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In April of 1911,

> Students of the School of Law and the Cleveland County Bar Association held a monster banquet in celebration of victory in the legislature for the new law school building. . . . In the program every body who had a part in securing the building had a chance to talk — and they did. . . . Everyone went away feeling that a historical moment had been celebrated. The evening was an unqualified success.[1]

We too have celebrated a historical moment (and we can now say "a historical" unless we are British and hence cannot aspirate "historical") this evening.

This new addition to the law school is more than just a much-needed addition of well-designed space. It is the triumph of an institution that was the major constituent college of this University from the outset, and it is a triumph of that law school over some pernicious but ill-informed enemies: critics of the liberal arts mission of a university; complacent members of the bar; and political and sectarian foes of free inquiry and research. Alas, some of each category still exist.

We arrive here tonight by the hard work and vision of President David Boren, Dean Andrew Coats, Mr. DeVier Pearson, Bill Ross, distinguished members of the faculty, students, and other friends of the law school. But in "remembering" this law school, it is inappropriate to start anywhere other than with one man, Dean Julien Charles Monnet.

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1. DAVE R. MCKOWN, THE DEAN: THE LIFE OF JULIEN C. MONNET 205 (1973) (paraphrasing *"Laws" Celebrate Victory*, UMPIRE, Apr. 11, 1911, at 11). Mr. McKown notes that Mrs. Monnet was the chief cook, arranging the menu which consisted of oysters on the half-shell which were specifically requested by the planning committee. *See id.* Mrs. Monnet also managed to arrange the event in the gymnasium and bring in cooking equipment to handle the task. *See id.* The rest of the menu consisted of white fish, roast turkey with chestnut dressing, peas, asparagus, homemade cranberry ice, Waldorf salad, cheese sticks, ice cream with strawberries, and cake. *See id.*

Dean Monnet came from George Washington University, with degrees from Harvard and Iowa, arriving on September 9, 1909, almost ninety years ago. I wonder what he thought, when he arrived at what would later be called Parrington Oval, to see but two buildings — the Administration building having burned to a pile of rubble two years earlier. I wonder also if he thought about Professor Vernon Parrington, the English professor and winning football coach — the first and last such combination here — who was "fired" from the University, along with President David Ross Boyd, by "religious" and political inter-meddlers.[2] Professor Parrington took his notes that he began here with him to the University of Washington, where they became perhaps the most influential book yet written in American political history, *Main Currents in American Political Thought*.[3] Dean Monnet would later have to deal with such meddling at various times in his career, perhaps even succumbing to it after an unprecedented and "unprecedentable" thirty-two years at the decanal helm.

The Dean, who later *taught* contracts, certainly knew how to *make* one. He negotiated a salary of four thousand dollars a year, a full three months vacation in the summer term, and a "free hand in running the school of law."[4] He was successful, again unprecedentedly, in all of these: the salary was equal to that of the governor of the state and the president of the university; his students did not exaggerate too greatly when they said he drove out of Norman on the last day of finals and arrived the first day of class; and despite Governors like Red Phillips, Alfalfa Bill Murray, and Jack Walton, he managed to run a law school that was the academic institution most independent of politics in the entire state.[5]

Among the major battles that the Dean had to face (aside from political meddling with the academic mission of the university whose president could be fired at a gubernatorial whim) were: (1) the lack of academic requirements for admission to the law school, a fact that caused many students to fail; (2) fierce criticism by the local bar for both the academic teaching of law, as opposed to "reading the law," and implementation of the brand new so-called *case* method; and finally, (3) the location of the law school itself.

Of these three decisions, I suggest that the most important to be made was the location of the law school. A strong effort was made to relocate the law school to Oklahoma City by merging it with the Epworth University Law School that would later become Oklahoma City University. Indeed, a few Epworth graduates were "counted" as University of Oklahoma graduates prior to graduating its first class. This was done to facilitate membership for the new law school in the American Association of Law Schools which required a school to have graduated a class before admission. Lawyers are creative folks, aren't they?

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2. *See* Robert Henry, *Catching the Jurisprudential Wave: Bernard Schwartz's Main Currents in American Legal Thought*, 33 TULSA L.J. 385, 387-89 (1998).

3. *See* David W. Levy, *Forward* to 1 VERNON PARRINGTON, MAIN CURRENTS IN AMERICAN THOUGHT xii (1987).

4. MCKOWN, *supra* note 1, at 129.

5. For a brief understanding of perhaps the most irascible of Sooner Solons, see Robert Henry, *Alfalfa Bill Murray*, OKLAHOMA TODAY, July-Aug. 1985, at 11.

A foreshadowing of the Dean's adamant position that the law school should be at the Norman campus is found in his acclaimed graduation speech at the University of Iowa, where he was chosen to be the last of three student speakers. His oration shows a deeply held belief in liberal arts and academic freedom:

> Youth are sent to sectarian colleges which are far inferior in instruction and in opportunities for liberal culture, so that their religious life may be continuously refreshed and secular influences neutralized. . . . What a false view! As if any of the great principles of religion could be shaken by education! As if religion were some dark emotion that could not bear the light of intellectual reasoning! Education is not the antagonist of religion, but it is the deadly foe of religious dogma. . . . But is it skepticism to discard dogma? The dogmatist forgets that maxim uttered by the great Augustine centuries ago: "In essentials, unity; in non-essentials, liberty; in all things, charity."[6]

I believe that it was this desire for "liberal culture," that is, education in the liberal arts, that motivated the Dean.[7] He wanted the study of law to be complementary and inclusive of the Western canon — what Dr. Robert Hutchins would refer to as "The Great Conversation" that Western philosophers (both natural and humanitarian) and writers have engaged in since Hellenic times. The Dean's biographer comes to the same conclusion:

> Pressure [to move the law school to Oklahoma City] mounted to the point where some advocates appeared to have come embarrassingly close to assuming a proprietary interest in the new venture, stopping a mere step short of *demanding* that the school be established in Oklahoma City. . . . But the Dean bought no part of this idea. His experience at George Washington [University] had shown him the fundamental error of physically separating a school, any school, from the main campus where university life is lived. He wanted the School of Law to be a part of the mainstream — to be in the center of the university and to enjoy all the associations attending and all the amenities surrounding college life. So it was that he courageously ruled out the idea of placing it in Oklahoma City, twenty miles away.[8]

A word should be said about the other two battles: entrance standards and the method of law teaching (indeed academic freedom itself). Populist Oklahoma seems to have a love/hate relationship with intellectualism. Oklahoma founder Alfalfa Bill Murray favorably compared his autobiography with Edward Gibbon's *The Decline and Fall of the Roman Empire*, yet, at the same time ranted and raved about wasted expenditures at higher educational institutions that wanted to build "concrete swimming pools" and study "football, town balls, and high-balls."[9] Oklahoma's

6. MCKOWN, *supra* note 1, at 32.
7. *Id.*
8. *Id.* at 163.
9. *See* GORDON HINES, ALFALFA BILL: AN INTIMATE BIOGRAPHY 276 (1932); 3 WILLIAM H.

most perceptive historian, Dr. Angie Debo, noted in 1949 that "Oklahomans believe in schools more than scholarship. They started their schools early and courageously; scholarship is something they have not yet attained — nor apparently do they care to attain it."[10]

I think the lack of admission standards to the law school reflected this populist, egalitarian, access-at-all-costs philosophy of early Oklahomans. But the Dean knew that it interfered with success in the study of law. A subsequent study by consultant Augustus G. Pohlman of the University of Indiana underscored the Dean's analysis.[11] When Governor Lee Cruce arranged for the firing of the University president, Dean Monnet was the unanimous choice to be acting president. You can guess that he finally got his admission standards.

One can imagine that the Dean would fight for better methods of law teaching as well. At his very first appearance before the State Bar Association he came out full force for the new and controversial case method of instruction:

> I am aware that many sitting in this room, to say nothing of even greater numbers not here, are critical of, if not outright opposed to, the so-called case method of instruction employed in the School of Law. I must emphasize that most leading schools are profitably using the case system. It is my judgment that those failing to adapt their curriculum to the plan will find themselves skating on thin ice and quickly. There can be no question about the superiority of the "inductive" system of instruction. It stands in contra-distinction to the old method of "reading law" which depends upon taxing the memory of man first to learn and then retain all the rules, tenets and precepts of the law. . . . [O]ur objective is to prepare future lawyers of this state with a sound understanding of the principles and fundamentals of the law. One learns by doing. A dissection of actual cases from real life is the surest method, if perhaps a bit slower, to gain a sound legal education.[12]

The Dean was successful on all three fronts. He kept the law school firmly attached to the University; succeeded in increasing entrance requirements; and obtained academic freedom to teach by the case method, creating a three year curriculum, and, in essence, teaching law as it must be taught — independent of outside constraint while cognizant of its constitutive role in the University and the community (here, an infant state).

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MURRAY, MEMOIRS OF GOVERNOR MURRAY AND THE TRUE HISTORY OF OKLAHOMA 694 (1945).

10. ANGIE DEBO, OKLAHOMA: FOOTLOOSE AND FANCY FREE 161 (1949). Debo concludes an important chapter in this book with the observation that "Oklahoma still distrusts, or at best undervalues, the expert. It produces strangely gifted people — and fails to use them." *Id.* at 173. I addressed this at greater length in Robert H. Henry, Building Excellence on the Foundation of Equality: Higher Education's Mission for a Changing Oklahoma, 1998 E.T. Dunlap Lecture Delivered at Southeastern Oklahoma State University (Oct. 26, 1998) (transcript on file with *Oklahoma Law Review*).

11. See MCKOWN, *supra* note 1, at 197 (setting out a summary of Pohlman's report).

12. *Id.* at 182-83.

The history of this law school is replete with repetition, certainly illustrative of Santayana's aphorism that those who do not study history are doomed to repeat it. The size and location of the school, its independence, indeed its very existence continue to replay themselves. For example, I was very excited about the recently resurrected plans, alas unworkable for various reasons, to relocate the law school on the main campus, preferably to Monnet Hall. But even though that is not possible, I note another repeated irony. For a time in its early history, the law school shared space in the science building, in the geology/paleontology section. As the Dean's biographer noted, "Generally, contracts and cephalopods, torts and trilobites, bills and brachiopods, or mortgages and mollusks are not intimately associated."[13] You see again the cycle: with the new expansion, and the adjacency to the fabulous new natural history museum, the paleontological past of law and geology are once again possible. Provided, of course, that we retain permission to teach geology/paleontology — what with its evolutionary underpinnings and all that.

As to the Dean's supporting cast, time permits but a mention. John Begg Cheadle was, for over a third of a century, a law professor and counsel to University President George Lynn Cross. Henry H. Foster, of Cornell and Harvard, was professor of agency and property. Both witty and unpredictable, he was quoted as once asking a student in property class: "Can you, Mr. ____, visualize yourself sitting on top of a pile of manure asserting your squatter's rights?"

The sartorially splendid Victor Kulp, of Northwestern University and the University of Chicago, could, while meticulously dressed, still vault through the open window into his classroom, to save time in coming directly from his home study to class.

Moving nearer the present, I will take the speaker's prerogative to get personal. My own first year as a student at our beloved alma mater was less than edifying. In a feat of exceptionally bad "deaning," my section was saddled with three freshmen courses — Torts 1 and 2, and Contracts 2 — taught by the same visiting professor, and a pedagogue as ponderous and as difficult to follow as anyone I have ever encountered. He was unbelievable. One of my student colleagues went to open a window during one hot day and the class was afraid she was going to jump. If it hadn't been for the taped and widely disseminated lecture of Professor Mac "Rapid-fire" Reynolds' amazing review on Torts (he taught the other section), few of us would have learned anything *ex delicto*. To have an impenetrable itinerant teach three solids to one section of freshman was criminal. I believe there is now a sentencing guideline for it.[14]

But the other mistake came from the other end, from using a local when the administration, if it had been administering, should have known better. Property 2 was scheduled with a tenured professor who was well past his prime and removed from solid teaching shortly thereafter. His idea of lecturing was to come in and tell

13. *Id.* at 164.

14. My esteemed colleague, Judge Wayne Alley, who was an excellent Dean of this law school, reminds me that for a committed student at any law school the most effective means of instruction is self-instruction.

war stories and then sock everyone with a nonsensical exam that no one could recall relating to the war stories, or reality for that matter.

This would have been a lost year, and maybe a lost profession to me, but for one person — Joe Rarick. "Roaring Joe" was tightly wound and did raise decibels a bit from time to time, but he had an infectious reverence for property law that reduced everything else to less than commentary. For Rarick, the big year in law was 1066, the Norman Conquest that began what became the law of tenures and hence our modern system of property law. I think Magna Carta was a footnote, and maybe even 1789 as well. Like Patton, I think Joe Rarick was at the Battle of Hastings, and he made the study of property law come alive for me. We developed a fast friendship that caused my first bill in the legislature to be one modernizing Oklahoma powers of appointment law, just as Professor Rarick and his mentor, Dean Fraser of Minnesota, wanted it. I gladly coauthored a resolution bestowing the title of "Father of Oklahoma Water Law" on Dr. Rarick. Before Wallace Stegner spoke about it in his important Michigan Law School Lectures,[15] Joe Rarick knew that aridity defined the American West more than any other "experience" in Holmes' famous legal sense.

Things got better. I studied with Dr. Maurice Merrill, the Yoda of Municipal Law and a man of remarkable wit and learning. In a move that almost made up for the infamous visitor, I got a month with the legendary L. Hart Wright, the finest Socratic lecturer I have ever encountered in any field. Unfortunately, his heart attack took him away from us for a week, and he tried to return, suffering a relapse. He returned to Michigan, but he came back the next year to give a guest lecture to an overflowing hall. I even came to love George B. Fraser, the Tiger himself, although the Tiger was a bit of an acquired taste.

I later was deeply honored to be asked to give a eulogy at Professor Fraser's funeral. I believe some of my words on that occasion recall what I learned about him:

> Like so many, my first association with George — he finally got me to call him that, saying that I could either call him George or Tiger — was in Civil Procedure class. Professor Fraser was the ultimate Kingsfieldian professor of *Paper Chase* fame. There was always another question, always another probe, always a way to force that most painful of human endeavors — thought.
>
> I remember, like so many of you, one fateful day when with about fifteen minutes of class left, the Tiger's wandering eye landed upon my name. The reign of terror commenced; for fifteen minutes he grilled, and when the blessed tones of the bell sounded relief, he marked my name with a pencil, and said, "Mr. Henry, we will continue with you tomorrow."
>
> My classmates gave me the look of sympathy reserved for the condemned. There would be no joy in Mudville that night. Instead, I

15. *See* WALLACE STEGNER, THE AMERICAN WEST AS LIVING SPACE 6 (1987).

went to the library, looked up everything that Professor Fraser had written on the subject, and prepared for the fateful hour. Entering class, I gave the Tiger that "we who are about to die salute you" look. The bell sounded, and the Tiger pounced: "Mr. Henry, do you think the result in this case is desirable?" I muttered that I did, ready for the next barrage. Instead, he called the next case. The mixture of relief and rage were cognitively dissonant. I was not able to quote his writings back to the master, but on the other hand, I was spared the gallows one more time.

One of my predecessors had not been so lucky. When he made a certain statement, the Tiger immediately challenged him with, "Where did you get that idea?" The student, somewhat defiant, responded with, "YOU wrote that in an article." Professor Fraser excused the student to go to the library and find the article. As the student was nearing the top of the stairs in the old building, he saw one of his classmates come out of class and looked at him. Thinking that the Tiger had repented and remembered writing the offending passage, he said, "Did Professor Fraser send you out to bring me back to class?" "No," the student responded, "he sent me out to show you where the library was."

My real friendship with George occurred after I left law school. I was elected to the legislature during my last semester, and shortly I found myself on the Judiciary Committee. One day I received a letter from Professor Fraser. The letter was most direct. It went something like this: "Dear Rep. Henry: The following statutes need to be repealed. . . . ." The letter went on to briefly explain the reasons that certain statutes had become outdated, or overruled for constitutional reasons, etc.

Well, I was partly annoyed and partly intrigued. The great problem with legislation about jurisprudential matters is that the bar and the academy have not been actively interested in dirtying their hands in the sausage mill that is the Oklahoma Legislature. I decided to call his bluff. I phoned the Tiger, and advised him that I would introduce a repealer for the offending statutes, but that he would have to be available to the committee to testify as to the reasons for all the repeals. I was shocked by the master's reply. He said, "Well, I have classes [you remember that accent] on Tuesday and Thursday mornings, and I would really hate to miss it, but you tell me when I must be at the committee meetings and I will reschedule classes."

I did not think that anything was as important to the Tiger as class. But I was learning. The LAW was what was important to George, and GOOD LAW, or "desirable" law was what he was after. We developed a strong alliance that day, and a strong friendship continued to grow. The Tiger was the Jedi Master of the Field Code, but even though he was the oracle of this Delphic mystery, he joined with the Oklahoma Trial Lawyers Association to repeal Oklahoma's Field-type Code and go

> to notice pleading. Ever cognizant of improvements in the law, George was not bound to the past. Though he could have easily maintained his domination of expertise in the old labyrinth, his quest was BETTER LAW.

In closing, let me remind you of what I said at the beginning of these remarks — that this law school has had, and continues to have, some pernicious and ill-informed enemies, and that there are still those who fail to see the mission of the liberal arts, still those who cannot fathom the necessity of the free marketplace of ideas, as Holmes termed it. They stalk about seeking to damage or destroy the accomplishments of Dean Monnet and so many who accompanied and followed him. But as he fought for the case method and academic freedom, key battles in his time, we must do likewise. This school must be free not only to teach the law that is, but to explore the law that ought to be. Whether we agree with any given school of thought or its messengers at any given time is not really relevant.

Law and Economics may not emphasize values to the extent that some of us may like, but must we not seek to understand the application of cost benefit analysis to the law just as we do in choices throughout our daily life? Marxists, as the late Bernard Schwartz observed, only live in one place now, the American Academy where "innocent of history, politically irrelevant, and marginal . . . [they] ape the spent intellectual fashions of the European culture market."[16] But don't we learn from Marx that we have to deal — somehow — with the costs imposed on and by losers in capitalist competition? Some crits are certainly wrong in urging that words do not have meanings, but must we not learn that legal language is a good bit more plastic, more manipulable, than we sometimes pretend? Didn't paradigmatic conservatives like Frankfurter and Harlan suggest that constitutional language must be read differently than an insurance clause or tax statute and must be read in light of "living traditions?"[17] The feminists who say that all sex is rape certainly overstate their case, but aren't they correct when they remind us of how many laws — including rape laws — are male-centered and improperly so? Don't critical race theorists make — appropriately — similar points about exclusion?

### *Conclusion*

Dean Monnet's decision to keep the law school as an integral part of the university was wise and praiseworthy. The Dean wanted the law identified with the liberal arts tradition, and with the freedom of inquiry that accompanies a great University. He knew, as did Cardinal Newman, that "[t]here is a Knowledge which is desirable, though nothing come of it."[18] But he would also say with Newman that "[k]nowledge is one thing, virtue is another."[19]

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16. BERNARD SCHWARTZ, MAIN CURRENTS IN AMERICAN LEGAL THOUGHT 604 (1993).

17. *See* Poe v. Ullman, 367 U.S. 497, 542 (1961).

18. JOHN HENRY CARDINAL NEWMAN, THE IDEA OF A UNIVERSITY at disc. V, pt. 6 (I.T. Ker ed., Oxford Univ. Press 1976) (1889).

19. *Id.* pt. 9.

This law school has educated governors, United States Senators, and judges. It has prepared law professors and practitioners. It has been an integral part of this University and of this state.

Those of us who love this place and what it stands for must do what we can to help it in its mission: to advance the Rule of Law by educating lawyers who serve clients competently and serve the courts ethically; and to advance freedom of inquiry about the Law so that, paraphrasing Pound, the Law can be stable and yet not stand still.[20]

20. *See* ROSCOE POUND, INTRODUCTION TO THE PHILOSOPHY OF LAW (1922).