1-1-1995

Looking Back in Pursuit of the Art of Law

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LOOKING BACK "IN PURSUIT OF THE ART OF LAW"*

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As part of the centennial celebration of the Washington College of Law, I am pleased to accept the invitation of *The Law Review* to revisit those six fascinating years of my deanship from 1971 to 1977. It is time for a backward glance in light of the profound changes that have since taken place in society, as well as in the Washington College of Law (WCL).

The goals we set out to achieve during my stewardship are summarized very well in *The Law Review*'s dedication to me of its 1977 summer issue of volume 26. The issue came out after I was in New England and caught me by surprise. I was deeply touched to have been recognized by *The Law Review* as contributing to the simple goals of "academic excellence and interpersonal faculty-student relations" and "the atmosphere of cooperation and congeniality which makes our school a unique community in which to pursue the study of law."[1] These were goals we all shared.

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* Title of address given on October 31, 1971, by the author on installation as Dean of the Washington College of Law. *See* Gordon A. Christenson, *In Pursuit of the Art of Law*, 21 AM. U. L. REV. 629, 629-35 (1972).

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1. *Dedication*, 26 AM. U. L. REV. 793, 793 (1977). The last full paragraph reads:

> Dean Christenson not only guided the development of our academic program, he also guided the development of the atmosphere of cooperation and congeniality which makes our school a unique community in which to pursue the study of law. This combination of academic excellence and interpersonal faculty-student relations has made the Washington College of Law what it is; concurrently, it will make us, its present and future students, what we will become.
>
> With Appreciation and
> Great Personal and Professional Respect,
> The Student Body

Id.

Coming in from outside,[2] I had not known of WCL's recent history other than its move to the main campus of The American University seven years earlier, and praise of its "practical" training from a cousin who graduated from WCL in the sixties. I knew of its founding by two women in 1896 and of its merger with The American University in 1949. Unfortunately, there were no women on the full-time faculty when I took office in 1971 (Professors Elizabeth P. Cubberley and Mary L. Martin were by then emeritae), nor were there many women nor minorities in the student body of about 680. I was unaware that Dean David Bookstaver (dean from 1951 to 1956) had recruited to the faculty such brilliant young teachers as Abraham Goldstein,[3] Leon Lipson,[4] and Adam Yarmolinsky,[5] as well as others who started their teaching careers at WCL. My predecessor was B. J. Tennery, a WCL graduate, who had succeeded John Sherman Myers and had resigned a few months before I arrived.[6] Robert Goostree, another WCL graduate, was acting dean.[7]

During my deanship, law schools began to open up, both in number and in program. Student applications mushroomed; women and minority enrollment increased; entering classes expanded; and new law schools were being approved by the ABA. Traditional legal education was under critical review everywhere, and nowhere more intensely and comprehensively than at WCL. The major goals for my administration were carefully worked out with American University President George Williams, after consultation with the faculty-student-alumni search committee and the faculty. These goals were: (1) seeking intellectual excellence in teaching and scholarship, with an integration of the theoretical and the practical, to serve the needs of the profession and society; (2) maintaining a human dimension in the professional interaction of students and faculty; and (3) increasing the

2. At the time of my appointment, July 1, 1971, I had been serving as Chancellor Ernest Boyer's University Dean for Educational Development in the central administration of the State University of New York.

3. Professor Goldstein is now the Sterling Professor at Yale Law School. He was dean of Yale Law School from 1970-75, overlapping my deanship of WCL. At an annual meeting of law school deans, he recalled to me that he started his teaching career at WCL.

4. Professor Lipson is now the Henry R. Luce Professor of Jurisprudence Emeritus & Paul C. Tsai Professorial Lecturer at Yale Law School.

5. Professor Yarmolinsky is now the Regents Professor of Public Policy in the University of Maryland System.

6. In 1966 at the time of Dean Myer's retirement, the eleven full-time members of the faculty petitioned the president to appoint Associate Dean B. J. Tennery to replace him. They were, in order, Edwin Mooers, Elizabeth P. Cubberley, Mary L. Martin, Louis C. James, Anthony Morella, Robert E. Goostree, Nicholas N. Kittrie, Harold C. Petrowitz, George Horning, Jr., A. Allen King, Jr., and Robert Bennett Lubic. Communication of May 10, 1966 to President Hurst R. Anderson, (on file with *The American University Law Review*).

7. He had just accepted the deanship of Capital University Law School in Columbus, Ohio.

national draw and diversity of students and faculty (considering gender, race, culture, intellect, and viewpoint) for a cosmopolitan place like Washington at the seat of government. In his letter of appointment of April 14, 1971, President Williams wrote, "I regard the advancement of the Law School as having important impact on the advancement of the University as a whole."[8]

My practical strategies for reaching these goals were fourfold: (1) increase and diversify the full-time faculty; (2) reduce the size of the student body to help reach a favorable faculty-student ratio; (3) introduce diversity into admissions standards, with the revival of the tradition of legal education for women; and (4) reduce the amount of University overhead retained from law student tuition by the central administration to invest in quality. Cutting against the grain, we immediately proceeded to reduce the number of students from 680 to 600 (John Sherman Myers Hall was designed for 450 students in 1964) and to increase the size of the faculty while diversifying both. Yale Law School had used a similar faculty-student ratio strategy during the twenties to make a leap of quality. This action caused great stress for the rest of American University.[9] Over my six-year deanship, the faculty increased dramatically,[10] while the student body grew to 670, maintaining the favorable faculty-student ratio as new faculty were added. The expanded faculty and diverse student body operated through a process of self-governance by restructured committees of the Law School Council, which included faculty, students, and alumni.[11] These mixed committees would tackle

8. Letter from George H. Williams, President, American University, to Gordon A. Christenson, Dean, Washington College of Law, American University (May 14, 1971) (on file with *The American University Law Review*).

9. The total law school budget, including the library, in 1970-71 was $631,500 out of tuition income of $1,275,000, not counting tuition waivers. Full-time tuition was $2030 a year. This information comes from documents sent to me during negotiations, copies of records I kept in my personal files, and the commitment letter from President George Williams, dated May 14, 1971, promising additional faculty. The University would have to reduce the amount of tuition income retained as overhead from about 50% to about 20%. This strategy required a strong commitment from President Williams, because betting on the law school without an endowment in fact cost the rest of the University about $500,000 from reallocation and lost revenue, an amount equivalent to the law school budget without the library.

10. The average full-time teaching load in 1970-71 was 8 hours per week, which was 16 credit hours per year. To free faculty time for more intense teaching and scholarship at WCL required a major reallocation of resources if the size of the student body was not to increase. Increasing the size of the faculty allowed a reduction to 12 credit hours per year.

11. Student organizations, under the leadership of SBA president Karen Shaffer and *The Matrix* Editor-in-Chief Gus Bequai, were particularly helpful. Many students gave support. Those I remember especially were Bruce Aitken, Christina Cerna, Cathleen Douglas, John Dunsmore, David Galbraith, Howard Lee, Victoria Marmorstein, William Moffitt, and Amy Young, among many others.

changes in the academic program before recommending them to the full faculty for approval.[12] This process worked.

Within several years, an infusion of energy seemed to unite a common purpose among new and existing faculty members and students, as well as the administrative staff, which included a rather rocky start by an inexperienced dean encouraging experimentation in a period of major change.[13] Appointments to the faculty included both senior and junior members, but the emphasis—given tight budget and the market—was to seek out promising beginning scholars, those who wanted to join in an exciting endeavor.[14]

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12. The faculty redesigned the first-year curriculum. I offered recommendations. We began to plan a joint degree program with the School of International Service. Some senior faculty inquired whether I was trying to make the school into an international law school, but movement on that front was only part of enlarging the vision of legal education.

13. Individual members of the faculty experimented, as when Professors Dalton (teaching contracts) and Vaughn (teaching torts) offered a year-long integrated course on obligations called "contorts" in 1974. I invited Professor Richard B. Lillich of the University of Virginia, as a visiting professor, to teach the first course in international human rights in 1975, while he was developing the materials for his and Frank Newman's new coursebook. *See* RICHARD B. LILLICH, INTERNATIONAL HUMAN RIGHTS (2d ed. 1991); FRANK NEWMAN & DAVID WEISSBRODT, INTERNATIONAL HUMAN RIGHTS (1990). During the spring semester 1972, Dr. J. Herbert Hollomon, commuting from M.I.T., and I co-taught a student-faculty seminar (five faculty members, each working with three students), on Problems in Public Law: Law, Science and Technology. Professor Nicolas Kittrie offered seminars on terrorism and political crimes. Professor David Aaronson offered a seminar on the economics of crime. Professor Elliott Milstein experimented with clinical methodology. An adjunct faculty member offered the first seminar on international trade with China, just as President Nixon made his strategic visit in 1972.

14. My first hire was an assistant dean for academic affairs, Robert Goldman, just graduating from the University of Virginia Law School and Editor-in-Chief of the *Virginia Journal of International Law.* He began work as soon as I did in 1971. The faculty appointed him assistant professor, as well. Former Supreme Court Justice Arthur Goldberg accepted appointment as University Professor of Law and Diplomacy in 1972 for two years. Robert Vaughn, with a fresh LL.M from Harvard and working with Ralph Nader's Public Interest Research Group, joined the faculty in 1972. That year a trained scholar/clinician, Elliott Milstein, joined the faculty as assistant professor to head the clinical program, in addition to teaching criminal law. Seymour Rubin, an international lawyer of stature in Washington left his practice to join the faculty full-time in 1972. Later he became Executive Director of the American Society of International Law. William McHugh joined the faculty January 1972, moving on to Florida State the following year.

Beverly May Carl from Southern Methodist accepted a visiting associate professorship for 1972-73. Janet Altman Spragens accepted an appointment in 1973 as associate professor. James Hollomon, just graduating from the University of Pennsylvania Law School, took the assistant deanship for administration and student affairs. In 1974, I appointed Patrick Kehoe, then Assistant Law Librarian at Yale, to the Law Librarianship with faculty rank of assistant professor. Clare Dalton joined the faculty that same year as assistant professor. David Lytle became associate dean for academic affairs and assistant professor when Goldman took leave for practice. Paul Rice from the University of Mississippi visited for two years, 1974-76, as visiting associate professor, then joined the faculty permanently in 1976. Peter Jaszi, who had been Research Director for the Task Force on Disorders and Terrorism at the Research Institute, joined the faculty full-time as assistant professor in 1976. Hugh Friedman visited from San Diego in 1976. Bert Lockwood was appointed associate dean after Lytle resigned. Before I left the deanship, Evelyn Abravanel and Mary Siegel both accepted appointments for the 1977-78 academic year.

I sought out Dean Erwin Griswold for advice. Having retired from Harvard and then practicing in Washington after a stint as Solicitor General, he helped educate me into my job as Dean. Our paths had crossed before. In 1969, Dean Griswold and I served on a Law Center Commission to review legal education at the University of Oklahoma (where I had taken my first full-time academic appointment in 1967 after government service).[15] He loved to help new deans and tried to keep up with them all. He had known the late former Dean John Sherman Myers very well, of course, from their Harvard student days.

During our occasional lunches, Dean Griswold suggested that some of my responsibilities for legal education in the seventies, would be traditional—to build consensus around excellence in both teaching and scholarship, to aspire for national stature, and to resist student calls for eliminating grades, for socially "relevant" courses, and for academic credit for working in the community. Dean Griswold advised me to demonstrate through action that a revitalized law school community in Washington might aspire to the first rank; to build stature through recruiting first-rate faculty and students to join a strong nucleus; not to yield to mediocrity. He was skeptical of curriculum reforms and of clinical programs, but favored legal reform scholarship as a contribution from faculty.

In the fall of 1971, almost in spite of Dean Griswold, I offered a jurisprudence seminar focused on rethinking the assumptions of legal education. We used many classic texts, in addition to new material, including an article by Yale Law student Duncan Kennedy challenging traditional legal education[16] and the talks on education by University of Chicago President Edward Levi.[17] My students wrote papers on

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15. During the sixties, I had served in the Legal Adviser's Office of the Department of State and as Assistant General Counsel for Science and Technology in the Commerce Department. In 1967, I left government service for academia, just as the student protest movements grew more volatile. As associate professor of law at the University of Oklahoma, I also advised the University President and directed a study of the University. Part of this effort included a Law Center Commission to plan the future of legal education there. During the upheavals in Oklahoma, I was directly involved in helping the President keep the campus open, which we did, keeping the peace, with a united faculty, student body and administration. When American University President, George Williams, interviewed me for the deanship, we instantly shared common experiences with campus unrest.

16. Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACTION 71 (1970). Now professor of law at Harvard Law School, Kennedy was one of the founders of the Conference on Critical Legal Studies in the mid-70s.

17. Edward Levi is a former Dean of the University of Chicago School of Law and is currently Provost of the University of Chicago. He later became Attorney General of the United States. *See generally* EDWARD H. LEVI, POINT OF VIEW: TALKS ON EDUCATION (1969). I discussed clinical legal education with him (he was opposed) and with Harvard Law Dean, Albert Sacks (he was in favor), one evening at dinner at the home of Max Isenburgh, a visiting member of WCL's faculty and a good friend and adviser.

all aspects of the assumptions buried in legal process: the socratic method, the monopoly of the law book publishers, the masks of doctrine, policies for admitting new students, the effect of tenure on scholarship and teaching, and the need for clinical legal education to reflect principled action by resisting instrumentalism.[18] Some senior faculty members were dubious when students told them that we were planning to reform the law school.

To explain our goals, I developed the theme that law was an art form and lawyers were skilled artists. This theme turned into my installation address which I gave on Sunday, October 31, 1971, on campus, with a large Washington audience in attendance.[19] An intellectually rigorous and humane law school community, I explained, one devoted to the limits which professional skills and reason bring to integrate the passions in pursuit of justice, might help us all to live.[20] The work of law or justice ultimately is aesthetic, I proposed, and involves creating or restoring balances that bring harmony to chaos and the destructive urges as well as resolve conflict. My seminar had explored some of these ideas. To achieve excellence within a law faculty, I advocated a "fierce autonomy of intellect and affection which can sustain the artistry of law."[21] For humaneness of community, I proposed that we should keep a sense of irreverence and playfulness. For diversity in viewpoint, I suggested that a professional community "should rejoice and be glad for the pleasures

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18. *See* Gordon A. Christenson, *Studying Law as the Possibility of Principled Action*, 50 DENVER L.J. 413 (1974).

19. Gordon A. Christenson, *In Pursuit of the Art of Law*, 21 AM. U. L. REV. 629 (1972).

20.

> We have held law in fear and esteem, as if it were God, sometimes irreverently, occasionally with demands. And in all of this there is wholeness in the playfulness of ritual that helps us all to live. . . . Of all institutions, law schools have the power of play in intellectual combat which seeks to understand reasoned limits. The capacity of the commitment to action in the public good is also vital, however, for the impulse of the state to go beyond freedom will not be curbed by legal graffiti, by words alone. Especially in Washington, a healthy irreverence in action is essential for survival.

Id. at 630.

21. *Id.* at 633.

> [Faculty] may enjoy money, but within limits, perhaps as judges do. Universities, however, should pay the best law professors salaries comparable to those paid the best judges and in return expect to find an even stronger commitment to students and each other. Law professors should have the grace of excellence not only as teachers and scholars, but also as active and independent artists in the world. They should have the distance from themselves that allows them to laugh and yet personal caring for students and each other that bears the pains of compassion. They must be tough-minded and emotionally secure as advocates of creative action in the public good and must be confident enough of their grounds of being to consider failure in a great cause to be irrelevant . . . . They must avoid the temptation to withdraw behind fences of specialization without the correlative strength of a conscious and whole world view.

Id.

of diversity. No law student or law teacher should fear being different. An artist takes no pleasure in imitating."[22]

As we moved beyond the righteous anger of the student protest movements, a sense of irreverence or fun helped keep perspective. Law students at WCL, for example, did not know what to do with Supreme Court Justice William O. Douglas when he showed up with his young wife, Cathleen (then a third-year law student), for student bar functions; so Student Bar Association President Karen Shaffer sat him next to me, their new dean, and we all became friends. One time he turned to me and said, "I always wanted to be a law dean; in fact, the faculty did elect me dean at Yale Law School when I was your age[23] but then Roosevelt called me to Washington and I never took office."

An authentic intellectual leader in legal realism, Douglas was a folk hero for me and for many students. We asked him to give the commencement address in 1972, and he made a few wise and snappy comments in about five minutes that brought the entire graduating class to their feet. They came to their feet again when I tapped a dozing senior Justice on the knee with his wife's diploma just as she came across the stage, and waking-up with a start he gave it to her; the students roared approval and cheered as she kissed him. That was the year some of those students literally kidnapped me from my office, taking me to an area near Cabin John for a picnic which included a case of wine.

Some time during my six years as dean, the nation took a turn, but few saw the direction. There came a turning point for WCL as well. Looking back, we can now see that about half-way into my term, beginning about 1973, the era of worldwide social change and prosperity following World War II came to an end.[24] The student protests and social upheavals of the late sixties and early seventies, well known to American University, were all part of this era of optimistic change and unprecedented global economic growth, a realization of Herbert Croly's progressive vision, written at the beginning of the century in his now-forgotten *The Promise of American Life*.[25] We then entered a dire and crisis-driven period which remains with us at the century's turn. It saw the beginning of greater

22. *Id.* at 633.

23. I was 38 years old when I accepted the deanship.

24. ERIC HOBSBAWM, THE AGE OF EXTREMES: A HISTORY OF THE WORLD, 1914-1991, at 8, 16, 257-86 (1994) (noting that unprecedented Golden Age of 1947-73, followed by age of crisis after the Cold War ended in 1991, led "the most profound revolution in society since the stone age").

25. HERBERT CROLY, THE PROMISE OF AMERICAN LIFE (1909).

cynicism, resentment and anxiety about an uncertain future seemingly beyond control by popular institutions or governments.[26] Had we done enough to prepare for it?

Vietnam was winding down by 1973, but the Watergate coverup was heating up. On October 23, 1973, I joined with deans of nineteen major law schools in petitioning Congress to establish a Special Watergate Prosecutor's Office and, in view of President Nixon's refusal to comply with court rulings, urging the House of Representatives to commence the consideration of impeachment.[27] Federal District Judge John Sirica called upon WCL law professors George Hornig (his old partner at Hogan & Hartson) and Tony Morella to represent him before the Court of Appeals in a writ of mandamus filed by Nixon, challenging Judge Sirica's ministerial discretion in ordering compliance with Special Prosecutor Archibald Cox's subpoena to produce the famous tapes in the Watergate case.[28] Before the next academic year began, in August, 1974, after firing Cox and facing successor Leon Jaworski, Nixon resigned just as articles of impeachment were being drawn up.

The temptation was irresistible in Washington to try to reconstruct legal education in service of a new era under a rule of enlightened law. The mission seemed more like a calling to one in legal education, a particularly romantic notion suitable to me at that stage of my youth, full of bravado, foolish indeed for an inexperienced dean.

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26. "The history of the twenty years after 1973 is that of a world which lost its bearings and slid into instability and crisis." HOBSBAWM, *supra* note 24, at 404.

The stability of the Bretton Woods international monetary system had come apart the year before. Productivity slowed. Optimism stalled along with civility and good race relations. A subtle backlash against feminism was building, even as I provided a meeting place in WCL facilities for the first National Women's Political Caucus to meet in Washington in 1972. Long-term decline began in real dollar wage levels for average American workers following the oil embargoes triggered by the Yom Kippur War between Israel and its Arab neighbors. Displacements of workers increased. The period of great economic expansion and egalitarian redistribution after World War II, from social welfare policies to Marshall plans and foreign assistance, was coming to an end by 1973. That the Cold War would also end was unthinkable; that a costly escalation of the Cold War was beginning scarcely drew comment.

27. Petition to Congress of October 23, 1973, signed by deans Bamberger (Catholic University), Christenson (American University), Cowen (Case Western Reserve), Ehrlich (Stanford), Fisher (Georgetown), Freedman (Hofstra), Goldstein (Yale), Halbach (Berkeley), King (Texas Southern University), Lorensen (University of West Virginia), McKay (New York University), Neal (University of Chicago), Paulsen (University of Virginia), Penegar (Tennessee), Reid (Howard), Sacks (Harvard), Schwartz (University of Buffalo), Sovern (University of Columbia), St. Antoine (University of Michigan), and Wolfman (University of Pennsylvania). Other deans were invited to join and did so later.

28. The order was upheld in Nixon v. Sirica, 487 F.2d 700 (D.C. Cir. 1973); *see also* JOHN SIRICA, TO SET THE RECORD STRAIGHT 121-23 (1979) (discussing trial experiences related to release of "Nixon" tapes).

But, as I now wistfully look back, the new era was over before it began[29] for most law schools. The world around us was already moving away from the ideals of social justice and human freedoms we took for granted in the Golden Age before the wheel turned.

During the spring semester of 1973-74, my jurisprudence seminar concentrated on the relationship between passion and reason in law, exploring the theme introduced in my installation address.[30] The seminar inquired into the kinds of passion that arise from various senses of injustice and that trigger human actions. Raw actions are transformed into legitimate ones through forms of law impressing limits or processes defined by reason. One student wrote on the violent anger and outrage that arose within the body politic from the powerful emotion of betrayal by a president that would be ritualized in the legal process of impeachment. Law required a process of ritual killing of the leader who betrayed the public trust, she argued, to make the special emotion toward patricide understandable and expiate any complicity. Impeachment of Nixon was merely a ritual expression of an irreparable breach that already had occurred. The ultimate legal form of impeachment was epiphenomenal.[31]

By 1974, critical thinkers were articulating that the liberal assumptions beneath the so-called Golden Age were mythical covers for other shifts—growing wealth disparities, hidden violence in the guise of private rights, use of constitutional doctrines of equal protection, and

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29. My family members became part of the school. My daughters, Lynne and Ruth, spent summers working in the Admissions Office. My son Scott was admitted as a law student during the summer I left, graduating in 1981, and is now practicing law in San Francisco's Bay Area. My former wife, Katherine, organized "Law Partners," a replacement for "Law Wives," until then the distaff support group headed by the dean's wife. She arranged a program of substantive talks about law by members of the faculty for the spouses, both, of law students.

30. David Hume's adage that "reason is . . . the slave of passion" and the legal realists' critique of legal formalism formed a backdrop. DAVID HUME, A TREATISE OF HUMAN NATURE 415 (1888) ("[R]eason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them."). Freud, moreover, had said that equality is driven by the passion of envy. The topic was suggested explicitly by Rawls' discussion of "The Problem of Envy" in JOHN RAWLS, A THEORY OF JUSTICE 530-34 (1971) (postulating that people in original hypothetical position would have no knowledge of envy or special emotions in choosing their principles of justice as fairness). If envy sometimes can be excused by equality, "no one supposes that those who have a larger share are more deserving from a moral point of view." *Id.* at 536. Mutual respect not happiness or excellence (perfection) justifies claims to social resources.

31. In my installation address, I had challenged the view that tabooed passion as part of a discussion of justice. Christenson, *supra* note 19, at 631.

> This view is a serious mistake. It keeps the art of the law from tapping its most useful and creative powers. . . . While assaults by vigilantes may not be the same as the pursuit of justice, the form of the art lies nonetheless in the primitive notion of restoring or creating a balance. Understood in this light, vengeful powers can be turned artfully into creative powers.

Id.

due process to keep basic power from being redistributed to women or minorities, the persistence of unconscious racism,[32] and the injustice of many inherited structures.[33] They were half right, like Rousseau was, in thinking that once we deconstructed legal traditions to reveal unjust substructures that sustained law as an instrument of oppression, society might be freed to move in a better direction. After 1973, however, we began to move in an altogether disturbing direction, away from the aspirations of the Golden Age.[34] The Supreme Court itself made a crucial shift beginning in 1973.[35]

In December of 1976, after five intense years, just after Carter was elected President, I informed the faculty that I was resigning the

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32. We held a conference to discuss racism at WCL in 1975, which I convened and moderated, between first-year law teachers and the Black Law Students Association led by William Moffitt and other students who are now prominent African-American members of the bar. One student asked a professor, "Why do you always give us a free ride on the difficult questions or let us off easy in questioning? Yet, you push the bright white students hard to the limit. We notice that, because it shows us no respect and demeans our intelligence." Truly surprised, the professor answered, "Why, I have devoted my entire life to civil rights and have always tried to be respectful of Blacks in my class, not to seem to pick on them." The Black student gave this response to the professor, who actually took it to heart: "That, sir, is exactly the point. Not challenging us to engage you in intellectual exchange to the edge because we are Black is institutional racism!" Who would have such an open conversation today?

33. At an "Evening Dialogue" at the Woodrow Wilson International Center for Scholars on June 27, 1974, which I attended, Roberto M. Unger, a young assistant professor at Harvard led the discussion, "Can the rule of law survive the transformation of modern society?" He maintained that the conditions that led to the formation of the European liberal state had changed radically and no longer could apply to what had become the corporate welfare state that had cast off liberal claims to protect individuals from the state. The corporate welfare state is concerned with affirmative goals for public welfare such as food, jobs, and economic security. I recall using this discussion in reviewing a new coursebook on international law to argue that "empirical, law-related research and alternative thinking is required of law schools purporting to teach international law in a contemporary world." Gordon A. Christenson, Review Essay, *Leech, Oliver & Sweeney: Cases and Materials on the International Legal System*, 123 U. PA. L. REV. 1001, 1017-18 (1974).

34. By the time I left my second deanship at the University of Cincinnati in 1985, it was clear to me that deconstruction as a mode of radical critical thinking was being used against leftist values. *See* Gordon A. Christenson, *Uncertainty in Law and Its Negation: Reflections*, 54 U. CIN. L. REV. 347 (1985).

35. Three Supreme Court decisions in 1973-74 gave warning of a turning point, which is apparent only in hindsight. All three involved changing expectations of individual happiness created during the Golden Age. First, the Court reached the apex of its liberal swing in protecting non-textual personal liberties by recognizing with *Roe v. Wade*, a woman's right of privacy in choosing to seek an abortion, with a signal from a dissent by a new Justice Rehnquist. 410 U.S. 113 (1973). Second, in *San Antonio Independent School District v. Rodriguez*, the Court put an end to adding categories of suspect classes for searching judicial review of legislative classifications discriminating against the poor in funding public education. 411 U.S. 1, 58-59 (1973). Third, the Court decided *Milliken v. Bradley*, (*Milliken I*) in which it refused to allow a remedial desegregation order by the District Court for Detroit schools to include 53 suburban school districts. 418 U.S. 717, 752-53 (1974). Happiness for suburban families was more important than their sacrifice for inner-city public schools in the Court's first and historic retreat from affirmative school desegregation remedies thought to have been required only three years earlier by a unanimous court in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 30-32 (1970).

deanship the following year and taking leave from the faculty to accept a two-year appointment to the Charles Stockton Chair of International Law at the U.S. Naval War College in Newport, Rhode Island.[36] There seemed a moment of genuine reciprocal affection as I brought my deanship to a close. I had done what I could and by then knew that law deans come and go, leaving but traces from what they thought important at the time.

In the spring of my last year, the students threw a boat party for the entire College and dignitaries, down the Potomac River to Mount Vernon and back, to say farewell. They gave me a captain's hat. The Morellas hosted a faculty farewell, and the faculty gave me a pocket watch and chain, inscribed, "You have fought the good fight. You have kept the faith. Your colleagues."

The pursuit of the art of law requires beginnings, middles, and ends. What was done in that remarkable time will have to be appraised more objectively in its own terms when the full history of WCL is written. Whether the art was whole, whether it influenced (as I hope it did) the institution and others for the better is not for me to say. My term came to a natural and graceful close, and a new academic adventure for me was to begin—away from Washington. And I am privileged to have held stewardship over a unique institution in Washington for at least part of its first hundred years during an era whose likes we will not see again soon.

36. I left the deanship July 1, 1977, saying that every five years or so I would like to do something new. *See* Mike Dallas & Jack Dulberger, *Dean Comments on Future Plans*, MATRIX, Apr. 1977, at 1 (on file with *The American University Law Review*). The new American University president, Joseph Sisco, approved a two-year leave from my faculty appointment. I also took affiliations with Harvard Law School as Visiting Scholar and with M.I.T. as Associate in the Center for Policy Alternatives.