

Reminiscences of a Recovering Texas Law Dean

100<sup>th</sup> Anniversary of the Texas Law Review

Mark G. Yudof

Austin, Texas March 26, 2022

It is a great pleasure and distinct honor to be with you today. I want to thank Scott Atlas, Ward Farnsworth, and my many friends among Texas Law Review alumni for inviting me. I feel like I am coming home to the city and institution that allowed me and my family to thrive. So many memories, so many friends; so little time.

I also want to extend a warm welcome to Chancellor J. B. Milliken. J.B. and I have been friends for many years. He has a law degree from NYU. In my experience, lawyers make the best UT chancellors.

When I think of Texas Law I think of a faculty that valued strong teaching, respected and nurtured students, and preserved an enviable comradery. We were and are a community. And it is a joy to see the members of the Texas Law Review over the decades who have achieved so much and made us all proud. But I am here to reminisce, to tell some of the back stories of Texas Law. Mostly the naked truths about the faculty, whose words and actions are sources of amusement, bewilderment, and sometimes inspiration.

Let me start with Page Keeton, the greatest dean in Texas Law history and my close friend. I met with Page in his office on my first day at the law school, having had some trouble finding the place. I admit to being directionally challenged. Page, informally attired, and Ernie Smith, dressed in a three-piece suit, were planning the faculty picnic that was to take place that afternoon.

I immediately trusted Page and knew he was a man of his word and not one to be trifled with. I assiduously avoided his debate with Leon Green over proximate cause in tort law. Leon, like Page, was a giant in the world of law professors and he held strong beliefs. Recall that he testified in favor of Franklin Roosevelt's plan to expand the number of justices on the Supreme Court, and he forcefully argued for the legality of employee sit-ins. I long heard rumors that Roosevelt had offered him the

position of Solicitor General, but he turned down the job. Leon and I debated Woodrow Wilson; I was a detractor; he was an admirer.

Turning back to Page, more than a year later, I learned that my instincts were right. I was called to his office and feared he would assign me to teach a course about which I knew little. My Sales and Secured Transactions students are still recovering. Mike Levy decided to publish the Texas Monthly rather than sojourn through the provisions of Articles 2 and 9 of the Uniform Commercial Code. He never practiced a day in his life.

But Page had another matter on his mind. I had signed a brief as co-counsel in the Texas school finance case. The Texas AG's office had opined that the lawsuit was a Communist conspiracy. The Regents had demanded that I appear before them to explain my radical ways. Before I could speak, Page clenched his jaw, looked me in the eyes, and simply said: "I want to make one thing clear. You are not going to the board meeting." I didn't go. Months later I was reprimanded by the board for using my law school mailing address (just the address, not the institution's name). To this day, I am the only chancellor of the University of Texas who was formally reprimanded by the same body that later appointed him to the top job. I did learn, however, more than a decade earlier Dean Keeton stood up for Professor Ernie Goldstein, who was threatened with dismissal for opposing the segregation of dormitories at UT. Same outcome.

Page and I became friends. I remember inviting him to a party at our home, and halfway in I could not find the dean. I wondered, as an untenured professor, what the penalty would be for losing the country's greatest torts scholar. I found him under the dining room table playing with my toddler son. That was the dean I loved and admired.

I also had a special relationship with Charles Alan Wright. Charlie was a formidable and brilliant man. But there was another side to Charlie. He had three television sets beside each other at home so he could watch multiple football games at the same time. We shared an interest in mystery novels. When I mentioned that I was reading Dorothy Sayers Nine Tailors, he insisted on lending me recordings of church bells

ringing so that I would have the complete experience. We talked in the faculty lounge, where Charlie had a dedicated seat on one particular couch. No one dared sit there even when he was out of town.

It did annoy me that Charlie typed out his brilliant federal procedure books at a faster clip than I could copy a phone directory. My Woodsmen touch football team also failed to beat Charlie's Legal Eagles, though, like Charlie, I wore a three piece suit as coach of my team—and, unlike Charlie, I borrowed a headset (not connected to anyone).

But most of all Charlie had character. He treated his colleagues, practicing lawyers, and students with respect, and they reciprocated. I never heard him publicly or privately disparage a faculty member, lawyer, or student. But one friend violated the reciprocity. When Charlie represented President Nixon during the impeachment inquiries, a mentor of Charlie's at Yale sent him letters at the White House. They were addressed to "Charles Alan Wrong," but the missives were always delivered to him. Charlie told the story with great amusement.

When I was dean, Charlie came to my office for advice on a knotty problem. President Bush (senior) had offered him the position of Solicitor General. He asked what he should do. I told him that he would make an incredible SG. Take the job! He looked at me and said he loved being a professor. I opined that he could take a leave and return to Texas Law. With the same dedication as Leon Green, he turned down the dream job.

One last story on Charlie. He insisted on referring to me as Dean Yudof, whatever my current title. He said, like General Eisenhower, I was entitled to be called by my highest title. He also decided to gift me a bottle of 25 year-old Macallan scotch for each job I turned down. Before he passed away, it turned out he had one bottle of Macallan left over. He told our mutual friend Mike McKetta to give it to me if I ever returned to UT. Mike called me when I became chancellor at UT System and gave me this last gift from my friend Charlie Wright.

There are countless other stories about law school faculty. I saw a side to them that others rarely saw. Dean Sutton, who united the law faculty after the busted dean search in 1979, appointed me as his associate dean. He decided that if I were to be his successor, I needed a makeover. He took me to Callaghan's and bought me a pair of Nacona boots.

Mike Sharlot, my successor dean, was a close friend of mine, and regularly engaged in spirited arguments in the faculty lounge. He enjoyed canoeing with the faculty, explaining his terror and relief to make it home alive. I always declined his invitations to the great outdoors.

Mike also organized a faculty soccer team, and many Mondays one might see him and other wounded warriors limping around the law school. One day he and others came to my office pleading for me to appoint a Brazilian academic as a visiting prof. I could not fathom why his services were needed. Then it became clear. He was a skilled soccer player, and he would advance the fortunes of the faculty soccer team.

Needless to say, when Clark Field down the street from the Law School was razed for a new fine arts complex, there was widespread mourning among the faculty. They always preferred baseball to Beethoven.

Gus Hodges was one of my favorites. Students knew him as a rigorous and demanding professor. Unprepared; unwelcome in his classes. I knew him as a gracious and thoughtful man with a wry sense of humor. How I envied his handlebar mustache. He was consistently voted by the students as the sexiest law professor, a designation that made him proud.

Bernie Ward was our poet laureate. His crisis occurred when his car was submerged in water during the Memorial Day flood. The debacle for Bernie was not the loss of the car, but the fact that exam bluebooks on the back shelf of his vehicle were not waterlogged but miraculously spared (he also was a religious man). He still had to grade them.

Lino Graglia was a controversial figure at the law school. But he was a charming and engaging man inside and outside of the classroom. He had many friends on the faculty and got along well with progressives who did not share his perspectives. One of his classes gave him two live ducks as a present at the end of the semester; presumably because he always told them to get their ducks in order. He brought them home to his spouse Kay and his daughters and named them Au Ceres and A l'Orange, an unmistakable message. But Lino being Lino, he did not follow through. He released them, uncooked, in a nearby lake.

Elizabeth Warren and Barbara Aldave were two brilliant teachers. Liz intellectually grew by the day, frequented the faculty lounge, and often engaged in debate with her peers. Liz and her husband Bruce Mann were wonderful fresh pasta cooks (as dean I welcomed such bribes), and Bruce was my designated driver during the occasional ice storms that hit Austin.

Two of our best hires were Cindy Estlund and Sam Issacharoff. Initially, I committed one of my many interviewing faux pas. My cheat sheet listed the room number at the hotel of the candidates; I blurted out to Cindy that this was strange; she had the same hotel room as Sam. No one had bothered to tell me they were married.

One day I called Cindy into my office to inform her that she would be teaching first-year property. She was a bit taken aback; Yale did not offer a basic property course when she was a law student. I told her that that was unfortunate, but not compelling. I still needed a property course instructor, and she was my choice. She consented and turned into an extraordinary property law teacher, occasionally peppering her lectures with solos on her guitar. So far as I know, thirty years later, she is still teaching the course at NYU.

But perhaps the most storied alum Joe Jamail and his involvement with Texas Law. I first got to know Joe when we worked together (with Irv Terrell, John Jeffers, and others) on the Pennzoil v. Texaco case. Multi-billion dollar lawsuits tend to gather a gaggle of lawyers. Joe had made substantial gifts to Texas Law, but I hoped he would make new and larger gifts (law deans never sleep!). I took the subtle approach. While walking with him in the Houston courthouse, I asked how he could walk with his head held so high. I told him that Jim Kronzer was honored with a chair at the law school; he only had a professorship. He responded: Dean, how much is the whole damn law school!" I took this as a positive sign for further negotiation. I have deleted Joe's expletives in this retelling.

After the Pennzoil dust had largely settled, he asked me for a proposal for funding to the law school. I carefully worked out a detailed document, asking for a large gift. I called Joe, and he said I should bring the document to Houston to discuss the matter. I readily agreed. A day or so before the planned office meeting, Joe called and asked that I meet him at a cowboy bar in Houston. A tad unusual. I arrived at the bar, noting that all of the windows had been blacked out. I entered and found Joe at the bar. He introduced me to friends, including a camera crew filming Joe. It turned out that Joe had agreed to be filmed for some rich and famous TV show, and he wanted his dean included in the festivities. Fearful of offending I agreed, I kept thinking: "How will I explain this to my wife Judy when the show is aired." We drank, they filmed. After a few hours, I departed, handing the grant proposal to Joe.

I didn't hear from Joe for a few days and called his office. I explained the situation to his assistant. She responded in substance: "only a damned fool would hand Joe

Jamail important papers in a bar. He lost them.” I confessed error. I found another copy of the document and flew to Houston, and the rest is history. Joe and Lee made a magnificent gift to Texas Law, and we established the Jamail Research Center, which houses the Tarlton Law Library. This was the first of many, many magnificent gifts from the Jamail family. But his friendship and loyalty are the things I cherish the most about Joe Jamail.

I have other memories. Of Stan Johanson, the brilliant teacher, dressing as Elvis. But this Stan has not left the building. Of introducing Bob Strauss and noting that the only way to keep a secret from Bob was to put it in a law book. When he got up to speak, he noted that I was the only man he knew who looked cheap in a Hermes tie.

And then there is the story of what became John Connally Hall. In 1993 a UT presidential search took place, and another candidate was chosen over me. Lt. Governor Bob Bullock and Senator John Montford, a Texas Law graduate, were incensed. Bob called me to his office to express his dismay and said he wanted to do something positive for the Law School. I stuttered; Monford chimed in that a new building would be nice. Bullock concurred, and I was left to return to campus explain to President Berdahl how Texas Law had jumped the cue for new construction on campus.

I cherish all of these people and the memories. I hope you do as well. You should be proud of Texas Law and its outstanding law review. Thank you for listening to the ramblings of a recovering Texas Law dean.