Townes Hall Notes
Summer 1989

From the Dean

[Address to the Texas Law Review Banquet, April 8, 1989]

I wish to thank Scott Atlas for his kind and flattering introduction, and for the record, I wish to say that of all the introductions I have received, his is the most recent.

I was somewhat surprised that the editors asked their dean to speak. Their invitation is akin to the chickens voting for Colonel Sanders. But I recently began to understand the depths of their feelings. Judy and I wish to thank Editor ERIC NICHOLS for the lovely basket of red apples and Chilean grapes that you sent to our home. And, as you know, the Review did not need to pay for my travel and accommodation expenses. When I asked Editor MARGARET BOND what she intended to do with the money saved, she indicated that the editors had decided to establish a fund to attract better speakers.

The faculty also worried a great deal about what I would say and spent many sleepless days at their desks. This worry is unwarranted, for I am here to praise the *Texas Law Review*. TLR has had a tremendous year. The editors published a brilliant symposium on academic freedom and splendid articles on arbitration in federal programs and on tax shelters (taxpayers never win before tax professors). Such respected professors as JACK GETMAN, HAL BRUFF, GEORGE DIX, CALVIN JOHNSON, ALEX JOHNSON, JUDGE THOMAS REAVLEY, and others wrote articles. And who will ever forget such memorable titles as "For Unifying Servitudes and Defeasible Fees: Property Law's Functional Equivalents" and "Climbing the Most Dangerous Branch: Legisprudence and the New Legal Process?" The titles themselves send intellectual shivers down one's spine—even if we don't know what they mean. On the other hand, I must note that an article by

Dean Mark Yudof

HARRY REASONER, '62, was rejected. It was entitled "Antitrust Law and the Eradication of Poverty Among Lawyers: Nobody has Seen the Trebles I've Seen."

The year, however, has not been entirely without controversy, despite Eric's efforts to establish a "kinder, gentler" *Texas Law Review*. Some thought that Eric spent too much time in Acapulco with his new bride. Others thought that members of a law review of the first class should not spend so much time on Nerf basketball and darts. And then there was the intervention of the Surgeon General of the United States. Dr. Koop required TLR to put a health warning on the cover of each issue. Apparently, experiments with Canadian white rats revealed that readings from the Review caused them to become comatose. On the other hand, a number of patriotic groups endorsed TLR, opining that it was better dead than read.

With respect to the editorial board itself, the editors proved the wisdom of Charles Evans Hughes' aphorism that "the history of scholarship is a record of disagreements." LISA SCHIAVO, who gave up her apartment in order to study full-time in the TLR offices, even suggested that if you were to lay all of the editors end to end, they would not reach a conclusion—although she thought it a good idea to lay them end to end. Her observation was belied, however, by the Board's decisive action on the Review's financial problems. The Board decided to issue law student bonds—bonds with no interest and no maturity.

On the whole, I must say that I am an enthusiastic supporter of TLR and of student-edited law reviews in general. No credence should be given to the rumor that Associate Dean Guy Wellborn will be placed in charge of the candidacy program. TLR provides a first-rate educational experience to aspiring lawyers and a deep sense of communal effort in a cooperative educational enterprise. I do not believe that the decimation of our forests to provide the pulp for all this paper is too high a price to pay. I also think that the number and variety of law reviews means that the doors are not closed to new ideas and young academics—as is so often the case for faculty-run journals in other disciplines. Diversity is the key to success—whether it is writing for practitioners, state or federal law, law reform, feminist legal theory, or traditional doctrinal articles. And there is one other advantage of student journals: they allow professors to cure inadequacies in their resumes. If you had a bad year in 1981 and did not publish anything, you can write an article today and publish it with a 1981 date of issue in a review that is eight years behind schedule—thereby curing the omission in your publication record.

Having said all of this in favor of law reviews, I have some advice to give to the new editorial board, some dangers to

avoid as they select articles and student works for publication. Let me list a few points:

1. Be wary of the footnote fetishists. These come in many varieties. There is the [Professor] HANS BAADE school of thought that no article should be read that contains less than a thousand footnotes or that fails to cite his work. Still others believe that you must show your erudition. They cite to all philosophers from Plato to John Rawls and indicate to the reader that they have read, understood and relied on all of them. A rough rule of thumb is that no footnote should take longer to read than the time it takes to open a six-pack.

2. Beware of the author who thinks that the court reached the right result for the wrong set of reasons. Some clausaphobics simply have some irrational fear of particular clauses of the Constitution. Others believe that constitutional clauses on tainting of the blood and letters of marque and reprisal have been ignored too long.

3. Notwithstanding Professor DAVID RABBAN's practice, never publish a book review that is longer than the book under review.

4. Reject articles by authors who find the English language corrupting of their ideas and ideals and who thus invent their own language. This is particularly true if they admit to being opposed to clarity, as something that only lesser minds seek. For example, Professor Duncan Kennedy of the Harvard Law School once said in the pages of the *Stanford Law Review* that he thought that a particular professor was "stuck in [his] dialectic of clarity and lucidity versus being turned into a pod." Or Professor Singer who said that "my mind becomes entangled in the mesnes of the very nets I throw out for my own rescue." Never publish articles with words in it like "pod," "mesnes," and "intersubjective zap."

5. Also be wary of those who approach cases with the attitude that there must be something worthwhile in there somewhere. This is like the child who wakes up on Christmas Day to find a pile of manure under the Christmas tree. Instead of being saddened, he is happy because he figures that there must be a pony hidden somewhere.

6. Law professors sometimes use metaphors and similes as an excuse for not thinking. If an author says that the law is a chicken salad sandwich or a pasta machine or offer and acceptance are like the ego and the id, make the professor explain his or her meaning. As a general matter, reject all food metaphors and references to psychiatry or baseball.

7. Many authors, who have not quite worked things out, entitle their articles "Toward a General Theory of X." Only publish articles by those who have gotten to X—not those who are moving toward the there there.

8. Titles with question marks should be avoided. If the question is "why law" or "why judicial review," a good answer is "why not."

9. Colonitis, the misuse of colons, is normally a device for duping editors into publishing the mundane in the guise of the metaphysical. For example, consider two recent titles: "Legal Rules and the Future of Mankind: Purchase Money Mortgages in North Carolina" and "Strangers in the Night: Search and Seizure of Mobile Homes on Public Lands."

To conclude my remarks, I would like to invoke H. L. Mencken. Mencken once said that "love is the triumph of imagination over intelligence." So, too, a law review should be the triumph of imagination over intelligence and not the converse.

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