His young wife, Dottie, was a superb first lady who provided a softer, sophisticated balance. George’s “good old boy” talk and appearance appealed to the Old Guard, but predictably turned off left-leaning faculty, particularly Yale and Irene Rosenberg. They feared he was not removed from the politics and prejudice of the Old South, and they did not want any dean but Paul Verkuil. A split faculty vote sent both Paul and George’s names to Emmett Fields for final selection. Emmett came to the law school and sat in the Frankel Room before the assembled faculty as each of us vocalized our choices and reasons for favoring one over the other. The top-down administrative attitude that has developed over the past thirty years makes such a reasonable approach unlikely today.

Emmett’s strategy left no paper record to embarrass the new dean or threaten critics with retribution if their choice didn’t win. Emmett knew some of us pretty well. He got a complete and accurate picture of our preferences and measured the depth of support for each contender. A cold yes-no vote with paper ranking would have been far less useful. The Old Guard did not like Verkuil, but they would not revolt if he were hired. Some Turks did not like George, but they would not revolt if he were hired. Youth and lack of experience were objections raised against Paul. George had been tested in office. In separate meetings, alumni made their case that Paul was too liberal and George would be a terrific fundraiser.

Emmett viewed alumni enthusiasm and George’s decanal experience very positively. Jack Rains, a respected and influential

1967 graduate, was particularly supportive of George. Jack had come to law school after a very successful career in insurance. After graduating, he had several careers in law, politics, business, and land development. His recommendation helped tip the scales in George’s favor. With faculty evenly balanced, alumni support made the effective vote two-to-one. The issue was settled when Emmett asked Mike Johnson, and Mike picked George. Paul Verkuil became dean of Tulane’s law school, and later President of William & Mary University and Dean at Cardozo Law School.

George had been dean at the University of Kentucky Law School for less than two years and felt he could not leave without more notice. He also wanted to be sure Mike’s funding legislation was firmly in place before agreeing to take office in the fall of 1976. A.A. White and Mike Johnson held office for two and a half years. After George said yes, they worked as a triumvirate that included George by telephone. The trio hired Jim Gambrell, Gil Finnell, and Eisuke Suzuki in the spring of 1976, to begin teaching in the fall, so it is reasonable to call them George’s hires.262

Our joy about hiring a dean dimmed when we learned that Emmett Fields was leaving Houston in 1975 to head The State University of New York’s flagship Albany campus.263 Roger Singleton became vice-president for academic affairs and Ron Bunn filled Emmett Fields’ former office for a single semester.264 Mike

262 After George took office, we hired Robert Brussack, Howard Sussman, David Gaebler, Elwyn Lee, Elizabeth Warren, Jeffrey Harrison, Richard Dole, Rand McQuinn, Jacqueline Weaver, Darold Maxwell, Gary Spradley, and Steve Zamora.


264 NICOLSON, IN TIME 453.
Johnson worked closely with these new administrators and built a strong relationship with them that eased George Hardy’s entry as dean.

In 1976, a new personality, Barry Munitz, was appointed to the newly created office of President of the University, and Philip Hoffman moved up to the position of Chancellor. Andrew Rudnick became Provost. Barry and Andy were a dynamic duo. Barry is a brash, Brooklyn-born, administrative genius who had worked with Clark Kerr, Chancellor of the University of California system. After leaving the University of Houston and toying with corporate work, Barry became director of the Getty Museum.

Barry and Andy were a class act—the best I had seen, and by far better than any later administration before the present Chancellor, Renu Khator. Barry did not follow the balloon theory of leadership. He was willing to burst balloons and risk his own. Andy wore red suspenders and a Wild West mustache as he carried out Barry’s bidding cheerfully or heartlessly as the occasion demanded. They located, selected, and funded a few programs they thought had potential for high quality. It was our good fortune that they made Bates College of Law a campus priority, along with Music and Creative Writing. The favored programs quickly acquired and maintained regional prominence. Barry and George got along fabulously.

George W. Hardy, Dean, 1976-1980

George did not quite achieve the fundraising success that alumni predicted, but he did raise more money than any prior dean. His most profitable undertaking was an annual Gala—a formal affair featuring table sales and an auction of donated items orchestrated by the indefatigable redhead, Shirley Fannin. Similar events now saturate the fund-raising game, but the Law Gala still produces some $600,000 per year. George left the Foundation with a record half-million dollars in assets when he resigned in 1980.

Unrestricted Foundation funds were especially valuable because they were not subject to university restrictions and accounting. This flexibility enabled George to compete with other schools for new faculty by offering them support for travel and summer research and, for chaired professors, salary supplements. Subliminally or openly, top teaching candidates judge law schools by class and image, and a recruiting dinner at Brennan’s with a middling Bordeaux can make any school look better.

George used personal friendship to persuade Jim Gambrell to move from NYU to Houston and add credibility to our Intellectual Property offerings. Jim joined Eugene Smith as one of the few senior faculty members we had been able to hire laterally from another law school.

George reached a new level in hiring in 1979 when he persuaded Steve Zamora to move to Houston. Steve graduated first in his law class at The University of California at Berkley and was Chief Articles Editor of their law review.
George and Barry Munitz enlisted the University to offer positions both to Steve and his equally talented and credentialed wife, Lois, who was looking for a position in an English Department. The University of Houston’s English Department had an open position. Barry Munitz’s support undoubtedly helped, but Lois’ credentials would pass muster anywhere. Steve taught a semester at Yale as a visitor after establishing himself at UH as the nation’s foremost authority on North American Free Trade Agreement (NAFTA) law, and served as dean at the Law Center from 1995 to 2000.266

We finally succeeded in hiring an established scholar in 1978 by persuading Richard Dole to fill the Bobby Wayne Chair in Consumer Law. Richard was a senior faculty member at the University of Iowa’s law school, and when a major Houston firm offered his wife Linda a position, they agreed to move to Houston.

Richard is an American Law Institute (ALI) member who served on the Cornell Law Review, and he holds an LL.M. from Cornell and SJD from the University of Michigan.

George W. Hardy, Dean, 1976-1980

Hiring Richard for the Bobby Wayne Young Chair required a stretch because Richard’s teaching and research specialty did not exactly match the chair’s requirements. Then, in a stroke of administrative genius, Richard became a Consumer Law professor through his Commercial Law specialty. He regularly visits Japan as an honored professor of law.  

Richard and Linda Dole were partners with Judith and me in a Galveston beach house. After a couple of years, burglars took a fair amount of insured furniture. We dreaded negotiating with an insurance company, but we found the adjuster unbelievably accommodating. He placed top values on sofas and designers chairs that were clearly beyond their peak. After he finished, he handed Dick a check and asked whether we were perfectly satisfied. The answer, of course, was yes. The adjuster’s next comment explained a lot. He was applying for law school, and would appreciate any help we could provide. We did not help, and he did not get into law school. But we kept the insurance check.

George was lucky to attract Richard to Houston. It is difficult to fill funded faculty chairs with subject matter designations. Donors understandably want their money to fund specialties they are interested in, and deans will agree to almost any condition to get the cash. But finding top scholars who meet the

requirements and are willing to resettle can be tough. The O’Quinn chair in Environmental Law and the Blakely Chair in Evidence, for example, went unfilled for years as we searched for acceptable candidates willing to move from an established position in another school. Entry level candidates are much easier to find and hire.

George reached into the national market to hire a number of entry level and young professors with top credentials. The law school took a step forward in 1976 by hiring Gil Finnell away from Florida State University. Gil was an SMU graduate and Eugene Smith’s former student. He had become a Land Use and Environmental Law scholar with some national reputation. Gil carried the high recommendation that the country’s finest judge of new teachers, Mason Ladd, who left Iowa to become dean at Florida State’s new law school, had selected Gil as one his first faculty members. When Dean Ladd came through New Haven recruiting for the University of Iowa’s Law School, he ran through the LL.M. crop with an unerring eye that made or destroyed careers. It was Mason Ladd who had asked me point-blank what Mac saw in me. When I couldn’t answer sensibly, Mason went on to another prospect and hired my good friend Arthur Bonfield. Dean Ladd did

268 Elwyn Lee, who holds a Yale J.D., was hired in 1977. Elwyn is married to Sheila Jackson Lee, who has a J.D. from the University of Virginia. She is a long-time member of the U.S. Congress. Elwyn is now a Vice-President of the University. Columbia Law Review graduate Howard Sussman, also hired in 1977, spent three or four years as an assistant professor before returning to New York practice. Guenter Treitel, a noted Oxford professor, visited for a year. Keith Blinn came from Conoco on a five-year non-tenure contract to augment the energy and environmental law energy program. David Gaebler, hired in 1977, is a law review graduate of University of Wisconsin law school who spent six years as Assistant Professor before moving to Northern Illinois Law School, where he has been a career-long Associate Dean. Harvard Law graduate Darold Maxwell, hired in 1979, helped Ira Shepard and Jim Wright develop a strong tax program before returning to practice. Darold loved sailing more than teaching or law practice, and he once took off a year to spend it on salt water. Also in 1979, George hired Gary Spradley, a 1971 Law Review graduate of UT Law School who had clerked for the Eleventh Circuit. Gary left law teaching a few years later to train for the ministry.
George W. Hardy, Dean, 1976-1980

a good job when he picked Gill Finnell, who turned out to be an excellent teacher and prolific scholar.

Gil bought an old house in West University Place, but he really wanted to build a “Frank Gehry” style townhouse in a zippier part of town. I recommended a Rice Architecture faculty member, Gordon Wittenberg, who, with his wife, Susan, and Mark Oberholtzer, designed and built a three-story townhouse on Vassar Street that was clad with Frank Gehry-inspired “despised materials.” The city rejected the first set of drawings just before Christmas holidays, and Gordon and Susan stayed up all night redesigning plans that the city approved late on Christmas Eve. The walls sport a combination of intentionally ugly yellow brick, combined with a flat composition material that look like cardboard, and sheets of corrugated roof metal. Gil’s eighty-year-old across-the-street neighbor said nothing until the builder started hanging the roofing metal on the side facing her. She finally volunteered, “Mr. Finnell, I have a friend who could get some nice siding that you would like better than that cheap tin roofing.” Gil thanked her, and they became good friends, but the corrugated metal stayed. The tall structure is located on Vassar Street, visible from the Southwest Freeway’s Shepard exit, driving south. Gil’s architects later designed a Santa Fe style house for faculty member Craig Joyce and Molly Joyce that is quite different from Gil’s. In 1996, we moved

269 Photo by the author.
into a house in West University Place designed by Gordon, Susan and Mark Oberholtzer.

Gil was our only faculty member to die young. He tried for forty years to lead a traditional heterosexual life, but he could deny his sexual orientation only so long. In the 1970s, after a self-revealing trip to Chicago, he told his wife he was gay. They divorced, and Gil left his wife and two children in Florida. He knew Houston was a more accepting community than Tallahassee, but he did not feel comfortable enough to come out in public. Judy and I innocently introduced several single women, and he tried dating before finally confiding to me that his Chicago trips were not entirely academic. I learned about Gil’s other life earlier than most faculty members, and when he began to show the telltale signs of systemic deterioration in the early 1990s, I knew the progression would be inevitable. There was no cocktail of drugs to keep him alive, and Gil spent his last year or so in bed, growing weaker until he died in 1995.

George hired our summa cum laude graduate, Jacqueline Weaver, in 1979, to build a strong oil and gas program.\(^{270}\) She had a strong background in economics and experience in the oil industry. I smiled, thinking about an event five years before that had caused Jacqueline some confusion. At Darrell Morrow’s request, I held a reception for graduating law students who might be Vinson & Elkins prospects. The event was scheduled a few days before I ceded the house to my successor in marriage. Jacqueline was a student guest, and the

\(^{270}\)Photo of J. Weaver: [http://www.law.uh.edu/faculty/](http://www.law.uh.edu/faculty/)
event bore no evidence that I had rented an apartment in Parc IV, where she and her husband, Kirk, were also renters. A few days after the reception, I met her at the apartment entry door as I was entering and she was leaving. Jacqueline’s face revealed that several possible explanations were going through her mind. My divorce and relocation probably wasn’t one of them.

In 1978, when George hired Elizabeth Warren, women law teachers had a tough time finding faculty positions. She followed the ordinary path to law teaching by agreeing to teach Research and Writing along with a substantive course or two. Elizabeth was different from most, in that she came as a tenure track faculty member. She was magnificent from the start.\textsuperscript{271} Elizabeth and I taught different sections of Contracts. I was a pretty good Contracts teacher at the time, and she was a very keen student of teaching methods. We spent many lunch hours at Casa Dominguez restaurant discussing how to teach the second half of Contracts. The first half, covering offer and acceptance, consideration, etc., was easy. Performance, conditions, and damages were not easy. Discussing how to get these concepts across to students occupied as much time as faculty gossip while we consumed a lifetime’s share of guacamole and chalupas. Elizabeth graciously mentioned our lunches in Julius Getman’s book on law teaching, \textit{In The Company of Scholars}. I found the reference handy when an incompetent Provost accepted an unexamined accusation that I was prejudiced against female faculty members.

\textsuperscript{271} Photo of Elizabeth Warren:  
http://upload.wikimedia.org/wikipedia/en/9/96/Photo-warren-s.jpg
George W. Hardy, Dean, 1976-1980

Mike Johnson appointed Elizabeth Associate Dean, but Bob Knauss, who took office after George resigned, noted that the time Elizabeth was spending in administration distracted her from the research and writing required for tenure, and he selflessly relinquished her administrative talent and gave her to the world. Bob also remembers that Liz installed a porch swing in her office where she could sit while listening to student complaints.

Elizabeth and Eugene Smith had a special relationship. He lusted openly after her, but she would have none of it. She was, though, amused by the pursuit. At Gene’s memorial service, she told two stories illustrating their relationship. When she came for her faculty interview, Gene hosted her and a couple of other faculty members at the Stables for lunch. Gene ordered a steak. He was seated next to her. When the steak arrived, he pushed it over to her with the command, “Here, cut this up.” She stared at him. He said, “Can’t you see I’m a cripple?” She answered, “Sure. But I thought you knew that when you ordered the steak.” Gene roared in laughter, and they were fast friends from that minute forward. Her second story described Gene’s chasing her around the desk in uncontrolled lust while she laughed, equally uncontrolled, as she avoided his crab-like grasp. Elizabeth noted that some people on the faculty disliked Gene and refused to come to his memorial. She said they should not worry. Gene didn’t like them, either.

Elizabeth taught at University of Houston for five years. The best thing she did for her own career and personal happiness was to marry Bruce Mann and leave us. They taught together at the University of Texas and University of Pennsylvania’s Law Schools before both joined Harvard’s law faculty. In 2012, she won a tough race to become a U.S. Senator from Massachusetts. Her Houston employment became an issue when her opponent charged that she had used her Native American ancestry to advance her law teaching career. I can swear she did not. Elizabeth got her Houston job on her own merits, and I didn’t hear about her ancestry until a couple of
years afterward. It was our great professional loss, and a personal loss for Gene and me, when she left.

Everyone hired by A.A. White, Mike Johnson, and George Hardy had good credentials, worthy of a school on the move. By 1978, the Turks’ early ambition to hire a credentialed economist had become a widespread practice in law schools. The new faculty member that best fit the Turks’ original agenda was Jeffrey Harrison, who held a Ph.D. in Economics from the University of Florida, and a J.D. from the University of North Carolina. Jeff has become one of the country’s foremost counter-neoclassical economists. When he took a job at University of Florida’s law school in 1984, another Ph.D. economist, Barbara White, replaced him. She left for the University of Baltimore Law School in 1993, and after a ten year gap, we hired our present economist, Darren Bush, in 2003.

The Old Guard was right about George’s personal grounding in the South, but they did not comprehend that he was also totally committed to scholarship—something they had never undertaken and did not deem important. Newell’s notion that scholars can’t teach was wrong. Virtually all young teachers the Law Center has hired during the past thirty years are talented in both research and teaching. The big difference then was that the new faculty members published, which produced a measure of defensiveness among the Old Guard who did not.

Sometimes clumsily and painfully, George firmly established scholarship as a requirement for promotion and tenure. That requirement marked a significant advance on our path to national respectability. Some aspirants who did not get tenure were good teachers and colleagues who had successful careers after leaving Houston.
Without George’s nudging, I would barely have satisfied A.A. White’s 1950s expectation of an article every couple of years. Twenty-four published articles and one book (soon to be two) during my fifty-plus years brings me close to that standard, but my meager output is nowhere close to today’s faculty norm. George increased the pressure for faculty scholarship by convincing Barry Munitz that Bates College of Law could not advance in the national law school world unless teaching loads were reduced to six hours per semester. The lighter load carried increased publication expectations. The expectation might make a faculty member seeking tenure and full professorship nervous, but I had passed those hurdles years before. Raises were not much incentive, and I was essentially bullet-proof unless convicted on a morals charge or caught pilfering money. In a gentle way, George told me I was not a good example for new teachers who were expected to produce an article or so every year. That stung enough that I looked for a project.

As part of a General Land Office response to the National Land Use Policy Act in 1973, I had written a two hundred-page summary of Texas zoning law. The federal act was dead, and I had set my report aside as useless. When George pushed me to write, I pulled it off the shelf. Michael Beaird, our associate librarian, had just accepted a job with Butterworth publishers, and he was looking for authors who would write books focused on the law of a single state. I expanded the GLO report into a 1984 book, *Texas Municipal Zoning Law*. The exercise provided my first introduction to computers and WordStar, an early word-processing program. These

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George W. Hardy, Dean, 1976-1980

machines made the job possible, and I owe Ray Nimmer, George’s other Associate Dean, thanks for providing them.\textsuperscript{273}

At Ray’s urging, George used Law Foundation funds to buy each faculty member a primitive (though state-of-the-art at the time) Xerox word processor. In the only major organized research in my career, I read and made notes on every reported Texas zoning law case. The Xerox clunker had limited storage on its eight-inch rotating disks, and it tended to hang up and lose data in mid-sentence, but it was a wonderful writing tool when compared with the IBM Selectric typewriters that still required paper. Westlaw had not yet given law professors access to its case retrieval and downloading capabilities, so my research assistants had to scour the digests for every Supreme Court, Fifth Circuit, and Texas zoning case since the beginning of time. They copied and bound the assembled cases in a dozen or so eight-by-ten-inch spiral notebooks for me to read. The task reminded me of Dwight’s recording act articles. I didn’t top his record of 1,100 cases, but I think the end product may be more useful. The book was completed in 1983 and published in 1984. It is still supplemented and marketed twenty-eight years later. I handed it over to competent authors in 1999 after deciding my summers were too precious to waste reading whatever land use wisdom Texas and federal courts had revealed since the last edition.

In the spring of 1978, Burt Agata arranged for me to visit at Hofstra University Law School during the summer semester. I taught Real Estate Transactions and learned a little about New York conveyancing law, but I learned more about police and prostitution in Uniondale, N.Y., where Hofstra’s staff had found me a short-term

\textsuperscript{273} I dedicated the book to my student research assistants, Brenda Eddy, Jennifer Arbolino, and Richard Berry, to my new wife and her daughter, and to Xerox’s wonderful machines.
When I arrived, it became clear I had rented the madam’s room in an almost vacant house of prostitution. There was another tenant, a young woman who occupied one of the half-dozen tiny rooms upstairs. In my second night, I heard a terrible noise from her apartment. The other tenant’s manager was apparently beating her up. I had no phone, but there was one on the wall in the dark downstairs hallway, and I asked the operator to call the police. I told the duty officer my story, and he was unimpressed. He asked for my phone number. He was skeptical when I told him I was new to the building, it was dark, and I did not know my own phone number. The police had no intention of showing up. Finally, I ran my credentials by as a lawyer, a visiting faculty member, etc., and that got a yawn. I did get his attention when I said that my next call would be to the local newspaper, and if the girl upstairs died, I would take their refusal to answer the call to the district attorney. They showed up a half hour later. By then the beating had stopped. They talked with the victim, who declared nothing had happened. The local police clearly knew more about my new habitat than I did.

When my semester in the bawdyhouse ended, I was ready to go back to Houston and do George’s bidding. He knew how to build a law school with the money Mike had secured from the Legislature, and I wanted to be part of it. Our modest increase in admission requirements had produced a capable student body, and George did not have to deal with a fifty-percent flunk rate.

During George Hardy’s deanship, the five-percent discretionary admission category grew to twenty-five percent of the entering class. Minority enrollment increased substantially, but low absolute numbers left room for claims of inequality. Ray Nimmer was Associate Dean from 1978 to 1985, during the terms of three deans: George Hardy, 1978-1980; Interim Dean Michael Johnson, 1980-1981; and Bob Knauss, 1981-1985. As Associate Dean, Ray was instrumental in formulating admissions policy and managing internal operations while the deans represented the law school in the
external communities and the University Administration. He sometimes faced daunting challenges.

At the beginning of Ray’s term as Dean of Students, the school faced a student uprising over the low numbers of African-American and Hispanic students. Ray managed to reduce tension by working with Tom Martin, an African-American student who graduated in 1980. Tom agreed to serve on the Admission Committee with Yolanda DeLeon, who became Assistant Dean of Students. The team of three made a major improvement in minority admissions procedures while avoiding a potentially explosive confrontation on the very delicate issue of race and admissions. A key factor was including students on the committee that screened applicants for admission in the discretionary category.

The student body issue that made George’s deanship memorable did not involve affirmative action. It concerned a unique person named Phyllis Frye.

Phyllis Frye deserves special mention for teaching us more than we taught her. At birth, the delivering physician declared Phyllis was a boy, and her parents named her Phillip. By age six it became clear to Phyllis that the gender assignment was a mistake. Phillip was physically, but not psychologically, a boy. Nevertheless, he continued to play out his assigned gender role, enrolled in Texas A&M, joined the Corps, graduated, served as an army engineer, married, and fathered a son. Then, in the 1970s, when her true gender could not be repressed, Phil donned a dress and became Phyllis, first in private, and then in public. The result was a series of personal disasters: divorce, military discharge, and social and job discrimination.

Life picked up when Phyllis found and married a woman named Trish, who fully accepted Phyllis. Her personal life began to settle down, but finding a job as a transgendered engineer was
impossible, and it appeared that Trish and Phyllis would have to live forever on Trish’s income in relative poverty.  

Phyllis applied to law school in 1978, not so much to be a lawyer as to find a way to deal with her own legal, financial, and personal problems. The 2005 award-winning movie, *Transamerica*, celebrated a transgender story. But in the late 1970s, Phyllis’ application to Bates College of Law prompted faculty discussion instead of automatic acceptance that her record justified. The reason was that Phyllis violated Houston’s ordinance against wearing opposite-sex clothing, and Phyllis would have a bathroom usage problem. Dean George Hardy and a faculty consensus sensibly saw no reason to treat Phyllis differently from other applicants, and the law school admitted her as a first-year law student, where she earned a place in this narrative.

Phyllis had not begun her hormone treatments when classes began. As a *Houston Press* article suggested, she looked like a big man with long hair wearing a dress. A few unsympathetic students bedeviled her, and the same bathroom issue that got her fired from an engineering firm followed her to law school because, as Phyllis described it, the world can’t figure out where transgendered people

274 Photos of Philip and Phyllis Frye: http://transgenderlegal.com/

can pee. The law school solution was to provide a couple of “lock for privacy” unisex bathrooms.\textsuperscript{276}

A few faculty members provided strong emotional support,\textsuperscript{277} but Phyllis ran into increased harassment when a group of students organized a new campus group, \textit{Friends of Gays and Lesbians}. As reported in \textit{The Houston Press},

The Friends drove the campus conservatives crazy. After the Friends dared to ask for $250 in student organization funds, the Young Americans for Freedom flew in Austin lawyers to argue against the request. That night, before Phyllis got home, a group of students drove to her house, banged on the windows and doors, and screamed rape threats. It took months for Trish to feel safe again.

The most memorable event during Phyllis’ time involved the Christian Legal Society. Before law school, Phyllis sought spiritual comfort in religion and became a born-again Christian. The law school had a Christian Legal Society (CLS) that enjoyed campus privileges, and the University’s student policy prohibited discrimination against students who wanted to join any campus organization. But when Phyllis began attending CLS meetings, she found CLS to be a particularly unwelcoming group.

\begin{flushright}

\textsuperscript{276} Bathroom assignments were a problem in the law school, even before Phyllis. When the law building was first planned, the ratio of women to men was far less than today’s fifty percent, and restrooms were unequal. Understandably, when women law students gained in number, they complained about the plumbing disparity, given the short ten minute break between classes. The Law School responded by converting some men’s toilets, unfortunately leaving urinals hung ambiguously on the walls. The women, with abundant good humor, grew ivy in them.

\textsuperscript{277} Phyllis singles out Irene and Yale Rosenberg, Jacqueline Weaver, Tom Newhouse, Ray Nimmer, Elwyn Lee, Joe Hensley, Jim Hippard, Jordan Paust, Dan Rotenberg, Stephen Zamora, Ray Britton, and staff Nan Duhon.

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George W. Hardy, Dean, 1976-1980

As The Houston Press reports,

For all three years she was in law school, the CLS met in secret so she couldn't join their meetings. Once, at her invitation, they laid hands on her and prayed, but God chose not to change her transgender ways. The CLS blamed Phyllis’ stubbornness.

Near graduation, Phyllis complained to the administration about CLS’ discrimination, and a committee was named to hear the charge. I was happy not to be involved in any of this, but I chuckled that a committee of one practicing Jew, Yale Rosenberg, one ambiguous Jew, Dan Rotenberg, and a likely non-believer, Ray Nimmer, had to decide who met the definitional standard of “born again Christian.” Even with an early life background as an East Texas Baptist, I didn’t have the slightest idea. The committee overcame the definitional problem and found that CLS had violated campus rules, for which it lost its privileges as an approved organization.

Despite her problems, law school was a good launching pad for Phyllis’ future life. For her first five years as a lawyer, Phyllis sold Amway products, mostly in gay bars, and she earned money as an occasional consulting engineer for a gay architect. In time, she became a political activist and got the city to repeal its cross-dressing ordinance, which I would guess was unconstitutional in any event.

Phyllis achieved a fair amount of success representing clients in sexual orientation cases. She gained professional respect along the way handling high-profile cases. She has been a visible

278 I think Dan attended a Unitarian church, but claimed to be Jewish.
advocate against holdings such as Littleton v. Prange, which held that a marriage between a surgically corrected transsexual and a man was invalid on grounds that gender is established irrevocably at birth. Her competence as a lawyer and her qualities as a human being finally won Phyllis appointment in 2010 as an Associate Municipal Judge.

Phyllis is an accomplished public speaker, she has taught law classes, she is politically active, and she has made presentations to several law school audiences, including my Jurisprudence class. Phyllis responded to her tribulations with more humor and kindness than her tormenters deserved. She has finally received acceptance by the profession, by her neighbors, and by any part of the world that counts, as an equal.

Some other things George did were very productive. For example, he worked hard to bring Newell back into the faculty fold. He persuaded Newell to edit a significant book on Texas Evidence, and Newell carried through as a good soldier. The book’s success boosted Newell’s spirits and filled out his resume. But most important, George began to work on the relationship between Newell and me. I never wanted to lose Newell’s friendship or respect. He was still the great teacher, and in 1959 he saved me from a lifetime of hard work by bringing me back to teach law for some fifty years.

George’s efforts bore fruit when I made a graduation speech before a late 1970s class. The speech was really good, and I knew it. But what made it truly memorable was that, after I sat down in the front row (assigned because I was a speaker), Newell touched me on the shoulder and said, “Fine speech, John.” That was the first time he had initiated verbal contact since he left the dean’s

279 9 S.W.3d 223 (Tx. App.—1999).
office in 1965. It was the overdue renewal of a personal relationship whose absence pained us both. We were on good terms from that day until he died in 1997.

Some observers remember George’s four years as dean more for personnel problems than for his ample successes. The most serious issue concerned Irene and Yale Rosenberg.\(^{280}\) As with most faculty issues, I had a foot in both camps. In this case, it was more like having one foot on the dock and the other on a loose canoe. Irene had a deep interest in juvenile law and an equally deep distrust of Southern judges. She created a course that placed students in observer-participant roles with downtown juvenile courts. She did not like what they saw. Irene decided, probably correctly, that Harris County’s juvenile courts played fast and loose with juveniles’ rights. She believed the judges appointed politically favored, incompetent lawyers who were interested only in the meager compensation and didn’t protect their clients from automatic commitment to detention facilities. Irene was a fiery advocate and she was confrontational.

A judge complained to the law school that Irene had taken a juvenile client away from the appointed lawyer—who was likely bungling the case—and persuaded another, competent, lawyer to handle the case. Irene denied it, but she didn’t hide her contempt for the system. The judges and appointment lawyers wanted blood, and they were ready to declare her guilty of an ethics violation without a

\(^{280}\) Photo of I. Rosenberg: http://www.law.uh.edu/faculty/images/IreneRosenberg.jpg.
hearing. Who other than A.A. White could conduct an inquiry? After a full and complete hearing, he cleared Irene. Totally.

George remained suspicious. Irene never hid her dislike of George, and the disagreement became loud and intensely personal. Irene and Yale were convinced they were victims of anti-Semitism and southern prejudice. George was afraid they would sue him and the law school, and he undoubtedly would have preferred they just go away. The dispute was still hot when Irene sought early tenure on the basis of good teaching reviews and publications that numbered well above the faculty norm.

Unfortunately, I was a member of the Promotion and Tenure Committee. George participated as an ad hoc member. I will not reveal the committee’s deliberations, but I will disclose the committee’s recommendation to the faculty as I remember it and as it was once recorded in faculty meeting minutes.

One committee member, Sidney Buchanan, sensibly voted to award Irene tenure and promotion to associate professor. Sidney stated the obvious, that Irene published high quality articles, she was a popular teacher, and she deserved tenure. Nevertheless, a committee majority, with George’s blessing, voted that Irene’s publications were not scholarly. Instead, the majority characterized them as thinly disguised attacks against judges who were stereotypically and unfairly painted as fundamentally racist and anti-Semitic. I was the lone member who abstained from voting for a very specific reason.

When the report went to faculty, I declared that Irene’s publications, along with her teaching, exceeded our requirements for promotion and tenure, but I had abstained in the committee because I thought the negative votes hid an agenda that judged her behavior instead of her performance. It was, in short, a vote based on collegiality, not quality. I asked for faculty direction about whether
collegiality was a proper consideration for tenure decisions. The faculty voted that it was not a proper consideration, and I gladly voted with that majority. I then voted in favor of Irene’s promotion and tenure. Nevertheless, faculty as a whole approved the committee’s negative recommendation. Thus, faculty said we should not take collegiality into account, but then they denied Irene tenure. A lousy outcome.

In my estimation, my actions had been open and noble. But my barest suggestion that collegiality was an issue converted my previously close relationship with Yale and Irene to one of suspicion. A later committee and faculty vote overwhelmingly approved Irene’s tenure and promotion, but an ominous decision on Yale’s full professorship was looming.

Yale and Irene were a great team in many ways, including writing articles together. Joint authorship was a problem because Yale did not have standalone articles that in George’s view could be judged apart from Irene’s contribution. Accordingly, Yale was

281 There are divergent views on the motivation for requiring Yale and Irene to write separately for tenure and promotion. As an abstract matter, the joint authorship issue is real. As an academic crime, it does not reach the same level as plagiarizing student work without attribution. Even with attribution or joint authorship, there can be a question as to legitimacy. I stepped over the line twice. The first time was at the behest of a law review board that needed an article and had an excess of student time to devote to helping an author. I had written an essay for a lay audience that was based on a wrong analysis of Equal Protection. Ken Fenelon turned it into a publishable article, but all he got was footnote credit. I was determined never again to shortchange a student by denying co-authorship. Law reviews are understandably picky about publishing student work as lead articles, but when the library research director told me she needed to find work for one of her very capable charges, I accepted the offer and provided nothing more than a sketchy notion of how I thought the subject should be handled. A very capable student, Justin Waggoner, produced a co-authored piece that was published in St. Mary’s Law Journal, whose policies apparently allowed student co-authors, but not sole authorship. I felt I had cheated Justin out of his rightful position as author, and I resolved never again to put my name on an article unless I did at least half the work. I did half the work on an article co-authored with Bob Schuwerk describing our Personal and Professional Ethics course. John Mixon and Robert P. Schuwerk,
advised to produce a separate piece for promotion to full professor. He submitted an unpublished manuscript that attacked the Supreme Court’s refusal to entertain a civil rights suit brought by a medical student against a Missouri medical school that expelled her on what Yale thought were improper grounds. The record revealed that a professor had referred to the plaintiff as a “New York Jewess and perhaps her hypercriticality and tendency to complain can be attributed to this heritage.” The medical student ranked first or second in her class, but she had been dismissed on the basis of “ostensible deficiencies in clinical performance and for inadequacies in peer and patient relations, personal hygiene, and ability to accept criticism.”

In draft form, Yale’s article was characterized by the committee as an unprofessional assault on the Court, the Medical School, and inferentially, on Bates College of Law’s treatment of Irene. Even moderate committee members viewed the incomplete manuscript as an angry replay of Irene’s own encounter with the UH committee. I had been ready to waive Yale into full professorship without reading his article. The divisive decision on Irene had soured me from looking too closely at promotion of any associate professor to full professor. A vote against final promotion is a meaningless slap in the face for anyone who already has tenure. But Yale’s unpublished article put the committee and me in a bind, and I reluctantly agreed that, at least in unpublished form, the draft provided slim basis for full professorship.

The committee voted against Yale’s promotion. To this day, I don’t know whether the action constituted a good faith assessment of the unpublished article or defensiveness at his indirect slam at the

*The Personal Dimension of Professional Responsibility, 58 Law & Contemp. Problems 87 (1995).*
George W. Hardy, Dean, 1976-1980

law school. Yale published a more scholarly version of the article282 and followed it with an outstanding study of Certiorari denial and issue avoidance by the Supreme Court.283 Both were reviewed very positively, and Yale got his promotion to full Professor.

The committee’s actions in both cases intensified the Rosenbergs’ anger and put an unfortunate hole in all three of our lives. Irene could not comprehend why I had not given her and Yale unqualified support. She reduced it to a two sentence analysis, “I can’t understand it. You used to be a liberal.” My vote on Yale’s promotion was enough to isolate me for thirty years from a part of the faculty with whom I was in substantial intellectual agreement. Yale died in 2002 without reconciliation. A few years before her own death in 2009, Irene came to my office to make peace. Her rabbi had told her that anger was destroying her health, and she should try to resolve it. I welcomed the opportunity. We talked, hugged, and remained good friends until she died. George Hardy died without reconciling with either Yale or Irene.

George resigned as dean in 1980 to accept a lucrative offer from an oil and gas law firm. Mike Johnson thinks money was the entire reason, but health may also have been a factor. In the spring of 1980, George had a cardiac scare that prompted a surgeon to schedule an operating room for bypass surgery. At the last minute, a catheter probe negated the procedure. Law school issues may have both exacerbated the health problems and contributed to his decision to resign. I hope it was not a result of Barry Munitz’s decision to inaugurate a five-year review for all deans. Barry held George in


such high esteem that he picked him as a safe inaugural case. He expected George’s strong approval would encourage other deans to embrace five-year review. That was a mistake.

I chaired George’s review committee. All told, George had a very productive deanship as viewed by friends and supporters on the faculty, but a disastrous one as viewed by a vocal minority led by Irene and Yale. Some women faculty members viewed George as an absolute sexist. I think that is unfair. Some people thought he handled Irene Rosenberg’s tenure and promotion badly. I agree with that assessment.

My report would have given George high marks, and he would have passed the critical review easily. Nevertheless, faculty who didn’t like him deserved their say, so I established a procedure to hear them and summarize their comments without revealing sources. The review became moot when George resigned. The five-year-review remained University policy, but not with the unblemished report Barry wanted or expected.

Mike Johnson had remained in office as George’s Associate Dean, and when George resigned in 1980, Mike stepped into the dean’s office as Interim Dean. Following his success as A.A. White’s Associate Dean, Mike worked effectively inside the law school and with University Administration, where he established working relationships with all major officials. Mike was Interim Dean until the fall of 1981 when Bob Knauss took office. Afterward, Mike served in various University positions, including Associate Chancellor, Vice-Chancellor, and Representative to the Southwest Conference for twelve years. In 1984, he served as Vice-President of the Southwest Conference and as President of the Conference from 1984-1986. From 1984 to 1988, Mike was Executive Director and Counsel for the Board of Regents. He returned to full-time law teaching in 1988 and retired in 2000.
In 1980, I was more interested in tax law than law school politics. Congress decided the economy needed a boost and amended the depreciation rules to allow a one year write-off for automobiles used for business purposes. I pinched myself at the possibility and called a fellow Yale LL.M. who was dean at the University of San Diego to get a visiting professorship for the summer. Mileage to and from San Diego and between my temporary residence and law school qualified as business use. I bought a Manila Beige 1980 Mercedes 240D sedan for $18,500 and maintained a mileage log on the business use to and from California and within San Diego. After returning to Houston, I put the car in the garage and drove my play-car, a Mercedes 190SL, until the end of the year. The $18,500 deduction produced $6,000 in tax saving and reduced my net cost to $12,000. Ira Shepard insisted on calling the car a “(Tax) Dodge” until I sold it to Tom Newhouse at 90,000 miles and paid capital gain tax on the modest sale price. Tom ran up another 100,000 miles, then sold it to his neighbor. It was still running the last we heard, and you could hear that diesel engine clanging two blocks away.  

I was enjoying the summer on the California coast with my new bride and new car when Barry Munitz called and asked me to chair a committee to select George’s replacement. It ruined an otherwise pleasant summer.

Robert L. Knauss

UH Law Center Frankel Room Wall of Deans

It doesn’t have to work. We both know where the courthouse is.


Judy and I capped our six-year courtship with a private wedding on Valentine’s Day, 1980. A few weeks later, we moved into the house designed and built by my former Rice architecture students, Scott Ziegler and Michael Cooper. We threw a surprise wedding by inviting a hundred or so people to “Join us at brunch.” A law student-Lutheran Minister, Leif Clark, now a highly-regarded San Antonio bankruptcy judge, read the vows on a second-floor balcony where we stood with our three mostly grown children, our three parents, and the bride’s sister.285 The architects were horrified. They had designed the balcony to handle a few plants and an occasional

285 Photo by Edward Reitman.
human, but not ten people who totaled well over a thousand pounds. The balcony survived, as has the marriage.

The March wedding preceded George Hardy’s resignation and Barry Munitz’s summer telephone call to San Diego. When my bride and I returned to Houston, I assessed my task as chair of the dean search Committee. We were not in the best position to attract a top-flight dean. News about the counterrevolution against Yale Law School, together with Tom Dienes firing, still contaminated our standing in the law school world. Choosing George Hardy as dean had been a positive move. His short, productive deanship repaired our reputation, but not enough for law school legends to knock on the door wanting to be our next leader.

There was no administrative crisis because Mike Johnson easily managed the dean’s office while we searched. In a rational world, the faculty might have drafted Mike to stay in office, but hostility directed at George Hardy had tarnished him as well. It didn’t help that, when Mike hired a competent secretary for his acting deanship, a competitor with more seniority but less talent, charged Mike with racial discrimination. Irene Rosenberg carried the offended claimant’s charge to the central administration, and the chosen secretary quit. Mike dutifully employed the claimant, but the charge had done its damage. Predictably, faculty members lined up on each side of the issue.

Mike did not sit still during the search. Building on the good relations George Hardy had forged with local law firms, he tried something no prior College of Law dean had done—soliciting Houston law firms for contributions. Mike selected eleven firms, with Vinson & Elkins as the largest and Jim Gambrel’s patent law firm the smallest. With John Kolb and Jim Gambrel’s backing, he got early pledges from these firms at both ends of the size spectrum so no managing partner could avoid contributing on the ground of size. When Mike began his rounds, managing partners were
Robert Knauss, Dean, 1981-1993

reluctant to commit for fear they would be pressed to make matching gifts to all schools that provided them lawyers. Mike responded that Bates College of Law was their local law school, and it supplied not only associates, but also research assistance from students and consulting from professors. He did not seek big contributions, preferring to establish law firm giving as a principle that could grow in future years. Mike succeeded with nine of the eleven firms contacted, thereby providing a base for the next dean to exploit.

While Mike was taking care of the dean’s office, Barry Munitz turned my search committee loose to find the best dean the market provided. In 1980, University administrators trusted colleges, or at least the law school, to act independently and produce unranked candidates for their final selection. Search committees were composed of faculty from the college itself with, at most, a nominal presence from the administration or another department. That has changed. University involvement has become an increasing presence and, in my estimation, an impediment in today’s dean searches. Search committees are so loaded with administrators and faculty from other departments that law faculty membership may comprise a minority. Regulations make it almost impossible for a law faculty to identify and pursue selected candidates. I don’t know whether those rules applied to our committee. If so, we ignored them.

Our ritual advertisements for dean produced ritual candidates whose greatest disqualification was that they didn’t know they were unqualified. Protocol required us to thumb through the resumes, but none stuck to the spit. The real work was telephoning law school gurus to get tips on the best prospects for our deanship.
I wanted to find a dean who did not know he/she wanted to be our dean. If we found a top candidate, I wanted to provide cover so law school luminaries would not know he tried for the job if we didn’t make a deal. After we made up the short list, I began calling prospects. Instead of inviting the targets to become candidates, I told them we were undertaking a dean search, and we wanted them to come to campus as a consultant to help us find the right candidate. This deception fooled no one, but it allowed our chosen prospects a formal cover while we looked each other over. They could even claim we really needed help finding a dean. We scheduled a talk with faculty for those who accepted so we could become better acquainted and receive their sage advice.

The people we contacted knew what we were doing. Some turned us down flat. Some agreed to “consult.” We produced three consultants and one set of hurt feelings. The hurt feelings came from a noted professor and former dean of another law school. He would have been a good choice, but we didn’t know he was interested until he called. News about the consultant ruse had spread, and he remarked that, although he hadn’t been asked to consult, he would like an interview. I am sure he was not the only aspirant who was miffed at not being on the consultant list. He got the interview, faculty liked him, and he placed number two on the final list we sent for the provost’s pick.

One prospect turned us down after a memorable breakfast with the committee. His distinguished career, both as professor and

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Robert Knauss, Dean, 1981-1993

dean, put him tentatively at the top of the list. We housed all consultants at the premier Warwick Hotel, now garishly renamed Zaza. The dean search committee was seated at a circular breakfast table in a private dining room. The waiter brought coffee and leaned over the consultant’s shoulder to adjust something on the table, tipped the pot forward, and streamed hot coffee down our guest’s collar. He bolted upright with coffee staining half of his shirt front. After a brief change, the consultant rode to school with a fresh shirt and inscrutable expression. He consulted brilliantly, faculty loved him, and the committee wanted him. But he pulled out of contention after giving us some good advice on finding a dean as a real consultant, not as an applicant.

One other consultant interviewed and pulled out. Eugene Smith was a committee member. Gene and Puerto Rican Jaime Fuster had been graduate school colleagues at Columbia. Gene tried to convince Jaime to top off his teaching career with a deanship. Jaime visited, looked us over, and gave a consultation talk that still stands out in my mind. He said deans and faculty matter less than student quality. We should become far more selective and enroll only top student applicants, even if it cost us headcount in the short run. That policy would quickly make us attractive to other top students, and we would gain a reputation based on quality of our graduates, not on our dean, faculty, or curriculum. And, he said, “That is the only true measure of success.” A.A. White could not have said it better. To our dismay, Jaime also pulled out. He later became dean at the University of Puerto Rico’s law school, then president of Catholic University in Puerto Rico, and still later a member of the Puerto Rico Supreme Court.

Bob Knauss was a spectacular consultant and virtually a unanimous choice to be dean. I am glad the coffee-stained visitor pulled out. He and Bob were similarly credentialed and honored. Choosing between them would have been tough and might have split the faculty that was finally putting its policy disputes to rest.
Both were former deans. The coffee victim had been law dean at the University of Oregon, and Bob had been dean at Vanderbilt. After Vanderbilt, Bob retired to teach at Vermont Law School and Dartmouth Business School, but being dean was still in his blood. Bob had stellar credentials: Harvard A.B., University of Michigan J.D., Law School faculty member at Michigan, Vice-President at Michigan, and Dean at Vanderbilt. Credentials were only the beginning of Bob’s assets. His wife Angela added as much as a Ph.D. to Bob’s qualifications. She was as gracious, beautiful, and talented in her supporting role as Bob was gracious and talented as dean. Her sense of style extended to choosing, maintaining and pampering Sadie Seville, a first edition of the all-time classiest GM sedan. I won’t say Bob was beautiful, but he certainly made a fine appearance with cropped grey hair, trim waistline, blue blazer, and a constant knowing and wise smile.

Bob consented to be placed on the approved list, Barry Munitz moved quickly, chose him, and Bob Knauss became our new dean. We had done well. In only one academic year, we commenced and completed a successful dean search, and we landed the best dean since A.A. White.

Bob brought important assets to the office. He was well known in the law school world; he co-edited a casebook in Agency and Corporations that was used in over fifty law schools; and he had been active as an elected member of the American Law Institute and in the Association of American Law Schools. In the previous four years, he had chaired AALS reinspection teams at both Northwestern and University of Chicago law schools. He also had a professional contact with Houston that began in 1975. In that year, the President of Vanderbilt’s Alumni Association was also President of Houston Natural Gas Corporation, and Bob was a Director of that
company. This relationship brought him immediate recognition in the Houston legal and business community when he became dean.

George Hardy’s deanship had suffered because of his southern background. Bob Knauss came unencumbered by geographical predispositions, and he joined a faculty that was large enough to dwarf lingering irritations against George. In particular, the leftward fringe of the faculty was receptive to Bob’s East Coast credentials.

Bob and Angela were fabulous entertainers. They sponsored events at their house that brought faculty together and eased some tensions. The ambience, the catered food, and their sophistication provided a reason for faculty to think they really were part of a first-rate law school. Bob was equally effective in developing relationships with movers and shakers in Houston’s blue chip firms and with our alumni who had established themselves as top practitioners.

Dean Knauss accepted A.A. White’s fundamental educational thesis that law is part of a broader social context. For example, in his dean’s message in a 1990 Law Alumni Briefcase, he listed six functions of legal education beyond the obvious task of training people to practice law. These included maintenance of democracy and the rule of law, self-determination and economic choice, the Bill of Rights, the regulatory system, the market system, and the judicial system.

The new dean believed Bates College of Law was qualitatively better than its faculty and alumni perceived. The school had survived its philosophical struggles, and under A.A. White, Mike Johnson, and George Hardy, it had regained academic respectability. George once assessed the school as ranking somewhere near the bottom of the top third of law schools in the country. His comment preceded US News efforts at quantification.
Bob wanted to move us up to the top quarter of law schools nationally. That meant placing in the top fifty schools in the nascent *US News* ranking. Bob had been at Michigan, a top-ten law school, and he had been dean at Vanderbilt, a top-twenty law school. He knew that moving up the ladder required money, university support, strong academic programs, a better masthead, and selective admissions. It also required we believe in ourselves.

Bob’s early goal was to get the local legal community, alumni, and the school itself to believe we had a good law school with the potential to be very good. Success did seem to lie on the horizon. Barry Munitz knew we had done well, and he assured us he would continue the support he had promised George Hardy. Then came a bombshell. Barry left in 1982 for a corporate position, leaving the new dean to deal with less supportive chancellors, presidents, and provosts. Fortunately, Bob’s prior experience as dean had taught him some lessons, one of which was to reduce to writing those oral promises made at the recruiting dance. At Bob’s request, Barry Munitz had written a three-page letter committing that the law school could hire ten additional faculty members at a median salary over the next three years. This was an important document in dealing with the next president and provost. Otherwise, the extra funds might have disappeared when Barry left.

Early on, Bob saw that the night school drained faculty energy, resources, morale, and reputation. He appointed Eugene Smith to chair a committee to look at the evening division. Jeron Stevens, a Baker Botts partner and Bates College of Law Alumnus, represented alumni interests and absorbed the criticism from evening graduates. Gene and Jeron dutifully produced a report documenting that the part-time program costs outweighed its benefits, and they recommended that it be phased out, just as we had recommended some twenty years earlier.
Jim Hippard, whose unexpected vote against the sociologist in 1969 had derailed the Turks’ ambitions, rose up again and defeated the effort to terminate the night school. Jim enlisted alumni and a few faculty members to lobby regents who were still attached to founding President Oberholtzer’s upward mobile ideals, and the Regents said the night school would remain.

Unable to eliminate it, Bob worked to reform the night program. Most law schools with evening divisions run them almost as a separate school and rely exclusively on part-time instructional faculty. During the 1970s, UH had slipped into that mode. Bob undertook to establish parity between the two divisions by requiring night students to satisfy the same entering credentials as day students and rotating full-time faculty into night classes to ensure equal treatment.

Faculty agreed to the reforms. In addition to substantive changes, Bob instituted a new attitude. The evening division was no longer called the night school, and students attending evening classes were no longer “night students.” Instead, the narrative was revised to read that the Law Center admits both full-time and part-time students. Classes, both full and part-time, are taught from eight-thirty in the morning to eight-thirty at night. Part-time students can take classes during the day, and full-time students can (and do) take classes after six.

The Admissions Committee was charged to apply identical standards for full-time and part-time students. A mostly unenthusiastic faculty agreed to fulfill its expanded evening class obligations. Adjunct professors were given opportunities to teach during the day. The early 1980s witnessed a significant increase in women applicants, and some of these very good students wanted to attend day classes as part-time students, giving substance to the narrative that part-time students were a valuable part of the day community.
Reshaping the part-time program made academic sense, and it was essential for the Law Center to obtain an Order of the Coif Chapter. In the 1980s, only about a third of applicant schools succeeded in Coif membership, and none had a night school. Bob recalls that when the Coif team inspected the school, he spent many hours over cocktails and dinner explaining that we no longer had a night school, but we did allow students to take four years to graduate instead of three, and we offered a full twelve-hour “day” of classes. The Law Center received its Coif chapter in 1985.

All law schools with selective admissions must decide how to choose and reject applicants. When selectivity threatened to exclude minority applicants in the 1960s, the College of Law created a “Five Percent Category” to allow consideration of race, background, etc., with an eye toward providing student body balance. With increased applications in the 1970s and early 1980s, law schools looked for a more sophisticated approach to admissions and a way to address affirmative action. During George Hardy’s term, the discretionary category increased to 25% of the entering class, providing a flexible admission base.

George and his Associate Dean, Ray Nimmer, had already addressed the basic admission issues, allowing Bob to build his own program on a solid foundation. At Vanderbilt, Bob had developed a sophisticated procedure that employed a faculty committee to read files, an Associate Dean for Admissions to administer the program, and full-file review that considered LSAT and undergraduate grade point average, college major, and quality of the college attended. Also considered were work experience, military service, and letters of recommendation. Evidence of hardship or lack of academic opportunity could overcome low grades or LSAT scores.

Murray Nusynewitz was appointed Director of Admissions, and he and Associate Dean Ray Nimmer engaged faculty members in recruiting prospective students. Particular recruiting efforts were
directed at Hispanics in the Rio Grande Valley and at predominately black colleges. Bob reports that, within a few years, the Law Center had more minority students, both in numbers and percentage, than any law school in the state other than TSU. As a result of these efforts, the Law Center has enrolled and graduated many outstanding minority attorneys.

The Turks had lost the battle to keep student headcount low when the second teaching unit was opened in the 1970s. That disappointment was countered by the fact that the large student body required a large teaching faculty that, by 1981, provided a deep source of research and instructional talent. Bob believed we had enough faculty strength in Tax, Health Law, International Law, and Energy and Environment to justify offering graduate law courses and LL.M. degrees. He appointed me to chair a committee to recommend it. On merits, I was an unlikely advocate. My only association with graduate law schools was degree-polishing at Yale. The only other LL.M. programs I knew about were NYU’s tax LL.M. and Georgetown’s graduate programs for D.C. lawyers. LL.Ms were losing significance as teacher preparation because J.D. graduates from top schools were beginning to crowd the entry-level hiring market, and law schools overwhelmingly chose them over LL.M.s. Nobody suggested our LL.M program would produce law professors, although it did turn out a few in its specialty areas. I viewed my task as simply documenting a report saying we ought to offer advanced degrees.

The report highlighted our strength in the named areas; faculty and the University agreed; and the Coordinating Board authorized Bates College of Law to bestow LL.M. degrees in the named specialties. The graduate program has found an active market. Some practicing lawyers want to come back to school and

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See Appendix V for more detail.
get specialty training in a new field, and others want complete retraining. Government and some corporations reward advanced degrees. LL.Ms in Tax are particularly salable. The LL.M. programs in Health Law and Intellectual Property serve their specialty communities with a variety of nationally ranked educational and research products. Lawyers trained and licensed in other countries can benefit from spending a year studying basics of the common law system, and, depending on state law, they may qualify to sit for bar examinations.

Graduate programs have another value I didn’t appreciate when I drafted my report saying we needed one. They cost little to run, and they can generate substantial tuition income. Enrolling tuition-paying graduate students may also reduce University pressure to admit more J.D. students as a revenue booster. Another benefit came from increasing the number of elective courses available to J.D. students as well as graduate students. Undergraduate law students can take any course offered in the various LL.M. programs, giving UH J.D. students a larger elective shopping cart than at any other law school in the state.

Bob wanted to accelerate marketing of the Law Center to the Houston community. He encouraged faculty to become involved in local activities and provide stories for the local press highlighting faculty accomplishments. Institutes, particularly Health Law, made strong and visible community contributions. Richard Alderman, David Dow, Michael Olivas, Irene Rosenberg, Tom Oldham, and Jordan Paust became regular commentators on legal matters in their fields.

For general public relations, Bob could not have had a more effective partner than Angela Knauss. She was willing to entertain frequently, and she did so with flair and class. A look at Bob’s calendar, particularly in his early years, showed he attended law school events three or four nights every week and hosted dinners at
Robert Knauss, Dean, 1981-1993

his home several times a month. He tells of being surprised more than once when he found himself introducing partners from downtown law firms to each other.

George Butler funded a Butler and Binion Lecture series that provided an opportunity to highlight the Law Center. It brought various national figures to Houston, and the routine was to hold a large reception at the chancellor’s house or a downtown club on the first day, then a dinner for community big wigs at the Knauss home. The next day there were meetings with students, lunch with faculty, and then a public lecture at Krost Hall. Featured speakers over the years included former President Gerald Ford; Justice Sandra Day O’Connor; Ed Walsh, the Iran/Contra special prosecutor; William Ruckelshaus, the first EPA administrator; Secretary of HEW, Joseph Califano; and former U.S. Attorney, Griffin Bell.

289 Photo of Dean Knauss, President Gerald Ford, and Angela Knauss provided by Robert Knauss.
An important aspect of community visibility was that it created more and better job opportunities for Law Center graduates. Bob hired an outstanding placement director, Deborah Hirsch, renovated space to provide interview rooms, and established routine contact with hiring partners of downtown and national firms to tout Law Center graduates. Students consistently ranked Deborah’s placement efforts as the Law Center’s best service.

Scholarly research and public outreach are essential, but expensive. All universities rely on operating entities with some relationship to the institution, but with technical separateness, to attract funds and support research and other worthwhile functions. During Bob’s deanship, four significant research and service programs were created—the Health Law and Policy Institute, the Environmental Liability Law Program, the Intellectual Property Institute, and the Institute for Higher Education Law and Governance. During the next quarter century, other institutes would be added, but these four remain the Law Center’s flagship programs. The venture into specialized areas and graduate studies also gave Bob an opportunity to change the name of Bates College of Law to the University of Houston Law Center.

Various publications proclaim that A.A. White’s law school was originally named Bates College of Law. That is not true. The law school came into being as the University of Houston College of Law. The initial designation as a college was important because it meant the law dean reported directly to the academic chief of the university, and not to the Dean of Arts and Sciences. That advantage has remained through two successive name changes.

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Colonel W. B. Bates was a UH Regent from 1943 to 1971, and he was the most important figure in obtaining state support for the University. Near the time the College of Law moved into the new building, President Philip Hoffman asked to meet with the law faculty. He announced that he was going to honor Colonel Bates on his retirement from the Board of Regents. That was great, but his next sentence was that he was going to name the law school after Colonel Bates. He notified us a half hour before the press release, but we had no say in any event. The move was not connected with fund raising. It was an honor for the Colonel, pure and simple.

Law schools are sometimes named for people. For enough money, a respected donor can get almost any University to name a building or an entire program for him/her. But names can be disabling. Years ago, UC Berkeley’s law school was tagged Boalt Hall to honor the funding source for its building. Mr. Boalt was undoubtedly an honorable man, and the law school bearing Boalt’s name was well established and solidly identified by that name. Nevertheless, according to Wikipedia’s questionable authority, the school decided in 2008 that “Boalt Hall” no longer reflected the campus on which it resided, and they removed the name. The fact is, once an entire program is named for a single person, the name has been sold and it can’t be sold again.

Bob was very aware of the downside of naming the entire school after Colonel Bates or anybody else. Two former deans had commented on specific adverse impacts and had unsuccessfully sought a way out. Bob saw a solution. Our LL.M. programs in Tax, Health Law, Information Law, and International Law

291 NICHOLSON, IN TIME 446 (note 5) correctly notes the law school was named for Bates in 1969, after the new building was completed.

292 Memoranda from John Neibel on August 7, 1969, and from George Hardy on July 7, 1977 made the same point, but without success.
supported the case we were no longer a College of Law, but a Law Center. Delicate negotiations produced a resolution naming a single building on the Law Center campus “Bates Law Building.” There are abundant unnamed buildings and programs to attract future donors, and it is unlikely the entire Law Center will again be named for a single donor.

Bob matched his external success with very positive internal policies. His response to faculty requests to conduct law-related research or teaching innovations was always “How can I help you do it?” He instituted faculty research leaves and summer research grants to encourage scholarly productivity, and he provided salary supplements to reward highly productive faculty. Those commitments required a substantial amount of money.

Newell Blakely had created The Houston Law Foundation in 1960 to receive endowed funds, donations and grants coming into the law school. Changing the name to The University of Houston Law Foundation in 1972 did not affect that function. George Hardy generated some money from alumni gifts, third-party research grants, and cash from the Gala that flowed into the Foundation. Before Bob arrived, a couple of fundraising projects produced endowed professorships and scholarships, and the Gala ordinarily provided a net ten to twenty thousand dollars per year. Bob saw the Houston Law Foundation grow from $500,000 when he took office to $11,000,000 when he departed, and annual unrestricted funds available in the Law Foundation increase from about $50,000 a year to over $1,000,000.293

Bob hired Bob Hull, with whom he had worked at Vanderbilt, as a consultant to launch an Annual Campaign. A first step was creating up-to-date alumni contact information and

293 UNIVERSITY OF HOUSTON LAW ALUMNI ASSOCIATION BRIEFCASE, Summer 1993.
Robert Knauss, Dean, 1981-1993

printing the first Alumni Directory in 1981. He named Nan Duhon, a law school treasure, as Director of Alumni Relations. She also organized the Gala and did background work on major gifts. An Alumni publication, The Briefcase, was started, and alumni were enticed back to campus by events such as Inauguration of the Order of the Coif, Rededication of the Library, and receipt of Judge John R. Brown’s papers. In 1987, a fortieth anniversary of the Law School was highlighted by presence of all five of the school’s deans.

The Law Foundation Board employs outside advisors to manage and monitor investments, but Bob viewed the Law Foundation Board itself as an important Law School asset. He developed close relationships with board members, most of whom had made significant contributions on their own or through their law firms. Bob’s usual practice was to present a general budget to the Board and summaries of Foundation activity to faculty. For several reasons, he named a few non-alumni members to the Board, including Shell Oil’s general counsel and the managing partners of three Houston law firms. In addition to getting their input on decisions, he thought they might help with student placement and possible future contributions. All of this proved to be true.

In a move that was significant for me personally, Bob worked with Don Riddle, one of our most successful graduates, to fund chaired professorships named for A.A. White, Newell Blakely, and me. I count my inclusion in this list a great honor, but I thought it would be awkward to sign letters as John Mixon, John Mixon Chaired Professor. Accordingly, I kept the Law Alumni 294 Photo of Don Riddle: http://content.tbs.org/images/profile/69302.jpg.
Robert Knauss, Dean, 1981-1993

Professorship, the title previously held by A.A. and Newell. Unless the money disappears, the John Mixon chair will be bestowed on some other faculty member when I retire.

John O’Quinn made substantial gifts, including a commitment of $4,000,000 in December, 1989, with the intent of building a new library and providing additional administrative and auxiliary space. The estimated cost was $5,000,000. The project expanded in scope to a signature building designed by aging architect Philip Johnson, who produced a couple of whimsical designs that were not particularly suited for school needs. One had a soaring shaft pointed menacingly toward College Station. Another was an assemblage of seven geometrically shaped buildings roughly duplicating a Wassily Kandinsky print. Bob described the many meetings in Houston and New York with John and Philip Johnson as fascinating, but futile.\(^\text{295}\)

The Dean renegotiated with O’Quinn to split the gift to fund library renovation, provide faculty support, and fund an Environmental Law Chair. In 1990, he could not resist sending a note to the AALS newsletter that he received $8,200,000 from two contributors in one year. At the Law Deans’ annual meeting, envious deans absorbed his advice not to ignore alumni who are good trial lawyers. Leonard Rosenberg, longtime Chairman of the Foundation Board and one of the school’s strongest supporters, received the University of Houston Outstanding Alumni award during Bob’s tenure. He began his acceptance speech by saying, “I

\(^{295}\)Johnson’s penchant for copying other designs is manifested elsewhere on campus. The UH architecture building is almost an exact copy of a design by Eighteenth Century French architect Claude-Nicolas Ledoux. Cost, concept, and design left the new law building on the drafting table, where it still sits, looking for a sponsor. I bear some responsibility for pushing Johnson for the job, but it just didn’t work out. Johnson has a picture of the final design concept in a tabletop book of his architecture, and a casual browser would think it had really been built.
have been honored to be the Friar Tuck for Robin Hood Dean Knauss.”

By the end of Bob’s deanship, the Foundation provided substantial income from various endowed funds to supplement the Law Center budget. Just as Newell had feared, the UH Administration began to press for detailed reports and even proposed steps to control expenditures, but with the help of Leonard Rosenberg and other Board members, Dean Knauss resisted and kept the Foundation’s identity separate from state funds.

Faculty hiring during the 1970s had produced very talented professors, but the 1980s were even better, as more and more highly credentialed applicants came onto the market. When he retired in 1993, Bob Knauss had hired more than half of the then current faculty, and he had presided over graduation of more than half of the Law Center’s total alumni.

Tom Oldham, a member of UCLA law review and a prodigious writer, was hired in 1981. He quickly became a prominent expert in Texas community property, family law, partnership, agency, and business organizations law. He is an elected member of the American Law Institute, and he received the UH Excellence in Research and Scholarship Award in 2000. Tom is also a patron of the arts in Houston and can be seen at virtually every opening of a new exhibit. \(^{296}\)

\(^{296}\) Photo of Tom Oldham: http://www.uh.edu/images/professors-images.
Robert Knauss, Dean, 1981-1993

In 1982, Elizabeth Warren met Peter Linzer, a law professor at University of Detroit, at a conference. She introduced him to Bob Knauss, who brought Peter to the Law Center as a visitor in 1983. We hired him a year later. Peter has been one of the Law Center’s Contract law stalwarts ever since. He was a Reporter for Restatement of Contracts 2nd, and he is a member of the American Law Institute. Peter has published numerous law review articles and two books, A Contracts Anthology, and a revision of Volume 6 of Corbin on Contracts.297

Also in 1982, Barry Munitz invited Michael Olivas to join the University of Houston with a tenured appointment in the College of Education and Associate Professorship in the law school.298 In 1986, Michael moved to a full-time law faculty position in the Law Center. He retained directorship of the Institute of Higher Education Law and Governance, which is housed in the Law Center. Michael is a prodigious publisher and a constant advocate for minority interests. He may be the Law Center’s most visible faculty member. Michael has gathered a host of academic honors, including the Esther Farfel award, which is the University’s highest. Michael is a consummate politician, and, as a well-deserved and hard-earned capstone, he was elected AALS President for 2011. Michael and I

297 Photo of Peter Linzer http://www.law.uh.edu/faculty/.

are so seldom in full agreement on law school matters that once or twice when we did agree, he made public note of the fact.

Michael once saved me and the school from embarrassment when he found an obscure news item about a candidate we had offered a job while I chaired the faculty recruitment committee. The new guy was correctly listed in the AALS register as author of three or four books by major law publishers. He had a respectable academic record, and I thought I had found a pearl. He was eager to come to Houston. The news item Michael found told the rest of the story. The prized candidate had been disbarred for stealing from his firm, and he had artfully changed a single letter in his last name so the connection was hard to find. By the time Michael’s sleuthing got through the alias, we had already signed him to a contract. Bob Knauss had to negotiate, threaten, and weasel our way out without lawsuit. That was my last time to chair the committee. Next year, we checked the AALS registry, and the guy was there with yet another spelling of his last name.

We had far better luck with Robert Schuwerk, who was hired in 1982. Bob is a University of Chicago law review and Coif graduate who quietly taught his classes and wrote a monumental tenure article with 1,000 footnotes. For an encore, he established himself as the state’s foremost scholar in legal ethics with his co-authored *Handbook on Lawyer and Judicial ethics*. Bob has been a stalwart advisor to the Student Honor Court for more years than we can count, and he takes that task and all other ethical matters very seriously.

299 Photo of Robert Schuwerk: [http://www.law.uh.edu/faculty/](http://www.law.uh.edu/faculty/)
A 1983 faculty appointment, Joe Sanders holds a Northwestern University J.D. and a Ph.D. in Sociology. He is a popular professor, a mainstay in the necessary functions of hiring, promotion and tenure, and an important member of the University community. Joe was a long-time editor of the Law and Society Journal, and is the author of Torts casebooks, many law review articles, and a recognized authority in Law and Social Science. The Turks would have loved him.

In 1985, Bob saw an opportunity to strengthen the Tax Law Program when Bill Streng, a former SMU law professor and co-author of four major treatises wanted to return to teaching. Bill accepted the Vinson & Elkins Chair and brought maturity and stability to our youthful faculty. Bill complements virtually every program the Law Center houses. His International Law credentials add to the credibility of the LL.M. programs in both tax and international Law. Bill’s international reputation calls him to teach regularly in Japan, Sweden, Norway, the Netherlands, and New Zealand. Bill lives across the intersection from a Houston house I used for years as a classroom example of deed restriction enforcement.

300 Photos of Joseph Sanders and Bill Streng: http://www.uh.edu/images/professors-images/.
Robert Knauss, Dean, 1981-1993

Bob followed George Hardy’s lead by hiring only top graduates from the Law Center. Laura Oren, hired in 1986, finished first in her law class, and she holds a Ph.D. from Yale in history. Laura and Irene Rosenberg were close friends, and they shared strong interests in feminist issues and general civil liberties. I was struck by Laura’s own story of discrimination—she had to settle for Yale’s Ph.D. program in History because Harvard’s program director told her the position should go to a man. Laura generously tried to straighten me out when I was writing about matters that she understood far better than I did, including constitutional implications of some aspects of zoning law. She also provided some welcome advice on immigration when Judy and I brought a Peruvian student to Houston to continue her education. Laura has published extensively in her chosen fields, and she has been a consistent advocate for traditional liberal causes.

The Law Center had a stroke of good luck in 1986 when Craig Joyce, a Stanford Law graduate and Vanderbilt professor, needed to move to Houston to attend to a family matter. Bob jumped at the opportunity to establish strength in Craig’s two research areas, Copyright Law and Legal History. Craig is author of the number one casebook on Copyright Law, and a legitimate historian. Combining Craig’s copyright specialty and Ray Nimmer’s expertise in information law produced the Institute for Intellectual

301 Photo of Laura Oren: http://www.uh.edu/images/professors-images

302 One article that resulted from this interest is John Mixon, Compensation Claims Against Local Governments for Excessive Land-Use Regulations: A Proposal for More Efficient State Level Adjudication, 20 URBAN LAWYER 675 (1988).
Robert Knauss, Dean, 1981-1993

Property and Information Law (IPIL) and a related LL.M. program that consistently rank in US News among the top half dozen of such programs in the country.

Craig is unique among law professors in that a future Supreme Court Justice introduced him to his wife, Molly. Craig was working in the Arizona law firm Fennemore, Craig, von Ammon & Udall, where John J. O’Connor was partner. Sandra Day O’Connor guessed correctly that her cousin and Craig, both Dartmouth graduates, needed to meet. They did, they married, and the pair has graced the Law Center community from the time they moved to Houston. In one of the coincidences of a small community, Eugene Smith had represented Molly in a case before the U.S. Supreme Court when she was a child. In turn, through Craig, we were able to persuade Molly’s famous cousin to visit the Law Center and speak to the Houston legal community in 1993 and in 2005, culminating in dinner for one thousand at the Hyatt Regency downtown. On the latter visit, I had my only chat with a Supreme Court Justice when she prepared dinner at Craig and Molly’s house. She cooks a great salmon. Craig co-wrote a volume on the Supreme Court with Justice O’Connor, and he has published innumerable pieces in journals and other distinguished venues, including Harvard and Oxford. He has become the leading living historian of American copyright law. Craig is the only member of the law faculty ever to have an award by a learned society named after him: the Craig Joyce Award, given triennially by the American Society for Legal History for distinguished service.

Robert Knauss, Dean, 1981-1993

While engaging in outstanding scholarship and teaching (voted best teacher by both the Student Bar and the Hispanic Law Students Association), Craig somehow found time to render a boatload of service at the Law Center, including chairing the Facilities Committee for the last twenty years. No one has done more to reshape the physical aspects of the present law building and overcome some of its multiple deficiencies. Craig was Associate Dean during Bob Knauss’s term, championing transparency and inclusion in meetings and processes and introducing the welcoming phrase “Law Center Community” into our institutional vocabulary.

We often received cheery emails from Craig dated as early or late as three am, evidencing his dedication to the task. Craig has cheerfully supported every law school dean, serving as Associate Dean for Graduate Studies & Special Programs under Steve Zamora and creating the libretto for the 50th Anniversary “Wizard of Lawz” musical in 1997. He massively reorganized the Law Center’s physical plant for Dean Nancy Rapoport in the wake of Tropical Storm Allison in 2001, and he chaired the follow-up Acropolis Project to conceptualize additional facilities for the Law Center campus. Along with Doug Moll, he salvaged the Law Center’s Self-Study in anticipation of the ABA’s every-seven-years accreditation process during the current deanship. For twenty-seven years, Craig and Molly faithfully put together their “Here We Go Again” party (ordinarily at the Houston Astros ballpark), the school’s only annual family-oriented event celebrating the opening of each academic year. Just as Sidney Buchanan was known as “Captain Nice” back in his day, Craig has become the “Benevolent Presence,” a nickname given him by students one summer while he was teaching in China.
Craig helped select Robert Palmer to fill a joint History/Law position as Cullen Professor in 1987. In addition to teaching courses for both the Law Center and the UH History Department, Bob Palmer is a scholarly giant in his specialized field of interest: English legal history. Between 1982 and 2002, he published four landmark monographs based on his on-site study of ancient plea rolls at the UK National Archives in London. All Bob’s scholarly work is marked by a sustained meditation on manuscript sources, open-mindedness to reinterpretations of accepted views, and an admirable tenacity in advancing his discoveries. Perhaps even more important, Bob has spent countless summers since his UH appointment photographing available archival plea rolls and digitizing them for online use by others. His site, the *Anglo-American Legal Tradition* is maintained by the O’Quinn Law Library, greatly to the Law Center’s credit internationally. In establishing the AALT site, Bob selflessly leveled the playing field for all scholars of English legal history. Manuscript materials currently spanning the Twelfth Century through the reign of George III, previously accessible only to Bob and a few academic peers able to spend long periods of time in London are now readily available for study by any scholar anywhere in the world. The long-term effects of Bob’s scholarly generosity are incalculable.


305 http://aalt.law.uh.edu/.
David Dow, hired in 1988, was Phi Beta Kappa from Rice and an editor of Yale Law Journal. He had a superb law school academic record and was Fifth Circuit Judge Carolyn King’s judicial clerk. David has a deep academic background in almost every field that can be named, from linguistics to physics to law. He holds a Cullen University Professorship. Handed a rare opportunity, I once took unfair advantage of David when he wondered aloud one day how John Austin would explain U.S. Constitutional Law. I answered by referring to a footnote in *The Province of Jurisprudence Determined*. That piece of otherwise useless information stuck in my memory from my ill-conceived paper in Northrop’s class. That was the last time I impressed any superstar.

The new breed of faculty does far more than teach. David runs an important criminal justice program representing death row inmates. His latest book, *Autobiography of an Execution*, inspired me to use personal history as an organizing theme in this book and gave me a title. As I wrote this paragraph, a news item revealed he received another award for his work on behalf of death row inmates.

The Law Center hired three more of Judge King’s clerks, Douglas Moll in 1997, Aaron Bruhl in 2006, and Zachary Bray in 2010. A fourth clerk, Katherine Smyser, taught a few years with great success before she decided motherhood and law practice were more fun.

David Crump had moved from our faculty to South Texas College of Law in 1982. In 1988, David was ready to leave South

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306 Photo of David Dow [http://www.law.uh.edu/faculty/](http://www.law.uh.edu/faculty/)
Robert Knauss, Dean, 1981-1993

Texas when the Dean and Board of Directors reportedly “were tearing the law school apart.” He came back to UH with a new mission. The State Bar had imposed continuing legal education requirements on lawyers, and there was a demand for competent courses around the state. David was running South Texas’ CLE program, and Bob Knauss wanted to get into the game. David began an entrepreneurial CLE enterprise that at its high point added about $1,000,000 annually to the Law Center budget. Commercial competitors eventually took over the field and the program was closed during Ray Nimmer’s deanship with David’s consent.

David Crump is the faculty iconoclast who defies easy description. He strongly prefers that we hire teaching candidates who have practice experience, and he often votes against those who have strong scholarly resumes but no time in law practice. David is a paradigm of scholarly productivity who published ten law review articles in one recent year. He authored ten law school teaching books that are currently used in courses ranging from Civil Litigation to Real Property Transactions. He has also published two novels and a book of children's poetry. In his spare time, he writes country western songs.

Bob hired two top Harvard graduates, Bob Ragazzo and Seth Chandler, in 1990. Both served on Harvard Law Review and were judicial clerks for Federal Circuit Judges. Bob is also a superb Las Vegas gambler. He and Eugene Smith used to go to Las Vegas together, and they came out about even. Gene lost as much as Bob won. Bob was glad to have Gene distract the blackjack dealer with his antics and chatter while Bob split face cards when the deck was right.

307 Memo from David Crump received February 8, 2012.
Bob Ragazzo reads an entire printed page in one sweep of the eye. He knows his specialties with impeccable precision. He knows how to get people to do what he wants them to do in a courtroom, in faculty meetings, and as Law Center representative to University committees. Bob’s Socratic method is every bit as good as Newell Blakely’s at his best. Bob is the Law Center’s toughest professor, and students love him. He is also a good play actor. For years, I talked the Republican conservative into playing the role of Critical Legal Studies professor for my first-year classes. Bob was so convincing when he trashed the legal system that some students signed up for his Securities Regulations course thinking he really was an outlaw. They were very mistaken. Bob detests the Crits’ influence on the Harvard faculty that robbed him of a good education in every course taught by a Crit. Bob’s specialties are Procedure and Business Organizations. His acknowledged expertise often lands him in court as a valued and convincing expert witness. He has been a tireless worker in Law Center committees and on University committees where effective advocacy is vital to protect Law Center interests.

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308 Photo of Robert Ragazzo furnished by Robert Ragazzo.
Seth Chandler’s research is so complex that most of the faculty can’t understand it without his explanation. Some of us can’t understand it with an explanation. Seth knows more about insurance economics than the companies themselves. He absorbs complex technicalities in law, computers, and his many other subjects as if they were nursery rhymes. Seth is listed as part of the Health Law and Policy program, but he covers several other areas as well. When there was no Ph.D. economist on the faculty, Seth filled in. The Turks of the 1960s would have loved Seth. He is one of the few people in the entire country who understands the mysteries of Wolfram’s computer logic as applied to law. In 2010, a new neighbor moved into a house down the street from mine. When he heard I taught at the Law Center, his first question was “Do you know Seth Chandler.” The neighbor was also a Wolfram enthusiast. So there are at least two humans who have read that enormous book. Seth also served honorably and efficiently as Nancy Rapoport’s Vice-Dean.309

Sandra Guerra Thompson joined the faculty in 1990. She holds a Yale J.D. and was a member of *Yale Law Journal*. Sandy brought practical experience gained during her service in the New York District Attorney’s Office, and she quickly became an accomplished teacher and scholar.

309 Photo of Seth Chandler [http://www.law.uh.edu/faculty/](http://www.law.uh.edu/faculty/)
Robert Knauss, Dean, 1981-1993

Something that is not obvious from her resume is that Sandy is the go-to person when a job needs to be done, whether it is serving on the hiring committee, Executive Committee, Dean Search Committee, or as Associate Dean. She was also a Yale dorm mate with Guido Calabresi’s daughter. Sandy has received a number of teaching and service awards, and she was the first Latina to be named full professor in any Texas law school.  

Sandra Guerra Thompson

In 1990, we hired Tony Chase, who is a Harvard triple, with degrees from Harvard College, Harvard Law School, and MBA from Harvard Business School. Tony is a classroom whiz. I have invited him as a guest speaker several times, and I wish I could hold a class in my hand the way he does.

Anthony Chase

As good as Tony is in the classroom, his out-of-school activity is even more noteworthy. Tony teaches law for fun and does other things for profit. Tony put his Harvard MBA to work and created three successful companies, one of which he sold to AT&T. He moves easily

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310 Photo of Sandra Thompson: http://www.uh.edu/images/professors-images/

Robert Knauss, Dean, 1981-1993

in national political circles, supported fully by his UH law graduate spouse, Dina Alsowayel. The only Bentley convertible that is likely ever to sit in the faculty lot belongs to Tony. In 2003, Tony and I wrote an article inquiring whether an owner of worthless polluted land can unload the potential liability for removing the pollution under the Federal Act known as CERCLA. The strategy is to convey title to a pauper who accepts liability in exchange for a bottle of cheap wine. The short answer is “maybe.”

Dennis Duffy was the last tenure-track faculty member hired during Bob’s deanship. Dennis is a Law graduate of the University of Virginia, and he was judicial clerk for U.S. District Judge George Kazan. He joined the faculty in 1993. Dennis and Eugene Smith became fast friends, and when a new university administration headed by Art Smith began looking for a general counsel for the UH System, Eugene urged Dennis to take the position. After serving the university honorably and effectively, Dennis joined Baker Botts, where he represents management in all aspects of labor law.

Some faculty members hired during Bob Knauss’ deanship established reputations at the Law Center and moved on to other schools. Barbara Atwood moved to the University of Arizona, where she continued her academic successes. Bill Miller, a Yale graduate with a quirky interest in Icelandic blood feuds, learned Icelandic, gathered the legends, and wrote books about ritual tribal retribution. To our dismay, when the University of Michigan called


him, Bill accepted their offer. Michigan is, after all, closer than Houston to Iceland. At that stage in our development it did not hurt to be seen as a feeder school for a top law school, but we regretted the loss to our own program. We hired Mary Anne Bobinski, who finished SUNY Buffalo law school at the top of her class, earned an LL.M. at Harvard, and served a Federal Circuit clerkship. She was a mainstay of the Health Law curriculum and a talented associate dean. I hoped she would be our dean someday, but she accepted a deanship at University of British Columbia in 2003 instead.

In 1966, Bates College of Law had about a dozen faculty members. In such a small group, a single person who could find three or four like-minded colleagues could change the course of the school. By 1980, there were about forty faculty members, and by 1990, more than fifty. In a group of that size, no individual other than the dean can have much influence over the direction the school takes. I realized that I had become Old Guard one day when I was grousing about something, and Eugene Smith said, “Mixon, it’s time to stack our guns and let other people run the show.” That realization is manifested by a shift in this narrative toward describing a mature institution instead of chronicling the creation of a new one.

During George Hardy and Bob Knauss’ administrations, I stayed out of law school matters except when asked or severely irritated. That left time to look for other diversions. My book *Texas Municipal Zoning Law*, commenced when George Hardy was dean, was published in 1984, early in Bob’s term. When Houston had a third run at zoning in 1990, I became a local advocate and made more than one hundred speeches around town in favor of the proposal. I bought a portable overhead projector and projected

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Robert Knauss, Dean, 1981-1993

cartoon images about land use zoning on a screen I tucked under my arm. This was well before PowerPoint made visual crutches easy and commonplace.

I expanded my interdisciplinary interests by team-teaching with experts in non-law fields, mostly to learn stuff that would be useful for my law courses. One co-teacher was a Management Information Systems professor from the UH Business School. We produced a law review article applying W. Edwards Deming’s Continuous Quality Improvement management principles to law and legal education. Emory Law Journal published it as lead article for a symposium issue.\textsuperscript{315} I also taught a course with a professor from the School of Social Work to examine how housing might be provided for adults with major mental illness.

Donald Williamson, who is a practicing psychologist, joined me in teaching a course to acquaint students with the personal pressures they would encounter in professional life. I later teamed with a cognitive scientist to examine new theories about cognition that might challenge basic legal assumptions. I taught with professional land developers to acquaint law students with sophisticated real estate practice. These courses prompted me to write a few law review articles dealing with cognitive science, complexity theory, business management, and city planning as applied to law and legal education. Because we did not hire a proper philosopher, I continued to teach Jurisprudence on and off for some forty years.

I was convinced that property lawyers needed to know what their clients were doing in the commercial world, so I expanded my real estate courses to cover mortgages, construction loan

agreements, permanent loan commitments, ground leases, etc., that developers use to produce apartment projects, shopping centers, office buildings, and subdivisions. Land developers and mortgage lenders came to class and told students how they developed rental and sales projects. Mack Stearns, a mortgage banker, described how Kenneth Schnitzer bought an entire subdivision, and then another, to expand Greenway Plaza office park, wiping out deed restrictions by acquiring all of the restricted land. Keith “Pinky” Jackson told several classes how he developed Meyerland and River Plantation, both of which turned out to have flooding problems. The CEO of U.S. Homes told a Land Finance class how his company produced middle income subdivisions.

As a Legal Realist, I presented law as only a part, albeit an important part, of what a Real Estate Transactions student should learn. I drew cartoons to illustrate the roles played in the land finance game. Big Tex was my paradigm developer, complete with Stetson hat, cigar, and string tie. The mortgage broker was “The Loan Arranger” because that is what he did. Cartoons of the permanent and construction lenders and general contractor filled the rest of the board.
A long-term interest in Jurisprudence nudged me to learn more about Critical Legal Studies (CLS), a movement that engulfed Harvard Law School’s faculty in the 1970s and 1980s. The Crits ran amok with benign Realist notions that rules do not predict legal outcomes and that law is a prediction of what a judge will do. Crits declared that law is politics, pure and simple, and it is unconsciously tilted in favor of the rich and powerful, to the disadvantage of women, minorities, and the poor. Law, to a Crit, is easy to predict. Just identify the result rich and powerful people want. Crits offer no alternative other than tearing down the system with the faith that something better will emerge. Their ideas have diminished greatly in importance, even in the academic community.

CLS is a pessimistic, cynical way of looking at the study and practice of law, but it carries a heavy load of truth. As Fritz Kessler had feared decades before, powerful commercial/industrial interests have come to define the rights of consumers through contracts of adhesion, and they counteract protective legislation with strategic political contributions to sympathetic candidates in judicial and legislative races. For example, when protective consumer legislation and litigation became a bother in Texas, billboards demanding a stop to “lawsuit abuse” quickly reversed the trend.

The Crits’ explanation is that law creates a deceptive illusion of neutrality that makes the oppressed members think they are to blame for their own plight instead of recognizing that they are victims of an unfair system. The illusion of fairness is characterized as flowers that hide the chains of slavery, thereby keeping the masses from rising up and overthrowing the system. The shift in the Texas Supreme Court
from the 1970s to the 1990s can be explained in this framework, as can the sharp division between left and right on the U.S. Supreme Court. My classroom drawing of Crits depicted 1960s radicals with a bomb ready to blow up the system without any notion of what would follow.

The antithesis and natural enemy of Critical Legal Studies is Law and Economics, the preferred philosophy of capitalists. Neoclassical economics postulates a hypothetical world in which rational, self-seeking individuals make informed exchanges. The frictionless free market supposedly produces a condition of maximum individual and community utility called “efficiency” in which goods go to the users who value them highest. The logical function of law is to protect that market and keep it open so utility enhancing exchanges can be made. Law and Economics provides a philosophical basis for the hard contract law that both Newell Blakely and I taught in the 1950s. Our contract law considered all participants in the market, be they minimum wage workers or billionaire investors, to be rational, knowledgeable, self-interested, and capable of bargaining to an acceptable exchange of money and goods. The function of law in such a market is clear: simply enforce the agreement, regardless of whether the exchange is just or the agreement fair. During my final decade of teaching Contracts and Property, I shifted too far away from Positivism and Realism and dwelt too much on critical thought and economic analysis. I lost some students along the way. I also lost touch with what was going outside my own classroom, secure in the belief that the law school was in good hands.
Robert Knauss, Dean, 1981-1993

My focus on my own courses kept me from noticing a growing discontent by a group of faculty members that clustered around Mark Rothstein. They could not deny that times had been good at the Law Center for at least the first ten years of Bob Knauss’s deanship. He arrived with the stated ambition of putting us in the top twenty state law schools in the country. One year after he left office in 1993, we were number 42 in *US News* ranking of all schools and twentieth among state law schools. The dissidents were concerned with what he had done for them lately.

The energy of the antagonists reminded me of the Turks before we grew old. I didn’t agree with the direction the energy was taking them, but Gene Smith again reminded me that we were Old Guard, and we had stacked our guns. I tried to avoid entanglement as the new alignment clarified itself and intensified as Bob Knauss’s deanship wound down. Their complaint that he was neglecting the duties of the office thinly masked a desire to take the title for themselves.

It was true that in the early 1990s, Bob had become increasingly distracted from what many faculty thought should be his first priorities. Probably because of opportunities to do other things and boredom with routine dean ing tasks, he started to move on. At the time, there was a game of musical chairs in the central UH administration. Bob was candidate once for President and once for Chancellor. In the Chancellor race, he was the only inside candidate, and his fellow campus-wide deans recommended him unanimously. But it was not to be.

In what turned out to be a major and frustrating undertaking, Bob chaired a committee to bring the George H. W. Bush Presidential Library to the campus. To compete with other schools, he needed a detailed plan, including site and architectural development, a proposal for a public policy institute, and library and design ideas. He worked closely with Compaq Computer CEO Ron
Canion to program a high-tech library. Unfortunately, Texas A&M guaranteed more money and got the library. They then used a lot of Bob’s plan.

Bob had seen the potential for significant international law involvement when the U.S.S.R. collapsed in 1991 and needed to revise its legal and economic systems to accommodate a market-based economy. He supported an undertaking by Paul Gregory from the UH Economics Department, law professors Jacqueline Weaver and Gary Conine, and former Dean George Hardy to draft a Russian Mineral Code. George directed the project at the Moscow end, and Gary and Jacqueline managed the drafting groups in Houston.

Bob had grabbed the opportunity to help draft legislation for the emerging private oil and gas market in Russia. There was plenty of money on the table, both from Russia and interested American sources. One million dollars was contributed, half from major oil companies and foundations, and half from the World Bank and the European Bank for Reconstruction. Bob also was involved privately in a move to privatize the Latvian part of Aeroflot to form a Baltic airline. He had cleared the Baltic arrangement with University Administration, and the Law Foundation handled the Russian project funds, but an ambitious faculty member made an unsubstantiated charge of financial mismanagement. When confronted, the accuser denied making the charge, but the event damaged both him and Bob.

The Russian Petroleum Project was a big drain on the dean’s time in the early 1990s. The project promised great visibility for the Law Center, locally, in Washington, D.C., and internationally. It also provided unique research opportunities for Law Center faculty, student research assistants, and the Houston Journal of International Law, which published a two-volume symposium that generated a huge reprint demand. The Russian Project became a hot faculty issue. It was a plus for the Law Center,
but the dean took a hit for failing to involve faculty in the details. Bob agreed with the notion of faculty governance for academic matters, but not involvement in budget decisions. In particular, he did not want to reveal financial details of the Houston Law Foundation out of concern the University administration would use the information to the Law Center’s disadvantage. Pressure was increased when a number of faculty members demanded to act as overseers through an executive committee. Bob saw it was time to move on. He negotiated an administrative shuffle that named Ray Nimmer Interim Dean and Richard Alderman Associate Dean.

When Bob retired from deaning in 1993, he could look back on more accomplishments in hiring top faculty and raising national visibility and respect for the Law Center than any other dean, before or since. He joins A.A. White as a founding dean. Bob’s twelve years in office gave the Law Center consistent and stable leadership and fueled the school’s longest run toward quality in its history. The school he left is what A.A. White aimed for in 1947, or at least what A.A. and the Turks would have been proud of.

It is easy to put Bob Knauss’s deanship into numbers, but harder to identify the intangibles. In numbers, there was pure growth—the Law Center’s annual budget from the University from $3,000,000 to $10,500,000; annual private support from about $50,000 to over $1,000,000; Law Foundation endowed funds from about $500,000 to more than $11,000,000; faculty growth from 36 to 50, which brought a significantly lower student-faculty ratio along with increased quality and diversity of the student body. As dean, Bob Knauss signed over half of all degrees that had been awarded at the Law Center. He had added 25,000 square feet of library space and renovated space for student organizations, placement, a snack bar, and a student lounge. Most important, he changed Bates College of Law to a Law Center with a broad curriculum, LL.M. program, institutes, research opportunities, and a better image of self.
Robert Knauss, Dean, 1981-1993

The biggest intangible is that Bob Knauss made all University of Houston law degrees more valuable. Bob was dean during a growth period in legal education, and he took full advantage of the opportunity to build the Law Center’s substance and reputation in local and national legal communities. Bob was probably glad to get away from the battle when he cleaned out his office in 1993. Ray Nimmer held the office as Interim Dean for the next year and a half, bringing fragile order and decorum to what had again become a divided community.

Ray Nimmer did not apply for the permanent position, and faculty missed an opportunity by not drafting him. The next two years’ dean search efforts were unproductive. In 1993, the committee produced a superb candidate who was the sitting dean at Tulane Law School. John Kramer was still popular at Tulane, but he wanted a new challenge. The law faculty approved him overwhelmingly and defied the Provost’s direction to provide a list by submitting only Kramer’s name. A few other reasonable candidates had been interviewed, but Dean Kramer was clearly at the top of the heap. Faculty feared the unsupportive Provost would choose a lesser candidate who would be easier to boss around. The Provost was offended that he got only one name. Instead of making the call to Kramer, he did nothing. Absolutely nothing. Faculty and the dean aspirant expected the courtesy of a phone call, even if it was to say he would not get a call. We did not expect continued silence. But that is what we got. Finally, to end the embarrassing hiatus, the candidate withdrew. Rumor has it the

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316 Faculty meeting minutes of February 10, 1994, state “Dean Strickland responded by saying that he thought it was a shock to President Pickering and Dr. Aumann that the committee only sent forward one name. Dean Strickland then went on to say that he felt that after some time to think about it, it was not as much a shock to them. Additionally, Dean Strickland said he felt the level of sensitivity toward faculty wishes is now greater than it was previously.”
Provost laughed and said he never intended to fill the vacant law deanship that year anyway.

The next year’s Dean Search Committee produced three outside candidates, two of whom were reasonably well regarded by all faculty members. The selection this time was marred by unpleasantness and charges of racism. Dean selection had become more formalized over the years, and the University impressed on committees the importance of secrecy in their screening and preliminary selection process. This procedure makes a fair amount of sense, but it is aggravating to faculty members who are excluded from the inevitable leaks that keep some, but not all, off-committee faculty members informed. Committee membership for this search was itself controversial, and the trust level between the committee and some faculty members was low.

The committee identified and selected its candidates and introduced them to faculty one-by-one. I ignored Gene Smith’s advice to stack my gun, and I took an active interest in the candidates. I judged all but two to be weak. One minority candidate made a point of lecturing me personally and pointedly during an interview session when I asked him what he would do as Law Center Dean. He declared he would immediately make the faculty and student body “look like the community we were in.” I interpreted this as committing to admit students and hire faculty on a racially selective, reverse discrimination basis. I responded that finding minority candidates with high class rank was difficult, and we would be in competition with every law school in the country for the few that were available. He said there were plenty of minorities with Coif and Law Review credentials from good schools, and the only reason we were not hiring them was that we weren’t looking hard. Both of us knew this was not true, and I knew that, if his admissions and hiring policy were actually implemented, it would be a disaster, even if it were constitutional. The committee approved him and put him on the list for faculty approval. A sympathetic
Robert Knauss, Dean, 1981-1993

faculty member described him as “this with-it, savvy guy who would be a terrific dean.” He eventually did become dean at a very good Northwest law school, but he resigned during his five-year review after an ethics complaint was filed against him.317

I was sixty years old, and being Old Guard was still a new experience. Along with everybody outside the favored circle, I had to live with the information blackout. As the date for the critical faculty vote neared, other grey-haired males began to ask whether I knew anything other than the sanitized data fed by the committee. All of us were out of the loop, but we agreed to pool whatever information we had. We set a day and time, and about a dozen faculty members, undeniably male and white, marched into a vacant classroom to discuss the candidates. The group included Dan Rotenberg and John Douglass, whose integrity and liberal credentials were impeccable. As the old-timers filed in, a faculty member who had just conducted class asked what was going on. I told her we were meeting to talk about dean candidates and invited her in. She declined, but spread the word that old men were assembling.

The meeting itself was benign. I put the candidates’ names on the board, and we told all we knew about each one and gave our individual impressions. There were no conclusions and no votes. It would be a stretch to call it a caucus by Webster’s definition.318 Nevertheless, the Dean Search Committee inferred that any meeting by old men could not be a good thing, and complaints about us


318 “a closed meeting of a group of persons belonging to the same political party or faction usually to select candidates or to decide on policy; also a group of people united to promote an agreed-upon cause:” http://www.merriam-webster.com/dictionary/caucus.
occupied more faculty time than discussion of any candidate’s merit. Committee members said our meeting violated University regulations designed to ensure equal treatment for minorities. Dan Rotenberg, who was at the meeting, defended it vigorously as free assembly, and he was incensed that people who had no evidence of wrongdoing were making charges of racism and violation of university policy and federal law. The faculty met in due course, with both sides fuming about the old men’s meeting. The problematic candidate received a vote that was shy of the sixty percent required for approval. A memo went to the Provost charging that an inappropriate meeting had prompted the candidate’s rejection, and the Provost unilaterally put the rejected candidate on the list. The candidate had the good grace to withdraw, but the event was reported throughout the law school world as an example of our racist behavior. C’est la vie. Faculty politics is rough.

The unpleasantness did not keep the committee from producing one acceptable candidate and one very good candidate. Both were properly placed on a list and sent to the Provost, Henry Trueba. This time, administrative bungling, not even bad faith, prevented hiring either candidate. Both candidates had strong faculty support, and I had voted for both. One was dean at a mid-level Midwestern law school with a substantial health law program. He was the favorite of the Law Center’s Health Law faculty. The other was a very impressive professor whose strong interview made her my first choice. The Provost began negotiating with the Midwestern dean, who had received more votes than the second-ranked candidate. John O’Quinn was a member of the Board of Regents, and he was far more impressed by the second-ranked candidate. John asked me directly who I liked best, and I said she was my first choice as well, but both were acceptable. Too late in the process, the Provost asked John what he thought, and John told him he liked the woman candidate. The Provost then offended both aspirants by shifting in mid-negotiation from the Health Law
candidate and calling the woman, who by now knew she was second choice. Both candidates withdrew, leaving an empty list. Thus, we were twice denied a dean, even though in two years we had approved at least three good candidates who wanted the job. Ray went into a second year as Acting Dean.

Distrust and stubbornness had wasted a two-year search and, with it, the opportunity to get a top-flight outside dean. The racist charge hung on the Law Center like an albatross for at least a decade. It tarred the candidacy of one Law Center faculty member for deanship at another law school, even though he had been out of town, nowhere near the offending meeting, and said openly he wished we hadn’t done it. The Law Center and the University were engrossed in misadventures that endangered two decades of progress.
Stephen Zamora

UH Law Center Frankel Room Wall of Deans

Tension and other events resulted in turnover at top levels of administration. UH had three presidents in five years. In mid-1995, the system chancellor and presidents at UH and UH-Victoria resigned. Regents brought in administrators, including William P. Hobby . . . as chancellor and deputy chancellor (Saralee Tiede) for two-year terms.

Chapter 9, The Urban System: The University of Houston, William P. Hobby and Saralee Tiede, from THE MULTICAMPUS SYSTEM: PERSPECTIVES ON PRACTICE AND PROSPECTS, 1999.

I was not alone in believing the University of Houston’s central administration had become dysfunctional. In 1995, the Regents hired former Lieutenant Governor Bill Hobby on a two year, dollar-a-year contract to straighten out the mess.

The Law Center was two years into a dean search to replace Bob Knauss. Ray Nimmer had exceeded his time commitment as Interim Dean and he was ready to leave office. Two opportunities to fill the position with a highly qualified applicant had been bungled. In 1995, a new Provost interviewed four internal candidates and unilaterally named Stephen Zamora dean.
Stephen Zamora, Dean 1994-2000

It was a reasonable choice. Steve had the requisite qualifications. He is a talented, hardworking scholar with an impressive resume in International Trade Law and Comparative Law, and he carries considerable national and international prestige. He is one of the nation’s premier experts on the North American Free Trade Agreement, NAFTA. Steve had been considered favorably for deanship at another school, and he was willing to take on the Law Center job. The assembled law faculty stood and applauded when the selection was announced, relieved not to face another search.

Steve’s entry into deanship was tough. Interim Dean Ray Nimmer’s departure left more than his own office vacant. Nan Duhon, the Law Center’s inspirational Development Officer, had taken a position at the Texas Medical Center. Ray’s executive assistant had resigned. Steve moved into an empty office with only a temporary secretary.

Steve describes his decanal priorities as rebuilding a sense of community and confidence that had been lost during the unproductive dean searches. He devoted immediate attention to building up the development staff by hiring Greg Robertson, who later became head of development at Houston Grand Opera. Steve increased the resources dedicated to development, annual fund raising, and public relations to improve the Law Center’s reputation. Annual fund collections increased.

Paul Janicke had just been confirmed as a permanent faculty member with a specialty in Patent Law, and Dean Zamora began working with Paul, Craig Joyce, and Ray Nimmer to create the Intellectual Property and Information Law Institute (IPIL). IPIL quickly became one of the Law Center’s most significant attractors of talented faculty and students, both graduate and undergraduate. Steve and the Law Foundation established a sensible “total return” policy to insulate restricted funds from depletion.
Several strong faculty members were hired during Steve’s deanship. These include Geraldine Moohr, Meredith Duncan, Ron Turner, Doug Moll, Johnny Buckles, and Ellen Marrus. Geraldine Moohr graduated first-in-class from American University’s law school, and she was a federal judicial clerk and Associate at Covington & Burling. She is one of the last general study LL.M. graduates hired by the Law Center in a regular teaching position. Gerry has been a prodigious scholar, particularly in white collar crime and employment law.319

Meredith Duncan is a 1993 graduate of the Law Center, where she was Articles Editor of the Houston Law Review. Meredith came to the Law Center as a student when her husband, fellow Northwestern University graduate Curtis Duncan, began his seven-year career with the Houston Oilers. She earned a J.D. magna cum laude while Curtis caught Warren Moon’s passes. Meredith was judicial clerk for Fifth Circuit Judge Edith Jones for a year, and then spent two years at Vinson & Elkins before returning to the Fifth Circuit as a permanent judicial clerk in 1996.

The Law Center virtually drafted Meredith into teaching in 1998, and she began a very successful career as classroom teacher, scholar, and casebook author. In her ten years as professor, Meredith has written seven law review articles, co-authored a national casebook on Torts, received a Teacher of the Year award and an Enron Teaching Excellence award, and she was twice selected to hood graduates at commencement. Meredith’s students love her, even though she runs a tight classroom. Some students feel privileged to sit in law classes with their redneck-inspired “gimmie cap” on backwards. Meredith may be the only professor to enforce the rule of minimum civility that requires hats off in class. She also requires preparation and bans computers in class.

If the Law Center wants its graduates to have access to law teaching jobs, it must achieve the national prominence that, whether fairly or not, is represented by a high US News ranking. Meredith personifies that promise. The Law Center hired her because we knew her and her talents, but other law schools have taken note as well. Meredith recently was a visiting professor at a very good California law school that offered her an opportunity to virtually name her own salary if she would relocate. She did not go.

I was a member of the faculty appointments committee that brought Ron Turner from the University of Alabama’s law faculty as a look-see (potential lateral hire) visitor. We were lucky to attract Ron to Houston. In addition to his impressive publication record, Ron had received teaching awards at Alabama, and he continued doing so at the Law Center.

Photo of Ron Turner: http://www.law.uh.edu/faculty/
Stephen Zamora, Dean 1994-2000

He is a very productive scholar, with seventy articles and nine books in print. Ron and Meredith Duncan have co-authored a Torts casebook that is now in second edition. Students recognize Meredith and Ron as two of the Law Center’s very best teachers. Their offices are close to mine, and they have been invaluable sources of advice, information, and counsel. Ron is one of the few faculty members who took time to talk with me seriously about legal philosophy, and he is the first African-American to be named Full Professor at the Law Center.

Douglas Moll, another of Judge Carolyn King’s judicial clerks, joined the faculty during Steve’s deanship. Our faculty alumna at Harvard, Elizabeth Warren, was one of Doug’s professors and a strong advocate. Judge King described Doug as her best law clerk to that date. Since his appointment he has fulfilled that promise in teaching, publication, and service to the Law Center. Doug teamed with Bob Ragazzo to co-author a monumental treatise on business associations. Doug is a regular on any list of student favorites, whether it be teaching awards (Professor of the Year three times, and a University Teaching Excellence Award), hooding graduates at commencement, high evaluation marks, or selection to the Honor Court Faculty Advisor list. Doug has a publication list of eight books and twelve published

Stephen Zamora, Dean 1994-2000

articles, one of which was listed in the ten best Corporate and Securities Articles of 2000.

Johnny Rex Buckles is a cum laude graduate from Harvard Law School with Law Review honors. He practiced tax law for eight years with Thompson & Knight in Dallas before joining the Tax Faculty at the Law Center in 2000. He was sorely needed to staff the basic curriculum and LL.M. program. Johnny Rex writes, teaches, and understands Tax Law, but his greatest passion may be theology. While in practice, he earned an M.A. in Biblical Studies at Dallas Theological Seminary. He has participated in the Law Center’s Christian Legal Society for almost his entire tenure.\textsuperscript{322}

Ellen Marrus holds a J.D. and LL.M. from Georgetown University. She became Director of the Clinical program in 1995 and moved to full-time teaching in 2005.\textsuperscript{323} Shortly after Steve became dean, Ellen proposed to begin an Immigration Clinic by hiring Joe Vail, an Immigration Judge who was stepping down. The clinic has become a high-profile center of excellence at the Law Center. In 2011, a case brought by our students went to the U.S. Supreme Court, where the Immigration Clinic’s client won a unanimous decision. Ellen shared Irene Rosenberg’s interest in Juvenile Law, and she has published

\textsuperscript{322} Photo of Johnny Rex Buckles: \url{http://www.law.uh.edu/faculty/}.

\textsuperscript{323} Photo of Ellen Marrus: \url{http://www.uh.edu/giving/opportunities/endowed/chairs-professorships/index.php}.
extensively in that and related areas.

Larry and Joanne Doherty funded a Legal Ethics Chair during Steve’s deanship. Larry J. Doherty worked his way through undergraduate and law school at UH. He was a top debater whose talents and hard work translated into law school success in moot court, law review, and top grades. He and Joanne met and married during his first year in law school. After Larry began practice, Joanne earned her J.D. from the Law Center in 1985, and she practiced for a time with a law firm founded by my classmate and Penthouse tenant, Fred Sullins. After graduating in 1970 and practicing for a time with a top plaintiffs’ firm, Larry became Texas’ most visible and successful legal malpractice lawyer. The event that propelled Larry into representing victims of legal malpractice was his employers’ refusal to take a case of clear malpractice. The case was egregious, and the firm saw the malpractice but refused to sue another lawyer. Having to tell the client that he could not take the case troubled Larry. The refusal conflicted with his recollection of John Cox’s classroom refrain that “there is a remedy for every wrong.” Malpractice clients have no remedy unless they can find a lawyer to take their cases. Larry swore that if he ever had his own practice, he would accept such cases. A few years later, in what he describes as a liberating event,

324 Photo of Joanne and Larry Doherty: http://bp2.blogger.com/_4QomyEjRf-U/SFbGB4jqKVI/AAAAAAAAADY/v1iZp0cSXSE/S220/larryjoe.jpg
Larry opened his own office and began to accept legal malpractice claims. His practice grew, fueled by referrals from other lawyers who would not bring such suits. Larry’s malpractice representation thrived, and one day he and Joanne walked into Dean Stephen Zamora’s office and funded the Chair in Legal Ethics. Larry insisted that there be a real chair, and he had a fine wooden rocker specially crafted for the holder of the chair. The rocker is kept only until the end of a chair-holder’s tenure, when it must be relinquished to the next holder.

Larry’s interests run well beyond law. He owns a first-generation Thunderbird maintained by our common auto expert, George Ramsey, whom Larry described as the only honest car mechanic he ever met. Larry is also a television personality. I was sitting in a little barber shop in Pryor, Oklahoma in 2004, when a show called “Texas Justice” appeared on a television set hung on the wall. I paid little attention until I heard a familiar voice and saw that Larry Doherty was the presiding judge on the nationally syndicated show that ran from 2001 to 2005.

Dean Zamora presided over the Law Center’s year-long 1997 celebration of its 50th anniversary. I missed a fair amount of the academic year because I finally claimed a semester off as compensation for teaching an overload of some 20 hours of courses at the law school’s request without extra pay. I came back to Houston to officiate at Gene Smith’s memorial and play a minor role in a faculty presentation of The Wizard of Lawz in which Steve played the scarecrow. Craig Joyce and Sid Buchanan wrote the

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325 Photo of 1955 Thunderbird: 
lyrics and Sid played the role of Dorothy, wearing a blue dress and ruby slippers. A series of celebratory events included “The Fifth Circuit and the History of Civil Rights in the South,” with participation by John Minor Wisdom and other notables, and “Women Legal Trailblazers,” featuring prominent women attorneys who recounted their personal stories. The program included Sara Weddington, the lead lawyer in Roe v. Wade, legal activist Sissy Farenthold, Ruby Sondock, the first woman to sit on the Texas Supreme Court, and Carol Dinkins, a prominent environmental lawyer and partner at Vinson & Elkins.

Steve wanted to produce a full-blown history of the Law Center’s first half-century, but he could not raise the money. He did produce a small pictorial history that was very useful in preparing this narrative.

Steve abandoned the school’s largely unsuccessful attempt to fill named chairs with lateral appointments, and he assigned the titles to faculty members with equal or better records than those we had pursued as lateral appointments. Jacqueline Weaver and Joe Sanders were named AA White Professors; David Crump was named the first Newell Blakely Professor; and Richard Alderman became the Dwight Olds Professor. Steve also used the George Butler Research Endowment to establish a research professorship for younger scholars. Steve advanced the academic side of the Law Center by affiliating with Canadian and Mexican law schools through the North American Consortium on Legal Education, created in 1998. He was a major player in creating the Consortium, which provides opportunities for students to participate in exchanges at member schools, holds competitions, and hosts workshops on curriculum development.

John Kolb, one of my classmates and a partner at Vinson & Elkins, helped steer a Keck Foundation grant to the Law Center to
inspire innovations in teaching Professional Ethics. The Foundation made similar grants to several other law schools.

Steve asked Bob Schuwerk to respond to the challenge, and Bob involved me as a helper. I never took the course in legal ethics, but I accepted the opportunity to create a more effective course. By the time students take Professional Ethics in their third year, they are tired of reading cases that seem especially irrelevant when presented as adversarial views of professional behavior. Bob and I proposed to turn the unpopular course into a personal learning experience for students by anchoring basic professional practices emotionally as well as intellectually.

I had recently written an article applying W. Edwards Deming’s Continuous Quality Improvement theory to legal education, and the article contained a reference to teaching lawyers’ ethics.326 Conversations with Donald Williamson, a practicing and academic psychologist, together with my 1960s experience with T-groups and experiential learning, suggested that we should ground the course in a cooperative, non-competitive application of limited T-group principles. We retained Tom Peery, a professional who specialized in Scott Peck’s version of Tavistock group process.327 We also involved a practicing clinical psychologist whose specialty was Family of Origin therapy. The Law Center allowed us to assign pass-fail grades so students would not compete with each other, but would instead share their questions, predispositions, and fears about law practice with other students. The course began with Tom Peery’s creating trust groups of six or so students each. The groups went through trust-building exercises to establish a norm of


327 Tom’s recent book, So Dad, What Makes A Man, refers to our course.
Stephen Zamora, Dean 1994-2000

openness and truth. Afterward, they engaged in structured introspection through Family of origin sessions with the psychologist. The purpose of the Family of Origin exercise was to enable students to look into their own backgrounds and identify attitudes that were likely to influence their future ethical behavior.

After students became comfortable sharing personal feelings in their trust groups, Bob invited a series of practicing lawyers to visit the class and tell their own stories of ethical challenges. The guest speakers included disbarred lawyers, lawyers with drug problems, state and local ethics officials, and “model” lawyers who had enjoyed long and satisfying law practice. One lawyer had served time in federal prison for crimes committed during a Savings & Loan scandal. After the presentations, the trust groups met separately, and students shared in groups their personal responses to what they had heard and how they might interpret it in their later practice. The course was very well received, and students ranked it in the top five percent of Law Center courses, a remarkable jump from its traditional ranking in the bottom five to ten percent.

We published an article that described the course and student reception. Typical student comments were:

“The most informative, the most communal, and the most valuable class I have experienced while in law school.”

“After listening and learning this semester ... I know that I am capable of facing clients and handling their problems. I am capable of being a counselor in the true sense of the word. I can listen, care, and resolve.”

Stephen Zamora, Dean 1994-2000

“The most important realization that I have gained from this class—a fountainhead for all other ethics rules—[is] that I have a better understanding of myself. More simply, by looking inward I will learn to act in an ethical way outward.”

The course differed substantially from most of the competing programs funded by Keck grants. Although it was a success within the Law Center, acclaim from others came slowly until professionals began to focus on the teaching methods we developed and the insights that guided us. We even absorbed a bit of abuse for departing from the expected path, and Steve fielded some criticism about the course from outside the law school. He did not interfere with it, and Bob Schuwerk still teaches a similar course.

During Steve’s administration, Texas A&M tried again to strike a formal affiliation with South Texas College of Law. Rumors of Texas A&M’s designs on South Texas had floated in the late 1960s and prompted reopening the evening division. 329

When A&M and South Texas announced their affiliation as fait accompli in 1995, Steve joined the University Administration in opposing the arrangement. 330 As with all state universities, UH is


330 Steve’s own assessment is “I was opposed to the South Texas affiliation with A&M. It was put together in a clandestine way, so that South Texas could improve its national standing, and possibly get a foot in the door to become fully a part of A&M. There was no attempt to try to assess what was best for legal education in Texas generally. In my opinion, higher education in Texas is relatively poorly planned and haphazardly regulated. The Coordinating Board is largely reactive rather than proactive. Higher education is managed by Boards of Regents that act like feudal lords, promoting their university at the expense of others. I think the South Texas/A&M deal was an aspect of this. Dallas did not have . . . a public university law school, so why have two (sic) in Houston? . . . I wrote an op-ed piece denouncing the move in the Chronicle. . . .” A member of the University’s Administration says Steve’s early statement was not as strong as the University would have liked.

414
jealous of its trade territory. Any infringement on its educational territory is viewed as a threat, and UH and the Law Center responded with the same hunker-down response as if the visiting team had the ball on the three yard line with four downs to go. UH Chancellor Arthur K. Smith and Regent John O’Quinn launched a broadside against the proposed affiliation. The Law Center faculty played onlooker. Some even saw themselves jumping ship and sailing under the A&M-South Texas flag if the merger went through.

I was surprised when an aroused University of Houston stopped the official affiliation in a head-on confrontation. It helped that Leonard Rauch, a former UH regent, chaired the Coordinating Board for Higher Education. The Board is charged by Texas law to oversee various activities of state-funded higher education institutions, and Rauch took the position that A&M could not form an alliance with a private law school without prior Board approval. He asked for an Attorney General’s Opinion, thereby placing a barrier in A&M’s path. UH administration asked University Counsel Dennis Duffy, a former Law Center faculty member, to write a brief opposing the affiliation, and Dennis argued persuasively that the affiliation exceeded A&M’s authority. The Attorney General agreed and issued a preliminary opinion requiring Coordinating Board approval of any affiliation. A&M foresaw that Board approval was chancy and bypassed it by suing the Board for a declaration that the affiliation was legal.

The District Court accepted Duffy’s argument that most of the affiliation agreement was illegal. The Texas Court of Appeals affirmed,331 and the Supreme Court denied writ of error.332 A&M

331 Opinion on motion for rehearing, South Texas College of Law v. Texas Higher Education Coordinating Board, 40 S.W.3d 130 (2000).
suffered a rare political defeat, and the formal affiliation was undone. The two schools continued their cooperative endeavors, but without the A&M banner and letterhead. The issue did not die, but A&M’s attention has apparently redirected toward acquiring Texas Wesleyan’s Law School located in Fort Worth.

The A&M issue got a lot of attention, but virtually no one noticed when the University cracked the information shield around the University of Houston Law Foundation by demanding and receiving detailed information about its activity. Bob Knauss and previous deans had vigorously defended against efforts both by faculty and administrators to learn details about the Foundation’s activities. Newell Blakely predicted that, if the Foundation was too closely tied to the Law School, the University Administration would want to control it, and the Foundation would lose its autonomy. Only the seeds of intervention were sown during Steve’s deanship, and he deems the sharing of information as both reasonable and inconsequential.

For me, the troubling event during Steve’s administration was the law school’s fall from its high point of 42nd in US News rank in the first year of his term in 1995 to 50th when Steve left office in 2000. That decline prompted me to plead for stronger admissions screening and more attention to the other factors measured by US News. Steve and his successor as dean contest the substantive

332 In re South Texas College of Law and Texas A&M University, 4 S.W.3d 219 (1999).


validity of *US News* ranking, but that is not the point. Valid or not, maintaining a high rank is essential to attracting top-flight students and professors alike. Ranking also determines whether law review editors will even read articles submitted by a faculty member for publication. Many of us took the drop in ranking seriously. Although there is spirited debate about the ranking procedures, I think the factors considered by *US News* relate very directly to institutional quality. The drop in rank does not appear to have been important to the central administration.

Steve is a popular professor and colleague, and he had few detractors during his deanship, but the new University Administration wanted to fill the position with an outside dean of their own choosing. Steve resigned the dean’s office in 2000, and the Law Center began to look for a new dean—again. This time, we were not in as good a position as when Bob Knauss left the deanship. We were then able to find eager candidates to interview at a school headed upward from a *US News* rank of 42. University bungling cost us those candidates, and lack of financial support combined with inattention to *US News* rank brought us to the brink of falling out of the vaunted top fifty.

Two stalwarts, Mike Johnson and Jim Herget, retired at the turn of the century, leaving law school intrigue behind. With trepidation, we put the “Dean Wanted” sign out and waited for a response. The question this time was “who wants us?” more than “who do we want?”
CHAPTER 20. NANCY RAPOPORT, DEAN, 2000-2006

When it comes to deaning, a dean’s own image of her role will often set her agenda. . .


Who would want to be our next dean? A few faculty wannabes knew that any internal candidate, however qualified, would run into a buzz saw at selection time. Surprisingly, several people with decent credentials showed up from the outside world. Three stood out. One was a highly regarded dean at a young Northeastern law school. The committee quickly put him on the list. A former dean at a respectable Midwestern law school joined him, but the list was as far as they got.

The winner was Texas-born-and-raised Nancy Rapoport, who held a Rice University B.A. and Stanford Law School J.D. After law school, she served as judicial clerk for former Texan and Ninth Circuit Judge Joe Sneed. Nancy practiced five years with a San Francisco firm before entering the teaching market. She taught at Ohio State Law School for four years and was Associate Dean for Student Affairs for two years. In 1998, she accepted appointment as Dean of the University of Nebraska’s law school. After less than
two years at Nebraska, she responded to our “Dean Wanted” plea, partly, she said, to be near her parents in Houston.335

Nancy’s faculty presentation left me thinking her ambitions for the law school were about the same as mine. When somebody said we should rank in the top thirty schools, she responded “Why not shoot for the top twenty—or top ten?” I gauged her optimism as excessive, but I had no doubt she referred to US News rank, applying the conventional criteria of peer evaluation, student quality and selectivity, good faculty-student ratio, and success in bar examination and employment of graduates.

Nancy’s visit went well, and faculty approved her overwhelmingly. The vote put Nancy on the short list sent to the

335I provided working drafts of this book to Mike Johnson, Bob Knauss, Nancy Rapoport, Steve Zamora, and Ray Nimmer with the request that they review their chapters and make comments and corrections. Mike, Bob, Steve, and Ray did so, and their chapters reflect that involvement. Nancy responded with the following email with copy to her lawyer:

John and Ray:

Based on a quick read of the first version of Chapter 20, my take is that the chapter, and likely the book as a whole, is neither a clear autobiography nor an accurate and unbiased history of the Law Center.

If it’s intended as an autobiography, then I have nothing to add. An autobiography is the sole purview of the writer, representing his own recollections and impressions.

If the book is intended as a history, though, then it is far from being a complete and fair depiction of my time at UHLC. But before I give you any comments, I would need to have assurances from both of you that my comments would be included verbatim, with the understanding that you are free to comment on my statements but not to delete or edit them. Otherwise, perhaps the best thing for me to do is to decline your request that I provide you with any specific comments on your draft and ask that you publish this email instead.
Provost. We waited confidently to see which of the three candidates would be named dean, recover our ranking, and bring direction to a school that had been frustratingly adrift under an unsupportive university administration. The Provost had no doubt which candidate would get the offer. The two guys didn’t even get an interview, and Nancy was named dean to take office August 1, 2000. I don’t entirely discount a rumor that the provost declared well before the search began that the next law dean would be a woman. It didn’t matter. We willingly provided one with good paper and some experience. Nancy had a lot going for her. She rivaled Philip Hoffman in the important ability to make a complete and cogent five-minute speech. She had good stage presence, she was bubbly, and alumni immediately took to her. We could relax and dream about a long and successful deanship.

Unfortunately, a storm was brewing that, literally and figuratively, would define Nancy’s deanship. Less than a year after Nancy took office, Tropical Storm Allison hit the Gulf Coast. In June of 2001, some 37 inches of rain fell on Houston in twenty-four hours, leaving behind five billion dollars in damage. The city’s drainage system, as always, was unprepared to handle the deluge. Flood waters quickly overflowed bayous on the way to the Gulf of Mexico, and I watched nervously from my own house, which is on an elevated lot, as water rose from a side street to one vertical foot from my ground floor. Then, magically, at about three a.m., the flood water in my area breached some natural barrier and flowed as a swift river from Amherst Avenue to Kirby Drive, made a left turn, went one block north on Kirby, turned right on Rice Avenue, and sped straight to the Medical Center where it did an estimated two billion dollars damage. My house stayed dry, but the law library did not.

We had warned the architects not to put the Law Library underground. We lost that battle without knowing the Law Center draws its utilities from a central power station through tunnels that connect some one hundred campus buildings and, if flooded, will produce an underground Venice. When Allison’s water breached an arterial tunnel, water rushed from building to building and dumped millions of gallons into any space below ground level. Our underground law library took eight to twelve feet of water, destroying an estimated 150,000 books and microfiche records. “Houston, we have a problem,” does not come close to describing Allison’s damage. The Law Center qualified for some $21,000,000 in FEMA funds to replace the printed volumes. One collection—the personal papers of Judge John R. Brown—was irreplaceable. Judge Brown sat on the Court of Appeals from 1955 to 1993. During his tenure, the Fifth Circuit included Louisiana, Alabama, Georgia, Mississippi, and Florida. He was one of a handful of federal judges who dealt with civil rights cases arising out of the Old South, and he was a key player in dislodging formal segregation. He was also a longtime friend of the law school. He is said to have taught a course at the law school in the 1950s, but I have no recollection of it.337

Judge Brown was always there when we needed a speaker and when the law school needed a friend or advisor. He generously hired our best graduates as judicial clerks, giving them and us a

significant boost long before major firms competed for them. His affection for the law school prompted the Judge to leave a collection of his valuable papers to our law library, and Allison destroyed two thirds of it. It was history’s loss and our great embarrassment. Shifting blame to campus officials and water engineers provided no satisfaction.

After the storm, Nancy played her leadership role well, acting as a quick decision-maker and cheerleader. But it wasn’t just Nancy who rescued the Law Center from the watery mess. Craig Joyce, Jon Schultz, and other faculty and staff members responded quickly to her call for help. On the morning of June 10, they stared down at a soggy mess in the basement that, two days before, had been a significant library collection. In the short time before the fall semester began on August 28th, the recovery team made the building functional. As a result, the Law Center welcomed the incoming first-year class almost as if nothing had happened. Their efforts saved the Law Center, physically and financially.

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338 One of our first graduates to clerk for Judge Brown was C. Thomas Reese. Judge Brown called me one day and said he would like to interview someone from our law school as a student clerk. I sent him a copy of Tom Reese’s final examination in some course, the Judge read it, and Tom got the job, first as a student clerk and after graduation as the Judge’s judicial clerk.

339 Mon Yin Lung adds facts and flavor to the recovery effort, as described in her email dated November 13, 2012. “Professor Jon Shultz began the project by finding a contractor and negotiating the contract to set up a turnkey system. Later the project was left to Michelle Wu, the then acting library director. After he assumed the directorship Spencer Simons eventually took over the management of the operation after the project supervisor left for another job. I have personal knowledge of this because, in addition to our discussions on the operation, Spencer also took me to the meetings and to the processing place. I remember vividly that in the Summer of 2007 every day we two packed and moved 30-35 banker-boxes of books back to O’Quinn Law Library in order to vacate the place on time for the end of the lease. Between the two of us we moved at least thirty-five tons of books. That was when I was trained to use a pallet jack and drive a van. (And operating a pallet jack is fun.)”
During the summer, UH departments ran out of luxury suites in Hofheinz Pavilion and classes convened in downtown offices and other borrowed spaces. Campus personnel scurried to preserve buildings from further damage by forcing in chilled air to retard the mold and then to change use allocations for a great deal of the Law Center’s space. FEMA required that flooded space be reallocated to other uses as a condition of paying to repair the structure and replace the soggy library collections. It took the Law Center a mere ten weeks to move from total disaster to almost full function. Although a host of other people did the actual work, Nancy’s incredible capacity for 24/7 cheerleading fueled the activity. All told, the flood proved she could step up to an unprecedented challenge.

For me, the biggest problem was not the water, but electronic gadgetry that was installed in classrooms with part of the recovery money.

When regular classes resumed in the fall, I began my usual course in Contracts. I noticed that the number of laptops screens hiding students was much greater than usual. I was vaguely aware that the Law Center had required all students to buy laptops, so the profusion of computer lids was not surprising. But after a couple of weeks, I realized the laptops concealed something more than eager first-semester fingers typing notes. I was accustomed to calling on people who claimed not to understand the question, but these faceless students did not even respond to their own names. I noticed that one student was acting strangely, looking first to her left and then to her right as if responding to some unexplained prompts. I asked her after class if she was involved in some sort of classroom game, and she responded with a story I found hard to believe. She said she was reacting to giggles, first on one side and then on the other. She could tell I was not convinced, she was distressed at that lack of trust, and she dropped out of school shortly after.
What I did not know for the first three weeks of the semester was that every classroom had been equipped with wireless internet access, and students could now shop on E-bay, send instant messages, and play competitive poker or lonely solitaire, totally freed from concentrating on the assigned materials.

The mystery was explained by a student who was totally unresponsive when I called on him. He dropped by my office and apologized, saying he didn’t hear me because he was answering an email he had just received. An email he had just received—in my class? I knew students could play computer solitaire behind their laptop screens, but how could they receive emails in class? Then he told me the Law Center had installed internet access everywhere in the building, including classrooms. I realized that the student I had questioned about the giggles was telling the absolute truth. Classmates on her right and left were sending notes that elicited responses and caused her to turn first to the right and then to the left. I felt awful, and I refunded the student her tuition out of my year’s expense allocation.

I verified that almost no faculty members knew about the unregulated electronic access. I asked for a cut-off switch to isolate the classroom from the internet, only to learn that a switch would do no good. No classroom could be isolated from the overlapping system that made every inch of the Law Center “hot.” The Law Center was not alone in jumping into classroom electronics. We simply followed a nationwide trend without much thought about the educational consequences. Most professors adapted to the electronic presence, but I was not going to accept the distraction without some show of disapproval.

I brought a ladder from home, and, at the beginning of class, I climbed up and disconnected the room’s modem. The dean got wind of this silliness and sent a memo saying she preferred I not disconnect the classroom. I did stop disconnecting, but not because
of the memo. I had made my point, and I was afraid of falling off the ladder. In the years that followed, I gave up trying to control internet access and simply banned open computers from class. Another half dozen UHLIC teachers have done the same. Since then, a growing number of law schools have revisited their electronic commitment after concluding that internet distraction may outweigh its occasional utility.


Banning computer use during class worked well enough for ten years, but that simple solution cannot disable cell phones with texting capabilities. Today, distracting electronic conversations are virtually impossible to limit.340

340 A St. John’s University Law Professor found that 58% of laptops users spent half of the class time on outside purposes, and another 29% spent more than five minutes on outside use: http://www.abajournal.com/news/article/study_58_of_2ls_and_3ls_using_laptops_in_class_were_distracted_more_than_ha/
My wired classes were not going well, and I looked for something else to do. I carried the memory of Yale’s attached student housing and SMU’s on-campus law dorms, and Craig Joyce and I undertook a year-long planning effort to promote a Law Center dormitory that could be financed by its rent stream. Nancy supported the effort, but the University didn’t. We dropped it after Craig and I accidentally learned that the University’s building policy did not allow stick and brick apartment construction inside the central campus. Unsubsidized commercial-grade apartments were not feasible. Recent completion of a commercial-grade mid-rise apartment project called Calhoun Lofts located a two-minute walk from the Law Center has satisfied the Law Center need for on-campus housing.

The law dorm was not the only building project that was proposed and abandoned during Nancy’s deanship. Expecting a substantial gift from John O’Quinn, Nancy organized an excellent planning effort to conceptualize an additional building for the Law Center campus. Craig Joyce chaired the planning effort for what was called The Acropolis Project, with assistance from Spencer Simons, Director of Law Libraries and coordinated with virtually every constituency in the UHLC community. If built, the structure would have placed the entire library above-ground in a new building, opened up additional space in the original buildings, and relieved overcrowding. Nancy’s personal enthusiasm inspired people to do lots of work, but the gift did not materialize. Without it, the project could not go forward.

The Law Foundation apparently couldn’t even meet its routine commitments. Although details are not clear, the Foundation had some bad years during Nancy’s administration. She got my attention with a surprise announcement that, along with others who received salary supplements from endowed chairs, I might suffer a $20,000 annual salary reduction because Foundation income was insufficient to pay the stipend attached to the professorship Don
Riddle had funded.\textsuperscript{341} While that threat hung in the air, Nancy and the Law Center’s financial officer, Teresa Watts, worked out a Support Agreement with the university administration that shifted our supplements to University funds, but at the cost of Foundation autonomy. I never understood the complicated formula that produced my final paycheck, but, all told, the good news outweighed the bad. I continued to get paid. At the end of Nancy Rapoport’s deanship in 2006, the Foundation administered some $13,000,000 in endowment and unrestricted funds, but income from the dedicated accounts was still insufficient to support the chair commitments.

By Nancy’s fourth year, faculty had developed a substantial split over her deanship. The big issue for me was our drop in \textit{US News} ranking. I made my point with emails to the dean and the faculty urging, sometimes undiplomatically, that we should fix things I judged were both bad educational policy and detrimental to ranking. There were abundant faculty complaints about lack of leadership and academic direction. Entering class credentials had dropped behind competing Texas law schools, partly because of inattention to enrollment numbers and LSAT scores.

Apparently to increase tuition revenue and satisfy UH administration requests, Nancy persuaded faculty to increase first year enrollment from 300 to 400 students in her second year without adding enough new faculty members to serve the increased headcount. That imbalance adversely affected our student-faculty

\textsuperscript{341} Faculty meeting minutes of January 31, 2003, “…The Law Foundation side is equally dreary. We’ve had almost three years of an economic down cycle, coupled with the additional up-front expenses necessitated by the damages from Tropical Storm Allison … . The law Foundation is not going to dip into corpus to pay endowments. Currently, the endowments aren’t spinning off money for us to spend, under the total return policy. …”
Nancy Rapoport, Dean, 2000-2006

ratio. Soft grading policies and lower credentialed students led to mediocre bar exam performance. All of these factors count in the US News ranking. They also go to quality as measured by any reasonable standard.

342 The traditional soft target was 300 first-year students. Steve Zamora’s staff produced 290 students in 2000 with median LSAT of 158. Nancy’s 2001 class had 306 students, but her 2002 class jumped to 405 students, and median LSAT dropped to 157. The hundred extra students inflated the total headcount for three years until they graduated in 2005. Lower LSAT scores tend to produce lower bar examination performance and lower ranking *vis a vis* other law schools. Nancy’s entering classes during her six years exceeded the target by a year total of 210 students, or an average 35 extra students per year. The median LSAT that dropped in her first year leveled out two years later and remained at 160 until the end of Nancy’s deanship, after which it increased to 161 in 2007 and 162 in 2010. The higher student headcount in 2002 was not matched by a corresponding increase in faculty size.

343 US News ranking of UH Law Center 1995-2014

2014 – 48 (tie)  
2013 – 57  
2012 – 56  
2011 – 60  
2010 – 59  
2009 – 55  
2008 – 60 (Beginning of Dean Nimmer’s term)  
2007 – 70 (Low point at end of Dean Rapoport’s term)  
2006 – 65 (Based on 2005 data)  
2005 – 59 (Based on 2004 data)  
2004 – 69 (Based on 2003 data)  
2003 – No ranking  
2002 – 50 (First year of Dean Rapoport’s ranking based on 2001 data)  
2001 - No ranking  
2000 - No ranking  
1999 – 50 (Ranking at end of Dean Zamora’s term)  
1998 – 49  
1997 – 46  
1996 – 42 (Best ranking at end of Dean Knauss’ term)  
1995 – 49  

Source: U.S. News & World Report database, hosted by EBSCO
Nancy Rapoport, Dean, 2000-2006

In an oblique way, my dispute with Nancy resembled the division between Newell Blakely and the Young Turks. The Turks had a vision of a first-rate school as measured by national standards. Those aspirations differed from what Newell Blakely was doing as dean and what Nancy Rapoport would later do as dean. There was no *US News* ranking in the 1960s, but the factors used by *US News* apply criteria the Turks would have used.344

Newell had used tough grading policies to select those students who would graduate and practice law, but by 2000 very few students flunked out and admission virtually assured graduation. Without Newell’s Darwinian grading, strict admission screening is essential. In every year of Nancy’s deanship, more than half of the entering class was admitted after full-file review that takes into account minority status and subjective factors such as life history, hardship, recommendations, undergraduate school attended, and employment. In 2006, almost 75% of students were admitted in this discretionary category, a far cry from the initial 5% and the 25% established during George Hardy’s deanship. This procedure invariably produces lower scores on the only measurable factors, LSAT and grade point average (GPA). *US News* counts only LSAT and GPA in assessing student body quality and school ranking.

Faculty quality, on the other hand, was not a particular problem during her deanship. I think *The Texas Lawyer* got it wrong when it said “[T]he main difference between Mixon and her is one

344 I do not claim the *US News* ranking is accurate. It can be gamed, and law schools do so regularly. Some schools have grossly misrepresented LSAT numbers and placement success. Nevertheless, it is the only credible measure of institutional quality that the market has produced, and its effect on student applications, law review article placement, hiring, and graduate employment cannot be denied. In an imperfect world, it is all we have to work with. I agree with Nancy that *US News* ranking is like a speedometer that tells how we are doing, and that ranking *per se* is not the goal. The problem was that the Law Center did not pay attention to a speedometer that told us were going backward.
of pedigree vs. performance—basically, he is more focused on credentials and (she is) more focused on what people actually do.”

It is true I pushed hiring new faculty with top credentials, which I identified as Coif graduation from a highly ranked law school, law review publication, and federal judicial clerkship. I hoped we could someday hire some U.S. Supreme Court Clerks. Eugene Smith’s observation that “There isn’t any substitute for brains” drove my baseline requirement that faculty members ought to be smarter than ninety percent of their students. But that wasn’t a big issue. Apart from our disagreement on one faculty appointment, it isn’t clear what The Texas Lawyer meant when it distinguished my emphasis on strong academic credentials, on the one hand, from her standard of what people actually do, on the other. The people we hired had very good credentials, and they had already published and published well. The shortcoming was that we did not hire enough of them to serve an increased student headcount.

From our high point at No. 42 in the year after Bob Knauss resigned, we dropped to No. 50 at the end of Steve Zamora’s term, and bottomed out at No. 70 during Nancy’s deanship. I had no personal influence, but I did have email. I made my points about student quality, bar examination performance, and the drop in US News rank, and the Dean, in turn, enlisted colleagues to stop me

345 The Texas Lawyer, April 26, 2006.

346 Steve Zamora comments: “John, you and I differ greatly concerning the US News ranking. The ranking is relevant, and some might consider it important. The US News ranking shouldn’t be ignored. But you treat it as scientific evidence, and make it a predominant, driving factor in how the Law Center should operate, even on a short-term basis. All legal educators I know question the accuracy of the rankings, so to conclude that the Law Center had deteriorated in quality when we fell to 50 from a high of 42 is a superfluous reading, and denigrates the advances that we made during my deanship and during Nancy’s. The early rankings were particularly flawed, and I have heard some allegations that law schools, including UH, fudged the figures to promote positive rankings. I doubt that is true in regards to UH, but…”
from what she regarded as “bullying.” My messages did not have a significant effect on academic policy, and when we crashed through the floor of the top third of law schools and joined the also-rans, Nancy cited an article she had written criticizing US News ranking\(^{347}\) as reason not to worry.

While the conversation about US News was hot, I made my case to a broader audience. Nancy was always keen to find new ways to raise money, and, in 2002, she talked with Don Riddle about generating a speakers’ fund through donations to the “John Mixon Society.” I first heard about the idea when Don called, and, of course, I agreed. The Society collected money for four years and brought in some really good speakers, including Jeffrey Wigand, the tobacco company whistleblower, and former U.S. Senator Dale Bumpers. After speakers’ fees increased, interest waned and the society invited me to make the Society’s final presentation as a celebration of the fifty years anniversary of the first class I taught. I accepted, knowing exactly what I would say.

I spoke for an hour in Krost Hall before a surprisingly large crowd. The Law Center owned only one really strong projector. I wanted to fill two boards, one on each side of the speaker’s lectern, so I bought an additional projector out of my Foundation account. The audience knew the title of my talk, *The History and Future of the Law Center*. They may have thought it would be a “feel good” event, since it was a celebration of the anniversary of my first year as a law teacher. I doubt they were ready for what my cartoons, projected on two big screens at the front, revealed.

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The talk followed the format of this book. I began by describing A.A. White’s high admission requirements and the school’s resulting success with graduation rates and high bar passage. I then described Newell’s open-door years and the dramatic drop in retention, bar passage, and prestige. I left out gory details of battles between the Old Guard and Turks, but I highlighted George Hardy and Bob Knauss’s remarkable deanships that carried the Law Center to its high point. Then I described our decline to the 60s in US News rank at the time of the talk. I ended with a bleak, but accurate, prediction of even lower drift unless some tough action was taken. Few smiles graced the faces of the three University administrators who attended. Nancy was not there.

I left the meeting without a clear picture whether the talk had made any impression. I think the audience felt uncomfortable that the school was not realizing its potential, but they were not ready to step up and say so. Not many faculty members attended. That does not mean they disagreed. Faculty and student concern about the law school’s downward trend was widespread.

In 2004, Nancy hired Pete Wentz, an outside consultant, to help define the Law Center’s educational mission in an undertaking called “Project Magellan.” Pete did a credible professional job, and many meetings and many dollars later, the committee produced a report that Nancy displays on her blog site. It is replete with adjectives, such as “premier public urban law school,” but displays no program and no clear direction. Opinions

348 Faculty meeting minutes of April 30, 2004, Attachment 1, April 28 Memo.

349 Probably without thought to what happened to Ferdinand Magellan in the Philippines during the historic voyage. He was killed.

350 The report is reproduced in Law Center faculty meeting minutes of October 20, 2005, and in http://nancyrapoport.blogspot.com/ link to http://www.law.uh.edu/news/additional/StrategicPlan.pdf
may differ whether Magellan’s voyage was worth its $63,000 cost.\textsuperscript{351}

Nancy denies responsibility for the drop in ranking. She says that, just like not being tall and blonde, there was nothing she could do about it. I disagreed then, and I disagree now. In a university with reasonable resources, law deans are hired to articulate and implement an educational vision.\textsuperscript{352} Deans set the institutional tone through their professional decisions and personal interactions with faculty and University administrators. Deans control hiring policy by their selection of faculty members for the recruitment committee and their charge to it. Deans negotiate with approved candidates for faculty position. Deans set procedures for student admissions, and they influence class size and composition. Deans are responsible if admissions officials select too many applicants with low numbers over better qualified applicants. Deans choose the staff members who raise funds, manage assets, and help graduates find jobs. Successful deans negotiate with university administrations from a position of strength and they secure funding required to sustain their programs. Effective deans spend the allocated money and then fight for more. If a dean has a vision that differs from the standard, it is up to her to define it and defend it, not just criticize the ranking process.\textsuperscript{353}

\textsuperscript{351} This figure was provided by the Law School Financial Officer in December 2011. I have heard a different number, as high as $250,000, from a disgruntled administrator.


\textsuperscript{353} In a 2012 article, Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools, 116 PENN ST. LAW REV. 1119 (2012), Nancy Rapoport articulated a vision of legal education that divided schools into “elite, modal, and precarious.” She placed UHLC in the modal category and said, among other things, that students needed more and better pre-law training, and more skills
After four years in office, 2004 was the time for Nancy’s five-year review.\textsuperscript{354} The formal procedure entailed tabulation of opinions about her performance by faculty and alumni. The review revealed a sharp split, particularly in faculty perceptions. In the Provost’s words, the data curve was “bimodal,” which I took to mean that people either liked her a lot or disliked her a lot. There was no middle. She retained substantial support among a corps of alumni, the Health Law Faculty, some people she had hired, and a few who supported her as the first woman dean. The Provost’s post-review meeting with faculty in 2005 implied some changes would be made.\textsuperscript{355} I did not see any improvement during the ensuing year. The downward drift continued.

That is the way things stood in April, 2006. The April issue of \textit{US News} carried more bad news. We had fallen from 65th to No. 70 out of 176 approved schools, well out of the top third and headed downward.

On Friday, April 7\textsuperscript{th}, a regular faculty meeting was scheduled for the Hendricks Heritage Room. About 150 students showed up to express their concern about the drop in Law Center ranking. Their complaints were specific and serious. Law Review members reported that authors at top schools no longer submitted as many articles to our review as before because we had fallen out of the top fifty. Big firms were making fewer employment offers, even to law review officers. One firm reportedly withdrew its offer to a training in law school. This 2012 perspective, if articulated during the 2004 Magellan exercise might have changed the trajectory of Nancy’s deanship. Her categorization of law schools is similar to what I identified in a 1994 article, John Mixon and Gordon Otto, \textit{Continuous Quality Improvement, Law, and Legal Education}, 43 EMORY L.J. 393 (1994).

\textsuperscript{354} Faculty meeting minutes of January 30, 2004.

\textsuperscript{355} Faculty meeting minutes of May 6, 2005.
law review officer when *US News* dropped us out of the top third of all ranked law schools.

The dean had planned her agenda beforehand. It included a few ordinary items and a discussion about switching to a new brand of exam software. Nancy was not surprised when students showed up. She thought they were there to discuss exam software, and a few may have been. But the great majority wanted to express their concern about the plunge in *US News* rank. They planned to make a short statement and leave. I knew why they were there, and I moved to suspend the agenda so we could hear the students and let them go. Nancy replied that the students were there because she had invited them, and we would not depart from her agenda. After an hour or so passed without being heard, students became restive. Then the dean left for a twenty minute bathroom break.

When she returned, students were clearly agitated. They began to voice their discontent and faculty chimed in. Nancy identified me as the cause of her problems. I kept quiet, but other faculty members spoke out, and it was mostly bad news directed at the dean. All told, the meeting produced the biggest public donnybrook in the school’s history. Nancy pled for faculty support, but only one faculty member offered a hand. The meeting mercifully wound down after a full hour of faculty and student criticism aimed at the dean’s failure to address both the *US News* ranking and the substantive factors that determine ranking.

Nancy’s deanship was tottering when a student sent an email to a friend on Saturday, April 8th describing the faculty meeting in detail. The email spread quickly through the interested communities and beyond. One colleague was attending a meeting in London when another participant asked whether he had seen the
email about our dean. It is reprinted in full in Appendix IV. Within hours, the email was in the hands of the University administration. On April 17th, nine days after the faculty meeting, the University accepted Nancy’s resignation with ritual praise for her accomplishments. After a short leave, Nancy left the Law Center to fill a chaired professorship at University of Nevada at Las Vegas.

A number of good things happened during Nancy’s deanship. A faculty report says she obtained six new professorships, and we hired some excellent faculty members.

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357 Faculty meeting minutes of November 12, 2004, Dean’s Report.

Nancy Rapoport, Dean, 2000-2006

Nancy worked hard to hire Lonny Hoffman, a University of Texas J.D. who showed remarkable success in innovative teaching and law review article placement. Leslie Griffin, a nationally renowned ethics scholar and Ph.D., filled the vacant chair funded by Larry J. and Joanne Doherty. We hired *Yale Law Journal* editor Aaron Bruhl, called by Fifth Circuit Judge Carolyn King her finest judicial clerk ever. Greg Vetter, a *magna cum laude* Northwestern Law School J.D., Law Review Articles Editor, and Law Clerk for D. C. Circuit Judge Arthur Gajarska joined the Intellectual Property faculty. Nancy recruited Peter Hoffman, a talented skills teacher, from her former Nebraska faculty. Marcilynn Burke, a Yale J.D., strengthened the Land Use and Environment program. Marcilynn taught for seven years before President Obama called her to Washington in 2009. The International Law program welcomed an acclaimed scholar, Antonio Gidi. Spencer Simons became Director of Libraries, replacing Jon Schultz, who retired with honor.

359 Photos of Aaron Bruhl and Greg Vetter: [http://www.law.uh.edu/faculty/](http://www.law.uh.edu/faculty/)
Darren Bush who was hired during Nancy’s deanship was an especially important faculty addition. He brought economics back into the law curriculum after several years without a Ph.D. economist. Darren is an iconoclast who knows the discipline, but he addresses both law and economics with a wry wit and healthy skepticism. He regularly testifies on legislative proposals, writes prodigiously, and is an irrepressible punster. Darren does the things every law school wants an economist to do. He teaches economic analysis of law, he incorporates economic thought in standard courses, he writes articles that look deeply into law and economics matters, and he reminds other faculty constantly of the economic analysis of positions they take.


361 The subject was not ignored during the gap because the multi-talented Seth Chandler covered Economic theory in several courses.

A highlight of Nancy’s deanship was that Vice-Dean Seth Chandler showed we knew how to do some things well. He stepped forward quickly to arrange administrative and classroom space for Loyola University of New Orleans when Hurricane Katrina flooded their law school building in 2005. The Health Law program also stabilized during Nancy’s term and retained its high rank.

Nancy’s sudden departure put us back in the dean search business. But first, we had to find someone to hold office until a permanent dean was named. Several reasonable choices volunteered, but faculty expressed a firm preference for Ray Nimmer. The University Administration followed faculty’s recommendation and selected Ray as Interim Dean for a second time in recent years. The Provost announced that the Interim Dean could not apply for the permanent position for fear of scaring off outside competitors. All contenders but Ray conceded. When Ray negotiated assurance he could compete for the permanent position, he passed the first test to become our next dean.

We needed a tough negotiator. There was work to do.
Raymond T. Nimmer

UH Law Center Frankel Room Wall of Deans
CHAPTER 21. RAYMOND T. NIMMER, DEAN, 2006 -2013

. . . After wide consultation with faculty, staff, students and alumni, it became apparent that Ray Nimmer has broad support to lead the Law Center at this time. . . [Donald J. Foss, Senior Vice-President for Academic Affairs and Provost] said. “In addition to his strong reputation as a scholar, he has administrative experience and the trust and respect of colleagues.”

University of Houston news release, May 19, 2006.

Ray Nimmer was raised in a tough neighborhood in Chicago. Make that a very tough neighborhood. His childhood may have been an urban analogue of my own. Ray graduated from Valparaiso University with degrees in mathematics and law, and he was at the top of his law class and Editor-in-Chief of their law review.

I was on the Faculty Recruitment Committee in 1975. We had a full interview schedule, and Ray Nimmer was on the list. If he had graduated from an elite law school, Ray would not have been on our list, and we would not have been on his. Harvard, Yale, Chicago, or Columbia would have snapped him up, and we wouldn’t have had any chance to bring him to Houston. What attracted us to Ray wasn’t his first-in-class finish at Valparaiso Law School and his law review background. It was that he had published
four law books in his short time as a Fellow at the American Bar Foundation.

The interview almost didn’t matter. No one on our faculty had published a hardcover book, and here was someone with four. The committee voted to bring Ray to campus, he did not flunk lunch, and we offered him a job as Assistant Professor. To our surprise and great good fortune, Ray accepted. We did well. Thirty-five years later, he holds an international reputation as one of the world’s most productive scholars in several different fields.

Ray’s first year as a teacher was acceptable, but not applauded. Lack of applause challenged him to find a new way to teach Commercial Law, the subject I bombed in my first year back from Yale. Ray developed a problem approach that in a single year transformed him into one of the law school’s most popular teachers. A.A. White complimented him by saying, “We didn’t expect you to be a good teacher; we only expected you to do good research.”

Ray makes a point of not wearing standard professional garb. When he was Associate Dean, Ray wore open collars and gold chains, not ties. Some of his shirts got as much attention as George Hardy’s ties and sports jackets, but not for the same reason. George may have been oblivious to what he wore; Ray’s vestments, including polo shirts with dress suits, make a conscious personal and fashion statement.

As a faculty member, Ray added twenty more books to the four he had in print when we hired him. He is our most cited professor. I would guess most law professors access Westlaw, not to research legal questions, but to find out how many times their own works have been cited. It is easy to do. I doubt Ray has ever done it. He doesn’t depend on other people’s affirmation. A few years ago, I needed to see how many times Ray had been cited. I wanted a comparison, so I pulled up Harvard’s superstar professor Alan
Raymond T. Nimmer, Dean 2006-2013

Dershowitz. I don’t remember what the count was then, but today it is Nimmer, 8,400 and Dershowitz, 2,182. Other comparisons are; Lawrence Tribe, 1,871; our faculty alumna and Harvard Professor Elizabeth Warren, 2,071; fabled former UT Law Dean Page Keeton, 6,441; and Torts legend William Prosser, 3,661. Admittedly, none of these numbers stacks up to Second Circuit Court of Appeals Judge Richard Posner, who hit 10,000 when Westlaw stopped counting. But only Posner is in Posner’s league. In the decade after his first associate and interim deanships, Ray wrote books and taught at the Law Center and around the world.

Ray was so effective during his 2006 interim deanship that he was the faculty’s obvious and overwhelming choice for the permanent position after a routine search produced credible but not overpowering candidates to replace Nancy Rapoport. Ray had administrative experience, having served as Associate Dean for A.A. White, George Hardy, and Bob Knauss. He stayed in the background during his Associate Deanships, running the law school quietly and efficiently while the deans did what they were supposed to do—court alumni dollars, extract money from provosts, and hire brilliant faculty. Ray learned deaning from the masters, and he quickly became one of the strongest deans on campus. He successfully negotiated University approval for many quality-enhancing changes, including approval for a much needed new building (delayed indefinitely by budget cuts), higher admission standards, smaller student body, and setting tuition at an appropriate level a few thousand dollars below the University of Texas. Ray retired in 2013 shortly after USNews affirmed his success by again placing the Law Center in the top 50.

Ray was dean in challenging times. Current and projected market conditions indicate that the supply of new lawyers exceeds

362 UHLC Faculty meeting minutes of March 7, 2008.
the demand, and law schools need to cut back both to maintain quality and avoid producing too many debt-ridden graduates who cannot find suitable employment. Reducing student headcount affects the financial structure of the Law Center and requires re-thinking the school’s mission.

Some years ago, tax-supported universities received enough public funding to cover most of their costs. Tuition was correspondingly low. In recent years, public revenue as a percentage of operating cost has declined dramatically at state universities around the country. At the University of Houston, state formula funding now covers only 24% of budgeted expenses. Grant and contract fees account for 18% of the budget, auxiliary operations 13%, and capital funds 11%. Student tuition makes up about 34% of the budget.\footnote{University of Houston FY2011 Budget, \url{http://www.uh.edu/af/budget FY2011Budget.pdf}, last visited September 16, 2011.} Tuition and fees have risen astronomically.

In 2012, Texas residents paid Law Center tuition and fees of $28,129.80 for the year. That is about 12.5% less than UT Law School’s $32,010.\footnote{http://www.utexas.edu/business/accounting/pubs/tf_law_fall11.pdf} The cost of attending the Law Center now exceeds the advertised cost at South Texas College of Law, reported as $27,000.\footnote{http://southtexas.lawschoolnumbers.com/}

State support and tuition income leave a big hole in university budgets, and raising money from private donors is a necessary ritual. All major universities create foundations to receive and manage endowment funds and unrestricted donations. The foundations disburse the money as directed by the benefitted institution. The University of Houston Law Foundation managed

\footnote{http://southtexas.lawschoolnumbers.com/}
about $21,000,000 in assets at the end of 2012. That number standing alone is impressive, but when compared with other Foundations, it is less so. Based on published accounts and educated guesses, Harvard University’s endowment was valued at $27.6 billion in 2010; Rice University’s at $4.1 billion; and Texas A&M’s at about $5 billion. The University of Houston’s endowment is valued at about $500,000,000. The University of Texas Law Foundation is said to administer $165 million,³⁶⁶ roughly eight times the assets of the University of Houston Law Foundation.

An obvious function of the Foundation is to hold and invest endowment funds that are restricted to supporting specific chaired positions such as the A.A. White chair, the Newell Blakely Chair, the John Neibel Chair, and the John Mixon Chair. The Law Foundation does not budget expenditures, but Foundation Directors do receive and approve annually a budget presented by the dean. They expect and trust that the dean will use the funds in accordance with the budget presented to them. Dean Nimmer tries to preserve Foundation assets by shifting all possible expense items to the state budget. That requires both an understanding of institutional budgeting regulations and a good working relationship with the University Administration.

The Foundation is no longer free from University oversight. The University requested and obtained Foundation financial information in the late 1990s during Steve Zamora’s deanship,³⁶⁷ but did not immediately regulate or supervise the way Foundation funds are spent. University involvement increased when the University assumed payment of the Foundation’s salary and

³⁶⁷ Faculty meeting minutes of September 2, 2005, item 8.
expense obligations for law faculty members during Nancy Rapoport’s administration.

Nancy’s Support Agreement marked a watershed in university involvement in Foundation matters. Before then, the Foundation provided funding for chaired professors in two categories: salary supplements and discretionary expense accounts. Law Center accounting officers assumed that state restrictions on expenditures did not apply to either. When the University agreed to take over payment of professors’ supplements, state accounting restrictions technically applied to expense reimbursement although they were not immediately applied.

When Ray took office, the Law Center’s financial records were, in his words, a mess. When the opportunity presented, he appointed Mybao Nguyen, an efficient and responsible financial officer, with instructions to correct accounting discrepancies. One conclusion was that all Foundation expenditures made on behalf of the Law Center were now subject to the State restrictions.

368 Steve Zamora comments that “. . . Ray did a tremendous job in putting the Law Center and the Law Foundation on a good budgetary footing. Prior to Ray Nimmer’s deanship, Law Center budgeting was not very transparent, and Ray Nimmer made a concerted effort to change this. I remember at a faculty meeting during Ray’s interim deanship before I became dean, that Ray projected a complete budget onto a screen during a faculty meeting and went over the budget with us. That was a breath of fresh air that I tried to continue. In addition, during my deanship, the Law Foundation instituted a policy to restrict payouts on endowment funds, so that no more than 4 to 4.5 percent of restricted funds could be paid out for the purposes designated by the donor of the restricted fund [Explanatory Note by Marvin Nathan: This is a “Total Return Policy” that is intended to prudently cover distributions, inflation, and administrative costs, and to enable the endowment to grow.] The theory was that even a conservative investment strategy would earn above 7 percent earnings on investments, allowing the Law Foundation’s corpus to grow at a rate higher than inflation. This changed, of course, with the economic downturns that took place during Nancy Rapoport’s deanship, when markets crashed and the Foundation was forced to discontinue payouts for a time.”
The new accounting carried some disadvantages. When Don Riddle funded my professor’s supplement, Bob Knauss recommended that a portion of the money that I could have received as salary be put in an expense account for expenditures that related to my job. The purpose of this special allocation was to fund job-related expenditures without having reimbursements counted as taxable income. The arrangement made sense, and all chaired professors used their expense accounts for outlays such as job-related travel without having to use University travel agents and go through the other red-tape connected with state reimbursement.

We used our accounts to buy computers that were clearly job-related, but might also serve private email accounts and home budgeting. The computers were not purchased out of university funds, so they were not placed in the university’s property inventory. Few if any faculty members bought separate computers for marginal personal use such as email, letters, and web surfing. The expense account was useful for other job-related purposes. For example, I gave a modest bottle of wine for classroom speakers as an honorarium, and I invited my first year students to my house for an end-of-semester party in December and in May after exams. I charged the $150 annual cost of wine and the $600 annual party cost to my Foundation account.

The loss of flexibility was brought home when the Financial Officer began to apply State restrictions to professors’ expense accounts. State funds cannot be used to buy alcohol. In my case, the disability was costly. I ended up paying for the students’ end-of-semester parties and wine honoraria out of my own pocket. All told, I took a $750 per year reduction in after-tax income for several years because of loss of reimbursement flexibility.

University restrictions even affected preparation of this book. I had spent only a few dollars of my $5,000 expense account for the academic year 2011-2012 when I finished a first draft and
needed a professional editor. The director of the University of Houston’s Creative Writing Program recommended a Fellow employed in their program. The Fellow was authorized to work after-hours for pay, but when I tried to pay him, the Law Center’s Financial Officer told me I could not use funds from my expense account. There was no question about the legitimacy of the expense, and I had plenty of money in the account. The problem was that University regulations applied both to his fellowship and my State-budgeted funds, and his fellowship prohibited him from receiving additional income from the University. Accordingly, I could not get reimbursement from the account. By the end of 2012, my Law Foundation account was no longer under water, but solvency does not remove the restrictions.

During the interviews conducted for this narrative, I ran into several alumni who questioned the way Foundation funds have been used by deans over the past forty years. As far as I know, no one suspects outright theft, though there is always the possibility that unsupervised funds will be diverted to uses that would be embarrassing if made public. In the 1970s, for example, a low-level investment officer at the University of Houston gambled with University funds in the GNMA futures market, making forward commitments of $500,000,000 in the University’s name, and losing an estimated $17,000,000 in institution funds. Questionable use of University of Texas Law Foundation funds prompted the UT Law Dean’s “resignation” in 2011.

369 The expense was reimbursed when we discovered the leftover funds in the John Mixon Society account. Even that reimbursement is questionable.


This is an anecdotal and personal history, not an investigative report. Except for my very welcome salary supplement made possible by Don Riddle’s gift, I avoided learning too much about the Foundation or what deans and directors did with its money.

The Law Center fared well within the University since 2006, partly because the University hired a dynamic Chancellor and President with a vision of excellence for the entire University. This alignment puts both the Law Center and the University in the best position since Barry Munitz’s administration to achieve national significance and improve educational services. Five Law Center graduates serve on the nine-member Board of Regents for the University of Houston System, which is chaired by Carroll Robertson Ray, a 2002 law graduate. Members include law graduates Nelda Luce Blair, Jarvis V. Hollingsworth, Nandita V. Berry, and Jacob M. Monty. The student member of the Board, Tamecia Glover Harris, is a third-year Law Center student.

The hiring of talented faculty accelerated during Ray’s administration. Every person who joined the faculty in the past half-dozen years would be at home on any faculty in the country, including the acknowledged top ten. They are proven scholars, and they have established themselves quickly as teachers. These professors are current events, not history. Instead of describing them and their accomplishments in detail, I will say only that they are the foundation on which the Law Center will build the bright future we have always known was possible.

Six recent faculty appointments are pictured above.\footnote{Julie Hill graduated from Brigham Young University with Order of the Coif honors and was Clerk for Tenth Circuit Judge Wayne Brorby. Julie writes insightful articles about the hottest topic of the decade, Banking Law, with which she has been intimately involved from childhood. Gavin Clarkson, Harvard J.D. and Harvard Business School Doctorate in Business Administration, is a nationally recognized expert in Indian Law. Adam Gershowitz holds a J.D. from the University of Virginia, with Coif and Law Review honors. He was Judicial Clerk for Fourth Circuit Court of Appeals Judge Robert King. Adam has written eighteen law review articles in twelve years, including five prestigious placements, and, since beginning his teaching career in 2005, he has picked up a student teaching award every year. Jim Hawkins was Grand Chancellor at the University of Texas Law School, an honor bestowed for having the highest grade average at the end of two years, and he was Chief Articles Editor of the Law Review. Beginning in 2007, he has published law review articles at about a two per year clip. Zachary Bray, Yale Law graduate, Law Review Member, and Judicial Clerk for Judge Carolyn King, has already placed his article on Conservation Easements in \textit{Harvard Environmental Law Review}. Kellen Zale holds a J.D. from Duke Law School magna cum laude, and law review honors. She will specialize in real property, land use, and environmental law.}
Law Center faculty and the dean have some tough choices to make in the coming years. We had come to view enrolling some 300 first-year students chosen from thousands of highly qualified applicants as a permanent condition. But in 2011, applications across the country declined by 10.9% and, in 2012, by another 12.5%. The Law Center could fill its first year class only at a substantial sacrifice in LSAT and GPA qualifications. As dean, Ray chose to reduce entering class size to 252 in 2011 and to 212 in 2012. The evening entering class shrunk to 33 students to

Pictured in the Appendices with their specialty areas are other recent faculty appointments. Barbara Evans, Yale J.D., Stanford Ph.D., and UH Law Center LL.M., is co-director of the Health Law and Policy Institute and director of the Center on Biotechnology and Law. She is a master teacher and author of brilliant scholarly works. She had an amazing career living in Russia while working with the World Bank and a law firm. Jessica Mantel graduated magna cum laude from University of Michigan Law School, Coif, Contributing Editor to the Law Review, and was Law Clerk for Sixth Circuit Judge Karen Nelson Moore. Jessica Roberts graduated from Yale Law School, where she was Articles Editor and Book Review Editor on the Yale Journal of Law & Feminism. She had two consecutive judicial clerkships, one for Justice Wainwright of the Supreme Court of Texas, and one for Fourth Circuit Court Judge Roger L. Gregory. Both Jessicas add great strength to the Health Law program.

Sapna Kumar is a University of Chicago Law School graduate, member of the Law Review, Law Clerk for Seventh Circuit Judge Kenneth F. Ripple, and winner of the UH Law Center’s IPIL award. She adds youth, strength, and vigor to the IPIL and Property curricula. Jacqueline Lipton is a highly credentialed lateral appointment to the Baker Botts Chair. She holds numerous degrees, including Ph.D, LL.M., and J.D, from various universities and brings great strength to the IPIL program.

Bret Wells is unique. His academic background is sterling, with a J.D. from The University of Texas with Coif honors and fifteen scholarly articles, but what sets him apart is his experience as a lawyer and corporate executive. Of particular importance to the Law Center is Bret’s Oil and Gas and Tax Law experience, which will be invaluable in strengthening those two LL.M. offerings.

Photos of law center faculty: http://www.law.uh.edu/faculty/.

373 Dean’s Notes, September 14, 2012, email to faculty.
maintain credentials parity with the full-time class. In an unrelated event, several valued professors left for positions elsewhere. The class size reduction and loss of some $800,000 in income has generated a new debate over function, policies, and vision within the faculty. I can only speculate how the Law Center will fare in the new environment.

I am now a bystander. I have been a bystander for several years. Instead of worrying about Law Center funding, curriculum, admissions, or hiring, I occupied my spare time over the past ten years learning more about science, pop physics, and legal philosophy and playfully applying them to law, either directly or as metaphor.

Cognitive science, fMRI brain imaging, and evolutionary biology directly relate to law. During the past decade, we have learned a lot about how the brain works when it commits to contract obligation or decides to rob a bank. Law’s assumptions about criminal culpability, sanity, contract intent, and consent are based on centuries-old, often incorrect notions that need to be revisited. Some exciting research is occurring in the Texas Medical Center that should be incorporated in the Law Center’s activity.

Complexity Theory challenges the notion that events in the physical world can be described and predicted with Newtonian accuracy. Lawyers are called on to predict, as Holmes said more than a century ago, but law, in a grand scale, and even particular legal disputes are fundamentally unpredictable because law is not a linear system that can be described in simple reductionist terms. Law is, instead, a complex dynamical system. Such systems present the problems of inability to determine initial positions, managing strange attractors, dealing with emergent forms, and avoiding catastrophe. I saw an application of this new science to Land Use Zoning, which is based on the pre-complexity notion that reductionist planning can predetermine and control land uses by
zoning regulations as if those uses obeyed the rules of linear, not complex, systems. A student and I wrote a law review article concluding that current zoning and planning notions that employ linear reasoning to create zoning maps and regulations based on conventional planning cannot reliably be used to manage dynamical land use activity.

Language and linguistics also have intrigued me during the past couple of decades. Linguistics is at the core of communication and legal thought. Yet, like the fish who may never know water, language is so much of who we are and what we do that it seldom gets the attention it deserves. In an article dealing with environmental sustainability, I recently described linguistic differences that make communication about environmental sustainability difficult, if not impossible.

The Young Turks wanted to bring economics into law school to help in policy analysis. That ambition has been fully realized. During the past fifty years, law schools have taken great interest in economics study, often of the neoclassical variety. Ignoring the shallowness of my credentials in the subject, I wrote an article blasting neoclassical economics courses taught in universities for teaching sociopathic pursuit of profit as acceptable behavior, even when it contributes to disasters such as the subprime mortgage crisis that destroyed the world’s economy.

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And then, as suddenly as it began, my law teaching ended. When this manuscript is finished, Judy and I will climb into our Sprinter travel van\textsuperscript{377} with our Wire Fox Terrier and spend a lot of road time in national parks and Wal-Mart parking lots. I won’t worry about the Law Center. It is a mature institution that magnificently fulfilled A.A. White’s vision and even satisfies Dan Rotenberg’s ambition “to hire people who are better than we are—people who wouldn’t hire us.”

THIS IS TOO MUCH PRESSURE.

NO WAY I CAN ANSWER ALL THESE!

HEADS UP DUDE—PROFESSOR ASKING JUST ASKED YOU A QUESTION.

ABOUT WHAT??

CURL! CURL!

NO CLUE. I JUST HEARD YOUR NAME.

MAYBE IF I IGNORE HER SHE'LL THINK I'M TAKING NOTES.

CURL! CURL!

SHE JUST ASKED YOU AGAIN, MAN! FOUR TIMES I'M SURE.

STILL HER NAME I GOOGLE IT.

CURL!

PROFESSOR? WE COULDN'T HEAR THE QUESTION BACK HERE—COULD YOU REPEAT IT?

CURL! CURL! CURL!

I ASKED ZIPPER TO MAKE YOUR MAJOR GREENHOUSE GASES.

WATER VAPOR, CO2, OZONE, AND METHANE.

UGH...

YOU OWE ME A PLAIN.

IF THAT KEEP UP I'LL NEVER GET THROUGH MY EMAIL.

CURL! CURL! CURL!
CHAPTER 22. LAW STUDENTS, 1947-2012

Mixon, the only bad thing you can do to students is bore them.

Thomas Milton Johnson, Student, 1964

Try reading a book while doing a crossword puzzle; that’s the intellectual environment of the Internet.


Alumni often ask whether law students have changed through the years. The loyal response is that the questioner’s class was one of the best, and today’s students are very, very bright, have great pre-law credentials, and will be great lawyers. That said, there is a different answer that expands the loyal declaration somewhat.

Dean White’s founding students from 1947 to 1956 were spectacular before they came to law school, in law school, and after law school. His admission standards ensured that they were able to

378 Another Tom Johnsonism was that no professor should be allowed to teach a course more than three times because they forget where the hard parts are.
learn law, and rigorous classroom instruction guaranteed that they did. The early students were upwardly mobile, and many were the first degree holders in their families. Most students in the very first classes were World War II and Korea veterans who wanted to make up for the years they had spent in uniform. Military experience gave them confidence and a no-nonsense attitude toward their studies. A few early graduates, including Royce Till and John Kolb, landed jobs with elite firms, but most did not have that opportunity. Undeterred, they confidently opened their own law offices, often with great success. Richard Haynes, Donn Fullenweider, Ray Fortenbach, Marian Rosen, Sybil Balasco, Leonard Childs, and Jack Trotter were among the early graduates who formed their own firms and matched or outstripped competitors from the University of Texas, Baylor, and SMU. One of the first graduates to find employment out of state was my classmate, Andrew Belansky, who succeeded grandly in California law practice. These early graduates set a tone of independence, self-reliance, and toughness.

The night school was a valuable recruiting tool for capable students who were not sure they wanted to commit to law school. One top-of-the-class graduate, Mike Willatt, describes it this way.

I lived in Baytown and rode to the Shell Chemical plant in a carpool with some other guys, one of whom was Tom Reese. Tom was a lab assistant at that time. He had scoped out what was necessary to get into the law school. Tom said that he was going to enroll on Saturday morning. I asked him how that worked and told him that I would go with him. When I went to pick him up, his wife [said] he could not go that day. I went and filled out an application with a nice lady in the outer part of the Dean’s office and I was in. It took Tom a few more years to apply.
When Newell Blakely became dean in 1956 and dropped admission requirements to the bare minimum of ninety hours of college credit and a C average, he produced a student body with wide variations in quality. We enrolled some very good students who became top flight practitioners, but they were evenly matched by classmates who were far less talented. Particularly in first-year courses, professors pitch their material to the middle of the class. That meant some top students were not challenged and a fair number transferred, mostly to UT.

One top student, Stuart Nelkin, transferred to NYU for a different reason, and his transfer was good news and bad news. The good news was that NYU was willing to accept our student as a transfer, even though we were not a member of AALS. The bad news is we lost an outstanding student who began to study law almost by accident.

Stuart had been accepted to medical school, but on his way to buy a microscope, he realized medicine was not what he really wanted to do. He visited with John Neibel and sat in John’s law class. Stuart was fascinated and asked whether he could enroll without an LSAT score. John agreed to conditional admission, requiring Stuart to withdraw if he didn’t make an acceptable score. There was no risk; we required the test, but did not use the results for admission. Stuart spent his first year in a hot contest with John O’Quinn for top-of-the-class rank. Stuart decided he wanted to be a law teacher, and Burt Agata advised he would be better off going to an East Coast school. With Burt’s personal push, NYU accepted Stuart and transferred his law credits. Stuart had easily qualified for law review at UH and his grades qualified at NYU, but the review officers did not like the fact he was a transfer student and offered irritating excuses for denying him membership. Stuart satisfied his NYU writing requirement by producing a research paper that so impressed the professor he recommended that the law review publish the paper as a non-member comment. The paper went to the
review, which took a long time to respond. Meanwhile, Stuart worked with a law firm, and a firm member advised him to submit the paper as a law review article. He did, and *Georgetown Law Review* accepted it for publication. When the NYU law review finally contacted Stuart to talk about publishing his piece as a student article, Stuart gave a reply that is not printable.

John O’Quinn, Stuart’s classmate, graduated in 1966, and he was an obvious open-admission success who was given an opportunity to overcome his poor academic record. There are other stories that are not so inspiring. Although we flunked out half the entering class, some weak students struggled through. For several years, most of A.A. White’s graduates had passed the bar on the first attempt, and all passed on second try. Our high pass rate on the bar examination suffered after Newell instituted open-admissions, and the school never regained its early bar exam dominance.

The pre and post-1956 comparison will not sit well with graduates who entered after 1956 and survived Newell’s Darwinian system. It certainly is not fair to those who achieved mightily—and a large number did. Their successes eventually caused local law firms to take note and hire our top graduates.

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379 A glance at the mastheads of *Houston Law Review* brings to mind both the student success and professional success of, to name a few, Dan Matthews, Mike Willatt, Don Gaucher, Darrell Morrow, Marvin Nathan, Eugene Cook, Gerald Adler, Paul Martin, Larry Pirtle, Bobby Young, John O’Quinn, Alvin Zimmerman, Wendell Alcorn, Taylor Hicks, Ron Robbins, Randal Hendricks, Marjorie Caldwell, Mike Baker, Steve Segal, Mel Cockrell, Richard Petronella, Charles Baxter, Carol Dinkins, Mike Cenatiempo, Jan Baker, Michol Craft, Laura Gasaway, Marjorie Wilhelm, Adele Black, Roger Rider, Ken Fenelon, Edward Hartline, Charles Parker, Bill Maynard, and Susan Crump. Along with Don Riddle and David Berg, all of these students survived Newell’s Darwinian Law School, and succeeded grandly, first as students, and then as lawyers.
State support in 1963 brought both the perception and the reality of a stronger school, and our new status attracted better students and produced a greater number of very capable graduates. Some of Newell’s students rivaled A.A. White’s best. Many joined first-rate local firms after graduation. Eugene Cook, a future Supreme Court of Texas Justice, and trial lawyers Don Riddle, Marvin Nathan, John O’Quinn, David Berg, Mel Friedman, and Mike Maness were among this group. Wendell Alcorn, a 1969 graduate, was one of our first graduates to be hired by a Wall Street firm. Don Riddle, Bobby Wayne Young, and Larry J. Doherty broke into high profile trial practice with the top local plaintiffs’ firm, Brown, Kronzer, Abraham, Watkins, and Steely. Tragically, Bobby Wayne Young and Robert Steely died in a suspicious airplane crash while working on a case.\footnote{The firm was working on a big case involving an airplane crash. The private plane Young and Steely were flying had traces of sugar in its gas tank. Robert Steely’s son, Clay Steely, graduated from UHLC in 1994.} Bobby Wayne had registered at UH in 1963 as second choice to UT, and he transferred to UT after his first semester. He returned to UH in 1964 after finding the transfer experience disappointing.

After Bobby Wayne’s death, the firm followed Don Riddle’s advice and persuaded John O’Quinn, who was then an associate at Baker Botts, to join the firm. John became a spectacular plaintiff’s lawyer. John, Don, and Larry celebrated their success by making major gifts to the law school.

We were delighted when Marvin Nathan accepted an offer from the Justice Department’s Honors Program after graduation. He has been a very successful attorney and faithful supporter of the Law Center ever since. David Berg, Mike Maness, and Mel Friedman became noted defenders of unpopular causes and clients. Mel did so much work out-of-state that he bought an airplane and
learned to fly. Unfortunately, a back-seat passenger got angry at Mel and shot him while he was piloting the plane. Free speech lost a great advocate along with Mel’s homicidal passenger in the crash.

The College of Law continued to serve students who worked to cover education expenses. For example, Raul Gonzalez, a 1966 graduate, worked in the law library to cover his law school expenses. After graduating, he worked as an Assistant Federal District Attorney in Tony Farris’ office, and he was District Judge, then Judge on the Texas Court of Appeals. In 1984, Governor Mark White appointed him as the first Hispanic judge of the Supreme Court of Texas. Raul was a distinguished Justice for fourteen years before retiring into private practice.

Dean White saved one of the school’s most successful law graduates from academic disaster. As David Berg describes it, “Dean White. . . . called me in after my contracts final, accused me (quite accurately) of using Gilberts study (‘You listed issues, you didn't analyze them’) and left me seriously chastened.”

David cleaned up his act, obtained his degree, and two years later he was our first graduate to argue before the Supreme Court. David’s career deserves to be told in a book, which he is now writing. One of the stories he will tell is that he and Stuart Nelkin were together in Washington, D.C. when they learned they had passed the Texas Bar. They didn’t

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381 After several months of searching for verification of this recollection, I finally got David Berg’s confirmation. The passenger was, by both of our recollections, Mel’s girlfriend.

have airplane fare to go to Austin to be sworn in, and Stuart suggested they go before a Notary Public in Washington. David responded, “Why a Notary Public? Let’s ask a Supreme Court Justice.” When Stuart asked the obvious question, David said, “I thought up the idea. It’s up to you to call the Court.” They picked the newest Justice, Thurgood Marshall, who said he would like to do it, but wasn’t able because he also had not yet been sworn in. He recommended they call another Justice. Encouraged, they phoned Abe Fortas, the next junior Justice. Fortas agreed, but asked them to keep it quiet. When they arrived for the event, David and Stuart ran into several other Texans who overheard them talking about the plan. They also showed up. David confessed the leak to Justice Fortas, who laughed and said he would swear in the entire assembled group. So they had a major ceremony. At the end, Justice Fortas stood around looking uncomfortable until somebody asked whether they could take a picture with him. He responded, “I thought nobody was going to ask.”

Not all stories have happy endings. A 1967 graduate had a short career when, a few days after he was sworn in, his first client paid his fee in stacks of currency with the bank wrappers still attached. Halfway into the interview, the Feds walked in and arrested the client for robbery and the newly licensed lawyer for receiving stolen property. State Bar records show his current address as Seagoville, Texas, where the Federal Correctional Institution is located. I was not surprised at that outcome.

I was surprised and disappointed with the fate of a 1965 graduate I predicted would someday be governor of Texas. He was very talented and had a great political sense. He and his beautiful wife would have charmed voters in any election for any office, just as he charmed juries to free his criminal practice clients. That was his problem. Fascination with the burglary game lured him into organizing and directing a ring of thieves. Before he was caught,
prosecuted, sentenced, and disbarred, someone fired a gun through his window with a shot that put his wife in a wheelchair forever.

The few bad apples did not spoil the fact that, by the end of the 1960s, the College of Law had gained a good reputation for training lawyers, but it was well behind competitor schools in placing graduates with prestigious firms. That disadvantage diminished when local firms found our graduates were more presentable than radicals from other schools during the tumultuous Vietnam protest years.

The Protest Years were characterized by the sheer energy of hundreds of thousands of young people who were driven by demands for change. I enjoyed the really outrageous students of the late 1960s and early 1970s. Before then, students were content to learn law through Langdellian case study, and they readily accepted the shallow justifications we offered for black letter rules. They absorbed “thinking like a lawyer” as a sort of religion. That benign acceptance changed in response to the generation’s strident demands. When protest students asked why, they were not satisfied with rationales the system offered. The Protest Generation wanted to know why an insensitive government was drafting them to be killed in a faraway war that did not directly threaten their homeland. They saw Vietnam was a Korea-like quagmire long before Richard Nixon had the good sense to declare victory and get out. They asked why about a lot of other things as well. Why was one drug, alcohol, privileged and legal, while others weren’t? Why were the jobs for women lawyers limited to domestic relations practice?

The protest generation did not see why students, but not faculty, should be graded. They issued a nonnegotiable demand to evaluate faculty and post the results. Many faculty members were outraged, but they saw no way to stop it. Ironically, the Associate Dean now has to plead with reluctant students to fill out their evaluation forms, indicating the law school eventually co-opted
faculty evaluations for its own purposes and students are no longer interested.

Protest students rejected John Austin’s “command of the sovereign” definition of law by questioning the command itself. For draft-age students, that command was going to get them shot in a rice paddy. They had no use for Wechsler’s neutral principles. They knew law was not neutral, and studying Langdell’s case method delayed them from changing society by organizing the poor and burning buildings. We did not have anything to offer but a draft deferment and whatever authority bar admission provided.

I wore bell-bottoms in the 1970s, took off my tie, and grew a beard. I inhaled, but not much. I was in sympathy with some student demands, but along with other faculty, I did not have much to offer them. We certainly could not teach students of the 1960s and 1970s how to cure societal evils. In the long run, though, their law training served them well. When the Vietnam War and the draft ended, protesters graduated and turned to more conventional enterprises. For example, law student Ann MacNaughton was a member of Students for a Democratic Society (SDS). She organized rebellious students and challenged every authority in sight during undergraduate and law school. But she also made good grades, graduated, practiced law for a major oil company, and now serves as a financial consultant. One of her clients in retirement is Sidney Buchanan, who recommends her services highly.
Another female student, Michol O’Connor, endured an adjunct Torts professor’s sexist comments for half a semester in silence. But when a male student commented that the class had been studying the “reasonable man” standard all year, and asked, “What about women?” Michol jumped up, stood on the desk, and said he was right to raise the question because women are not as smart as men and should be held to a lower standard, the “reasonable woman” standard. If there are different standards, Michol’s success suggests that the standard for women is higher. After graduation, she worked for a time with the city’s top personal injury firm, served as an assistant U.S. attorney, spent years as an appellate judge, and in her spare time wrote the definitive books on Texas Practice. The success of her own books prompted Michol to establish one of the most successful independent law book publishing companies in the country. Michol never lost the edge that characterized the protest generation. She once sued her own court to require it to file her dissent to their refusal to consider a case en banc.

Charles Jacobus is a 1973 graduate who followed the traditional path to success. Chuck loved Real Estate Law, wrote a book on Property Law shortly after graduation, practiced successfully, taught Real Estate Transactions as an adjunct professor for years, and received the State Bar of Texas’ Real Estate Section’s Lifetime Achievement Award in 2012.


The protest era ended the notion of universities as *parens patrae* for all time. Federal legislation passed in 1974 prohibits educational institutions from releasing information about grades or class standing to prospective employers and even to parents without the student’s express consent. This is undoubtedly better policy than posting grades by name in the hallway, but the privacy policy, as implemented at the Law Center, hinders professors from getting information about individual students’ record for legitimate purposes, such as job recommendations. It also disables us from contacting parents when students show signs of serious mental illness. Irene Rosenberg and I broke the law in the mid-2000s and contacted the parents of a student who was showing obvious signs of decompensating into serious mental illness. They confirmed his schizophrenia and said he had come home needing immediate treatment. They appreciated the call.

The protest years generated a lack of trust that seems to have left students and professors viewing each other as anonymous entities, or even as enemies, instead of as sympathetic humans with a joint purpose. For example, the practice of grading exams by number began in 1947. The purpose was to insulate professors from the identity of the writers when grading essay answers, but the concern was that they would favor a writer they knew, and not any assumption of animosity. The student number list was publicly available in the faculty suite, so compliance was voluntary and loose. When student rebellion indicted faculty along with all establishment icons, the exam number system became an impenetrable shield protecting them from supposedly vindictive faculty members. Staff members now act as temple guardians that keep the information locked up from faculty. I think the combative

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385 Family Educational Rights and Privacy Act of 1974 (FERPA or the Buckley Amendment), 20 U.S.C. § 1232g, with implementing regulations in title 34, part 99 of the CODE OF FEDERAL REGULATIONS
relationship that emerged from the protest years diminished the mutual respect and acceptance that a student’s function is to learn, and the professor’s function is to teach.

Those years changed faculty as well as students. We lost some of our formality and mystique. Few professors now require students to stand and recite. We turned more to lecture and explanation, and we are less demanding about preparation before class. Publication came to be more important for promotion and tenure than teaching capability.

In 1971, when the social policy movement was sidetracked, Bates College of Law did not entirely return to Langdell’s Formalism and John Austin’s Positivism. Teaching was competent and students were reasonably satisfied with their instruction. Students knew little and cared little about their professors’ continuing struggle over the soul of the law school. Opening the second teaching unit destroyed the Turks’ hope for dramatic improvement in admission credentials, but we continued to screen first year students and the student body improved overall. Selective admissions introduced a need to avoid unfairly excluding minority applicants. As entering qualifications gradually improved, the flunk-out rate declined, and we became a solid public law school with ordinary complaints and responses.

The military draft ended in 1973, and the Vietnam conflict wound down in 1975. Almost overnight, students accepted our benign doctrinal explanations for why rules of law were what they were, and we went back to playing our traditional roles. Students put on shoes, cut their hair, put on bras, and willingly studied Langdell’s cases. They seemed reasonably content with the notion that, if their grades were high enough, they might get a job with a big downtown firm. Those ambitions were now more realistic.
The foothold we gained with local and statewide firms in the early 1970s grew stronger over the next forty years. A.A. White and Mike Johnson moved the school back to the Realist path, and law students responded well to George Hardy and Bob Knauss’s expanded curriculum. Faculty also experienced a new sense of freedom with an unwritten rule that, so long as a professor took care of the minimum course load, she/he could teach any seminar or substantive course on an experimental basis.

The new law building, AALS admission, George Hardy and Bob Knauss’s deanships, help from Fifth Circuit Judges John R. Brown and Carolyn King, and support from alumni and other friends in the local and statewide community produced the heady top-50 ranking in US News that enabled the Law Center to attract even better applicants and produce an abundance of highly qualified graduates. Students’ major complaints focused on non-responsive administrations, occasional bad teachers, and, for some, slim job opportunities. These are good, healthy concerns.

As the second-ranked school in Texas, our primary competitor for top students was UT, and our student body reflected our ranking in the top twenty state-supported law schools. Employers took note, and students were confident and reasonably content. That was about to change as University support for the Law Center diminished along with Law Deans’ attention to rankings.

Allison’s 2001 storm did not dampen student enthusiasm as much as the unrelated drop in US News rank. The decline reduced the school’s attractiveness for Texas students, and the Law Center lost ground to SMU and Baylor in the race for consensus second place in the State. A nationwide increase in law school enrollment and a modest recovery in US News ranking between 2006 and 2011 brought better-credentialed students to the Law Center, and a supportive university administration improved prospects for the future. Unfortunately, economic recession has diminished
employment opportunities locally and nationally. The Law Center responded to the new reality by admitting a much smaller class in 2012. This move has prompted new faculty debate about the role and mission of the school that is reminiscent of the long-running dichotomy between the A.A. White and Newell Blakely supporters.

There is a growing realization that legal education may not be a good buy in today’s market. Today’s law students will not earn as much income as the previous generation. They will graduate with more debt because diminished taxpayer support has brought a dramatic increase in tuition. Although seductive student loans soften the immediate impact, many graduates will find their legal education does not provide the earning power required to service their student debt.

Some increased costs in legal education result from nationwide reduction in professors’ classroom commitments to enable greater publication. I have mixed feelings about this tradeoff, although it is the inevitable consequence of what I championed in 1962. It is a pattern no single school can buck without falling to the bottom of the academic heap. To its credit, the Law Center maintains its own tuition at a significantly lower figure than similarly situated schools. The $4,000 differential between Law Center tuition and UT Law tuition amounts to a $12,000 saving over the three years of study.

One reward of longevity, both for schools and professors, is seeing the institutional continuity that comes from successive generations of law students and lawyers. For example, Vern Thrower and I were classmates. I later taught Vern’s two sons, Greg and Lynn, and granddaughter Lilly, and saw them graduate from the Law Center. Knox Askins graduated in 1962 and his son Clark in 1999. Randal Hendricks graduated in 1970 and his son Bret in 2003. Larry Pirtle, Marvin Nathan, Eugene Cook, and Don Riddle graduated in 1966. Daughters Karen Pirtle and Laurie Cook
graduated in 1988, Nicole Nathan in 1995, and Don’s son Todd Riddle in 1994. Robert Frank graduated in 1974, and his daughter Jennifer in 2009. Judge Ross Sears counts six family members as alumni. These strong family connections create a sense of community and vote of confidence in the institution that provided their legal education.

Carroll Robertson Ray represents a continuity of a different sort. Her grandfather, H. R. Cullen, is the patron saint of the University of Houston, and her mother, Wilhelmina (Cullen) Robertson, graduated from the University of Houston. Her father, Corbin J. Robertson served as a UH Board Member and Athletic Committee Chairman. Carroll graduated from the Law Center in 2002 with Coif and Law Review honors, and she was named chair of the UH System Board of Regents in 2010.

Today’s entering students present the best pre-law credentials since A.A. White’s first classes. Although there is often no direct correlation between individual LSAT scores and individual law school success, there is a class-wide correlation between ability and performance. Ten years ago, I would have fearlessly predicted that these students and their contemporaries would enter law practice with the most sophisticated perspectives of

386 Judge Ross A. Sears, J.D. 1970; John Terry Sears, J.D. 1973 brother (Deceased); Mariann Jensen Sears, J.D. 1983, Wife; Vickie Sears Frank, J.D. 1990, daughter-in-law; Ross A. Sears II, J.D. 1991, son; and Terry Harold Sears, J.D., 1994, son

any prior generation of law students and the greatest chance for professional success. The prediction would have been self-serving because legal education at the Law Center and around the country appears to be what I pushed for a half-century ago. Now that these ambitions have been realized, I am not so sure about the outcome. My uncertainty comes from observing that both law students and legal education have changed dramatically.

Legal education is different now. It is kinder and gentler. The Law Center handholds first-year students by providing tutors who did well the previous year, and some students claim a privilege to sit quietly without participating in classroom activity. We used to play interactive classroom games with faith the procedure itself would magically impart understanding of law and train students to practice law after graduation. It does not work the same way today.

The new generation of law students has been raised with computers, cell-phones, texting, and Twitter’s 140-character shorthand that they bring to class as electronic companions. Student brains work differently from their predecessors on that account. In wired classrooms, more than three-fourths of laptop users occupy their screens intermittently or constantly not with notes but with internet trivia totally unconnected with the material being covered. The great philosopher Gary Trudeau depicts today’s college classes accurately with the Doonesbury cartoon strip that introduces this chapter. Zipper makes it clear that the professor is the distraction when the student character says, “If this keeps up, I’ll never get through my email.” Banning computers from classroom

388 http://www.abajournal.com/news/article/study_58_of_2ls_and_3ls_using_laptops_in_class_were_distracted_more_than_ha/

use can’t eliminate cellphone texting that may distract students even more than internet surfing.

Computers are marvelous devices, but I do not think they always facilitate critical thinking. Online information makes superficial rules and answers so available and easy to find that students, and eventually lawyers, will inevitably shift their inquiry from the complex questions “Why is this the rule, does it produce good results, and does it make sense in this context?” to the simpler questions “What is the rule, and how does it answer the immediate question?” If true, this shift in basic orientation will eventually diminish societal and personal responsibility for legal outcomes and discourage periodic rethinking of contextual justifications for particular laws. Wikipedia-type nutshells may even lead to unexamined acceptance of any declaration of easy-to-apply authority. I doubt that today’s law students worry much about what law ought to be. Instead, I think they are content to find online rules that, once found, carry the same authority that first graders accept in flashcards that declare 1+1=2 without understanding that this answer works only in a base 10 system.

Students who limit their inquiry to online rules are acting rationally if their only goals are to get through law school with minimum effort and pass the bar. The danger is that on graduation, they will stumble in the practice community of lawyers and judges who expect them to work through legal problems the way an earlier generation of lawyers did, and to use rules, statutes, cases, politics, and policy reasons creatively to solve real problems. The ability to solve complex law problems cannot come from outlines and online searches that present law as a simple linguistic statement or mathematical construct that purports to be authoritative. Remember that, when Paper Chase’s law student, James Hart, found Professor
Kingsfield’s notes, he discovered they contained questions and doodles, not answers.390

Learning law in depth requires reflection on the raw materials of law found in cases and statutes, rigorous classroom exchanges, heated arguments in study groups, hallway discussions, bull sessions, and beer hall fights over principle. All thought is a product of physical activity in the brain, and new data is stored as neural patterns in the cortex, where it is available for reflective thought. After new information is stored, the brain talks to itself, calls up the stored information, reflects on it, and re-stores it. The re-stored information is not recorded in the same neural patterns from which it was called up. It is instead recorded in a new set of neural patterns that have been physically changed by the act of reflection. For centuries, writers, thinkers, and lawyers have dealt with tough problems by calling up stored data, working with it, sleeping on it, and re-storing it in changed form.

I believe reflection on fundamental issues in law does not occur as much in students’ brains today as it did fifty or even twenty years ago. Nicholas Carr’s book, The Shallows: What The Internet Is Doing To Our Brains, explains that computers and electronic gadgetry have altered the way our brains work. Carr says today’s students regard their personal computers’ memory and the information available on the internet as extensions of their own brains. In short, if information is available online, students treat it as if it were present in their own heads. They do not see a need to clutter their minds with data they can easily pull up and paste. That means that, instead of storing and reflecting on law problems, students just make a mental note of where short answers can be

found in nutshells, predigested briefs, other students’ outlines, and Wikipedia’s one-page summaries of complex legal philosophies. 391

There is nothing new about law students’ search for shortcuts, but fifty years ago, the classroom itself imposed a learning inefficiency. Just as the QWERTY keyboard design slows typists, 392 students could not satisfy classroom questions by reading canned briefs or a laptop screen. They had to prepare for rigorous classroom questioning. By contrast, in today’s relaxed classroom, forewarned students pull up predigested briefs accompanied by answers to questions the professors is likely to ask. A student can hide complete ignorance by reading aloud from a laptop. How I wished for a similar tool when A.A. White called on me to recite *Palsgraf*. But when I remember the hapless student who recited in Newell’s class from a canned brief, I am glad I didn’t go through law school that way. Nor would I want to hire a lawyer who did.

My 2002 experience with wired classrooms convinced me that multitasking is a myth. Nicholas Carr’s quotation at the beginning of this chapter supports my intuition, as does Gary Trudeau’s cartoon. There is only so much attention a human brain can spare in a given moment. If a student’s attention is split between online poker and the rationale for unconscionable contracts, something has to give. It will not be online poker. Texting is as out of place in class as behind the steering wheel. I admit to some bias. A texting teenager rammed my car at a traffic light, and

391 Rice Architecture Professor Nonya Grenader voiced the same concerns about architecture students in our conversation on March 31, 2012. Students can use computer-assisted design programs with great facility, but they have trouble producing design concepts that are not already part of somebody’s program. A Vinson & Elkins partner remarks that too many new associates have a difficult time dealing creatively with law problems, even though they made good grades in school.

another almost ran me down when I was walking across Kirby Drive.

David Crump may be right in saying “There is too much Yale” in my narrative about the Law Center. He would focus more on training our students for practice than on what elite schools do. His point of view is supported in a 2012 article, in which former dean Nancy Rapoport distinguishes between three categories of law schools: elite, modal, and precarious. She cites the Yale model as appropriate for students with superb academic backgrounds who can learn law on their own and learn the details of practice on the job. She identifies UH Law Center as a modal school whose students’ pre-law academic records and access to elite employment are less strong, and for whom the Yale model is inappropriate. Nancy and David’s observations reveal a paradox. Modal law schools such as the Law Center that want to achieve higher rank now do so by hiring elite law graduates as teachers, and these teachers replicate their own classroom experience when teaching. These teaching methods, though acceptable in an elite school, may not be effective for students in a modal school as visualized by Nancy and David.

The disturbing result may be that the more a modal school tries to emulate the elite schools, the less effective it is at producing competent lawyers. I have found that students during the past ten years or so at the Law Center acted more like elites and less like modals. For example, a surprising number of students decided not to

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394 Nancy recognizes that generalizations are unreliable. Consider Judge Evelyn Keyes, who graduated Magna Cum Laude and Phi Beta Kappa from Sophie Newcomb College, then earned M.A. and Ph.D degrees from both The University of Texas and Rice University before obtaining her law degree from the Law Center in 1987. She is not alone in having pre-law school credentials worthy of any elite law school.
buy the casebook for my courses on the assumption they were not
going to read it. One student panicked when I said at the end of the
semester that the printed casebook was essential for the open book
exam because questions were keyed to it. I lent her a spare. When it
was returned, it was extensively hi-lighted and tabbed. I wonder
whether the student read those cases or took a colleague’s book and
duplicated the highlights and tabs.

What is the outcome of computer-influenced law study at a
modal law school? Students who rely on Wiki rules will graduate,
practice law, judge, and legislate. Their shallow skills may get them
in trouble in their early years of practice in a world where law
practice requires creative use of doctrine, not quick and easy rules
from the internet. But any practice disability may be short-lived.

If shallow thought works more than half of the time, it will
become the practice norm of the future. The practice norm will
quickly become the judging norm, and judicial clerks will produce
Wikipedia analyses for their judges who will in turn generate
superficial opinions. The clerks’ ability to cut and paste will make
future judicial opinions longer, but less valuable as thoughtful
precedent and policy guidance.

Legal education will adapt to the new reality. Electronic
communication and access to stored data are here to stay. There is
no way to reverse mental conditioning that makes students view
computers as an extension of their own brains. Young professors
will have little difficulty dealing with binary brains, inasmuch as
they are already conversant with and sympathetic to electronic
capability. Old professors will retire and die. The challenge for the
young generation of law teachers is to develop new ways to use the
technology in legal education. The old system won’t work. Texting
is more fun than Socratic discussion, and students can withdraw into
their laptops and virtual worlds anytime. Traditional classroom
discussion may have to give way to a classroom that focuses on out-
of-class problems that students address in class with the electronic tools that, after all, have instant access to the world’s storehouse of relevant data. Casebooks may be passé.

If a holistic, complex, dynamic view of law is replaced by binary Formalism, then law may indeed function in the next generation much as Newell visualized it sixty years ago. “The law” in a particular subject area will become a simplistic extension of accepted rules, like the rule that rotten eggs, but not good eggs, float. Lawyers will become more like engineers and mechanics who apply the laws of physics without questioning them. If law is treated as a branch of applied science as Langdell visualized, then law will come to exist as it is expressed symbolically—as a logical, reliable, and knowable system with “if, then” connectors that produce analytically correct answers.

If facts are the only variable, and if they are classified and put in acceptable categories, then a binary program can produce an answer without reflective thought. Judges and lawyers need not stop and ask whether the logical outcome conforms to societal needs, justice, common sense, or the “Aw, come on, now” rule. The rule is the rule, and the rule provides its own justification. With instant analysis, judges can handle a dozen cases in the time now required for one, and long opinions can be produced by the “cut and paste” Microsoft Word function. There is really nothing left for the judge to do. If there is nothing for the judge to do, there is nothing for the lawyer to do. Online, do-it-yourself forms already threaten lawyers’ monopoly on office practice (and the inept user’s fortune), and online pleadings are on the way.

This assessment indicates that, although the Realists won in the short-term, they may lose in the long term. Newell Blakely’s lawyer, for whom law is a set of formulaic rules, not Holmes’ man of economics and practical reason, may be the lawyer of the future.
Law Students, 1947-2012

Treating law as nothing more than information may not be a bad thing. Traditional legal research is so time-consuming that almost no client outside Fortune’s 500’s circle can afford to pay for it. The old fashioned way of reading cases has, as Grant Gilmore noted in the 1960s, begun to break down because of overload. Any retrieval system brings up far more cases than researchers can absorb in a reasonable amount of time. Westlaw can spew out hundreds of cases on almost any area of law. The temptation to run up billable hours makes arguments more and more sophisticated and complex. Judges issue longer and longer opinions because “cut and paste” makes production of pages and pages of computer generated text easy. An auto mechanic does not need to know physics or engineering to replace a spark plug. It may be that traditional legal study over-trained its products, to the detriment of the consuming public. If computer-driven law provides a faster answer to legal problems and disputes, it may be a good thing.

If law becomes a computer program, the important question is “Who gets to do the programming?” It makes a great deal of difference whether the programmer is Democrat or Republican, right or left, Tea Party or Pelosi, Scalia or Ginsburg.

The Realists were too optimistic when they thought judges were a more reliable source of good social policy than legislators. In Texas today there is no substantial difference between the political orientation that drives legislators and the political orientation that drives the Supreme Court of Texas.

In my last oil and gas class, I made a rough count of Supreme Court of Texas cases where landowners sued oil companies claiming lease violations. My recollection is that the pre-

1988 Democratic court held for lessors about 10-0, and the Republican court after 1990 held for the oil company 10-0. Precise issues seemed not to matter. The count is not at all scientific, but any trial lawyer can attest to the general shift in judicial tilt between those two time periods. No judge needs to be bribed or individually biased to favor one party or interest over another. The reasoning process itself is equally logical, regardless of who wins. What matters is whether the judge frames an issue as Rush Limbaugh would or as Rachael Maddow would. Once framing occurs, the decision becomes a product of deduction and binary logic. A rule produced by general bias is just a rule. It is not necessarily good or bad. Any proposition or rule can provide a foundation from which outcomes can be deduced. This is computer logic. But it is not neutral, and it is not human. The conscious or unconscious tilt of the programmer determines the decisions, and law ceases to be a product of individual human thought.

My assessment, of course, ignores Georg Hegel, who sits on the sidelines, warning that any imbalance in favor of computer-driven rules will in time generate its own refutation and produce a new synthesis in law. When that happens, legal education will follow suit.
Judge Carolyn Dineen King

http://www.burtonsilverman.com/Commissioned%201%20image/JudgeKing.jpg
CHAPTER 23. JUDGE CAROLYN KING, LAW CENTER FRIEND FROM 1962

*John, if I were ever going to hire a woman, she would be the one.*

Dean Newell Blakely, 1963

The Law Center has been favored with many important friendships over the years. Friends included major players in legal education who recommended their prized graduates to us as professors, and us to them. Friends also include legislators, judges, and alumni. I am making note of only one because this book has to fit within a reasonable page length.

Judge Carolyn King and I met in 1962, when Quintin Johnstone asked me to tell soon-to-graduate Carolyn Dineen Randall (now King) and her then husband, fellow graduate Jim Randall, about Houston. Jim had accepted a position with Baker Botts to begin in September. Carolyn had lined up promising interviews, but nothing firm. These native-born northerners wanted information about the unknown Gulf Coast territory. Their move must have produced images as diverse as those I held about the East Coast when I drove from Houston to New Haven. We arranged to meet, and I assured them Houston was neither Wild West nor plantation country. I extolled the city’s virtues far beyond my knowledge or belief.

I was greatly impressed by the confident woman law graduate who was about to move, unemployed, to Houston. An idea took shape. She would be an ideal first woman member of our law
faculty. I moved back to Houston in early summer, 1962, and bought a small house in southwest Houston. I think the Randalls were our first invited guests, and we dined on pot roast and potatoes. The meat was not choice, but our guests seemed genuinely grateful for a home-cooked meal. I have been reminded they also salvaged a barbeque grill we were sending to scrap.

We chatted about teaching law. She was intrigued and I arranged an interview with Newell Blakely. I told Newell how impressed I was, but his noncommittal response warned that she should not expect a warm reception. She was after all, a graduate of the devil’s own law school, and she had no experience practicing local law. Not incidentally, she was a woman. I prepped her for the meeting by reminding her that we were in the South, and Newell was very much a part of it. Respect and deference were obviously essential. But instead of playing his expected role, Newell began probing and jabbing, “Now, just why do you think we should consider you for our faculty?” Her answer was just as sharp, “Dean, I have looked at your school’s faculty credentials, and I think I would improve your masthead.” They parted with “It was nice meeting you, and let’s stay in touch” that left me pessimistic when I visited Newell shortly after. I still remember his exact words: “John, she is very impressive. If I were ever going to hire a woman, she would be the one.” My interpretation was that he had made a final decision, it was no, and that was the end of the matter.

Years later, I learned Newell overcome his hesitation and offered her a job—as a Research and Writing teacher! Unfortunately for us, but perhaps fortunately for the future Judge, she had by then landed a position with Fulbright & Jaworski. I am sure the law firm paid more than our paltry salary, but I doubt that money was the issue. The future Judge had chosen a different, and much tougher, career path than law teaching.
Judge Carolyn King, Law Center Friend from 1962

Judge King practiced law at a high level and held many important positions before Jimmy Carter appointed her to the Court of Appeals for the Fifth Circuit in 1979. I didn’t give up recruiting her, though. Every so often, I would call to ask whether she wasn’t ready to retire from hard work and become a professor. Eventually, the calls were whether she would consider our deanship. Alas, the answer was always no. But from her position in the federal building in downtown Houston, Judge King had a greater influence for good on our law school than any living person who was not directly connected with it. Just as Judge Brown before her, Judge King responded generously and graciously to innumerable requests to speak at the Law School, give welcome advice, and say good things about us.

From the hundreds of applicants produced by far more prestigious schools, Judge King hired a succession of our best graduates as judicial clerks, giving them the best possible entrance into practice. She also hired a lot of Yale and Harvard J.D.s, and she graciously nudged her best clerks to join the Law Center faculty as beginning professors. Still on the faculty are incredibly productive scholars David Dow, Douglas Moll, Aaron Bruhl, and the newly hired Zachary Bray. Another of the judge’s judicial clerks, Kathryn Smyser, taught brilliantly for several years before choosing motherhood over professing.

Judge King’s support may have subtly influenced other Yale graduates to join our faculty. Although not directly connected with Judge King, Yale law school graduates Marcilynn Burke, Barbara Evans, Jessica Roberts, and Sandra Thompson are prized members of the current faculty. A less direct New Haven connection extends through Laura Oren and Leslie Griffin, both of whom hold Ph.Ds. from Yale in non-law fields. Jordan Paust and I are holdovers from the LL.M. years. At this writing, the Law Center lists 55 current faculty members. Counting all degrees, the twelve with some New Haven connection comprise more than twenty
percent of current faculty. Eight faculty members have similar Harvard connections, comprising about fifteen percent. The University of Texas Law School is third with about ten percent.

The Yale connection significantly improved the Law Center, going well beyond Newell Blakely’s worries about my supping with the devil. Judge King’s influence far outstripped my own in forging and maintaining that positive relationship. Her former judicial clerk, Aaron Bruhl, for example, fulfilled her expectations as a professor and scholar, and he is beginning to receive the national recognition that will make it difficult for the Law Center to keep other schools from luring him away.

A final note completes this chapter. After reading five hundred pages, I doubt many readers will recall my personal association between lawyers and the suits they wore. That fascination sent me to visit A.A. White in 1952. The most impressive of the Nacogdoches lawyers who regularly visited Hoya Abstract Company was Tom Reavley. He looked most resplendent in his lawyer’s suit, crisp white collar, and snappy tie. I did not know at the time he held a Harvard law degree, which amounted to overtraining for Nacogdoches practice. Not long after I left Nacogdoches for law school, he expanded his practice and became Secretary of State, Travis County District Judge, and Justice of the Supreme Court of Texas. Jimmy Carter named him to the Court of Appeals for the Fifth Circuit in 1979. He is now senior judge of the court.

Judge Carolyn King, Law Center Friend from 1962

I was delighted to hear that Judge Carolyn King and fellow Fifth Circuit Judge Tom Reavley married in 2004. These two people who had profoundly influenced my own life and our Law Center were now together on the Court of Appeals as fellow judges and as husband and wife.

Judge Reavley has no reason to know his snappy suits and Kelly Bell and Moss Adams’ resplendent seersucker unintentionally determined my future. About a dozen years ago, I saw a blue and white striped seersucker suit on sale at Gap. I bought it and hung it in a closet. When I thought about wearing it one day, I put it on and looked in the mirror. Somehow, it did not look the same as it did on those dapper Nacogdoches lawyers. I looked more like an ice cream vendor. The suit still hangs, unworn, in my closet as a reminder of a journey that began in an East Texas county seat some sixty years ago.
APPENDICES

The Author and Albertus

Photo by Judith A. Mixon
APPENDIX I. WERE A.A. WHITE AND SIMON FRANK REALISTS AND NEWELL BLAKELY A FORMALIST?

I freely classified A.A. White and Simon Frank as American Legal Realists. This means that I interpret their fundamental attitude toward law as conforming to the general lead of O. W. Holmes, Jr. In *The Path of the Law*, Holmes downplayed formalistic rules, called law a mere prophesy of judge’s decisions, and declared that judges should consider social advantage when making decisions. Roscoe Pound characterized law as an instrument of social policy. Both A.A. White and Simon Frank taught their classes with full awareness of and concern about the social context in which law operates. They did not feel constrained by the formalistic rules derived from reported cases. A.A. wrote several articles that manifest his attachment to Legal Realism.

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10 Harv. L. Rev. 457 (1897). Holmes criticized the then-current notion that judges found law by reading prior decisions and then logically applied the rules to solve current disputes. Holmes proposed that judges ought to be less influenced by history and logic, and instead should “peek” (my term, not his) at the social effects of their decisions before deciding a case. After peeking, judges should make the decision that best advances the overall social good, overruling precedent if appropriate. Traditional approaches to law look backward for rules to apply to today’s disputes; Realists look forward to see which potential decision works best when fed back into society as policy. As later described by Roscoe Pound, law is properly used as an instrument of social policy. Realist ideas were highly controversial in the first quarter of the twentieth century, and traditional lawyers and law professors criticized them as judicial usurpation of the legislative process.
Were A.A. White and Simon Frank American Legal Realists and Newell Blakely a Formalist?

I called Newell Blakely an Austinian Positivist and Formalist who followed Herbert Wechsler’s notions that law should be based on neutral principles and judges should not attempt to advance any particular social interest. Austinian Positivism holds that law draws its authority from the state, and the rules of law declared in statutes and judicial decisions are binding until changed by the legislative body or higher court. Formalism assumes that law and its rules operate as a logical conceptual reality within a self-contained system, and law can be understood, learned and applied without considering external social events.

The difference between American Legal Realism and Formalism is fundamental. Realists, of necessity, view Formalism as naïve and potentially dangerous, citing Hitler’s use of Hobbes and Austin’s definition of law as the command of a sovereign as justification for his depredations. Formalists, of necessity, view Realism as an inappropriate and dangerous use of law to advance particular social interests. Newell fought a losing battle to save the law school from what he saw as illegitimate Realist ideas whose focus on social interests would detract from teaching the technical legal skills and traditional legal rules of practice.

This assessment of A.A. White’s and Newell Blakely’s jurisprudence is my own interpretation. As far as I know, Newell never classified himself according to any of these categories. A.A. was somewhat more open about his attitude toward law and social policy, but I never heard him say outright he was an American Legal Realist. When he took the job as acting dean in 1974, though, A.A. made a point of hiring Yale LL.M. graduates who had been trained in the Realist principles espoused by Yale and LSP.

This appendix goes into more detail about the basis for my interpretation of these two complex and dedicated educators.
Were A.A. White and Simon Frank American Legal Realists and Newell Blakely a Formalist?

A.A. White and Simon Frank’s points of view were closely aligned with the branch of American Legal Realism that flowered in the 1930s and 50s and followed O. W. Holmes’s two important notions that (1) law was simply a prediction of what a judge would do, and Formalistic “rules” are unreliable predictors; and (2) judges should use the tools of social science to guide legal decisions in the direction of greater public advantage.

The clear implication of Holmes’ first notion is that predicting a judge’s decision involves more than just knowing the rules of law. Judges are human, and formally stated rules neither determine their decisions nor tell why they held for one party or the other. Simon’s focus on justice and intuition mirrored pronouncements by one of the most vocal Realists, Karl Llewellyn.398 When Simon Frank taught that judges are influenced by their own notions of justice, he opened up an entirely new aspect of law for his students, and he was on firm Legal Realist ground.

Holmes and the Realists’ second point is that judges ought to take greater account of the social interest, or social advantage, when they decide cases. Roscoe Pound is credited with coining the term “social engineering” to describe law as an instrument for accomplishing social good. In the Realists’ world, law is not simply an internally consistent system that can ignore the social system of which it is a part. Instead, Realists believe the legal system and legal education should employ basic social science, including psychology, sociology, and economics, both to understand legal decisions and to produce outcomes that make sense in the real world and influence society to act in a better way.

Were A.A. White and Simon Frank American Legal Realists and Newell Blakely a Formalist?

Dean White followed the Realist tradition by teaching law with constant attention to whether a particular decision did or did not serve the public interest. In Anti-Trust, he always directed discussion toward positive or negative effects of a decision on the competitive free market. In Labor Law, he would ask whether the Taft-Hartley Act was a good way to adjust the respective interests of labor and industry. In Constitutional Law, he championed the positive values of federalism and individualism at the same time he championed free speech. In Torts, he placed greater faith in the jury’s sense of justice than in efforts to limit their function to finding facts through special issue submission.

Legal Realism was strongly represented at Columbia Law School when A.A. did his graduate work there in 1941. A.A. became acquainted with Columbia’s Walter Gellhorn, one of legal education’s superstars and a great Constitutional law scholar. Most of Gellhorn’s scholarship was aimed at improving law, not simply describing it. Although not ordinarily considered a pioneer American Legal Realist, Gellhorn is credited with the saying, “We are all Realists now.”

A.A.’s constant focus on improving law implicitly adopts Holmes, Roscoe Pound and the Realists’ notion that judicial decisions, as

399 See Martin Davies, Choice of Law and U.S. Maritime Liens, 83 TULANE L. REV. 1435 (2009), n. 25, “This phrase has been used so often that “it has become a cliché to call it a ‘cliché.’” Also see Michael Steven Green, Legal Realism as Theory of Law, 46 WM. & MARY L. REV. 1915, 1917 (2005). “As with all clichés, it is difficult to trace the first usage. The earliest I have been able to find is in a book review in 1961. Beryl Harold Levy, The Common Law Tradition—Deciding Appeals, 109 U. PA. L. REV. 1045, 1047 (1961) (book review) (attributing it to “my friend Gellhorn,” apparently a reference to the Columbia University law professor Walter Gellhorn):” Photo of Walter Gellhorn: http://www.columbia.edu/cu/record/archives/vol21/vol21_iss13/record2113.27c.gif.
were a.a. white and simon frank american legal realists and newell blakely a formalist?

well as legislation, are legitimate instruments for implementing social policy.

i have read seven law review articles written by a.a. white. they reveal a progression of thought that began in 1952

400 in 1952, a.a. white wrote the right of recovery for prenatal injuries, 12 la. l. rev. 383 (1952), arguing that children should be allowed to recover for prenatal injuries. he develops a strong social policy analysis that clearly goes beyond simple restatement of law. he did not invoke social science references, but he did criticize reported appellate opinions and advanced his alternatives.

in 1955, a.a. white and will wilson wrote the flow and underflow of motl v. boyd. the problem, 9 s.w.l. j. 1 (1955). they concluded that individual lawsuits were not an appropriate way to resolve the many policy issues in allocating water rights, and they recommended that a broad statewide agency develop policies and manage the precious resource. as realists, they examined practical and political policy and proposed a rational response to serve a social interest.

in 1959, in the supreme court’s avenues of escape from the constitution, 4 s. tex. l. j. 129 (1958-1959), a.a. picked up on a fundamental american legal realist theme: judges’ decisions are driven by subtle factors that have nothing to do with the formal law that supposedly decides the case. a.a. identified the very presence and closeness of the supreme court to the washington, d. c., home of the other branches of government, as giving the federal government an edge in federalism cases. in particular, he noted that citizens have difficulty showing standing to challenge federal laws, the court tends to weaken the federal system by nullifying state legislative policies, and it expands the fourteenth amendment. this is the most conservatively tilted article i found, but it is equally an american legal realist analysis in highlighting a source of institutional bias that never appears in the opinions it infects. it was the last article a.a. wrote while he was still engaged in oil company practice before returning to the law school as professor.

a.a.’s 1968 article, the reasonably just man, 5 hous. l. rev. 575 (1968) is markedly different from the earlier articles because it makes extensive references to other scholarly works, most notably those of william prosper and leon green. a.a. also refers to o. w. holmes’ the path of the law to debunk the notion that logic drives legal decisions, and to jerome frank’s appeal that justice, not law, should be an open reason for decision. a.a. approvingly cites roscoe pound’s skeptical comments about law’s ambiguity. a particular quote indicates a.a.’s attitude toward traditionalism,
Were A.A. White and Simon Frank American Legal Realists and Newell Blakely a Formalist?

with an early, intuitive acceptance of the Realist point of view and proceeded to full acknowledgment in his later writing. Without

Judges are often such slaves to precedent that it makes them weak and timid about announcing new doctrine or in applying the old. If they venture to do something new in fact, they feel compelled to disguise it in the costume of the old doctrine. Thus, a gap is created between what the courts say and what they do, and the seeds of future confusion, debate, and misapplication are sown. In some instances, legal rules, concepts, and clichés become, through *stare decisis*, an easy substitute for thinking. . . . Judges should not be beset by a host of mesmerizing concepts and clichés.

A.A. conducted a survey of one hundred and fifty Texas lawyers. This is not unusual for researchers today, but it was much less common in 1968. By going outside the ordinary law reports and compiling statistics on literacy to support his proposal, he applied Realist and Sociological techniques for discussing the effect of law on society. He advocated that lawyers should learn to comprehend the economic and political factors which now indirectly and with too little awareness enter into their thinking, quoting Jerome Frank, a noted Realist scholar (n. 150).

The 1969 article, *Strict Liability of Cigarette Manufacturers and Assumption of Risk*, 29 LA. LAW REV. 595 (1969) was a hard-hitting Realist attack against the traditional “assumption of risk” doctrine that insulated tobacco companies from liability for harm caused by their products. In particular, he argued against applying the doctrine to preclude recovery by people who were minors when they first became addicted. The article referred extensively to statistical data to support a clear policy holding tobacco companies liable in tort. The article is, in every respect, an application of Holmes’ social policy test for legal doctrine.

A.A. White, *The Intentional Exploitation of Man’s Known Weaknesses*, 9 HOUS. L. REV. 889 (1972) proposed a new tort based on grounds indicated in the title. The article is heavily grounded in medical statistics and common sense. The last three sentences read “The decisions must be fashioned by compassionate judges from the broad, humane principles of the law developed in other connections. There is no escape from the fact that these will be policy decisions. They will be policy decisions whichever way the courts decide them.”

A.A. White, *The Wrongful Death Statutes—A Constitutional Problem*, 12 HOUS. L. REV. 35, 64 (1974) relies less on statistical data and studies than on expansion of case law to support his policy argument. But the article’s last sentence takes a clear position for extending the Constitution beyond its traditional limits by declaring “The death statutes, which thus seriously discriminate without a rational basis against one class of dependents, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution.”

496
Were A.A. White and Simon Frank American Legal Realists and Newell Blakely a Formalist?

citing Realist authors, A.A.’s earlier articles looked critically at particular legal rules and proposed specific legislative or judicial changes to accomplish some precisely identified social good. By 1968 (the year a robust form of Legal Realism briefly dominated Bates College of Law), A.A.’s interest in American Legal Realism had grown to full-blown approval. In a provocative 1968 article, he devoted a full one-quarter of his footnotes to Leon Green, a monumental Realist scholar. Ironically, Leon Green graduated from Ouachita Baptist College, Newell’s Alma Mater.

Green was a hero of the American Legal Realist movement. He was no fan of Formalism, and he expressed more faith in the common man’s sense of justice than in judges’ pronouncements. He is reported to have said, “The decision of a court is no more the law than yesterday’s light from a lamp is electricity.” A.A. White picked up on Green’s faith in common sense in his 1968 article *The Reasonably Just Man* proposing that in tort cases the jury should not be hemmed in by special issues, but should instead be asked two questions: (1) Should the plaintiff recover? (2) If so, how much? For A.A. White, these two questions should be the jury charge, and the jury’s answers should decide the case.

Dean White mentioned to me several times his conviction that fifth graders could decide cases as well as judges, and they could make better decisions than judges who were constrained by precedent. He seriously proposed handing fifth grade students the bare facts of several landmark cases that broke rank with formalist rules and charted new directions for decision. His thesis would be

401 Law student Bobby Wayne Young transferred to UT after his first semester at UH, but he returned to UH for the fall semester of 1964, having become disenchanted with his spring and summer experiences away. He told Don Riddle that he found only one bright spot at UT, his Torts professor, Leon Green. “He thinks just like you and me, Riddle,” he told Don.
Were A.A. White and Simon Frank American Legal Realists and Newell Blakely a Formalist?

proved if the students came to the same conclusion that, for example, Judge Benjamin Cardozo actually reached. It was my impression he actually conducted the experiment, but I failed to find a published report.

Simon Frank was a student at the University of Texas Law School when Leon Green was a professor. Although any inference about a law teacher’s jurisprudence so long after the fact is no better than a guess, two things are clear. Neither A.A. nor Simon thought law was a self-contained system that could be isolated from its social context, and they would not justify an outcome for the sole reason it is logically derived from precedent and rules. Simon and A.A. believed and taught the importance of aspiration—what law “ought” to be. By contrast, Newell taught what law “is” as if it were a tangible reality.

I identified Newell Blakely as a Formalist, Positivist, and follower of Wechsler’s neutral principles. I also indicated that he viewed law as an internally consistent reality that did not need to look outward at society for its content. Newell was content to take law as he found it and leave change to the legislature. He had no use for Realist thought, and I remember occasions when he laughingly derided one of the active Realists, Hessel Yntema.

My assessment of Newell’s perspective is based on interpretations of events between 1952 to 1972 when he was an active and influential participant in law school affairs. Newell unalterably opposed Yale Law School’s version of American Legal Realism and he fought against its influence in the College of Law from 1963 until 1966 when he resigned from the deanship. He continued his opposition from the sidelines well into the 1970s.

The comparison between A.A. and Newell’s approaches can be starkly stated. If both had taught *Plessy v. Ferguson* before
Were A.A. White and Simon Frank American Legal Realists and Newell Blakely a Formalist?

*Brown v. Board of Education* was decided, Newell would have posed increasingly narrow hypothetical fact situations to test whether a given treatment was “equal” without ever questioning the “separate but equal” rule itself; A.A. would have jumped (and did jump) directly to the question of whether *Plessy* was a good rule for today’s society. The difference is fundamental. Newell accepted legal rules as neutral statements of authority, and his classes focused on whether variations of facts did or did not fit within the rule; A.A. questioned the rules themselves head-on. Newell would have viewed *Plessy*’s adverse social effect as irrelevant for classroom study; A.A. would have viewed it as the only issue worth discussing.

Newell taught criminal law, and he was familiar with the writings of Herbert Wechsler, a Columbia Law School faculty member and principal drafter of the Model Penal Code. He might have used Wechsler’s Criminal Law casebook. Wechsler is well known for his criticism of the Supreme Court’s resort to social science to support its decision in *Brown v. Board of Education*. Wechsler would require judges to find justification for their decisions in “neutral principles” and avoid advancing any particular social interest. Newell was sympathetic with Wechsler’s opposition to judicial activism and his criticism of *Brown*’s consideration of sociological data. He would have found neutral principles attractive.

Newell left no significant paper trail before 1980. Forty years after he began teaching, Newell participated in drafting the 1987 Texas Rules of Evidence Handbook and authored several explanatory comments for the *Houston Law Review*. He

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Were A.A. White and Simon Frank American Legal Realists and Newell Blakely a Formalist?

participated in drafting the Texas Penal Code, enacted in 1973, without leaving an individual mark. He participated in drafting the Texas Rules of Civil Evidence, promulgated in 1983, and the Texas Rules of Criminal Evidence, promulgated in 1986.\footnote{Leah Gross, The Legacy of Newell Blakely, http://www.law.uh.edu/blakely/legacy-of-newell-blakely.html (last visited September 22, 2011).} I do not know what influence Newell had in any of these drafting efforts. The work products and the effort itself are certainly consistent with Austinian Positivism, as clarifying and changing the command of the government by exercising Formalistic authority. After the rules change, Formalist judges are bound to follow them. All told, though, these observations do not conclusively define Newell’s broader perspectives on law.

After George Hardy took office in 1975, Newell became more relaxed and circumspect. He may even have altered his fundamental notions about law and legal research, judging by a single 1980 law review article.

In 1980, Newell wrote an article on evidence.\footnote{Newell H. Blakely, Past Recollections Recorded: Restrictions on Use as Exhibit and Proposals for Change, 17 HOUS. L. REV. 411 (1980).} It is the only written source I found that might reveal Newell’s personal view of law. It was published more than two decades after Newell tried unsuccessfully to impress his personal educational vision on the law school. Standing alone, the article does not support my assessment that Newell was a doctrinaire Formalist and Positivist who rejected all tenets of American Legal Realism. Either I am wrong in my classification, Newell changed his point of view, or his student assistant influenced the article’s basic propositions.
Were A.A. White and Simon Frank American Legal Realists and Newell Blakely a Formalist?

The article’s title, *Past Recollections Recorded: Restrictions on Use as Exhibit and Proposals for Change* tantalizingly suggests that by 1980, Newell himself met the minimal definitional requirements as an American Legal Realist. I count those requirements as (1) looking critically, not just descriptively, at existing legal rules; (2) considering the social policy implications of a current rule; and (3) referring to social science data as justification for change.

The article’s stated purpose is to look critically at a rule of evidence and propose a change, specifically

...to explore the development and present practice of past recollection recorded in evidence law, with special attention to Federal Rule of Evidence 803(5) and to Texas cases. *It will be recommended that the federal position precluding use of the writing as an exhibit be changed to permit such use, that the traditional requirement of failure of present memory be eliminated, and that, to the usual foundation necessities, there be added the requirement that the trial judge be given discretion to exclude the writing if the circumstances surrounding its making suggest that it is unreliable.*\(^{405}\) (Italics mine).

The article does not isolate and state a clear social policy interest, but it does undertake to make the rules of evidence more coherent for admitting relevant evidence. It makes a clear declaration on a subordinate point “Surely on policy grounds alone, these records of past recollections should be classified as hearsay.”\(^{406}\) A dedicated Realist might not give the article an A for

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\(^{406}\) Ibid. at 441.
Were A.A. White and Simon Frank American Legal Realists and Newell Blakely a Formalist?

policy discussion, but it certainly gets a passing grade. An Austinian Positivist also might approve the effort to improve the rules of law, so long as it did not involve or advocate judicial activism.

The most significant Realist indicator is Newell’s citation of a 1935 Law and Social Science article\textsuperscript{407} declaring as a scientific matter that recollections can be refreshed by earlier writings. He also cites other non-law references for the proposition that peoples’ memories fade over time.\textsuperscript{408} He even ventures lightly into literature, with references to Proust and Kipling.\textsuperscript{409} In another professor’s article, these citations would be commonplace, but for the Formalist, Positivist person I have described, the departure is dramatic and unexpected. It implies that Newell was willing to reach outside of formally stated law, at least on occasion, to support a legal proposition or find a basis for change.

The 1980 article leaves open the conclusion that, whatever his 1960 orientation, by 1980 Newell accepted Walter Gellhorn’s assertion that “we are all Realists now.”

\textsuperscript{407} Ibid. at 413.
\textsuperscript{408} Ibid. at 462.
\textsuperscript{409} Ibid. at 413, n. 6.
F. S. C. Northrop was my most influential teacher at Yale Law School. One of his basic propositions was that we cannot have an adequate jurisprudence without first having a correct theory of person, and we cannot have a correct theory of person without a correct epistemology. He criticized John Austin and the Utilitarians, partly because their theory of person was based on an incorrect epistemology, namely radical empiricism. Radical empiricists, including Thomas Hobbes, John Locke, and David Hume, postulate that we are born with a blank slate mind, and we get correct knowledge about an external world through sense impressions (taste, feel, smell, sight, and hearing). We record those impressions on our blank tablet minds, and we assign names to the impressions according to community usage. Memory is comprised of decaying sense impressions that remain in our minds.

Today’s empiricists do not accept Hobbes and Locke’s version. Instead, current epistemology holds that we do not acquire direct, objective understanding of an external reality through our senses. Instead, we get our understanding of reality by postulating and proving abstract constructs, such as those used in science. A beginning point for scientific understanding is the analytic reasoning of mathematics.

The early empiricists assumed that we have a priori ability to do math, as in 1+1=2, and to assign names to the sense impressions. They held that language is a sort of math, with words taking the place of numbers, through which we can make logical statements (computations of words). Other people understand what we say because their minds have the same language and logic written on them. Truth is defined synthetically as correspondence between formally stated propositions and reality itself.
Empiricism, thus defined, is fundamental to understanding the purposes and methods of science. Science requires that we be able to make true statements about external reality, and scientific method works by generating logical analytic hypotheses about cause and effect that can be tested by observation and tentatively verified or definitively falsified.

Northrop was a philosopher of the sciences, not a lawyer. He told us to spend our days and nights reading David Hume’s writings, particularly Hume’s emphasis on empirical inquiry.

If we take in our hand any volume, of divinity or school metaphysics, for instance, let us ask, Does it contain any abstract reasoning concerning quantity or number? No. Does it contain any experimental reasoning concerning matter of fact and existence? No. Commit it then to the flames, for it can contain nothing but sophistry and illusion.⁴¹⁰

Part of Northrop’s message was linguistic, including the important notion that there is a monumental difference between the following three propositions: (1) “Tom has a tattoo;” (2) “Tom will get a tattoo;” and (3) “Tom ought to get a tattoo.”

(1) *Tom has a tattoo* is descriptive—a statement of what “is.” The proposition’s truth or falsity can be determined empirically by looking at Tom’s arm (and therefore the statement is scientifically meaningful). This is the essence of scientific empiricism—testing propositions for truth by using the senses to determine whether they conform to measurable reality.

(2) *Tom will get a tattoo* is a prediction—the speaker’s declared commitment about the future. When Holmes said in *The Path of the Law* “The prophesies of what a court will do in fact, and nothing more

pretentious, are what I mean by law,” he defined law as a prediction. Predictions are at the heart of science, i.e., formulating a hypothesis for predicting a future condition, and then determining empirically whether the predicted event occurred. An experiment that measures the hypothesis’ usefulness determines whether it is acceptable in science as stating a reliable cause and effect relationship.

(3) Tom “ought to” or “has a duty to” get a tattoo is more complex and less subject to proof. It is a normative assertion that assumes an implicit or explicit standard for evaluating Tom’s action. The statement is not scientific, and its truth cannot be verified empirically. It cannot be defined in terms of what “is.” Judges, legislatures, and ordinary people deal every day with what “ought” to be without realizing the complexity that underlies that normative characterization. In ordinary conversation, people use descriptive and evaluative statements indiscriminately, referring to commonly held, but individually situated, cognitive models (mental constructs) as a guide. This usage conforms to Wittgenstein’s notion that meaning comes from understanding how a word is used in the community, and in that context, there may be no categorical difference between the three types of statements.

There are other attempts seek to give content to “ought” statements. Pragmatists refer to the end result of actions to measure whether a given action is good or bad. Holmes used this pragmatic standard when he advocated that judges take greater account of the social effects of their decisions. That, of course, leaves open the question how one can assess whether an end result itself is good or bad. People who believe in Judaism, Christianity, or Islam may use divine revelation to justify their normative conclusions. Utilitarians refer to the tendency of actions to increase happiness or diminish pain. Economists apply a special utilitarian standard to define “efficiency” which they implicitly adopt as a normative standard (all the while denying that they do). Kantians believe they can find moral truths by reason and logic. Northrop’s notion of “oughtness” was more
complex than all of these. He combined the epistemology of modern science with the intuitive understanding of oneness that is inherent in eastern religion to construct an underlying philosophy of modern law.

Northrop proposed that an adequate jurisprudence would be grounded in the universal logical constructs of science. He called the words and formulae of science “concepts by postulation”—for example, $E=MC^2$. These were distinguished from what he called “concepts by intuition,” which are known by immediate apprehension—for example, the Buddhist feeling of “oneness” with the universe. From this epistemological beginning point, he located in the Declaration of Independence and Bill of Rights a universal concept by postulation that all people are entitled to equality under law as a matter of “natural right.”

Northrop found his empirical meaning for “ought” in the firsthand experience of oneness, empathy, and understanding that comes from Eastern religion. The contrasting Baptist religion that I had been raised in was based on abstract concepts that I could never understand, such as the Trinity, heaven, hell, and being “saved.” I had seen people engage in very emotional religious experiences, particularly when I peeked through the window at a back country church, but those experiences were different from what I found in the Buddhist intuitive experience. Near the end of the spring semester, I experienced a brief period of satori, which helped me understand Northrop’s point. I tried to hold on to it, but lost it. Alan Watts and other Buddhist writers warn that the worst thing one can do in Buddhism is to try to hold on to an experience. The immediate moment is what counts.

Readers who have experienced the sense of understanding and power that comes from satori will not be surprised by Northrop’s attraction to Buddhism. Those not acquainted with the experience may relate to the sense of being “in the zone” when bowling, playing a fast-paced game of basketball, or any activity where thought and action must meld into one. For a time, I laughingly used Zen state to catch flies, or knock them out of the air. Then Buddhism disappointed me. On a trip to China, I visited a few
F. S. C. Northrop’s Complex Jurisprudence
temples and discovered that it invoked much of the same structures, icons, and formalities that I had not understood or bought into in the Baptist and Catholic churches. So I retreated into what a Yale classmate, Ken Penegar, called “parlor Zen.”

Many people achieve Zen state through meditation. When I tried, I simply went to sleep. Recent fMRI brain imaging of experienced meditators has shown that meditation shuts down neural activity in the part of the brain that creates the sense of individuality by separating apprehension of self from “not self.”

I fully accept F. S. C. Northrop’s notion that an adequate theory of jurisprudence must be based on both the scientifically defined universal construct of equality and the equally universal world of intuitively derived sense of oneness and justness.

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APPENDIX III. LAW, SCIENCE AND POLICY, 1961-1962

Law, Science, and Policy (LSP) was perhaps the most optimistic and aggressive variation of American Legal Realism. Its details were still under development in 1961, and its progenitors had high hope that it would become an integral part of legal education and scholarship. Their hope was unfounded. A final book detailing its fundamental premises was not published until 1992,\(^{412}\) well after it peaked as a significant factor in domestic law and legal education.

LSP’s fundamental assumptions are outlined in the following paragraphs. Italics indicates specific category words used in LSP’s universal analytic categories. The categories are suggestive of content, but they are open enough that a scholarly observer can use them to analyze anything from building a nation to robbing a bank.

1) *LSP’s commitment to empiricism.*

LSP’s epistemological commitment to scientific empiricism consigned natural law, transcendental reason, precedent, and Plato and Kant’s pure reason into Hume’s metaphorical flame. Words, propositions, and constructs made sense to McDougal and Lasswell only if they could be empirically defined. Pragmatic action to achieve the overarching goal of Greater Human Dignity is their relevant normative inquiry, with the understanding that all consequences of action, good and bad, must be taken

into account and weighed before action can be recommended or outcomes evaluated.

2) *The scholarly observer.*

LSP requires that its descriptions and analyses be undertaken by *scholarly observers* who interpret events from an unbiased, objective scientific perspective.\(^{413}\) We can all act as scholarly observers by cleansing ourselves of attachments to myth and a willingness to be guided by fact.

3) *The overarching goal of Greater Human Dignity.*

To provide a framework and direction for responding to Holmes’ admonition that judges take greater account of social advantage when deciding cases, LSP postulates an overarching societal goal that they called Greater Human Dignity.\(^{414}\) This normative construct has no particular foundation in conventional legal analysis. The goal statement is broad and its categories are open, but it can be defined somewhat by ordinary language. It is, for example, concerned with humans, not plants or other animals. The goal relates to greater dignity, not oppression. The goal is defined operationally as producing more of the things that humans want (preferred events, or values), and sharing these values more widely.

Greater Human Dignity, defined as producing more values and sharing them more widely, boils down in empirical terms to, for example, expanding individuals’ control over their lives (*power*), expanding knowledge (*enlightenment*), increasing earning, saving, and economic activity (*wealth*), improving everybody’s health (*well-being*), increasing ability to perform tasks (*skill*), increasing opportunities for emotional satisfaction (*affection*), expanding social acceptance for groups and


\(^{414}\) *Ibid.* at 740.
individuals (*respect*), and increasing right behavior (*rectitude*). To the extent Greater Human Dignity increases individual happiness, it resembles Bentham’s Utilitarianism. It also mirrors Natural Law’s emphasis on human fulfillment. It is consistent with the economists’ postulations of efficiency. It is a likely outcome of serious Kantian, Platonic, or Rawlsian contemplations, but LSP does not adopt or subscribe to any of these philosophies as a foundational basis for its goal postulate.

Although LSP’s authors claimed no transcendental authority for their overarching goal, they place a heavy burden on anyone who proposes an alternative, e.g., allocating respect according to inherited position or caste, requiring adherence to a state religion, or restricting educational opportunities to a closed set of people, however defined.

4) **Values (preferred events).**

LSP accepts the notion that the “good” outcome is defined by its positive increase in personal and individual satisfactions. In that respect, it comes close to adopting Utilitarianism and economic efficiency as normative standards. LSP calls the events that humans prefer “values.”

McDougal and Lasswell limited their value count to eight, not because it is a magic number, but probably because a 1956 study by George A. Miller suggested that an average human brain can hold in memory seven or eight categories of objects, plus or minus two.

An observer can measure each value empirically. For example, individual *power* to influence government can be measured by whether people have unimpeded ability to vote and whether their votes are counted, to acquire wealth, to travel without restriction, etc. Individual and community *enlightenment* can be measured by assessing the outcomes of public and private educational efforts in a community. *Wealth* can be measured by counting individual and community income, savings, and other assets. *Well-being* can be measured by longevity, birth weight, prevalence of
disease, and effectiveness of medical treatment. *Skill* can be measured by individual and community abilities to drive an auto, read, and perform valuable services. *Affection* can be measured by levels of satisfaction in marital relationships, families, and groups. *Respect* can be measured by assessing whether individuals or groups are shunned, and whether a caste system separates an elite class from others in the community. *Rectitude* can be measured by individual and community adherence to, and satisfaction with, common moral standards.\(^{415}\)

Once LSP’s fundamental goal is accepted, implementation becomes a matter of pragmatic action, much as Holmes and Roscoe Pound advocated. That is, once I know you want to get downtown from the law school, it is a simple matter to tell you how to do it. No study is required for an objective observer to draw some obvious conclusions. Overall well-being as measured by life expectancy is higher in the United States than in Africa, but lower than in many European nations. The United States spends far more per capita for health care than most other countries that have better outcomes. It is so obvious that the system could be improved that many people fear that the act of measurement itself might challenge their own myths about the system. In particular they would fear the goal statement that well-being should be shared more widely would imply benefitting some societal participants they deem unworthy. For anyone who accepts LSP’s goal statement, it is difficult to escape the logical conclusion that healthcare should be more widely accessible. If one operates on a free-market economic myth that healthcare is equally available to the poor and they simply choose not to buy it, LSP requires rethinking. In an LSP framework, extending respect to all persons requires consideration of same-sex marriage opportunities.

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Law, Science and Policy

Newell and Dwight viewed LSP as communistic. Ironically, during my time at Yale, Lasswell was in South Korea and Taiwan spying on the People’s Republic of China and North Korea for the U.S. government. LSP was supported at Yale partly as a measure for counteracting Russian and Chinese communist expansion in emerging nations. The Ford Foundation provided funds to bring present and potential government leaders in emerging nations, particularly Africa, to New Haven to learn LSP as an alternative ideology to communism. These foreign students received subsidized LL.M. study with expectation they would return home as political leaders armed with McDougal and Lasswell’s LSP system and put it into effect, thereby expanding democratic American influence in the developing world.

5) The intellectual tasks.

Goals are easy to state, and many conditions are relatively easy to measure. The critical question is operational—how to actually increase community values and share them more widely. LSP addressed the instrumental challenge by providing pragmatic frameworks for accomplishing its goals. They posit five intellectual tasks to be performed by scholarly observers.

The scholarly observer first rids him/herself of bias that might detract from scientific objectivity in gathering facts and constructing action plans. The observer then performs the intellectual tasks of first, clarifying the goal in terms of the overarching postulate of Greater Human Dignity. The clarified goal will likely be specific to some process, e.g., wealth, well-being, or respect. For example, one may focus on community power in a nation such as Libya. When this section was being drafted, rebels were trying to overthrow Moammar Gadhafi. The observer may conclude

416 Gadhafi reported dead by several news outlets on October 20, 2011.
http://www.huffingtonpost.com/2011/10/20/muammar-gaddafi-killed_n_1021462.html
Greater Human Dignity is advanced by rebel success. Second, the observer identifies trends that relate to the goal. When this was written, a trend indicating rebel success had not been clearly established. Third, the observer assesses conditioning factors. A conditioning factor was whether the Libyan people and Arab nations would support the rebel movement or Gadafi. Another conditioning factor was whether western forces would aid one group or the other, and if so, to what extent. Fourth, the observer projects the trends into the future, taking into account conditioning factors. This step may indicate the rebels will win without intervention, or that they will fail unless other nations intervene. Fifth, the observer recommends strategies or alternatives. The observer may recommend doing nothing if the rebels are winning, but propose military or political intervention if they are losing. Sixth, the observer assesses the outcome and its effects, the success or failure of the selected strategy. Since the rebels deposed Gadafi, that is the outcome that must now be assessed by an entirely new analysis.

In describing events and trends, the observer will classify events and analyze them by what MacDougal and Lasswell called Phase Analysis.

6) Phase analysis.

Phase analysis provides categories for describing who is trying to do what, where, with what assets, what are they doing to accomplish their goals, with what success, and with what effects?

Phase analysis can be used to describe and analyze any purposeful human activity. It involves seven steps. First, the observer identifies the participants.

Second, the participants are described as to their perspectives of self and others. The observer may inquire, for example, who the Libyan rebels are and whether they see themselves as freedom fighters seeking western values, or as religious revolutionaries trying to impose fundamentalist rule on Libya as a key to their behavior and success. A similar analysis of
Law, Science and Policy

Gadhafi and his troops is obviously essential, but analysis of bystanders who may at some point be involved is also important.

Third, the observer determines the various objectives of the groups of participants. Gadhafi’s objective is likely to be power, as is the rebels’. But both combatants have other measurable objectives, such as respect and affection of the Libyan people, wealth from the oil fields, rectitude from overthrowing a dictator, etc.

Fourth, the observer determines the situation, one aspect of which is where the struggle occurs. The geographical situation is Libya, which is the arena in which the power struggle occurs. The struggle also involves other situations, such as the markets in which economic conflicts occur, and these markets may be worldwide in scope.

Fifth, the observer can identify base values, or assets, that each group possesses. The eight values provide a list for categorizing base values, such as military and political power, enlightenment about what is going on, well-being (particularly Gadhafi’s health), wealth to buy arms and fight, skill at military operations, affection of the people, the respect the various participants receive from others, and rectitude from doing the right thing.

Sixth, the observer describes the strategies employed by both Gadhafi and the rebels. That is, what are they doing with their assets to get what they want? The strategies may be military, political, economic, claims for affection, rectitude, etc.

Seventh, the observer will assess outcomes from the endeavors. Have the rebels captured territory? Has Gadhafi rallied the people to protect his position?

Eighth, the observer determines the effects of the activity. Has victory by, say, the rebels, actually increased the value positions of Libyans, or have the rebels imposed an even more oppressive rule?
The Libyan conflict was resolved after the preceding section was written. But that does not mean that LSP takes a rest. There is now a new process to be analyzed, and it involves the same steps of clarifying goals, identifying trends and conditioning factors, extending the trends, assessing the likely future outcomes in PEWWSARR terms, and making recommendations for future action. The goals are likely to remain the same, but a phase analysis reveals there are new participants who have different goals, base values (assets), different strategies, etc. There is no end, and the process never stops.

The Supreme Court of Texas recently decided that Galveston beachfront owners do not lose their right to exclude the public when a storm shifts the line of vegetation landward. A traditional legal analysis would focus on legal myths about constitutional protection of private property, on the one hand, or the primacy of legislative action, on the other. Property rights favor the landowner; the Open Beach legislation favors public access. An LSP analysis would measure whether holding for the public or the private owners or the public is more likely to increase shared power, enlightenment, wealth, etc. Addressed this way, it is likely the public, not the lot owners, should win.

At this writing, the U.S. Supreme Court has just decided that the Affordable Care Act is constitutional. Most of the political discussion related to abstractions about federal power to require people to buy health insurance in the private market. All of these arguments would be classified as myth by LSP. What would be important is identifying the well-being, skill, affection, wealth, etc., values at stake and formulating ways to increase them and make them more widely available. This inquiry has little to do with the myths that were argued before the Court.

In addition to its problem-solving procedures, LSP provides formulaic procedures for creating governments (constitutive process), for invoking power, etc. Through its formulae, LSP undertakes to provide a
complete description of all descriptive and action steps involved in the process of authoritative decision.

*Prediction*\(^{417}\)

Lawyers, clients, scholarly observers, and the community at large need to be able to predict what authorized decision-makers will do. LSP adopts Holmes’ observation that prediction is an essential part of the legal process. To predict authoritative decisions, an observer must first *identify the decision-maker* without limitation to judges and legislators, but intentionally expanded to include administrators, advisors, and anyone who influences authoritative decision. Prediction requires consideration, not just of prior appellate decisions and statutes, but also of the perspectives of the person who makes the decision. This includes the biases, principles, and moral assumptions that will likely affect the decision. Law, by the ordinary definition of cases and statutes, is presumed to be a dominant factor in the formal processes, but LSP affords law’s rules only myth status, as a narrative in the mind of the decision-maker that may or may not control the decision. What may be more important for prediction is an understanding of psychology and politics, including the decision-maker’s personal identifications, perspectives about self, perspectives about others, perspectives about legal myths, and personal objectives.

LSP’s focus on the personal aspect of decision-making may provide its greatest threat to the traditional assumptions that law, not people, determine legal rights. LSP’s irresponsible progeny, Critical Legal Studies (CLS), took the next logical step and declared that law is politics, pure and simple. The proposition may be true in particular circumstances, but CLS’

wholesale declaration threatens to undermine the public’s acceptance and respect for law as an institution.

When I took the LSP course, I resented the reduction of what I had studied and taught to myth that had meaning and influence only because it was implanted in neural patterns in human brains. Fifty years later, cognitive science and evolutionary biology tell me that law as an institution is based not on abstract and universal reason, but on community habits and practices that are perpetuated by ideas residing in individual minds. Law is therefore based on myth, albeit a necessary myth.
APPENDIX IV. THE APRIL 8\textsuperscript{th} EMAIL\textsuperscript{418}

-----Original Message-----
From:
Sent: Sat Apr 08 11:46:01 2006
To:
Subject: Faculty Meeting

OK, so here's what went down at Friday's Meeting. About 150 students and 1/3 of the faculty showed up to the 12:00 meeting in the Heritage Room. The faculty, not really knowing that one of the topics to be discussed at the meeting was UH's recent drop to 70 in the \textit{US News} Law School Rankings, were shocked at the turn out by students, many of them making stupid jokes as they entered the room.

Rapoport kicks off the meeting by giving the floor to Mixon. Mixon moves to table the dean's report until the faculty and administration has had a chance to hear from the students. Rapoport asks why she should grant the motion, and Mixon responds, "there's obviously something that's caused them to show up in large numbers. I think they deserve the opportunity to speak if they've decided to come and make themselves heard." Rapoport responds coldly, explaining "they came because I invited them to come, John." Mixon snaps back, "well then lets hear what they have to say." Rapoport declines, and subsequently filibusters the discussion of ranking for an hour and half, causing at least 1/3 to 1/2 of the students present to leave the meeting.

\textsuperscript{418} Printed with consent of the author. Available online at Findlaw's Information, Message 25574: \url{http://www.information.com/bboard/clubs-fetch-msg.tcl?msg_id=002zeQ}. 
The April 8th Email

All the while, throughout the discussion during the dean's report, etc., members of the old guard faculty (Mixon, Shepard, Schuwerk, Linzer, Dole, Ragazzo) are repeatedly asking the dean to allow students the chance to be heard and explain what it is that's bothering them. Of course, Rapoport declines every time, causing students and faculty alike to become more and more restless.

Finally, Rapoport gets to the rankings discussion. For 15 minutes, she attempts to side-step and downplay the issue, claiming 1) the rankings are subjective and reflect an "obvious east coast bias;" 2) the rankings aren't the true measure of the caliber of education that we as UH students are receiving; 3) students are somehow to blame for failure to submit the information asked of them post-graduation regarding employment so that UH can make an accurate statistical report to US News; and 4) there are other factors at work (read: lack of alumni and main campus support) that are depriving us of both the ability and money to attract new faculty and students.

Rapoport finishes speaking, and opens up the floor to comments and suggestions. Linzer is first to speak, and he laces into the administration, Rapoport especially, for failing to make a concerted effort to effect positive change the factors that play into the rankings, i.e. student-to-faculty ratio (UH is worst in the top 100), 75% LSAT and GPA, placement after graduation, and reputation among the bench and bar. He says she did an awful job of soliciting contributions during the fundraising campaign after the flood, saying "We'll be fine, the library's OK, etc." when he said she should have said "We're in deep shit, we need help to build a new library."

Linzer's point was that Rapoport is a people-pleaser and a thinker, not an administrator and "doer." Then Shepard spoke up, reiterating what Linzer said, and adding that Rapoport makes this same speech every year without doing anything to change the way that we
The April 8th Email

approach the Rankings. His suggestions were: cut the bottom 20% after 1st year (improves student-to-faculty ratio) and set a bar for acceptable LSAT scores, because our "resume-friendly" system of rankings was letting some less-than-qualified applicants gain admission to the school. Finally another professor stood up, basically saying that if the administration were to be run like a corporation, there would have already been some radical changes to management, because in a corporation, unlike a school, there's actually some accountability for the type of decline that has followed Rapoport since coming on as dean. He said Rapoport has failed to take enough responsibility for her part in the fall in rankings, and that she sugar-coats and smiles it away, always saying "there's always next year," etc.

So then Rapoport gives some bullshit response about "well everyone, what are you doing to change it???", and the faculty basically rips into her again, saying that they're doing everything they can—helping get students placed in jobs post-graduation with the contacts that they've developed, continuing to write scholarly articles (that are now harder to publish in respectable journals because of the fall in rankings), and providing the best education they can to students given the situation.

Rapoport then opens the floor up to students. Everyone that wants to speak does so, and Rapoport answers questions with "well, what are you doing to change it?" Finally, someone says "It's not my job to change it, Dean, that's your job. I'm a student. You're the figurehead of the entire law school." Rapoport is stunned. She calls for a break to use the restroom and is gone for 15 minutes (who does that? everyone was standing up and listening to the meeting for 3 hours, she couldn't hold it in and continue?)

Anyways, Rapoport comes back and gives her side, saying she's got no support in the old guard faculty, and specifically, Mixon has
been her albatross since she came to the university. At this point she begins to cry. And she also continues to say that everything she does is undermined by the faculty and Mixon in particular. Big mistake, both the crying and the finger-pointing at Mixon. Students pounce on the opportunity to get at her during a moment of weakness, especially after she's just ripped the most well-respected professor at the entire school. Mixon says nothing, students begin raising their voices at Rapoport, saying the fall in rankings is completely unacceptable and they're not going to wait around anymore. Rapoport calls an end to the meeting, and speculation flies among students and faculty alike that she may resign before the weekend is over.

Who knows? It was a interesting experience, and Rapoport left the room with far fewer (read: zero) supporters than she entered with. Friends of mine who were indifferent to the woman left the meeting detesting her. So we'll see. Hope this gives you the info you were looking for.
APPENDIX V. THE DECLINE OF LL.Ms IN LAW TEACHING, 1993-2013

The Law Center hired roughly 140 tenure-track professors during its 65 years. The tabulation in Appendix VIII shows a remarkable change in credentials presented by newly hired Law Center professors. By 1974, the law school had hired 46 tenure-track teachers. Twenty-five, or more than half of them, held LL.M. degrees that were awarded before or during their tenure as teachers. From this watershed date until 2012, the school hired 95 tenure-track teachers, and only 13 held LL.M. degrees.

The triumvirate of A.A. White, Mike Johnson, and George Hardy hired 33 new teachers. One-third (11) had earned LL.M. degrees from elite schools to polish their J.D. and qualify them to enter the teaching market. After George’s deanship, a remarkable change occurred. Bob Knauss, the next dean, hired 35 new teachers. Only four had LL.M. degrees. After Bob’s deanship ended in 1993, the law school hired 30 new teachers. Only two had LL.M. degrees.

Apart from specialty areas such as health and tax law, the Law Center has not hired an LL.M. graduate since 1995. The role of an LL.M. for polishing a non-elite J.D. for law teaching has been virtually eliminated by the plethora of highly credentialed graduates of prestigious law schools seeking to teach. That is bad news for the really bright graduate of a middle-rung law school, but it is good news for the law schools that hire new teachers and for their student bodies and seek improved ranking.

LL.M. degrees were never important for entry level teachers at Harvard, Yale, and Columbia, who favored top-of-the-class graduates from
their own school or from other schools in their circle, polished with Supreme Court or Circuit clerkships, scholarly publication, or great academic success at other schools. Law schools slightly outside this circle received the elite schools’ second-best graduates as beginning teachers. LL.M. degrees were important only for employment at law schools that did not have access to this elite pool of beginning teachers. When Newell hired my night school classmates, he may not have had a lot of choice. Harvard and Yale graduates, even LL.M. holders, would not look at UH unless they were dodging the draft. I once asked Myres McDougal how he thought we should expand our faculty. His response was consistent with Newell’s practice “Hire your top graduates and send them to graduate school.”

From 1955 to 1980, the advice made sense. A top-of-the-class graduate from University of Houston was likely to be a better bet than a bottom-half graduate from Harvard. That is still true, but that is no longer the choice. Today’s choice is between the Coif and Law Review graduates from highly ranked schools, and Coif and Law Review graduates from lower ranked schools. Even law schools at the very bottom of US News ranking can now select from a large supply of eager applicants with elite law school credentials.

Today’s graduates of law schools outside the top circle who want to enter law teaching have had better law training by conventional measures than those who graduated in the 1950s and 1960s. Mid-rung law schools of that earlier time did not have rich curricular opportunities, and graduate study allowed them to experience law in a broader context. Today, that rich curriculum is available at University of Houston Law Center and most other strong state and private law schools. Professors, particular new ones, are as highly credentialed as those at elite schools. Simply stated, our law graduates have been exposed to a broader level of law study than my generation was.

The Law Center’s curriculum is rich in special study, research, and opportunities to publish in our highly ranked law review. Our very top law
The Decline of LL.M.s in Law Teaching

graduates are substantively qualified to teach law without getting an LL.M. Their problem is getting a job. The credentials for academic appointment at a reasonably strong law school are easy to identify. The qualifying factors in 2012 are COIF, a J.D. from a law school ranked in the *US News* top twenty, law review experience, judicial clerkship at the Supreme Court (few available) or Circuit Court (many available), and at least one published law review article. Some additional publication is very nearly essential. A Ph.D. adds panache, but won’t guarantee a job. More than five years of practice is not a positive factor and may even be disabling.

The Law Center need not be nostalgic about the days when a country boy could be polished with an LL.M. and get a teaching position. Instead, we should rejoice that all twelve current faculty members hired since 2005 hold J.D.s from a *US News* top-fifteen law school; half of them graduated from one of the top-three ranked schools; ten were law review officers; eight were judicial clerks for Circuit Court judges; one clerked for a Federal District Court judge; and three hold Ph.Ds. They are enormously productive. A rough count of the lifetime scholarly production by the Law Center’s 52 tenure-track faculty in 2012 reveals that they have produced almost two hundred published books and more than one thousand articles. Very few schools could have matched that record twenty years ago. Not many can today.

The new faculty members are excellent teachers. Student evaluations show they are better received than older faculty, and that makes sense. They are closer to the age of computers, electronic communication, and programmed learning, and they are less encumbered by recollections of a now-irrelevant past. My practice of banning computers in class may be anachronistic in the quick study world of Wikipedia law.

Credentials do not necessarily imply greater talent or certain success. The current dean, Ray Nimmer, is the Law Center’s most published professor and probably the best known internationally. His Valparaiso degree would not attract much attention from good law schools today, and it
didn’t in 1975 when we hired him. I would like to say we hired Ray because we foresaw his spectacular future. But the fact is that it was more luck than predictive skill on our part. His success is not due to luck. It is a product of intellect and hard work.

No one can predict who will be the next legal education superstar. It could be a member of our faculty or a graduate from our law school or it could be a new faculty member at Harvard. The safe strategy for any school is to hire on the applicant’s academic record. Every school is concerned about its masthead, just as Northwestern’s Dean Ritchie was forty-five years ago when he told me he could not hire a teacher with my UH degree. A J.D. and law review position from Harvard does not need explaining. A Supreme Court clerkship speaks for itself, as does a Circuit clerkship. These credentials testify that the graduate has succeeded in tough competition, and that success is likely to continue. If credentials fail to predict, the tenure process protects the school. This reasoning makes top credentials a virtual necessity for tenure-track positions at law schools around the country. It is not fair to today’s brilliant top of the class J.D. from Valparaiso, but it is rational. A Valparaiso or Houston graduate can still do as Ray Nimmer did, and as Rutgers graduate Elizabeth Warren did: get a job at an out-of-the-loop school, publish great work and teach fabulously. Remember, Elizabeth did not have a lot of job offers when she accepted ours.
APPENDIX VI. LL.M. PROGRAMS AT THE LAW CENTER, 2012

As a result of Dean Robert Knauss’ expanded vision, the Law Center now offers graduate degrees in six specialties: Tax; Energy; Environment and Natural Resources; Intellectual Property & Information Law; International Law; Health Law; and an LL.M. for foreign lawyers who spend a year learning the basics of American law.

Graduate programs add panache and prestige, and they add cash. The eighty-five graduate students who enrolled in 2011 generated over $2,500,000 in tuition and fees for the University, a substantial portion of which is passed through to the Law Center.

In 2011, the Tax program drew the most students, with 27 enrolled, followed by International Law with 17; Intellectual Property and Information Law 15; Energy, Environment, and Natural Resources (EENR) 14; Foreign Scholars 13; and Health Law 9.

The Law Center supports its graduate law programs with 20 courses in Tax, 24 in International Law, 23 in IPIL, 27 in EENR, and 18 in Health Law. Foreign scholars have access to most courses in the basic J.D. curriculum. All specialized courses are open to J.D. candidates, thereby strengthening all Law Center academic endeavors and generating opportunities for substantial research and publication.

Peggy Fortner has done a superb job as Director of the LL.M. program since 2000. Admission and policy decisions are made by a graduate legal studies committee.

I will describe some aspects of each LL.M. program.
LL.M. Programs at the Law Center

*Tax LL.M.*

The College of Law’s entire Tax Faculty in 1952 consisted of C. W. Wellen, who was the law school’s first and only Tax professor until he left in 1959. When Wellen left, Dean Newell Blakely hired my former classmate and local torts lawyer, James H. Wright, to teach income tax and estate tax law as part of his course load. Jim took tax courses at University of Michigan Law School in 1963, and he taught basic tax courses until he retired in 1983. A.A. White and Mike Johnson doubled the size of the full time Tax Faculty in 1975 by hiring Ira Shepard, a Harvard law graduate and member of the Harvard Law Review. Ira brought a high-level tax practice background and four years of experience gained from teaching tax at University of Georgia Law School from 1971 to 1975. Ira and Jim enlisted some of Houston’s best practitioners as adjunct professors to teach specialty courses. Darold Maxwell, a Harvard law graduate and tax specialist, taught from 1979 until he returned to salt water sailing and law practice a few years later.

After the LL.M. in tax law was approved in 1983, University of Pennsylvania Law School graduate Richard Westin joined the faculty. Richard had tax practice and teaching experience, and he has published several books on tax law. In 1985, Northwestern J.D. Bill Streng, an experienced international tax law practitioner and former SMU law professor, joined the faculty. Bill is author or co-author of nine major books in tax law. Westin moved to University of Kentucky in 1998, and in 2000, the Law Center hired Johnny Rex Buckles, a Harvard Law graduate with substantial tax practice experience. Another talented teacher and scholar, Christine Agnew, taught from 2005–2007 before moving back to tax practice.
LL.M. Programs at the Law Center

A recent addition to the faculty, UT law graduate Bret Wells, hired in 2011, brings a rich practice, corporate, and tax background. He also worked in Singapore for a time. He teaches and writes primarily about U.S. international tax rules and policy. He also teaches the basic Oil & Gas course, drawing on his experience as chief financial officer for a large drilling company.\(^{419}\)

Ira Shepard retired in 2011, leaving Bill Streng, Johnny Buckles, and Bret Wells to anchor the undergraduate and graduate tax curriculum. A corps of adjunct professors drawn from Houston’s talented practicing bar remains essential to the program.

Available tax courses include:

- Advanced Corporate Tax • Bankruptcy Taxation • Business Planning • Corporate Taxation • Estate Planning • Federal Income Tax • Federal Income Taxation of Trusts & Estates • Oil & Gas Tax • Partnership Tax • Post Mortem Estate Planning • Real Estate Tax • State & Local Taxation • Tax Accounting • Tax Ethics • Tax Fraud & Money Laundering • Tax Policy Seminar • Tax Procedure • Tax Research • Taxation of Compensation • Taxation of Exempt Organizations • Taxation of Financial Instruments • Taxation of Sales & Exchanges • U.S. International Tax

*Energy and Environment and Natural Resources*

The Law Center’s location in Houston makes oil and gas law a natural subject for graduate study. I took the basic course as a student from Simon Frank, who taught oil and gas law in the 1950s. With my oil company background, I felt at home teaching the course in the 1960s. That

\(^{419}\) Photo of Bret Wells: [http://www.law.uh.edu/faculty/](http://www.law.uh.edu/faculty/)
single course covered conveyancing, leases, and regulation, but it was not enough to serve the demand that appeared after the OPEC oil embargo that caused oil and gas prices to more than quadruple. Interest in oil and gas increased when George Hardy became dean. George was a recognized oil and gas expert who practiced, published and consulted extensively in the field.

George strengthened the school’s commitment to oil and gas law and expanded the subject to include environmental studies by hiring our recent law graduate Jacqueline Weaver. She brought a strong academic background in economics and experience in the petroleum industry. Jacqueline quickly built a national reputation as an expert in oil and gas law, and she participated in major research projects, one of which aimed at producing mineral codes for Russia. She has published several books and book chapters and many law review articles. She is one of the world’s authorities on oil and gas conservation and a passionate advocate of field-wide unitization as a means to extend productivity of the nation’s oil and gas reserves. She is widely sought as an expert witness, particularly in gas royalty cases. Bret Wells strengthens the oil and gas program as well as tax.

Environmental law was not a significant issue in legal education until Richard Nixon’s administration produced the National Environmental Policy act of 1969, the Clean Air Act of 1970, and the Clean Water Act of 1972. There could be no better example of Holmes and Roscoe Pound’s use of law as an instrument of social policy than this enormous legislative, administrative, and judicial effort to accomplish a social good. Before 1970, there was little or no case law to define the new world of regulatory intervention. The challenge to shape new legal institutions would keep scientists, legislators, practitioners, and professors busy for the next forty years. Jacqueline Weaver has been at the forefront of this effort, leading the Law Center’s efforts to establish a teachable discipline.

Jacqueline was not alone in the formative efforts. In 1976, George Hardy hired Gilbert Finnell, a Florida State professor who brought his
considerable interests and expertise in Land Use, Coastal Zone Management, and Environmental Law to the Law Center. Gil taught land use and related courses until his death in 1994. Bob Knauss hired Sanford Gaines, a Harvard law graduate with environmental expertise in 1985. After helping build the Law Center’s environmental program, Sandy accepted a position at the University of New Mexico in 2007. John O’Quinn sought to expand Law Center competence in environmental tort liability by funding an Environmental Law chair in 1990. For several years, the position was filled by visiting environmental scholars, including Fred Bosselman, one of the nation’s leading Land Use experts. Victor Flatt, a Northwestern J.D. accepted the chair in 2002, and in the same year, Marcilynn Burke, a Yale J.D., began teaching land use and environmental courses. Victor left for University of North Carolina in 2009, and Marcilynn took a position with the Bureau of Land Management, which manages over 245 million acres of federally owned land. In 2010, the Law Center added environmental lawyer Tracy Hester, who has been an exceptionally strong and visible environmental spokesman.

Environmental Law is now a stable discipline, with an abundance of teachable cases, regulations, supplementary legislation, and scientific data. The connection between environment and energy is obvious, considering the environmental impact inherent in virtually every type of energy production. For example, many areas in Texas have lignite deposits that must be mined by surface removal; coal used as a fuel produces air pollution; fracturing gas formations to increase production may contaminate fresh water formations; and oil refining, petrochemical production, and auto exhausts add to air pollution.

Energy, Environment, and Natural Resources LL.M. courses include:

Advanced Oil & Gas Contracts • American Indian Law • Clean Air Act • Climate Change Law and Litigation • Coastal and Ocean Law • Emerging Energy Markets • Energy Law and Policy • Environmental
LL.M. Programs at the Law Center

Criminal Enforcement* • Environmental Law • Environmental Regulation of Emerging Technologies • Federalism and Environmental Law • Hazardous Waste Law • International Commercial Arbitration • International Environmental Law • International Petroleum Transactions • International Risk Management • Land Use Management • Law of Biodiversity Conservation • Legal History of Gasoline • Natural Resources Law • Nuclear Law • Oil & Gas • Oil & Gas Tax • Practice of Environmental Law • Project Finance • Regulated Industries • Toxic Torts • Water Law

The Law Center is currently tied with Vermont Law School for the greatest number of energy law courses offered by any law school in the country.

Health Law.

In the 1960s, John Neibel developed a personal interest in legal problems of a growing number of aging people. John met a newly licensed psychiatrist, Philip Bohnert, and they discovered common interests in law and medicine. The immediate product was a Law and Medicine course that John taught for a number of years, sometimes with Philip’s participation. Bohnert was already a well-known co-author of *The Paranoid*, a medical reference book. His wife, Gretchen, later graduated from the Law Center. John Neibel taught Law and Medicine until 1978.

In 1969, Margery Shaw, M.D., a University of Texas Health Science Center professor, took a tentative look at law school by taking my course in Jurisprudence. She saw an immediate connection between law and her specialty, Medical Ethics and Genetics. She became a serious law student, graduating with a J.D. in 1973. She and John Neibel undoubtedly discussed their mutual interests in law and medicine, but by the time Margery graduated, John had resigned as dean. Mike Johnson as Associate Dean had substantial responsibility for running the Law School, and he took an interest in the medical affiliation. In 1974 the law school hired Len
Riskin, a Yale LL.M. graduate with a serious interest in law and medicine. Mike Johnson, Len Riskin, Len’s wife Casey, and Margery Shaw enlisted Texas Medical Center officers to create a research institute that combined resources of the law school and The University of Texas Health Science Center. They created an Institute for the Interprofessional Study of Health Law, rented space in Fannin Bank Building, and began an affiliation between the Health Science Center and University of Houston. The Institute’s listed officers included Roger J. Bulger, M.D., and William S. Fields, M.D., along with Mike Johnson, Margery Shaw, and Andrew Rudnick, who was Associate Chancellor of the University of Houston.  

The first efforts sought to organize with a director who held both a law degree and an M.D. In 1975, The College of Law hired Phillip Reilly, M.D., to implement a Law and Medicine curriculum and the new research institute. Reilly holds a J.D. from Columbia and an M.D. from Yale. The group also tried to enlist Jay Katz of the Yale Law Faculty to anchor a permanent arrangement between the law school and the University of Texas Health Science Center. Katz considered relocating to Houston, but he remained at Yale. 

Phil Reilly left after a year or so, but the law school had made its commitment to Law and Medicine, and in 1984 Dean Robert Knauss hired Laurence Tancredi, who held an M.D. from University of Pennsylvania and a J.D. from Yale Law School, to fill the post. Larry left after one year, and Dean Knauss abandoned pursuit of dual degree M.D./J.D.s in favor of finding an aggressive promoter with more traditional law credentials to

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420 In a JAMA 1982 abstract, Geneticist and lawyer Margery Shaw is profiled and the work of Houston's Institute for the Interprofessional Study of Health Law is discussed. Dr. Shaw, interim director of the Institute, offers her perspectives on current issues in health law, among them the personhood of the fetus and its implications for patient care, wrongful birth and wrongful life suits, and a proposed federal regulation concerning adolescents, contraceptives, and parental notification. Her research in genetics and her theories of genetic counseling and reproductive responsibilities are also touched upon.
LL.M. Programs at the Law Center

make the nascent Health Law Program self-sufficient, stable, and academically strong. He found an entrepreneurial director in Mark Rothstein. Mark holds a Georgetown University J.D.; he had a health law practice background; he held an adjunct teaching position at University of Pittsburgh’s Graduate School of Public Health; and he was adjunct professor at West Virginia University School of Medicine. In addition, Mark and his wife, Laura, were law professors at West Virginia University. They came to Houston as visiting professors in 1985 and both joined the regular faculty in 1986. Mark built a health law program that was at various times ranked by *US News* as first or second in the nation.

One of Mark’s first moves was to create a new Health Law and Policy Institute to solicit funds and receive grants with some independence from the University and the Law Center. Mark directed the new institute from 1986 until 2000, when Laura became Dean at University of Louisville Law School. Mark relocated with her to the University of Louisville’s medical school. Mark was a hard-working and charismatic director. He lobbied successfully for state funds and private grants, though the program continued to run a deficit. Funding aside, the Health Law program was a resounding success. Mary Anne Bobinski was a highly effective Director of the Health Law Institute until 2003, when she became dean at University of British Columbia.

Dean Nancy Rapoport hired Joan Krause in 2001 and, in 2003, added Brian Liang, who held both a J.D. and M.D. Brian left for California Western’s Law School in 2004, and Joan Krause and Richard Saver relocated to the University of North Carolina in 2009, requiring the Health Law program to rebuild its teaching capability. That task fell on William Winslade.

William Winslade, Director of the LL.M. program, is the longest-serving Health Law faculty member, having joined in 1986. He holds Ph.D. degrees from Northwestern University and from Southern California Psychiatric Institute and a J.D. from UCLA.
LL.M. Programs at the Law Center

Bill succeeded grandly in his rebuilding effort. Current faculty includes Barbara Evans, hired in 2007. She holds a Ph.D. from Stanford, J.D. from Yale, and LL.M. in Health Law from UHLC in 2007. Three years later, Jessica Mantel, J.D. and M.P.P. from University of Michigan, and Jessica Roberts, J.D. from Yale, joined the Health Law Faculty.  

Barbara Evans, Jessica Mantel, and Jessica Roberts

The Health Law and Policy Institute is a related entity that receives grants and provides students opportunities for research training. Barbara Evans and Jessica Mantel are co-directors of the Health Law and Policy Institute. Patricia Gray and Ronald Scott have long served as research faculty members. Both hold LL.M. degrees from the Law Center, and they regularly produce significant research products for government and private clients.

More than 160 UHLC Health Law graduates have entered academic, state and federal positions, practice, consulting, and research. The emphasis on writing is supported and encouraged by substantial awards for publishable papers. The Health Law Program is ranked tenth by US News in

421 Photos of Barbara Evans, Jessica Mantel, and Jessica Roberts: http://www.law.uh.edu/faculty/.
LL.M. Programs at the Law Center


Courses leading to LL.M. in health law include the following:

Advanced Health Law • Biotechnology and the Law • Children’s Health and the Law • Disability and the Law • E-Health Law Seminar • Elder Law • Food & Drug Law • Health and Human Rights • Health Law Clinic I • Health Law Clinic II • Health Law Survey: Introduction to Health Law • Health Law Transactions • Health Regulatory Process • HIV and the Law • Hospital Law and Ethics • Law & Bioethics Seminar • Law & Psychiatry • Law, Ethics, and Brain Policy Seminar • Life & Health Insurance • Medical Malpractice Litigation • Poverty, Health & Public Policy Seminar • Public Health Law and Ethics • Regulation of Health Care Professionals Seminar • Rural Health Law

*Intellectual Property and Information Law.*


Ray’s book and his demonstrated expertise gave the law school new credibility in digital information. When Craig Joyce, an Assistant Law Professor at Vanderbilt Law School with a Stanford J.D., unexpectedly indicated he might move to Houston, the Law Center enthusiastically hired him as Associate Professor, and Dean Knauss saw the prospect for a strong program in intellectual property law. He asked Craig to build what was to
LL.M. Programs at the Law Center

become a premier Intellectual Property and Information Law program and related institute. Faculty approved the IP program in 1991.

A key part of Craig’s plan was adding a Patent Law Professor to the faculty. Houston is a diverse place in many ways, but its IP bar (and thus the job market for UHLC graduates) is skewed heavily toward support for the petrochemical, biomedical, and astrophysical industries. Paul Janicke, initially hired in 1992 on staff but later converted to tenure-track status, was a former managing partner at Arnold, White & Durkee, Houston’s then huge and world-class “boutique” IP firm. Paul has since become the Houston Intellectual Property Law Association Professor of Law. Craig holds the Andrews Kurth professorship.

Together, Paul and Craig established the program that eventually became IPIL by co-marketing their efforts with Ray Nimmer’s Computer Law Institute. Paired with Craig, whose best-selling copyright casebook was already in its second edition, Ray gave instant credibility to the new UH IP venture. Paul shepherded the LL.M. concentration in IPIL through the faculty, the University, and the Coordinating Board in the early days of the program. The addition of the advanced degree had relatively little impact of the shape of the IP curriculum

In 1999, under Stephen Zamora’s deanship, the IP and computer law programs formally merged to form IPIL. Two faculty members who later joined Craig and Paul in the IP program are Greg Vetter, J.D. Northwestern University, hired in 2002, and Sapna Kumar, J.D. University of Chicago, hired in 2009 after winning a prestigious prize awarded by the Institute.423

In 2012, noted scholar Jacqueline Lipton was named the Baker Botts Professor of Law and Co-Director of IPIL. Among her degrees are Ph.D. and LL.M. from Cambridge and five other degrees from other noted institutions. As with health law, the instructional program for J.D. and LL.M. study and the supporting institutes are so totally entwined that any effort to describe the degree program necessarily requires reference to the related institute, which is described in more detail in Appendix VII.

The LL.M. courses in information law and intellectual property that are available both to J.D. and LL.M. students include the following:

Communications Law • Copyright Law • Copyright Seminar • Digital Transactions • Entertainment Law • Entrepreneurship • Intellectual Property Seminar • Intellectual Property Strategy & Management • Intellectual Property Survey • International Intellectual Property • Internet Law • Licensing & Technology Transfer • Patent Law • Patent Prosecution • Patent Remedies & Defenses • Privacy & Data Protection • Property Crime

423 Photos of Sapna Kuma and Jacqueline Lipton: http://www.law.uh.edu/faculty/.
in the Information Age • Special Research in IP or IL • Trade Secrets • Trademarks & Unfair Competition • Transactional Clinic • Virtual Worlds

*International Law.*

Visiting Oxford Professor F. H. “Harry” Lawson suggested in the 1960s that we establish a Mexican Legal Studies Program to capitalize on our proximity to that important neighboring market for trade and legal services. Dean John Neibel arranged for Bates College of Law to offer courses in Mexico that were available for our students and students from other law schools. Eli Ereli, Jim Herget, Charles Heckman, Steve Zamora, and Sandra Thompson were early directors. The venture eventually morphed into a general international law curriculum. George Hardy gave the program a boost by hiring two young professors with international law interests, Jordan Paust, a widely respected public international law scholar, and Stephen Zamora, who is one of the nation’s most knowledgeable North American Free Trade Agreement scholars. Jordan is a prominent Human Rights advocate and a constant commentator and writer in the field. Jordan writes prodigiously, and he is widely cited as an authority, particularly in Human Rights matters. Jordan is a member of the prestigious “over 100” citations club. He has a Westlaw count of 1,970.

Bill Streng, a recognized expert in International Tax law, adds strength to the program. Other faculty members with related specialties and support from the Houston international law bar enable the international law LL.M. to serve its highly qualified graduate and undergraduate law students.

Courses offered in the International Law curriculum include:

Asylum Law • Comparative Law • Conflicts of Law • European Union Law • Human Rights Seminar • Immigration Law • Immigration Law & Business • Import & Export Regulation • International Business Transactions • International Commercial Arbitration • International Contracting • International Criminal Law • International Law • International
LL.M. Programs at the Law Center

Law & the Use of Force Seminar • International Litigation and Arbitration • International Petroleum Transactions • International Tax • International Trade • International Trade Seminar • Introduction to European Law • Introduction to Mexican Law • Law and International Economic Relations • Law of Biodiversity Conservation • Law of International Organizations • Maritime Cargo and Collision • Maritime Cargo, Collision, and Ocean Pollution Seminar • NAFTA • Problems in International Trade and Investment Seminar • Space Law • U.S. Export Regulation

Foreign Scholars.

Increased internationalization of trade and commerce has created a demand by attorneys licensed in other countries to spend a year in residence learning about American law. The general curriculum is available for these students, along with some specialized studies that include the following courses:

Employment and Labor Law • Energy, Environment and Natural Resources Law • Family Law • Government Regulation • Health Law • Intellectual Property & Information Law • International and Comparative Law • International Law and Admiralty • Law and Society • Procedure and Practice • Real Property, Trusts, and Estates • Taxation
LL.M. Programs at the Law Center

The LL.M. for foreign lawyers provides a valuable alternative for some lawyers to meet bar eligibility requirements in some states. Another option is to spend three years obtaining a regular J.D., as Jorge Camil, a 1971 graduate, did. Most foreign LL.M. students do not seek a U.S. license, planning instead to return to their home country with a better understanding of American law. The mix of foreign and domestic law students enhances the Law Center's general educational environment, as illustrated by the experience of Xiao Chen, who was licensed in China and earned a J.D. at the Law Center in 2011. He was an excellent student, and such a favorite that his fellow graduates selected him to be their class speaker, and his dynamic presentation earned a standing ovation. Xiao Chen plans to translate portions of this book into Chinese.424

The various LL.M. programs and Institutes have given content to Bob Knauss’ vision to convert Bates College of Law into a sophisticated, broad-based Law Center.

424 Photo of Xiao Chen: https://ssl.uh.edu/lexbook/facebook.php?year=All&asect=All&letter=C.
APPENDIX VII. INSTITUTES AT THE LAW CENTER, 2012

Institutes bear explaining. Those at the Law Center are entities that are approved by the Administration to provide a limited range of services to the profession and the public. They can receive donations, enter into contracts for research or other service, employ full-time or part-time staff, employ law students, and disburse funds. They may be funded by an initial grant, continuing support from public or private sources, and income from their services. Law Center Institutes do not ordinarily manage their own monetary accounts. Instead, the Law Foundation or the University receives income, manages payroll and other expense payments, and audits the operation. Institutes are ordinarily created by individual professors or a group to perform research contracts or receive grants for purposes that are consistent with the University’s general mission.

Whatever good the institute does reflects back on the University, but the University does not have formal liability for performance of contracts. Donors trust that money donated to an Institute will be used for its intended purpose. Government and private parties know that institutes can employ skilled professors and students to produce high quality educational or research products. Operating as an institute frees the entity from some restrictions on expenditures and red tape, although that flexibility is diminishing. Universities ordinarily require that Institutes pay a percent of their grant receipts as overhead to the University to cover the costs of space, utilities, administration, accounting, and the like. Several universities have
been embarrassed when caught imposing exorbitant overhead, as with Stanford’s 74% in 1991, since reduced to 57%.

An outsider may assume that a happy faculty would welcome every worthwhile institute with a smile and pat on the back. That is far from true. Institutes that involve long-term commitment of resources or the prospect of considerable income present an ever-present temptation for empire-building. Other faculty may resent diversion of funds that might otherwise be available for the benefit of non-institute faculty. During the late 1980s, Law Center Faculty divided into advocates for the J.D. program who argued and voted against creating any special programs on the one hand, and advocates for special purpose institutes on the other. The tension diminished as established institutes settled into their roles and no major new institutes appeared.

One of the most visible institutes is the Health Law and Policy Institute, which received line-item state funding as a result of successful lobbying by Mark Rothstein and Dean Bob Knauss. The funding now goes to the University, but it is substantially passed through to the Institute. Barbara Evans and Jessica Mantel are Co-Directors. Two professional research faculty members provide substantial research products to public and private parties. Another institute, the Texas Consumer Complaint Center was initially funded by a small grant from an alumnus. It now has several reliable sources of support, one of which derives from punitive damage awards in consumer cases. The A.A. White Institute received an initial foundation grant and now receives additional income by charging tuition for mediation training.


426 Stanford Nanofabrication Facility web site: http://snf.stanford.edu/about/fees.htm (last visited September 27, 2011)
Institutes at the Law Center, 2012

Here is a partial list of Law Center Institutes as of 2011:

A.A. White Dispute Resolution Center
Center for Children, Law & Policy
Center for Consumer Law
Center for Environment, Energy and Natural Resources Law
Criminal Justice Institute (CJI)
Health Law & Policy Institute
Institute for Higher Education Law & Governance (IHELG)
Institute for Intellectual Property & Information Law (IPIL)
Program on Law and Computation
Southwest Juvenile Defender Center
Texas Consumer Complaint Center

Institutes were particularly important for supporting research and outreach of several LL.M. programs.

Because the Law Center’s current institutes and programs are almost too numerous to enumerate, let alone describe individually, I will illustrate only one. Fortunately, it is a success story: the Institute for Intellectual Property & Information Law, or IPIL.

_Founding._

After Ray Nimmer’s book received the 1985 Best Book Award from the Association of American Publishers, Dean Robert Knauss perceived intellectual property to be a coming specialty, and he asked Craig Joyce, who taught Copyright Law, to create a new program. The program would involve a curriculum, an LL.M. offering, and an Institute to receive and disburse funds and sponsor non-credit programs that would benefit the profession and the Law Center.

After spirited debate over adding another special program, faculty approved the new program and the related institute by a single vote. The
narrow victory was followed by reconciliation and a unanimous vote that authorized Craig to present the initiative to the outside world as fully supported by faculty. UHIP instantly became the third-oldest IP program in the country, right on the cutting edge where Bob Knauss and Craig Joyce had envisioned. Literally dozens of law schools have since created similar programs, but IPIL maintains its preeminent position, consistently outranking all but two or three competing institutes that are housed at top-ten-ranked law schools.

**Personnel.**

A key part of the plan was adding a patent law professor. Houston’s IP bar (and thus the job market for UHLC graduates) is skewed heavily toward support for the petrochemical, biomedical, and astrophysical industries. The newly hired professor, initially on the Institute staff but later converted to tenure-track status, was Paul Janicke, a former managing partner at Arnold, White & Durkee, Houston’s then huge and world-class “boutique” IP firm. Paul was initially hired with an implicit understanding that if he could raise enough money from the local patent bar to fund his position, he would be considered for a regular professorship. He raised the money, but hiring became complicated when women faculty members objected to hiring Paul without also hiring a woman. Sidney Buchanan, the appointments chair, addressed the equality problem by sending a single-purpose team to the hiring convention with instructions to find a woman law teacher. The trip succeeded, a hiring balance was struck, and Paul was moved to tenure-track status. Subsequently, he was appointed the Houston Intellectual Property Law Association Professor of Law. Craig Joyce holds the Andrews Kurth professorship. In 1999, under Stephen Zamora’s deanship, the IP and computer law programs formally merged to form IPIL. Three subsequent faculty members, Greg Vetter (2002), Sapna Kumar (2009), and Jacqueline Lipton (2012) strengthen UH IP offerings with teaching and scholarly emphases on Patents, Software, and Cyber Law.
Finally, like other major institutes and centers at the Law Center, IPIL has a behind-the-scenes administrator who accounts for much of the operation’s success: capable staff to run day-to-day operations. In IPIL’s instance, that person is Sindee Bielamowicz, who came on board simultaneously with the merger of the IP and IPIL programs in 1999.

Teaching by institute faculty.

There is a common misconception about teaching loads in specialty programs. For purposes of external consumption, it is valuable to portray faculty in specialty programs as engaged 24/7 in whatever is the subject of their institutes. The day-to-day reality differs greatly from that perception. On average, specialty program faculty members teach, at best, half of their teaching hours in the subjects where their programs project them externally. Ray Nimmer, for example, always had an academic focus on Commercial Transactions, and for years before he became dean, he taught and wrote in that area and in Contract Law. Craig teaches Torts and is a nationally recognized scholar in Legal History. Paul, who came to the Law Center from an IP litigation practice, also teaches Evidence and Military Law. Both Greg and Sapna carry major teaching loads in Property.

IPIL faculty teach the major IP courses, but ten other professors, or affiliated faculty, teach in other subject areas or elsewhere at UH. One such faculty member chairs the University of Houston Physics Faculty. In addition to these “on-site” reinforcements, IPIL and the Associate Dean for Academic Affairs coordinate the activities of some two dozen downtown practitioners who, as adjunct faculty, teach additional niche courses or coach students in various IP competitions.

The LL.M. program in Intellectual Property and Information Law is separate from the Institute. It offers a flexible curriculum for IPIL LL.M. candidates to earn twenty-four credits at UHLC (a minimum of fifteen of them in IPIL courses). The only additional load on IPIL faculty occurs if a candidate elects to write a masters thesis, which is optional in IPIL and
several of the other LL.M. concentrations. Otherwise, LL.M. students are additional enrollees in classes that would otherwise be offered for J.D. candidates anyway.

Apart from the various IPIL-directed lectures and other events noted below, LL.M. and J.D. students benefit from IPIL’s sponsorship of the Intellectual Property Students Organization (IPSO), founded in 1991. IPIL provides funding and liaison with potential speakers from the bench, bar and legal academia for IPSO programming that now averages two events per month.

**Institute-supported scholarship.**

All of IPIL’s core faculty members are very productive scholars in their relative specialties. Paul Janicke published scholarly articles even during his practice career, and Ray Nimmer was a research fellow at the American Bar Foundation before teaching law. Institutes like IPIL also support quality scholarship by others. A major function of the Health Law & Policy Institute, for example, is providing support for studies by a cadre of health law professionals tasked to research issues important to the State of Texas and beyond.

Several Law Center institutes and centers, including Health Law, ENR (Energy, Environment, and Natural Resources), and Consumer Law, have standalone journals focused on their areas of specialty. IPIL, under Craig’s direction, chose a different path. Beginning in 1994, with the first Katz Foundation Lecture, IPIL negotiated a partnership with Houston Law Review that benefits both parties and the Law Center generally. IPIL attracts for its various lectures and symposia, including, since 2004, the annual Baker Botts Lecture, a number of top-flight intellectual property and information law scholars from leading U.S. and international educational institutions. Participation in the last ten years alone included faculty from more than half of US News’ top twenty-ranked law schools, as well as Oxford and Cambridge Universities; law firms; corporations, and the
judiciary. The work-product from these events is handed to the law review for editing and publication, and the published products regularly receive plaudits from the authors for their exceptional thoroughness and sensitivity.

IPIL also awards sizeable annual grants to rising IP stars in academia and among federal appellate court clerks as a way to encourage enhanced scholarship in IP. One happy spin-off from the Sponsored Scholarship Grants program was that IPIL identified Sapna Kumar, who was then headed for a Seventh Circuit clerkship. Her research brought her to the law faculty’s attention and resulted in her eventual hiring at UHLC.

The crown jewel of IPIL’s efforts to promote outside scholarship in IP and IL is its annual national conference in Santa Fe, New Mexico. Over the years, through that conference and IPIL’s two lecture series, the program has managed to attract the leading treatise writers in all of IPIL’s subject areas, as well as judicial luminaries such as Richard Posner and Frank Easterbrook. The conference is an intensive, but informal, workshop during which papers by a half-dozen presenters are honed in a collegial setting by fellow presenters for eventual publication in Houston Law Review. Invitations to “come to Santa Fe next summer” are a highly sought-after commodity in IP academia.

*Institute service to the practice.*

All of the institutes, to one degree or another, provide service to the profession. In addition to its two annual lecture series, IPIL co-sponsors with the Houston Intellectual Property Law Association an annual fall institute in Galveston on IP law. The gathering consistently attracts between three hundred and four hundred attendees from Southeast Texas and fulfills all annual MCLE requirements of the state bar. IPIL also maintains a number of websites for the convenience of the bar (and academia), including patent litigation statistics maintained by Paul Janicke and a licensing blog by Ray Nimmer.
The bar benefits from IPIL’s ability to attract leading members of the judiciary to Houston. They included, most recently, two panels from the U.S. Court of Appeals for the Federal Circuit, which hears all patent appeals from across the United States, and now-retired Supreme Court Justice Sandra Day O’Connor. Justice O’Connor’s appearance in 2005 drew an overflow crowd of one thousand for a dinner and lecture.

Support for institutes.

All institutes are funded uniquely. IPIL’s financial support comes from an Advisory Council composed of leading regional law firms and corporations. The board assembles three times a year for a lecture and dinner.

Institutional direction.

IPIL, long directed by Paul Janicke and Craig Joyce (with the addition of Ray Nimmer after merger with the Computer Law Institute in 1999), is now headed by Craig Joyce and Greg Vetter. Greg, who has an MBA in addition to his J.D., handles most business affairs, curriculum, and the Institute’s sponsorship of IPSO. Craig is principally responsible for fundraising and marketing.
APPENDIX VIII. TENURE TRACK
FACULTY HIRED, 1947-2012

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*Not tenure-track until 1959
## APPENDIX IX. ENTERING CLASS DATA, 2000 – 2007

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557
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AFDC (Aid For Dependent Children), 24
Agata, Burton (Burt), 209, 210, 211, 212, 213, 219, 239, 286, 342
Agnew, Christine, 527
Alcorn, Wendell, 462, 463
Alderman, Richard, 289, 290, 368, 396
Algerian Lounge, 86
Allison, 320, 381, 421, 422, 423, 428, 471
Arkadelphia, Arkansas, 49
Asimos, Ted, 81
Askins, Knox and Clark, 472
Austin, John, 124, 157, 158, 163, 164, 169, 212, 383, 467, 470, 503
Austrian Positivism, 160, 492, 500
Baker & Botts, 63, 192, 463, 485
Baker, D. Jansing, 462
Baker, Mike, 462
Baker, Roland, 48, 58, 103
Baker, Suzanne, 310
Balasco, Sybil, 6, 85, 86, 246, 460
Barndt, Richard V., 207, 209, 210
Bates Law Building, 6, 372
Bates, William B., 41, 60, 194, 195, 371
Baxter, Charles, 462
Baylor College of Medicine, 232
Beaird, Michael, 341
Beck, Lucy, 81
Beck, Robert, 81
Belansky, Andrew, 460
Bell, Griffin, 369
Bell, Kelly, 17, 18, 19
Bentham, Jeremy, 157, 179, 510
Berg, David, 264, 462, 463, 464
Berger, Barry, 269
Berry, Nandita V., 451
Bertha, Maid, 26
Bielamowicz, Sindee, 546
Black Power, 253, 275
Black, Adele, 462
Blair, Nelda Luce, 451
Blakely, Newell H., 4, 12, 45, 46, 49, 52, 63, 66, 86, 96, 112, 124, 125, 127, 129, 133,
Index

Blinn, Keith, 335
Bobinski, Mary Anne, 389
Bohnert, Philip, M.D., 232, 531
Bonfield, Arthur Earl, 186, 335
Bosseman, Fred, 218, 530
Bowmar, Robert (Bob), 218
Branford, CT, 142, 143, 149
Bratt, Carolyn, 191
Bratt, Vesta, 32
Bray, Zachary, 383, 452, 487
Briefcase, 363, 372, 373
Brinson, Gay, 202
Britton, Raymond L., 133, 154, 190, 204, 205, 214, 346
Brown, Ernest, 140, 277
Brown, John R., Judge, 373, 422, 471
Brown, Pernila, 310, 312
Bruhl, Aaron, 383, 438, 487, 488
Buchanan, Sidney, 5, 226, 261, 262, 306, 346, 350, 381, 467, 545
Buckles, Johnny, 405, 527, 528
Buddhism, 161
Bulger, Roger J., M.D., 532
Burke, Marcilynn, 438, 487, 530
Bush, Darren, 340, 439
Bush, George H. W., Presidential Library, 394
Butler & Binion, 53, 204
Butler, George, 369
Byrd, Jewell, 33
C.K., 22, 23, 101
Calabresi, Guido, 152, 153, 387
Caldwell, Marjorie, 462
Caldwell, Mary Ellen, 168, 183
Califano, Joseph, 369
Cameron, Hedley, 28
Canion, Rod, 395
Cardozo, Benjamin, Judge, 46, 47, 55, 330, 498
Carmichael, Stokely, 275
Carr, Nicholas, 459, 476, 477
Carriker, Dr. in Cushing, 26
Carter, Jimmy, President, 19, 82, 487, 488
Cenatiempo, Mike, 462
Center for Consumer Law, 544
Center for Environment, Energy and Natural Resources Law, 544
Chamber of Commerce, 298
Chandler, Seth, 384, 386, 440
Chaney, Don, 196
Chase, Anthony (Tony), 91, 387, 388
Childs, Fortenbach, Beck & Guyton, 81
Childs, Leonard, 81, 82, 460
Christian Legal Society, 346
Clark, Leif, 357
Clarkson, Gavin, 452
Clingan, Thomas (Tom), 206
Clinical Psychology, 256, 258
Coast Guard, 4, 41, 116, 117, 118, 136, 138, 156, 206
Cockrell, Mel, 462
Coco, Al, Director of Libraries, 227, 228, 229, 261
Coffee, 109, 361, 362
Coif, Order of, 56, 204, 218, 226, 328, 366, 373, 431, 452, 453, 523
Cole, Criss, 71, 72, 195
Coley, Gerald (Gerry), 97, 202
Collier, Charles, 133, 203
Colton, Richard (Rick), 6
Index

Columbia University, 42, 123, 133, 135, 136, 139, 140, 141, 203, 277, 288, 313, 315, 316, 321, 335, 361, 389, 443, 494, 499, 522, 527, 532
*Complexity and Chaos Theory*, 455
Conard, Al, 137, 140, 277
Conine, Gary, 395
Cook, Eugene, Justice, 6, 79, 462, 463
Cooper, Michael, 297, 357
Cordrey, Ruby, 45, 81
Court Observation Course, 53
Covington, James S., 213, 219, 261, 262, 264, 287, 300, 405
Cowart, Robert (Bob), 107, 111
Cox, John, 202, 205, 214, 255, 277
Craft, Mary, 323
Crandall, Texas, 19, 20, 26, 27
Criminal Justice Institute (CJI), 544
Critical Legal Studies, 385
Crouch, William (Bill), 202
Crump, David, 316, 383, 384
Crump, Susan, 462
Cuba Missile Crisis, 119
Cullen, H. R., 60, 195, 231, 238, 295, 382, 473
Cullen, Wilhelmina, 473
Cullison, Alan, 220, 228, 271, 279, 280, 286, 291, 320
Cushing, Texas, 15, 16, 17, 20, 21, 26, 27, 28, 31, 40, 41, 190, 194, 307
Dairy farming, 21
Danforth, John, Senator, 153
Davis, Samuel, 269, 299, 300, 316
Dean, John, 219
DeLeon, Yolanda, 344
Deming, W. Edwards CQI, 390, 412
Democrat, 28, 210, 262, 482
Dershowitz, Alan, 445
Dienes, C. Thomas, 228, 271, 279, 284, 285, 286, 291, 292, 293, 320, 358
Dillingham, Charles, 202, 214
Dinkins, Carol, 411, 462
Doherty, Larry and Joanne, 409, 410, 463
Doherty, Larry Joe, 130
Dole, Richard, 330, 519, 552
Doonesbury on Computers in Class, 474
Douglass, John J., 232, 310, 319, 551
Dow, David, 4, 5, 368, 383, 487
Duffy, Dennis, 415
Duhon, Nan, 9, 346, 373, 404
Duncan, Meredith, 405, 407
Dworkin, Ronald, 191, 211
Edgewater Beach Hotel, 138, 139
Einstein, Albert, 160
El Paso connection, 310
Eliot, Charles, Harvard President, 93
Empirical, empiricism, 171, 172, 173, 175, 176, 177, 178, 227, 271, 504, 506, 509
England, John, 67
Ereli, Eliezer, Adam, 230, 231, 538
Evans, Barbara, 453, 487
Ewing, Richard, 6, 165, 179, 191, 202, 210, 211, 213, 219
False community, 258
Fannin, Shirley, 332
Farris, Anthony J. P. (Tony), 77
Felsman, Robert, 189
Index

FEMA (Federal Emergency Management Agency), 422, 424
Fenelon, Ken, 462
Fields, Emmett, 301, 305, 306, 330
Fields, William S., M.D., 532
Finnell, Gilbert (Gil), 335, 336, 529
Flatt, Victor, 440, 530
Flower in the Crannied Wall, 161
For Whom the Bell Tolls, 161
Ford, Gerald, President, 369
Formula funding, 238, 302, 308, 309, 446
Fortenbach, Ray, 81, 82, 460
Fortner, Peggy, 526
Fountainhead, 128
Frank, Jennifer, 473
Frank, Robert, 52, 76, 473
Frankel, Maurice (Frankel Room), 39, 86, 246, 329
Frat Club, 86
Freeman and Van Ness, architects, 238
Freeman, John, Jr., architect, 238, 243
Friedman, Melvin (Mel), 463
Friends of Guys and Lesbians, 346
Frontier Fiesta, 75
Frye, Phyllis, 344
Fulbright & Jaworski, 60, 65, 82, 194, 206, 213, 237
Fullerweider, Donn, 460
Fulmer, Vernis, 34
Gaebler, David, 335
Gaeke, Fred, 57
Gaines, Sanford (Sandy), 530
Gala, 332, 372, 373
Gambrell, Jim, 552
Gasaway, Laura Nell (Lolly), 228, 462
Gaucher, Donald, 189, 462
Gayle, Gibson, 65
Gellhorn, Walter, 42, 277, 303, 328, 494, 502
Gershowitz, Adam, 452
Ghent v. Rich, 112
Gidi, Antonio, 438
Gilmore, Grant, 147, 153, 185, 479
Glenn, John, 185
Gonzalez, Raul, 464
Gonzalez, Raul, Justice, 79
Gough, James (Jim), 133, 203
Gould, Lenya & Lance, M.D., 4
Gramatzky, Carl, 79
Graul, Don, 6
Gray, Clara, 35, 36, 72
Gray, J.R., 34, 35
Gray, Patricia, 534
Great Depression, 10, 19, 21, 23, 27, 28, 29, 40, 75, 157, 252
Greater Human Dignity, 175, 508, 509, 512
Green, Leon, 495, 497, 498
Gregory, Paul, 395
Griffin, Leslie, 369, 438, 487
Griswold, Erwin, 164
Gross, Leah, 500
Group process, 256
Gullickson, Stuart, 294
Gulliver, Ashbel, 149, 150
Gurdon, Arkansas, 49, 128
Hadley v. Baxendale, 50
Hapgood, Frank Prentice, 67
Hardy, George W. III, 371
Hardy, George, Dean, 125, 302, 309, 324, 327, 328, 329, 338,
Index

Harlingen, Texas, 49, 128
Harney, Naomi & Phil, 78
Harris, Tamecia Glover, 451
Harrison, Jeffrey, 340
Hartline, Edward, 462
Hawkins, Jim, 452
Hayes, Elvin, 195
Haynes, Richard "Racehorse", 74, 460
Health Law, 189, 231, 232, 276, 368, 370, 371, 386, 440, 453, 526, 531, 532, 533, 534, 535, 539, 543, 544, 547
Heckman, Charles, 231, 538
Hegel, Georg, 122, 482
Hendricks, Bret, 472
Hendricks, Randal, 6, 192, 435, 462, 472
Hensley, Joseph, 211, 213, 214, 346
Herget, James (Jim), 5, 231, 289, 290, 417, 538, 551
Hester, Tracy, 530
Hicks, Taylor, 462
Hill, John, 53, 189
Hill, Julie, 452
Hippard, James J., 202, 246, 268, 271, 272, 346, 365
Hirsch, Deborah, 9, 370
Hispanic, 310, 381
Hitler, 159, 160, 492
Hobbes, Thomas, 129, 156, 158, 160, 162, 492, 503
Hoffman, Peter, 437
Hoffman, Philip G., President UH, 278, 280, 301, 371
Hofheinz, Fred, 253
Hollingsworth, Jarvis V., 451
Holmes, O. W., Jr., 102, 147, 162, 163, 169, 170, 172, 173, 175, 179, 481, 491, 493, 494, 495, 496, 504, 505, 509, 511, 516, 529
Holsomback, Green, Tubby, Bruce, 16, 17
Houston Junior College, 43
Houston Law Foundation, 77, 372, 396, 446
Houston Law Review, 188, 193, 405, 462, 499, 547, 548
Hoya Abstract Company, 18, 488
Huber, Steven K., 4, 319
Hudspeth, C. M. "Hank", 5
Human Rights, 48, 535, 538
Humble Oil & Refining Company, 17, 30
Humphrey, Robert Lee (Bob), 67
Hunsaker, Grace, 87
Hyman, Harold, 231
Induction, 94
Institute for Higher Education Law & Governance (HELG), 544
Institute for Intellectual Property & Information Law (IPIL), 544
Irwin, William B. (Billy Brax), 40
Jackson, Sandra, 5
Jacobus, Charles, 468
Jamail, Joe, 78
Janicke, Paul, 404, 437, 536, 545, 548, 549
Jarvis, Jetta, 202
Jenkins, Ella, 31
John Mixon Chair in Law, 6
Johnson, Karen, 307
Johnson, Lee Otis, 253
Index

Johnson, Michael T. (Mike), 6, 125, 288, 300, 302, 307, 315, 330, 358, 420
Johnson, Philip, 374
Johnson, Thomas Milton, 459
Johnstone, Quintin, 139, 141, 163, 295, 485
Jones, Jesse, 41, 295
Joyce, Craig, 5, 231, 379, 380, 382, 404, 423, 427, 437, 535, 544, 545, 553
Kant, Immanuel, 98
Kaplan, Leonard (Len), 229
Katrina Hurricane, 440
Katz, Jay, M.D., 532, 547
Keen, Juanita Puckett, 86
Keeton, Page, Dean, 194, 209, 218, 293, 445
Kehoe, Pat, 228
Kelsen, Hans, 99
Kemmerer, W. W., 36, 43
Kennedy, John F., President, 119, 185
Kessler, Friedrich (Fritz), 150, 151, 152, 392
Keyes, Evelyn, Judge, 478
Khator, Renu, Chancellor, UH, 331
Khrushchev, Nikita, 119
Kiibler, John, 202
King, Carolyn, Judge, 82, 186, 191, 206, 383, 407, 452, 471, 485, 489
Kingsfield, *Paper Chase*, 91
Knapp, Frank, 53, 65
Knauss, Angela, 362, 363, 368
Kolb, John, 411, 460
Krause, Joan, 440, 533
Krost Hall, 251, 369, 432
Ku Klux Klan, 19
Kumar, Sapna, 453, 537, 545, 548
Ladd, Mason, Dean, 183, 335
Lambert, Bettye, 86
Langdell, Christopher
Columbus, Dean, 93, 94, 232, 467, 470, 480
Latino, 310, 311
Law Alumni Professor, 3, 133, 374
Law Gala, 332
Law Library Journal, 241
Law, Science, and Policy (LSP), 169, 508
Lawson, F. H. “Harry”, 538
Leathers, John, 288
Lee, Elwyn, 322, 323, 330, 335, 346
Lee, Sheila Jackson, 335
Lefcoe, George, 186
Legal History, 231, 379, 380, 531, 546
LeMond, Jim, Xavier, 196
Lewis, Guy, 195
Liang, Brian, 533
Lieberman, Harry, 189
Lincoln convertible, 85
Linzer, Peter, 376, 519
Lipscomb, Owen, 60
Lipton, Jacqueline, 453
Llewellyn, Karl, 101, 174, 493
Locke, John, 159, 160, 162, 503
<table>
<thead>
<tr>
<th>Name</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loyola University Law School</td>
<td>440</td>
</tr>
<tr>
<td>LSAT</td>
<td>208, 366, 473, 519, 520</td>
</tr>
<tr>
<td>Lucas, Shack</td>
<td>16, 17</td>
</tr>
<tr>
<td>Lund, Thomas (Tom)</td>
<td>313</td>
</tr>
<tr>
<td>Lung, Mon Yin</td>
<td>5, 125, 320, 423</td>
</tr>
<tr>
<td>M. D. Anderson Library</td>
<td>113</td>
</tr>
<tr>
<td>Machiavelli</td>
<td>287</td>
</tr>
<tr>
<td>MacNaughton, Ann</td>
<td>467</td>
</tr>
<tr>
<td>Madame Nobel</td>
<td>30</td>
</tr>
<tr>
<td>Malloy, Joe</td>
<td>67</td>
</tr>
<tr>
<td>Maness, Michael</td>
<td>463</td>
</tr>
<tr>
<td>Mann, Bruce</td>
<td>339</td>
</tr>
<tr>
<td>Mantel, Jessica</td>
<td>453, 534</td>
</tr>
<tr>
<td>Marrus, Ellen</td>
<td>405, 408</td>
</tr>
<tr>
<td>Marschall, Patricia</td>
<td>322</td>
</tr>
<tr>
<td>Marshall, Eugene</td>
<td>191</td>
</tr>
<tr>
<td>Martin, Paul</td>
<td>462</td>
</tr>
<tr>
<td>Martin, Tom</td>
<td>344</td>
</tr>
<tr>
<td>Matson, Redfield (Red)</td>
<td>86</td>
</tr>
<tr>
<td>Matthews, Dan G.</td>
<td>462</td>
</tr>
<tr>
<td>Maxwell, Darold</td>
<td>335</td>
</tr>
<tr>
<td>Maynard, William (Bill)</td>
<td>462</td>
</tr>
<tr>
<td>McCarthy, Joe, Senator</td>
<td>48</td>
</tr>
<tr>
<td>McConn, Jack</td>
<td>65</td>
</tr>
<tr>
<td>McCurdy, William E.</td>
<td>190</td>
</tr>
<tr>
<td>McGinnis, Jose</td>
<td>310</td>
</tr>
<tr>
<td>McGowan, Demps &amp; Mertie</td>
<td>26, 33, 104, 158</td>
</tr>
<tr>
<td>McKay, Julie</td>
<td>9</td>
</tr>
<tr>
<td>McNamara, Robert</td>
<td>119</td>
</tr>
<tr>
<td>Mentchikoff, Soia</td>
<td>140</td>
</tr>
<tr>
<td>Mexican Legal Studies</td>
<td>231, 276, 538</td>
</tr>
<tr>
<td>Meyers, Charles</td>
<td>140, 277</td>
</tr>
<tr>
<td>Miller, William (Bill)</td>
<td>388</td>
</tr>
<tr>
<td>Mixon, Judith</td>
<td>315, 357</td>
</tr>
<tr>
<td>Mixon, Leona</td>
<td>20, 25, 29</td>
</tr>
<tr>
<td>Moll, Douglas</td>
<td>381, 383, 405, 407, 487</td>
</tr>
<tr>
<td>Monty, Jacob M</td>
<td>451</td>
</tr>
<tr>
<td>Moohr, Geraldine</td>
<td>405</td>
</tr>
<tr>
<td>Moore, G. E. (Naturalistic Fallacy)</td>
<td>159, 178</td>
</tr>
<tr>
<td>Morgan, J. Harris</td>
<td>293, 294</td>
</tr>
<tr>
<td>Morris, Merle</td>
<td>9</td>
</tr>
<tr>
<td>Morrow, Darrell</td>
<td>189, 337, 462</td>
</tr>
<tr>
<td>Morse College, Yale</td>
<td>240</td>
</tr>
<tr>
<td>Munitz, Barry, President of UH</td>
<td>331, 333, 341, 355, 359, 364, 376, 451</td>
</tr>
<tr>
<td>Murphey, Arthur</td>
<td>185</td>
</tr>
<tr>
<td>Murray, John</td>
<td>202, 366</td>
</tr>
<tr>
<td>Nacogdoches, Texas, 15, 16, 17, 18, 20, 21, 27, 34, 40, 49, 75, 76, 194, 322, 488, 489</td>
<td></td>
</tr>
<tr>
<td>Nagle, David</td>
<td>202</td>
</tr>
<tr>
<td>Nat, Texas</td>
<td>194</td>
</tr>
<tr>
<td>Nathan, Marvin</td>
<td>6, 462, 463</td>
</tr>
<tr>
<td>National Land Use Policy Act</td>
<td>298</td>
</tr>
<tr>
<td>National Science Foundation</td>
<td>298</td>
</tr>
<tr>
<td>National Training Lab</td>
<td>258</td>
</tr>
<tr>
<td>Nazi Germany</td>
<td>151, 160</td>
</tr>
<tr>
<td>Nelkin, Stuart</td>
<td>290, 461</td>
</tr>
<tr>
<td>New Deal</td>
<td>24, 157, 295</td>
</tr>
<tr>
<td>New Orleans, La.</td>
<td>4, 72, 117, 119, 129, 440</td>
</tr>
<tr>
<td>Newhouse, Tomas C. (Tom)</td>
<td>221, 223, 261, 346</td>
</tr>
</tbody>
</table>
Index

Nixon, Richard M., President, 28, 64, 73, 77, 78, 298, 466, 529
Normal School, 29
North American Consortium on Legal Education, 411
Northrop, F. S. C., 155, 156, 157, 158, 159, 160, 161, 162, 171, 179, 383, 503, 504, 505, 506
Northwestern University Law School, 198, 216, 217, 218, 225, 228, 233, 279, 280, 362, 378, 405, 438, 525, 527, 530, 533, 537
Nusynewitz, Murray, 366
O’Connor, Sandra Day, Justice, 369, 380, 549
O’Quinn, John M., 129, 130, 131, 132, 335, 374, 400, 415, 427, 440, 461, 462, 463, 530
O’Toole, Huey, 312
Oakley, Gladys Jurchak & Charles, 6, 57, 83, 84
Oberholtzer, E. E., President of UH, 12, 39, 42, 43, 44, 125, 195, 232, 365
O’Connor, Michol, 6, 462, 468
Odom, Wendell, Judge, 202
Office of Price Administration (OPA), 42
Oglethorpe, 310
Oldham, Tom, 5, 368, 552
Olds, Dwight, 46, 50, 56, 57, 58, 59, 66, 75, 98, 123, 127, 129, 133, 137, 150, 152, 157, 190, 191, 199, 204, 214, 219, 261, 289
Olivas, Michael, 368, 376, 377
Oren, Laura, 379, 487
Osborne, Erin, 5
Ouachita Baptist College, 49, 497
Palmer, Robert, 231, 270
Parker, Charles, 462
Parker, Kinch, 21
Paust, Jordan, 317, 319, 346, 368, 487, 538
Peery, Tom, 412
Peck, Scott, 259, 260, 412
Pennzoil v. Texaco, 78
Pepperdine, 76
Peters, Ellen, 153, 183
Petronella, Richard, 462
Phase Analysis, 176, 513
Pirtle, Larry, Karen, 462, 472
Pitman, Eugene, family, 40, 108, 190
Plessy v. Ferguson, 103, 158, 239, 498
Policy, 164, 165, 167, 169, 172, 175, 178, 182, 189, 211, 272, 297, 298, 370, 386, 453, 508, 516, 528, 529, 530, 533, 535, 543, 544, 547
Pollock, Howard, 72
Posner, Richard, 164, 445, 548
Pound, Roscoe, 102, 123, 127, 162, 169, 175, 179, 491, 493, 494, 495, 511, 529
Pravel, B. R., 191
Prosser, William, 445, 495
Index

Province of Jurisprudence
Determined, 158, 383
Rachlin, Susan, 9
Racial discrimination, 195
Ragazzo, Robert (Bob), 384, 385, 407, 519
Rains, Jack, 329
Ramirez, Juan, 310
Rand, Ayn, 128
Rangel, Jorge, 310, 311, 312
Rapoport, Nancy, Dean, 381, 419, 428, 432, 445, 447, 448, 518, 519, 520, 521, 533
Rauch, Leonard, 415
Ray, Carroll Robertson, 451, 473
Ray, Roy, 42
Reavley, Thomas, Judge, 18, 19, 82, 488, 489
Reilly, Philip, M.D., J.D., 316, 532
Republican, 28, 77, 210, 212, 213, 226, 227, 312, 482
Rice Institute, 43
Rice University, 231, 291, 296, 447
Riddle, Don, 6
Riddle, Don, Todd, 6, 373, 428, 432, 448, 451, 462, 463
Rider, Roger, 462
Riskin, Leonard, Casey, 532
Ritchie, John, Dean, 216, 217, 218, 233, 525
Riverside Terrace, 322
Rizk, Fred, 6, 79
Robbins, Ron, 462
Roberts, Jessica, 453, 487
Roberts, Lewis, 46
Robertson, Corbin J., 473
Robertson, Gregory, 404
Rodell, Fred, 154, 190
Roosevelt, Franklin D., President, 15, 28, 295
Rosen, Marian, 84, 85, 460
Rosenberg, Irene, Yale, 6, 77, 290, 291, 310, 329, 346, 347, 349, 352, 353, 354, 368, 374, 375, 408, 469
Rosenblum, Victor, 228, 279
Rotenberg, Daniel (Dan), 212, 214, 219, 225, 228, 261, 263, 271, 279, 280, 286, 287, 291, 292, 320, 346, 347, 399, 400
Rothstein, Laura, 533
Rothstein, Mark, 533, 543
Rotten egg metaphor, 96
Rove, Karl, 482
Ruckelshaus, William, 369
Rudnick, Andrew (Andy), 331, 532
Rudy, Beverly, 6, 75, 83, 84, 85
Rusk, Dean, 313
Russell, Bertrand, 94, 160
Russell, Lou, 36, 39
Salomon, Gizella, 84
Sanders, Joseph (Joe), 378
Satterwhite, John, 28
Saver, Richard, 440
Schleider, Ben, 5, 6, 65, 74
Schneider, Mike, Judge, 79
Schnitzer, Kenneth, 391
Schultz, Jon, Director of Libraries, 6, 320, 423, 438
Schuwerk, Robert (Bob), 412, 519
Schwartz, Justin, 299
Scientific method, 93, 94
Scott, Henry, 116, 118
Scott, Ronald, 534
Sears, Judge Ross, John Terry, Mariann Jensen, Ross II, Terry Harold, and Vickie, 76, 473
Seersucker suit, 17, 49, 179, 489
Segal, Steven, 108, 462
Self, Roy, 29
Settegast, Julius, 322
Index

Shaw, Margery, M.D., J.D., 315, 531, 532
Shepard, Ira, 5, 222, 310, 313, 318, 335, 519, 527, 528
Shepley, Ralph, 202
Simons, Spencer, Director of Libraries, 427, 438
Situation Sense, 493
Slaughter, Arthur, 57
Smart Shop v. Colbert’s, 101
Smith v. Allright, 27
Smith, Eugene, 321, 322, 335, 361, 364, 380, 384
Smith, Mabel, 45, 196, 227
Smith, Preston, Governor, 195, 251, 253
Smyser, Kathryn, 383, 487
Snake, 22
Sneed, Joe, Judge, 419
Solito, Peter, Judge, 312
Sondock, Ruby Lee, Judge, 79, 85, 86, 411
South Texas College of Law, 63, 81, 114, 198, 284, 317, 383, 414, 415, 416
Southwest Juvenile Defender Center, 544
Southwestern Legal Foundation, 292
Stephen F. Austin State College, 76
Stevens, Barksdale, 46, 53, 63, 204
Stewart, Forrest, 118
Stone, Christopher, 186
Strahan, Richard, 189
Streng, William (Bill), 378, 527, 528, 538
Students for a Democratic Society (SDS), 255, 467
Sullins, Fred, 66
Sussman, Howard, 335
Suzuki, Eisuke, 318
Sweatt, Heman, 238
Tabor, Tobi, 9
Tancredi, Lawrence, M.D., J.D., 532
Tannery, Odie V., 18, 33, 34, 35
Tavistock model, 260
Teaching Unit II, 248, 285
Texas A&M, 67, 283, 284, 344, 395, 414, 415, 416, 447
Texas Consumer Complaint Center, 543, 544
Texas Gas Corporation, 74, 114
Texas Municipal Zoning Law, 341
The Law of Computer Technology, 555
The Path of The Law, 102, 173
The Shallows
What the Internet is doing to our Brains, 459, 476
This is our home. It is not for sale, 323
Thompson, Sam, 35
Thompson, Sandra, 487
Thompson, Sandra Guerra, 386
Thrower, Vernon, Greg, Lilly, Lynn, 6, 76, 195, 472
Till, Royce, 460
Tips, Bill, Thad, Thelma, 28, 104, 158
Treece, Gerald, 131, 132
Tribe, Lawrence, 445
Trotter, Jack, 81, 460
Tuition, 446
Turner, Ron, 405, 406
Index

Union Oil Company, 48, 65, 66, 67, 79
United Nations Charter, 48
Utilitarianism, 157, 179, 510
Uton, Al, 185
Values (preferred events), 510
Van Hoomissen, George, Dean NCDA, 232, 305, 319
Van Ness, John, Architect, 238, 239
Verkuil, Paul, 327, 328, 329, 330
Vernon, David (Dave), 46, 57, 60, 66, 102, 107, 115, 123, 209
Vetter, Greg, 438, 537, 545, 549
Vinson & Elkins, 63, 189, 227, 337, 378, 405, 411
Wake Forest Law School, 57
Walker, Carl, Judge, 109
Walker, Charles B., Judge, 64, 133, 204
Wallace, Jim, Justice, 79
Warren, Earl, Justice, 48
Warren, Elizabeth, 338, 376, 445, 482, 525
Watts, Teresa, 428
Weaver, Jacqueline, 310, 337, 346, 395, 529
Wechsler, Herbert, 467, 492, 498, 499
Weddington, Sara, 411
Welfare overall, 24, 25, 41
Welfare underwear, 24
Wellen, C. W. (Bill), 46, 59, 123, 129, 202, 527
Wells, Bret, 453, 528, 529
Westin, Richard, 527
White, Barbara, 340
White, Morley, 189
Whitehead, Alfred North, 155, 160
Wilhelm, Marjorie, 462
Wilkey, Malcolm, 64
Willatt, Mike, 189, 462
Williams, Esther, 66, 376
Williams, Howard, 141
Williams, Percy Don, 64
Williamson, Joe, 289
Williston, Samuel, 93, 127, 150, 190
Winslade, William (Bill), 533
Wisdom, John Minor, Judge, 411
Wittgenstein, Ludwig, 155, 172, 505
Wizard of Lawz, 381, 410
Woody, Clyde, 85
Index

World War II, 10, 12, 16, 28, 30, 40, 42, 59, 72, 74, 76, 84, 211, 252, 460
WPA, 24
Wright, James H. (Jim), 202, 203, 204, 205, 206, 214, 219, 225, 238, 239, 261, 277, 291, 300, 335
Wright, William Emerson, 312
Yale Law Journal, 49, 151, 230, 383, 386
Young, Bobby Wayne, 462, 463, 497
Zale, Kellen, 452
Zamora, Stephen, Dean, 5, 231, 248, 318, 332, 346, 381, 403, 431, 445, 447, 448, 537, 538, 545
Ziegler, Scott, Architect, 297, 357
Zimmerman, Alvin, 462
Zoning, 341, 389, 455