Chapter 14: Law School (1968-1971)

So Leolin went; and as we task ourselves
To learn a language known but smatteringly
In phrases here and there at random, toil'd
Mastering the lawless science of our law,
That codeless myriad of precedent,
That wilderness of single instances,
Thro' which a few, by wit or fortune led,
May beat a pathway out to wealth and fame.

Tennyson, "Aylmer's Field" (1864)

And afterward he read all the words of the law, the blessings and cursings, according to all that is written in the book of the law.

Joshua 8:34

I applied to a number of élite law schools, counting on my draft counseling experience to get me in despite my crummy academic record at Columbia. The first school I heard from was the University of Pennsylvania, in Philadelphia, which accepted me. As soon as I heard that, I withdrew from consideration at the other schools. My main reason for wanting to go to Penn was my wish to marry a woman who had graduated from Barnard (the Columbia's women's college) the year before and gone back home to Philadelphia. I was in full courtship mode and wanted to be where she was so I could press my suit.[1]

Also Ed Robin, Eugenia Flatow's campaign manager (see Chapter 13) and a man I respected a lot, had gone to Penn Law after Harvard College. The idea that someone as smart as Ed, who presumably could have gone to Harvard Law if he had wanted to, chose Penn Law instead, influenced me toward Penn. Now that I think about it, maybe Ed went there in pursuit of a woman too, rather than for academic reasons. But anyway, when Penn said yes I told Harvard and Yale my other candidate schools thanks, but no thanks, I was going to Penn. In the end, the romance did not work out, but because of its humane culture and customs Penn turned out to have been a lucky choice for me, and I was probably a lot happier and maybe even better educated than I would have been at a

[1] And no comments, please, on how my suits always need pressing anyway.

"paper chase" school like Harvard.[2] I was tired of Columbia and would not have gone there anyway unless no other school admitted me.

It was quite a shock actually to move to Philadelphia. I had the New Yorker's fatuous idea that New York was all there was and everyplace else, as Barnum said, was Bridgeport. This is of course not true, but at the time I really thought it was, and I had studied New York history and read Meyer Berger and Damon Runyon and really identified with my home town in an active way. I could not imagine ever leaving, but when a person thinks with his gonads anything is possible, and one day there I was 95 miles away in Philadelphia. I was pretty startled.

I went to the housing office to look for an apartment, and I found one in West Philadelphia, at 4630 Chester Avenue. It was about a mile or so west of the campus, but right on the trolley line that went to 34th and Chestnut where the Law School was. It was a big house divided into three flats. Mine, on the ground floor, up some steps from the street, was a pleasant enough apartment, except for the trolley noise, which people said I would stop hearing and sure enough I did. There was a porch, and a front room with a bay where I studied in an armchair. A bedroom opened off a long corridor, and then there was another room where I had a desk for non-school projects, and then the kitchen. The landlord, a landscape architecture student, lived above me with his pretty wife, and two young women (one of whom later became my girlfriend) lived on the top floor. It was spare, but it was ample, and I moved in immediately. I went back a few years ago and the house had fallen nearly into ruin.

It was an interesting experience getting used to living in Philadelphia, a city I scarcely knew at all. Jessica Lobel, who was from Philadelphia, and my law school classmate Andy Schwartzman, who had gone to Penn as an undergraduate, both helped me appreciate the place – the magnificent Victorian

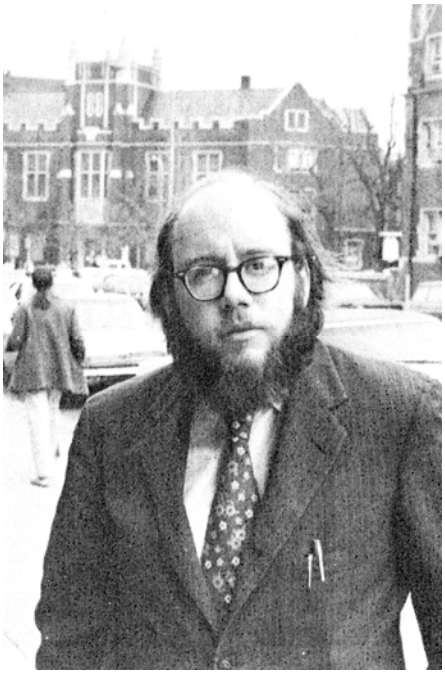
[2] This term for a law school derives from a 1970 novel *The Paper Chase*, by John Jay Osborn, Jr., set at Harvard Law School, and the 1973 movie based on it. It implies an institutional structure based on cut-throat competition among students for advantage in minutely computed class standings, of which Harvard Law was at that time a paradigm. Scott Turow's Harvard Law School memoir *One L* (1977) gets that malign atmosphere across very well – that was just what Penn Law tried hard (and successfully) not to be.

City Hall (above left), Fairmont Park and the Art Museum, cheesesteaks and soft pretzels and scrapple, the peculiar Philadelphia accent, which I have never been able to imitate. I learned to join in hating Frank Rizzo (above right), the notorious bully and chief of police, who became mayor shortly after I left town. I appreciated Philadelphia even more after I got a car at the end of my second year (see it pictured in Chapter 30.A).

The first year in most law schools is a set curriculum, with no electives, and Penn followed this practice. It is a good practice, because law study is hopeless without the essentials. The entering class of about 100 was divided into two sections, A and B – I was in section B. All of us in a section took all our courses together, except for one course (was it Civil Procedure or Property?) where this was varied so we could meet some of our classmates.

The first course, which met for a week before the other courses started, was called **Judicial Process**. It was an introductory course, taught by Prof. James Schotland, a securities law specialist and a visiting professor from Georgetown. Here, as in all first-year classes, a whole section of 50 students met at once in a kind of amphitheatre formed of counters with seats behind them, laid out in semicircles around a teaching platform, rising up seven or eight levels from the floor. Seats were assigned alphabetically. Most of us were not used to classes this big, at least not where we were expected to participate and not just sit through a lecture taking notes.

This first week was something like boot camp – we dived in and found our assumptions rudely shaken. Professor Schotland assigned us an opinion by Joseph Story (1779-1845) (left), one of the greatest legal scholars and Supreme Court justices of the 19th century, who was only 32 when he was appointed to the Court. We were all graduates of good colleges, clever enough to get into Penn Law, and we thought we could at least read. I especially thought I could read because I had taken a course in military law at Columbia Law School and had even read cases (meaning appellate court opinions).



But we were all wrong. We went over the text and Professor Schotland asked questions in classic Socratic style, the universal American method of teaching law since the 1890s. It soon became clear to us that reading a legal text under that kind of oversight required a lot more care than we were used to. We realized we had to consider every single word on the page, not leaving any

out and not adding any from our heads. To follow the argument was not as easy as it seemed. Trying to answer questions about it showed us that there was a lot we were missing. It was a revelation as we got our first insight into what was called "thinking like a lawyer."

I decided several things in my first days in this class, all of which served me well. The first was to accept the method and not buck the system. Considering my conditioning and my college practice, that was a big step right there. The second was to accept that I had a huge amount to learn and that the professor was *way* smarter than I was – this was true of almost all my teachers at Penn, who were of astonishing brilliance. And the third was to jump in and take my licks. Some students never volunteered – they were afraid of being tripped up in the Socratic dialogue and made to look foolish. I decided that if I was going to get the benefit of the process, I needed to accept that risk and participate fully. So I never hung back, and consistently raised my hand to be called on, and if I got chewed up, well, that was part of the deal. This had the unexpected effect that, because I volunteered often, I was almost never called on when I didn't volunteer, and so I was rarely caught unprepared. The etiquette was that if you were called on and you were unprepared you had to say so rather than waste class time bluffing. I had to do this a few times – the amount of reading was staggering, and I didn't do it all – but I *tried hard* to do it all, which was quite a change from college.[3]

I took with delight to the method of teaching. Once I got the hang of it, and I did get the hang of it very early, it was really fascinating. Learning to read and think like a lawyer was like suddenly getting a new pair of glasses, with an accurate prescription instead of the fuzzy old pair with scratched lenses that I had been using. I used the method to learn legal analysis, but also I applied it to everything I did after that, and still do to this day. I still pay close attention to the words I read, or write, or say, or hear, and when I need to I go over them with a lawyer's care. I learned never to assume anything, and always to consider any construction that could be placed on words, and to take responsibility for any possible construction of my own words no matter what I subjectively intended them to mean. I learned how not to skim, but to step back from a text and read it word by word in slow motion. I learned to be exact and precise with language, and not say more or less than I meant, and how not to be ambiguous (or how to be ambiguous deliberately if that was useful). I got really good at logical analysis, and learned to separate issues and search for the right order of decision. Forty years of practicing these skills has sharpened all of them.

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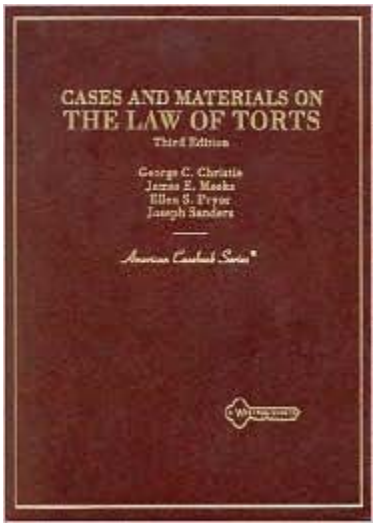
[3] Scott Turow describes in *One L* the humiliation of giving a wrong answer at Harvard Law, and people throwing up in fear before class, and the disgrace of having to pass as unprepared. It wasn't at all like that at Penn.

The Judicial Process course continued through the rest of the semester, using a casebook. Casebooks are fat tomes, in my day usually published either by West Publishing Company's Foundation Press (blue covers) or by Little, Brown (red covers) and called *Cases and Materials on* _____. Now West has brown covers too. These books contained vast numbers of appellate decisions, arranged for a systematic progress through the subject, with some (but not much) commentary and supplemental reading, and discussion questions afterward. We would be assigned certain pages to read and sometimes a few of the questions to prepare to discuss. Almost all the courses used casebooks, although a few used specially prepared xeroxed materials similar in format.



I got a grade of Distinguished in Judicial Process – the highest grade possible in our unusual grading system. I don't remember much of the substance of the course beyond the first week. It dealt largely with legal analysis and the nuts and bolts of appellate decision-making. Topics would almost certainly have included history of the common law, use of precedent, use of legislative history, *stare decisis* (meaning *let the decision stand*, shorthand for a preference for not overruling prior precedents), forms of resolution (for example affirmance, reversal, remand, overruling), principles of statutory and judicial construction (meaning how a text is *construed*), *dictum* versus holding (what was necessary for the decision vs. what was stated without being strictly necessary), retroactivity, deference to lower tribunals, narrowing of issues on review, and so on and on. These methods control in all American appellate courts, although rules differ very slightly in detail. Mastering them was necessary for all courses, as almost all subjects were taught from appellate opinions.

It may be questioned whether teaching law almost exclusively from appellate opinions is the best technique. It leads to a tendency in the so-called national law schools like Penn to produce lawyers who know a lot about appellate courts and not much about actual practice. It used to be said that the national schools (unlike the less prestigious schools which trained lawyers for the local bar) produced lawyers who knew everything except the way to the courthouse. But the way to the courthouse was much more easily learned (with proper apprenticeship) than the indispensable tools of legal analysis the national schools specialized in. Nowadays all schools place a lot more emphasis on *practicum* – Golden Gate, for example, where I teach in the mock trial program, has courses where law students practice skills like litigation and mediation and taking and defending depositions. Like most other schools, national schools anyway, we had very little of that back in 1968-71.

Penn taught substantive law from national casebooks, and procedure from the federal rules, without paying much attention at all to Pennsylvania practice (although we did

learn to use the Pennsylvania side reports, which are reports of county court decisions, not used in other states, and worked with Pennsylvania statutes for some purposes). We studied the Restatements of the Law (model codes from the American Law Institute which have not actually been enacted anywhere). But the lack of a practical local approach did us no harm, as many of us never intended to practice in Pennsylvania anyway, and the broader approach of the national casebooks gave us a better education in basic principles than if we had concentrated on the local rules.

The other first year courses were all two semesters long. Below I review my other courses besides Judicial Process. As with my review of my college courses in Chapter 11, this recapitulation may bore some contemporary readers. By all means skip it. But 24th and 34th century researchers, pay attention.

Civil Procedure. This course used a casebook, the Federal Rules of Civil Procedure, and an elegantly written treatise by Fleming James called *Civil Procedure*. Stephen Goldstein, a young professor with one white eyebrow, taught our section. He was very good, but I regret having missed the legendary A. Leo Levin who taught the other section. He did teach our section one day when Professor Goldstein was absent – what an experience!

This course taught the basics of litigation by the modern method. Before the Federal Rules were enacted in the 1930s, most litigation was still conducted under what was called *common law pleading*, which had elaborate, artificial, rigid and unforgiving rules. These rules could be traced back to the medieval sources of the English legal system. The reasons for them could be understood with study, and we studied some of them in Judicial Process and in Civil Procedure.

But the common law pleading method was unwieldy and needed reforming. Its rigidity had already forced the creation of a parallel system called Equity. Law and Equity were distinct, and traces of this division can still be seen (for example, that is why there is no jury trial in a divorce case). Except for these traces, the Federal Rules of Civil Procedure, first enacted in 1938, abolished the distinctions between Law and Equity. The old *forms of action* were also abolished, and *notice pleading* was substituted, where the point of pleading was to give the defendant adequate notice of your claims. Every action now begins with a *complaint*, in which the plaintiff says what he wants and why he is entitled to it. Forcing both sides to disclose relevant facts and witnesses in *pretrial discovery* avoids surprises.

This is unfortunately not the place to discuss the history of the common law or even common law pleading, fascinating though it is.[4] We went through the Federal Rules of Civil Procedure from soup (Rule 1) to nuts (Rule 84). Complaint; pleading; service of process; motions to dismiss; jurisdiction and venue; depositions and discovery; cross-actions and joinder and interpleader; class and derivative actions; trial; judgments; and lots lots lots more. It was difficult and I got a grade of Qualified (the basic passing grade, one of only two I got in three years). But I have picked up a lot of it since – I would do a lot better in that course today. Everything I learned there I used throughout my legal career.

A word on our grading system. In my time Penn Law had an unusual adjectival grading system. Instead of the numerical grades which used to be awarded, or the letter grades with numerical equivalents used by other schools like Columbia, Penn found that "because of sharply rising admission standards, the overall quality of the student body became such that grade-point averages and class standings were found to be more misleading than meaningful." Instead the grades were: Excellent (top 20%), Good (next 30%) and Qualified (the remaining 50%, meaning everyone else who passed). At the top was the exceptional grade of Distinguished, which was awarded very sparingly and sometimes not at all, and Unsatisfactory, also rare, which meant failure. These adjectival grades were intended, the official explanation read,

> to convey a meaningful evaluation of how well a student has done in a particular course without purporting to assign him a place on a scale of merit precisely demarked from that of every other student. These grades should not be thought of as having numerical or letter equivalents.

A copy of this official explanation, which the school sent out with transcripts so people to whom they were shown could understand what they were seeing, appears with my transcript as Document 14-1. The adjectival grading system was abandoned in 1995 and letter grades restored.

This grading system turned out to be a good thing for Penn because it defused the cut-throat competition and pathological class ranking which prevailed at other schools. There was officially no way to rank us, and by the time I got to Penn an ethos had developed that standings were not computed, and grades were never mentioned by way of comparison. Students cooperated instead of competing. The difference this made between Penn and paper chase law schools like Columbia and Harvard was incalculable.

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[4] Interested readers are directed to Fleming James, and to Frederic William Maitland (1850–1906), whose histories of English legal institutions such as *The History of English Law Before the Time of Edward I* (with Frederick Pollock; 2d ed., 1898) and *The Constitutional History of England* (1908) give a lot of the background.

I knew nothing about this before I got there – it was just blind luck that the woman I was interested in lived in Philadelphia and not Boston or New York or Chicago or North Dakota – but it resulted in a far more wholesome and positive experience than was available at most top-tier law schools of the day.

- Actually there *was* a way to calculate class standing, used for offering positions on law review and for certain honors and prizes. But this made no difference to how the students related to each other.

Penn also differed from most law schools of comparable quality in that the professors actually taught, rather than being away running the government or ceding the classroom to juniors, and access to the faculty was deliberately fostered as part of our culture. There was even a rule that professors were not supposed to shut their office doors, to emphasize that they were accessible to students. I remember one professor who closed his door but put a sign on it apologizing, saying it was just for the air conditioning, and please to come on in. Some professors even ate with us in the lunchroom. At Columbia College students had not had that kind of access (or maybe I just never tried to get it). It was terrific.

Back to the first year curriculum. **Criminal Law** was taught by a distinguished scholar, Louis B. Schwartz (left; I named my cat after him). This study was of special interest to me throughout law school because I imagined I would be specializing in criminal law in my role as a lefty lawyer defending front-line radicals. A big part of my interest in criminal law was that it was the intersection of state coercion and the autonomy of the individual. Readers of Chapter 8 will understand why, even apart from politics, resisting attempts to seize people and lock them up had a special appeal for me. Even now, when there are highly publicized trials of one kind or another, I *almost* always root for the defense. Even with O. J. Simpson – I like to see the defense win.[5] There are exceptions, but mostly I am a defense kind of guy. I cannot imagine ever being a prosecutor, except maybe to lock up George W. Bush.

Criminal law was a fascinating study even apart from my particular emotional involvement. The idea, for example, that crimes had *elements*, and that the state had to

[5] Future researchers: O. J. Simpson was a famous professional football player who, after his playing career was long over, allegedly murdered his wife. His televised trial in 1995 was a national sensation; he was acquitted despite a widespread belief that he was guilty.

prove *every single one* beyond a reasonable doubt, was a fascinating concept. I spent quite a while paging through the Pennsylvania criminal code figuring out how all this worked. I used the principles I learned in this course throughout my career. I was one of the few lawyers at my mostly civil firm who understood criminal law issues, which served me well, like being bilingual.

Both criminal law and civil procedure, as we practice them today, have medieval English roots. So do other areas, especially property and wills. I was interested in these connections and went to the library looking for Blackstone's *Commentaries*, the grand 18th century restatement of the law of England from which generations of lawyers in England and America had once learned the law. Imagine my surprise to find that this fundamental text was not in the main stacks – the only copies were in special collections.

How are the mighty fallen! 2 Samuel 1:19. I borrowed a reasonably grungy rebound set (four volumes, which I had not realized) and read a lot of it, although not straight through. I liked to look up obsolete courts like the Court of Stannaries (local jurisdiction in the Cornish tin mines) and the Court of the Arches (ecclesiastical jurisdiction of the Archbishop of Canterbury). But not all I learned from Blackstone was antiquarian.

Then there was **Property**. This meant *real property* (that is, property interests based in land) rather than *personal property* (the other kind). Our first teacher was George Lee Haskins, a distinguished specialist in colonial legal history (*Law and Authority in Early Massachusetts* (1960)). But Professor Haskins drank, and began missing classes and turning up loaded, and the school removed him. The professor who taught section A Property took over our section from Haskins – he was Jan Krasnowiecki, called by everyone Kras (it even says Kras on my transcript). Kras was from Poland, and spoke elegant English with a gentle Slavic accent, much as I imagine Joseph Conrad might have done (or like Zbigniew Brzezinski). He was a famous expert on the subject and taught us well. Here he is in a *much* later picture.

There are all kinds of ways to divide up property – fee simple absolute, tenancy by the entireties, joint tenancy, estate *pur autre vie*, and so on. The key concept is that you can't convey more than you have, but subject to certain rules added to prevent abuses (for example no entailing of property, restricting forever how it passes through the generations; after 1948 no more racial covenants) you can divide it however you like in space and time, and with overlapping and contingent shares. I loved the puzzles this created and lapped up this subject.

- Kras joke: Why is a covenant like a tight skirt? Because it's binding on the assignees. Think about it.

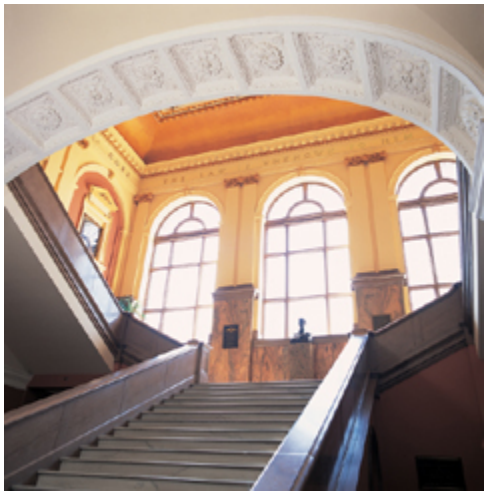
I didn't quite lap up **Contracts**. The professor was Curtis Reitz, also a very distinguished expert. Here he is, also in a much later picture – the crew cut is gone. I got a bit over my head in contracts, and stopped going to class, until Professor Reitz told me to snap out of it, and I did. I ended up learning the basics of the subject, and as with all these first year subjects it is sufficient to learn the basics and be able to spot the issues. It is not necessary to know the law by heart – you just have to know where the problems might lie. Was a contract really formed? Offer, acceptance, meeting of minds? Or was it a *unilateral* contract, which can be created by performance? Was it an *integrated* contract, such that extrinsic evidence of what people must have meant (called *parol evidence*) is not acceptable to vary its terms (but may be used to resolve ambiguities – and is there an ambiguity or not?)? If terms conflict, how should a court give effect to the intentions of the parties without rewriting the contract for them? Is the transaction covered by the Commercial Code? And so on and on and on. Now I see the fun of this game, and often analyzed disputed contract terms as part of my work – I never imagined I would ever be doing that.

Torts was taught by David Filvaroff, an exceptionally talented and entertaining teacher. A tort is an injury done to another, not arising from contract; a crime may also be a tort. Duty of care. Proximate cause. Defenses. Calculation of damages. Negligence, battery, defamation, interference, statutory torts. And on and on, again. I remember one example Professor Filvaroff gave us. Battery is an unwanted touching by another. So a boy and a girl are in a canoe. He moves to kiss her. She says no, but she means yes. He kisses her anyway. Is it a battery? We went on for a full hour on this one, maybe two. This very illuminating hypothetical would be too politically dangerous to use today.

Defamation is a tort, but truth is usually a defense. I composed a long screed in the form of a news article stating that Professor Filvaroff entered the classroom and made his way to the podium without falling down. To people who didn't know him well he gave no indication of being drunk. Everybody noticed that he didn't molest even one of the female students. The students appreciated it that he was able to speak that morning without slurring his words any more than usual. And lots more in this vein. The idea was to write something which clearly implied that Filvaroff was a drunk and a lecher without either saying so or being false in any respect. Was this defamatory? We had a good conversation about this question.

I also used to send anonymous notes to the podium, signed "the masked tortfeasor of Section B." A typical note had a drawing of a parrot saying "Polly want a cracker!" The caption was *res ipsa loquitur*, a torts maxim which means *the thing speaks for itself*.[6] Filvaroff would sometimes read these aloud in class. He often had lunch in the school cafeteria, which was of course primarily a student hangout, and he was very popular with the students. There was some outrage when he did not get tenure and moved to the University of Texas.

The final first year course was called **Legal Method**, and I think it was a legal research and writing course. My transcript lists the professor as Endeman, of whom I have no recollection. I think we used *Legal Research in a Nutshell* as a text – it was written by Morris Cohen, the head law librarian at Penn. I later used it as a text for training assistant law librarians.



Before moving on to the second year, a word about the physical plant. It was between Chestnut and Sansome Streets, and 34th and 36th Streets, at the northeastern edge of the Penn campus in West Philadelphia. The law school was housed mostly in modern buildings, although the shell of the old building (above left, interior above right), whose ceremonial 34th Street entrance was not used in my day, was still there. The main entrances were on Chestnut and Sansome Streets. The library and some classrooms were in the old building – classrooms were mostly of the amphitheatre type, but some smaller classes met in seminar rooms.

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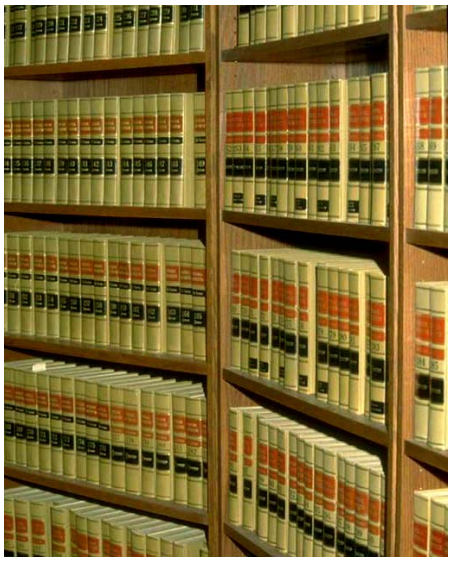
[6] For example, if a safe falls on someone from a window, we can presume (rebuttably) that *someone* was negligent, because as a rule such things do not happen without negligence somewhere.

A lobby joined the old building to an undistinguished new one. A bronze statue of a Chinese mythical beast which could tell the guilty from the innocent stood in this lobby.

It was called by everyone *the Goat* (left), and was the landmark at the center of the school. The administration was in a wing of the new building on Sansome Street (above left), running on one side of a small grassy quad (above right). Christine Jackson, the Registrar who signed my transcript, ran a tight ship there without being unhelpful or unfriendly. This "new" building is now (2010) slated for demolition.

Faculty offices were in a wing on the other side of the quad, leading to the cafeteria. I spent a lot of time in the cafeteria, taking with friends and digesting not only lunch but the lessons. Beyond that, on the west end of the quad, was a large dormitory building, now demolished to make way for an opulent brand new building – I hear the Goat is there now. A lot of new buildings have been added since my time there. The old building is now magnificently restored and is called Silverman Hall. For a "virtual tour" of the Law School today, much changed since my day, see *http://www.law.upenn.edu/about/virtualtour/*

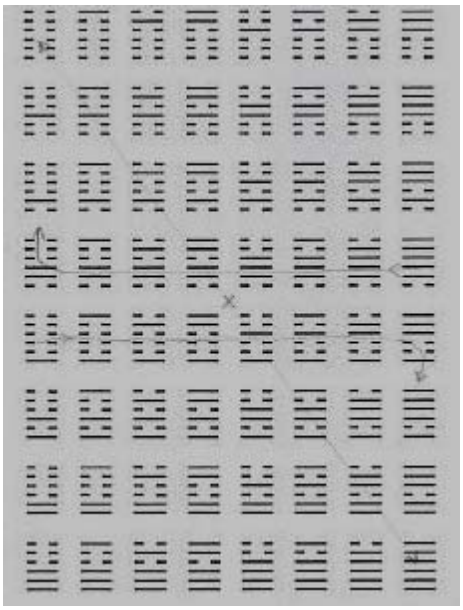


Biddle Law Library was in the old building but newly renovated – so newly in fact that for the first few weeks we didn't have access to it, but used a hot dingy cellar in another building on the main university

campus – was it Lippincott Library? When Biddle was finally reopened, the indirect lighting for the reading room, placed on top of the freestanding stacks and pointed up to reflect off the ceiling, was so hot and brilliant that the room had to be closed again until it could be recalibrated. But when it was finished the reading room was superb.[7]

In those pre-computer days legal research was all done from actual books – digests and reporters and treatises, and of course *Shepard's Citations*, hundreds of fat volumes full of nothing but numbers for finding mentions of cases in other cases.[8] American law is the most thoroughly indexed field of study in the world, but the indexes, although marvelously effective, were extremely cumbersome. Nowadays all that is just a memory as research is done by computer, although I think lawyers who were trained in the old method can use the new methods more deeply and more thoroughly. We certainly have a better appreciation of the subtleties of the West Key System, which students brought up on Lexis never gain, and even young lawyers who use Westlaw often don't know as well as we do. Document 27B-1 shows something about the Key System and how it works.

Like the people who worked on the law review, I had a pass to stay in the library all night. I often did this, because as in college I was flying on speed for my whole time at Penn (see Chapter 17.D). A few of us night owls were regulars on the graveyard shift. It's hard to know now if I was more or less efficient with the speed. I put in long hours, but I was exhausted – I think I would have been better off doing my work in the normal way. But I had awful study habits and believed I could not do it without speed. This was probably not true, but I thought it was.



In the basement of the old building were some small rooms used by clubs. Penn Law had a few clubs, relics of an earlier student tradition and more or less neglected by the time I got there. The clubs had rules to keep them selective, but one club, called the Kent Club, was dormant, still holding its charter but having no members.[9] Some of us

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7 Biddle now has about 840,000 volumes and is one of the largest law libraries in the world. Many items such as state sessions laws, now available electronically, are no longer collected for the shelves.

8 An example is shown in tailpiece to Chapter 15.

9 The Kent Club was named after James Kent (1763-1847), known as *Chancellor Kent* because he was for many years Chancellor of New York, the state's highest judicial

(*footote continues* →)

got the idea of reviving the Kent Club so we could have a hangout, but without the exclusivity of the other clubs. We made it a rule that any law student who was not a member of any other club could be a member of Kent. Kent proved popular, but not too popular for our limited space. I used that room intensively – it had a couch, some chairs, a bookcase and a window – and I made it into a sort of informal office and sometimes slept there. Among other things I used it as a consulting room, to read *I Ching* oracles for my classmates.[10]

The summer after my first year (1969) I worked in the Bail Project. Philadelphia Police Headquarters were in a then-modern building at 8th and Race Streets, called after its shape the Roundhouse (left). The night court was in this building, where everyone arrested in Philadelphia was brought to be arraigned and to have bail set. The deal worked out between the police and the university was that law students would be assigned to cover the Roundhouse 24 hours a day, in shifts. We would interview everyone arrested for a bailable offense (which for practical purposes excluded only murder). A little-used attorney interview room was made available to us for this purpose. We got a copy of each prisoner's arrest record, called a *rap sheet*. Then we would advocate for the prisoners in the police court, solely on the question of bail. A special statute allowed law students to do this. The assistant district attorney assigned to the Roundhouse for that shift was our opponent. Professor Schwartz was our nominal sponsor, but the project was quite autonomous. My classmate Andy Schwartzman was a leader in this project, and we even had a paid secretary. I worked out the interview form we all used. We divided up the shifts – night shift was no problem for me as I never slept anyway – and doubled up on Friday and Saturday nights, when arrests were highest.

(*footnote continues* …)

officer. He was the first professor of law at Columbia – a building on the main Columbia campus, the original law school, is named for him.

10 *I Ching*, or the *Book of Changes* as it is called in English, is an ancient Chinese classic based on a system of 64 hexagrams of solid or broken lines, as shown in the text illustration. It was originally used for divination, but its commentary is full of Confucian philosophy. Like the Tarot and other such systems, the *I Ching* is now best used not to foretell the future but as a channel and vehicle for projection. Psychological insight and skill at recognizing symbols and archetypes can be applied to these projections in order to elicit from those who consult the oracle their own solutions to perplexing problems. I used the third American edition, called *Wilhelm-Baynes*, published by Bollinger Press in 1967, with a foreword by Carl Jung.

I learned a tremendous amount from this project. Part of the benefit for me was meeting all these prisoners – it was an eye-opening look into the underside of society. Another part was working in police headquarters and getting to know the officers. For a veteran of the Columbia Strike, in the polarized atmosphere of 1969, this too was an education. I became fairly popular among the police, despite or maybe because of my beard and radical contour. They were surprised that I was a good egg, and I was surprised that some of them were good eggs, even Sergeant Harry Bastian who controlled the savage police dogs. And I learned to make a good case out of what I had, under time pressure, and to stand up on my legs and plead in court.

Bail is supposed to be used only to ensure appearance at trial, not to keep seemingly dangerous people off the streets or to punish them for what they are supposed (but not yet proved) to have done. The key predictors of appearance, as opposed to flight, are roots in the community – a house, a job, a family. A lot of what we were looking for in our interviews was these kinds of roots. The top prize was "nominal bail," which meant essentially release on recognizance without having to post a bond. Bonds cost an unrefundable 10% of the bail, so getting out on $5000 bail meant paying $500, out of reach for many people.

More than half the Philadelphia night court judges in those days were "lay judges," that is, people who were not lawyers but had earned a political appointment. But many of them had a lot of wisdom anyway, and often some sympathy for the people who appeared before them. They were very different from the haughty judges of the state trial courts and the Olympian federal judges.

My favorite of these judges was Judge Mongiluzzo (the *g* was soft). He was a good-hearted Italian from South Philadelphia, so kindly disposed toward our clients that he was called *Turn-'em-Loose Mongiloos*. Judge Mongiluzzo was particularly impatient with arrests for petty moral offenses like gambling and numbers-running. I will never forget the time when the cops brought someone in for betting on a basketball game. Judge Mongiluzzo interrupted the district attorney who was presenting the case, picked up the phone on the bench, called his bookie, and placed a bet on a game. It was easy to get nominal bail in a case like that.

Other judges were sterner, and some were as tough as Mongiluzzo was lenient. But most of them would listen to us, and often we did well for our clients. In one case my client had a rap sheet nine pages long, with arrests for all kinds of crimes back to the 1930s. But I noticed that with all these charges there were no FTAs (failures to appear). Therefore, I argued, this man had a better record of appearing for trial than anyone else in town, and as bail was meant to guarantee appearance he should get nominal bail. I think I even prevailed on that argument.

Here are my courses for the second year, 1969-70. I will not discuss each of them on as much detail as I did for the first year courses. The first year was electrifying, but the second year was much less so, because we knew the method by this time and the aim was to gain knowledge in specific areas. Also I don't remember as much detail about most of these courses as I do about first year – in part that was because they were only single semester courses.

Fall Semester

- **Appellate Advocacy** (Prof. Lesnick) began with brief-writing but ended with a moot court competition. My argument was an epic one because my opponent and I both got grades of Distinguished, an unheard-of conjunction. He won the contest, though.

- **Constitutional Law** (Prof. Bruton) was a very important course for me because it was central to what I imagined my work would be, defending radical political movements. Topics of special interest to me included the First, Fourth, Fifth and Fourteenth Amendments, and elements of criminal due process. But there was a lot more to it than that, including for example issues of separation of powers, federalism, judicial power, case and controversy, supremacy and preemption, the Commerce Clause, civil due process, and principles of constitutional construction and adjudication. I used all this and more throughout my career.

- **Labor Law** (Prof. Lesnick) was taught mostly in the context of the National Labor Relations Act, about which I knew nothing at the start. I'm glad I studied it and learned a lot, although I almost never used this material later on.

- **Legal Profession** (Dean Strazzella) was the basic course in legal ethics.

- **Commercial Law and Criminal Litigation Seminar** (Prof. Lesnick). I dropped this course and don't remember now why the two subjects were combined.

- **Litigation Seminar** (Profs. Spritzer, Bender and Strazzella). I remember nothing about this course.

- **Summer Reading** (Prof. Honnold). Not a course, but an examination on reading assigned over the summer. I did well on this because *I actually did the reading*! What a concept! I have completely forgotten what we read.

Spring Semester

- **Civil Rights Legislation** (Prof. Bender). An important course for me, as it fit into what I imagined my future work would be. The federal Civil Rights Acts, and what they covered and (sometimes surprisingly) did not cover.

- **Comparative Law** (Prof. Coulson) (grade of Distinguished). This was a fascinating topic. Professor Coulson was a visiting professor from England, and his course focused on Islamic inheritance law. The purpose was not to make us experts in the subject, but to expose us to a completely different system. I loved this course and learned the material thoroughly.

- **Evidence** (Prof. Filvaroff). Evidence is an essential course for any lawyer, especially litigators. It is a sort of companion to Civil Procedure, although it works for criminal cases too – it governs what may and may not be used as proof. When I studied this subject in 1970 the Federal Rules of Evidence had not yet been adopted, so we worked from case law and (I think) state evidence provisions reprinted in our casebook. Topics included presumptions, relevance, privileges, witnesses, opinion and expert testimony, hearsay, authentication, and objections. Evidentiary issues are important in almost every litigation problem, and I use these principles continually in teaching in the Golden Gate University mock trial program.

- **Corporations** (Prof. Leech) was a required course. Unlike my practice in college, I did not resist it just because it was required, but instead pitched in to learn the subject. It is a good thing I did, because I trace to this course my understanding of how corporations work legally. Theory and structure, classes of stock, duties of directors, business judgment rule, proxies, shareholder derivative actions, corporate opportunities, piercing the veil, securities fraud, and more. It was a lucky break for me that Corporations was a required course – an understanding of this topic is essential to comprehend many cases on other subjects, and I used it all the time in my practice at Farella.

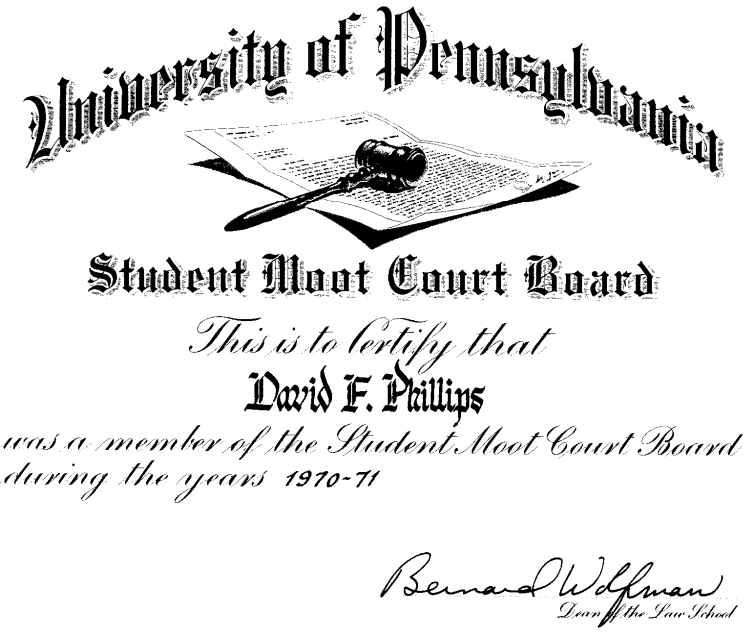
    - I wish **Taxation** under Prof. Mundheim had been required too, so I would have had to take it despite thinking I would never need it. Failing to learn the basics of this subject impaired my later ability to analyze legal problems. At some point I often had to say there may be tax implications here, but I don't understand the subject well enough to recognize them, let's consult someone else on that point. I wish I hadn't had to do that.

The summer after second year (1970) I went to California to work for Kennedy & Rhine – that adventure is discussed in Chapter 15.

I had not been selected for Law Review by grades, and didn't try out for it in competition because I didn't want to spend time and energy writing law review articles (ironically, that was a lot of what I did in practice later). Also a place on Law Review was

considered most useful in competing for jobs at big prestigious law firms after graduation, and I wasn't interested in that kind of firm anyway. But my second-year grades were high enough that I was among the few students who got an invitation to Law Review at the end of second year without competing for it. The Editor-in-Chief called me in California to offer me the spot. I declined it – I was already committed for the summer, and didn't want to work on Law Review. But it was nice to have been asked.

I was also offered for third year a place on the Moot Court Board, almost as prestigious as Law Review in its way and something I was actually interested in. Moot Court is a mock appellate argument, distinct from mock trial. I think I was offered this place because of my high grade in Appellate Advocacy. I developed a moot court problem based on the evidentiary issues in the Leary case I had worked on my second summer. It was not notably successful, as I kept having to change the problem. I didn't know enough about appellate advocacy yet to design a good problem, and there was not sufficient faculty oversight of the Moot Court Board. Nevertheless it was a nice honor to have.


University of Pennsylvania

Student Moot Court Board

This is to certify that

David F. Phillips

was a member of the Student Moot Court Board during the years 1970-71

Bernard Wolfman

Dean of the Law School

Third year was sort of a letdown for everyone. As noted the first year was revolutionary, but the second year was merely informative, and in my day the third year was just more of the same. There was a saying: first year they scare you to death, second year they work you to death, third year they bore you to death. Nowadays, with the emphasis on *practicum* and developing lawyer skills, third year is probably more involving. These were my third year courses (1970-71).

Fall Semester

- **Comparative Law** (Prof. Weir). The focus this time was not on Islamic law but on the European civil law system, as distinct not from criminal law but from the common law system used in England and therefore in America. Different approaches to precedent, judicial power, and record development. Hard but interesting.

- **Conflict of Laws** (Prof. Oliver) was one of the most difficult courses for me. It dealt with questions of which law to apply when there were arguments for applying different ones – for example, a contract made in one state (or country) but performed in another and sued on in a third. Sometimes there is a clause in a contract saying what the parties intend in this situation, but sometimes there isn't, or there are arguments for why the stated choice of law should not be followed, or perhaps there is no contract in the case. Some issues are procedural, which usually follow the law of the forum state; others are substantive, which don't. What happens when the choice of law rules of one state result in adjudication by the law of a state with an opposite rule? And of course there are federal/state questions too. This is very hard material, and it was not made any easier by the fact that Prof. Oliver was one of the few professors I had who didn't teach very well.

- **Law and Psychiatry** (Prof. Lonsdorf) was of obvious interest to me as an aspiring criminal lawyer and as one with a special interest in protecting people from arbitrary deprivations of liberty. Readers of Chapter 8 will understand the attraction of the subject for me.

- **Trial of an Issue of Fact** (Prof. Segal) was a mock trial course, taught by Adjunct Instructor Bernard L. Segal. It is the same course I now help him teach at Golden Gate University more than 40 years later. The most important consequence of this course for me was the friendship I developed with Bernie Segal, which continues to be a very important relationship all these years later. Bernie promised his students they could make three phone calls to him later for advice – I have made many dozens more than that by now.

- **Problems of Prosecution Seminar** (Prof. Specter) was part of my effort to take as many criminal law courses as I could. It is not a good strategy to specialize too much in school – better to take as broad a selection of subjects as possible. I was really sure what I was going to do as a lawyer, and as it turned out I was completely wrong (I had made the same mistake in college). But the seminar was interesting, and it was taught (as an adjunct instructor) by the District Attorney of Philadelphia. He was none other than Arlen Specter, who later became a United States Senator and Chairman of the Senate Judiciary Committee. Specter had gone to Penn as an undergraduate.

    - I remember one episode from this seminar. I was well known for my lefty views, which of course included opposition to "preventive detention," the unconstitutional practice of denying bail in order to keep people in jail before trial because they were thought to be dangerous. Discussing this subject, Prof. Specter called on me but unexpectedly asked me to argue <u>for</u> preventive detention. I gulped and gave a pretty good extemporaneous four-point

argument for it, even though personally I was against it. This was a formative moment for me in my training as a lawyer.

- Specter is my ace in the hole at the game of "Degrees of Separation" – because of him I can always (in theory only) get to anyone on the world in no more than three calls. If he'll take a call from me as a former student, the President will always take his call, and anyone in the world – the Dalai Lama or Oprah Winfrey or whoever – will take a call from the President.[11] Needless to say I have never tried calling Senator Specter on this basis.

- **Senior Writing** (Prof. Reitz). I have no idea now what I wrote about.

- **Criminal Litigation** (Prof. Lesnick). No recollection now.

Spring Semester

- **Advanced Criminal Procedure** (Dean Strazzella). No recollection here either. Just as all the government courses I took in college merged in my memory and canceled each other out (see Chapter 11), the same thing seems to have happened with the criminal law courses in law school.

- **Constitution and the Military** (Prof. Alschuler). I remember this as very interesting, building on my Columbia military law course. I can no longer remember what she covered.

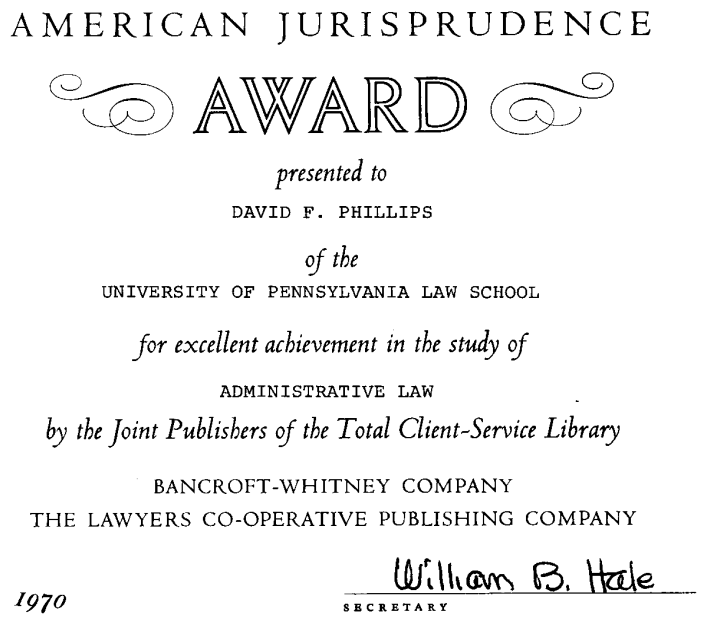
- **Transmission of Wealth** (Prof. Aronstein). This is what Penn called the basic course in wills, trusts and future interests. It was taught at nine in the morning four days a week, but it was so interesting and so well taught that I rarely cut the class. Like first year real property, it was about dividing up and conveying interests in estates, of which land in the country was only one kind. Historical principles dating back to feudal times were the key to understanding a lot of it. Because I understood this historical background, the course was not the fog to me that it was to many of my colleagues. I can still draft a pretty good will.

---

[11] Oprah Winfrey is a super-famous television personality and publishing mogul. It is hard to imagine that there will *ever* come a time when she is not only known but known by her first name only – but by 2319 that time may have come. Senator Specter switched parties in 2009 and lost his primary for renomination the next year, so now the President might *not* take his call, and I'll have to find someone else to get me through to the Dalai Lama.

- **Women's Rights** (Prof. Shapiro). At the time (1971) this was still a fairly new concept. It fit in with my lefty agenda. I remember the confused political vibes the few men in the seminar got from more mainstream men. The women in the course had no problem with us.

- One course missing from my transcript is **Administrative Law**. I must have taken the course, because I dimly remember it, and I won an American Jurisprudence Award in the subject (right). But it's not there.



AMERICAN JURISPRUDENCE

AWARD

presented to

DAVID F. PHILLIPS

of the

UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

for excellent achievement in the study of

ADMINISTRATIVE LAW

by the Joint Publishers of the Total Client-Service Library

BANCROFT-WHITNEY COMPANY

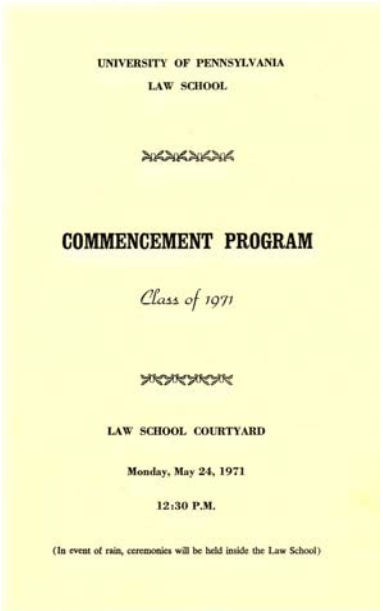
THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY

1970

William B. Hale

SECRETARY

  - American Jurisprudence Awards, or AmJur awards as they were called, were given to the top students in certain courses based on final grades. The prize was a copy of the volume of AmJur (a legal encyclopedia) dealing with your subject. The book went slightly out of date fairly quickly, and AmJur (like its cousin the grandly titled Corpus Juris Secundum [C.J.S.]) was not the most respectable authority. But still, it was nice to get a prize. I got three or four of these awards, but now have only one award certificate, and that one in a course I seem from my transcript never to have taken.



UNIVERSITY OF PENNSYLVANIA
LAW SCHOOL

COMMENCEMENT PROGRAM

Class of 1971

LAW SCHOOL COURTYARD

Monday, May 24, 1971

12:30 P.M.

(In event of rain, ceremonies will be held inside the Law School)

I graduated from Penn Law in May 1971. My diploma is attached as Document 14-2. I did well enough to get my degree *cum laude* – I later learned that I missed *magna cum laude* by the smallest statistically possible increment. But *cum laude* was enough to satisfy me. I was also made a member of the Order of the Coif (seal at right), the law honor society more or less equivalent to Phi Beta

Kappa for undergraduates.[12] After my undistinguished career at Columbia, it was gratifying to have done so well.

As soon as I graduated I set out for California. As related in the next chapter, I decided in the middle of second year that that was where I wanted to go, and I never even considered taking the Pennsylvania bar.

Here are some further memories of Penn Law which didn't fit in above.

- My first experience of taking responsibility for telling someone what the law was came in my first semester, when the National Park Service proposed condemning most of our family's 29-acre property in Cape Cod for the National Seashore. They intended to leave us 5.9 acres, just under the six acres we would need to subdivide. My father asked me if they could do that. I hit the books (in those days we still had books) and regretfully told him that they could.

- I first got to know Bernie Segal in 1968, well before I took his course. This was still hairy anti-war time, and some undergraduates had been busted for having a bomb. I was interested in helping the defense because I was interested in dating the roommate of one of the suspects. Bernie represented the accused, so I wrote to him offering to help. He asked me to research what a bomb was under Pennsylvania law. It was an interesting project, and I must have done OK because he let me help him on other things after that. Once he sent me into the ghetto of North Philadelphia to inspect a crime scene and look for bullet holes in the wall. I also went to talk to someone in Holmesburg Prison in North Philadelphia on a project of his – this was the first time I ever went into a prison.

- Smoking was permitted in class in those days. Lots of people smoked, and of course I smoked more than anyone else. See Chapter 17.B. We had styrofoam coffee cups with the university's seal on them in red and blue – it was a game to hold the coal of the cigarette just far enough from the cup to blister the surface, but not close enough to burn it. It was possible to do this and still play close attention to what was being said in class.

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[12] The Order of the Coif traces back to the Corporation of the Serjeants at Law in medieval England. The serjeants were elite lawyers, the only ones who could become Judges of Common Pleas. The office is known from the early 12th century. The coif, a special white headdress indicating a serjeant, was later replaced by a white cloth worn on top of the wig, as shown above on the seal of the modern Order. For more on the development of the Order of the Coif, see *www.orderofthecoif.org/COIF-history.htm*.

- In the library I studied the sex laws in great detail, and noted with awe that the local sodomy statute forbade having sex with any animal "or bird." What kind of Pennsylvania bird, I wondered, would be suitable for having sex with? No ostriches anywhere in sight. Chickens too small (and their beaks too sharp). Swans too strong. Birds of prey too dangerous. Perhaps a large and friendly duck?

- Student eating places included:
  - A small French café on an alley off Sansome Street. This was called the Moravian Café, despite being French.
  - Pagano's, a classic Philadelphia Italian restaurant dripping with marinara sauce.
  - The International House cafeteria, in a university building for foreign graduate students on Chestnut Street – cheap and better than the student cafeteria, which was not open at night.
  - Father Divine's lunchroom. Father Divine (right) was a cult leader very popular among black people some decades earlier. He was quite a character – look him up on Wikipedia. He died in 1967, but his cafeteria went on – enormous portions of soul-food-style dishes, very cheap and filling, would sit in your stomach like cannon balls for hours afterward.

- Sometimes, when a student said something particularly apt, usually on inspiration, breaking in without being recognized, he would be rewarded by applause from the other students. As the classes were fairly large, this was very dramatic when it happened. It happened quite a few times to me, and it was a thrill every time. I remember once when a colleague was arguing very strenuously that whatever it was when a hurricane blew over a tree onto someone's house, it wasn't an Act of God (a technical legal term in the insurance context). I asked "Well, whose act was it then?" I now understand that this was more facile than useful as a matter of insurance law. But it made a hit at the time.

- Professor Roy Schotland, the visiting professor who taught Judicial Process, created a sort of scandal when he married Sara Deutsch, a much younger member of our first-year class. There should not have been any scandal, as law students are adults and college graduates, and they got properly married, but there it was anyway. I made it my business to show support for both of them, visited them in Schotland's elegant Rittenhouse Square apartment, and spoke up for them whenever I could. I don't know if they're still married today, but Google reveals

that they were still married in 1997 at the time of their 26-year-old daughter's wedding. So apparently it was for keeps.

- In law school I began having serious problems with overhead light, which I still have. Nowadays I wear a beret, which I can pull out of my bag or pocket and pull out in front to shield my eyes if I need to. But then I wore a green eyeshade, which were still obtainable in stationery stores. I modified these with black tape on the lower surface (to prevent reflection) and substituted waxed shoelaces for the elastic bands. I had special pockets for them sewn into the linings of my jackets. I didn't wear them to create a trademark for myself, but because I really needed them – direct overhead light could make me queasy and sleepy and really interfered with my attention (it still does). I wore one in the Roundhouse police court, and when I spoke at my father's funeral in 1973. But it became a trademark anyway, maybe because it *wasn't* an affectation, but a necessity. The cops at the Roundhouse called me "Las Vegas Jack," and I used this familiarity to become a sort of favorite of theirs, which helped my work there. The corridors of the Law School were lined with portraits of past deans, and I knew I had arrived when parties unknown fitted one of those portraits out with an eyeshade like mine. Note in the photo the pack of cigarettes in my breast pocket.

Here are a few things I remember from Philadelphia days unconnected to the law school.

- It snowed every winter in Philadelphia, just as it had in New York, and in the winter of 1969-70 the snow melted and then the melted snow froze, coating the steps and the sidewalk with ice. I came out of my house one day that winter, slipped on the ice, and slid down the steps, across the frozen sidewalk, over the curb, and into the street. I was lucky only to have sprained my ankle, and used a cane for a few days (given to me by the student health service). We don't have that kind of thing in California, which is one reason I live here now.

- Cheesesteaks (above right) were a Philadelphia specialty – thin slices of beef shredded on the grill with two spatulas, mixed in with cheese, fried onions, and sweet (or hot) peppers, and served on long roll. They were delicious – I wish I had one right now. Pat's King of Steaks at 9th and Wharton in Italian South Philadelphia (above left) had the best cheesesteaks. Andy Schwartzman introduced me to the place.

- Also scrapple, a kind of peppery sausage, not in sausage form but sliced into bricks. It was made of pig ears and pork snouts and other delicious things. Especially good with jam or maple syrup. Yum.

- After I decided to go to California for the summer after second year, I needed a car. Having grown up in New York I never used a car, and indeed didn't know how to drive. A few brave souls tried to teach me to drive, but they had stick shifts and it was too much to learn to drive and use the stick at the same time. I finally took a lesson from a driving school and passed my test – now I had a license but still couldn't really drive. But I bought a new Austin America anyway, with an automatic transmission, for about $2000 – money I still had from a long-ago legacy from my Aunt Louise. Because it was orange (see picture, Chapter 30.A) I thought of it as a pumpkin, like Cinderella's coach. I gamely set out for California, and by the time I got there I really could drive. I didn't learn the standard transmission until many years later.

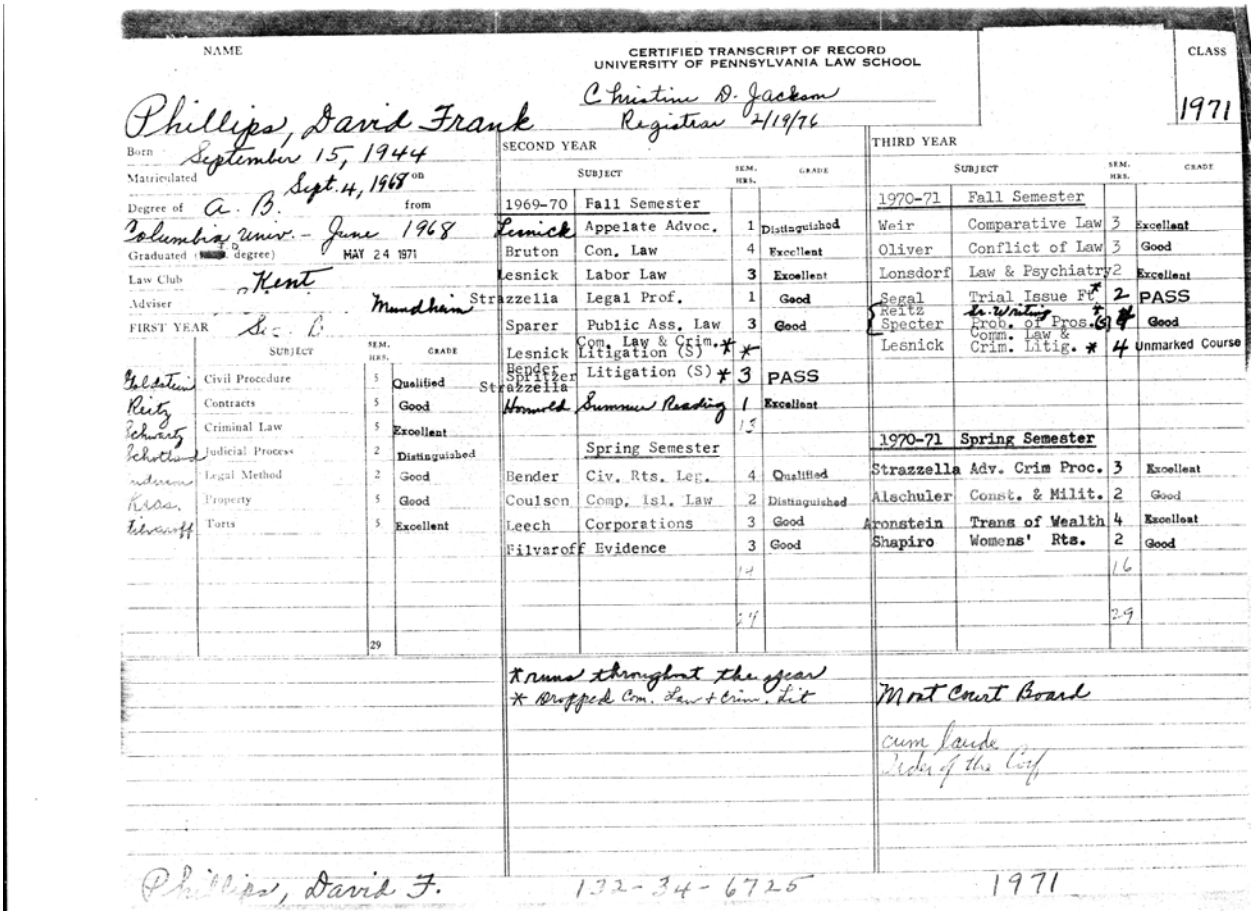
Although depending on my mood I may regret having become a lawyer instead of, for example, an art historian or a merchant marine officer, see Chapter 27B.5, I certainly don't regret having gone to law school. Law school gave me the highest level of intellectual training, and the lessons I learned there about how to think and analyze, and see ahead, and how to use and interpret words and concepts and reason, are of continuing benefit to me every day.

Tailpiece: Seal of the University of Pennsylvania.

The seven books represent the seven liberal arts,
the subjects of the medieval curriculum.

The motto *Leges Sine Moribus Vanae*, adapted from Horace,
means *Laws are Useless without Morals*.

Document 14-1: Law school transcript



NAME

Phillips, David Frank

Born September 15, 1944

Matriculated Sept. 4, 1968 on

Degree of A. B. from Columbia Univ. - June 1968

Graduated ([redacted] degree) MAY 24 1971

Law Club

Adviser Kent

FIRST YEAR Sec. C

	SUBJECT	SEM. HRS.	GRADE
Goldstein	Civil Procedure	5	Qualified
Reitz	Contracts	5	Good
Schwartz	Criminal Law	5	Excellent
Schlesinger	Judicial Process	2	Distinguished
Anderson	Legal Method	2	Good
Kraus	Property	5	Good
Filvaroff	Torts	5	Excellent
		29	

CERTIFIED TRANSCRIPT OF RECORD
UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

Christine D. Jackson
Registrar 2/19/76

CLASS 1971

SECOND YEAR

	SUBJECT	SEM. HRS.	GRADE
1969-70	Fall Semester		
Lesnick	Appelate Advoc.	1	Distinguished
Bruton	Con. Law	4	Excellent
Lesnick	Labor Law	3	Excellent
Strazzella	Legal Prof.	1	Good
Sparer	Public Ass. Law	3	Good
Lesnick	Com. Law & Crim. Litigation (S) *	*	
Bender Spritzer Strazzella	Litigation (S) *	3	PASS
Hornsted	Summer Reading	1	Excellent
		15	
	Spring Semester		
Bender	Civ. Rts. Leg.	4	Qualified
Coulson	Comp. Isl. Law	2	Distinguished
Leech	Corporations	3	Good
Filvaroff	Evidence	3	Good
		12	
		27	

* runs throughout the year
* Dropped Com. Law + Crim. Lit

THIRD YEAR

	SUBJECT	SEM. HRS.	GRADE
1970-71	Fall Semester		
Weir	Comparative Law	3	Excellent
Oliver	Conflict of Law	3	Good
Lonsdorf	Law & Psychiatry	2	Excellent
Segal	Trial Issue Ft. *	2	PASS
Reitz Specter	In Writing * Prob. of Pros. Comm. Law &	6	Good
Lesnick	Crim. Litig. *	4	Unmarked Course
1970-71	Spring Semester		
Strazzella	Adv. Crim Proc.	3	Excellent
Alschuler	Const. & Milit.	2	Good
Aronstein	Trans of Wealth	4	Excellent
Shapiro	Womens' Rts.	2	Good
		16	
		29	

Moot Court Board

cum laude

Order of the Coif

Phillips, David F. 132-34-6725 1971

UNIVERSITY of PENNSYLVANIA

PHILADELPHIA 19104

The Law School
3400 Chestnut Street

OFFICE OF THE DEAN

EXPLANATION OF GRADING SYSTEM

Prior to May 15, 1966, law students were assigned numerical grades in each course. These grades were weighted and averaged and class standings determined on the basis of the weighted average. A weighted average of 70.00 was required for each academic year. Students with averages of less than 70.00 but more than 68.00 could continue in school under certain circumstances.

Because of sharply rising admission standards, the overall quality of the student body became such that grade-point averages and class standings were found to be more misleading than meaningful. On all examinations administered after May 15, 1966, students have been normally assigned one of five adjective grades: Distinguished, Excellent, Good, Qualified, and Unsatisfactory. These are intended to convey a meaningful evaluation of how well a student has done in a particular course without purporting to assign him a place on a scale of merit precisely demarked from that of every other student. These grades should not be thought of as having numerical or letter equivalents.

Grade distribution will vary from course to course. Apart from the grades of Unsatisfactory and Distinguished, the grades to be awarded in typical circumstances in moderate and large-sized classes shall approximate 20 percent in the Excellent category, between 35 and 40 percent in the Good category, and the balance in the Qualified category. (Between May 15, 1966 and November 1971, the Good category contained about 30 percent of the class and the Qualified category contained the balance, about 50 percent of the class.) A grade of Distinguished is an exceptional grade; often there will be no grade of Distinguished, at most two or conceivably three may be awarded in a large class. Grades of Unsatisfactory in a course will normally be few.

An unusual grade of Unsatisfactory (N.C.) (Unsatisfactory, no credit) also exists. A student who fails to complete or who, in the written opinion of the instructor, evidences a lack of a bona fide effort to complete the requirements of a course in which he is enrolled shall receive a grade of Unsatisfactory (N.C.) in such course but shall not receive credit for the completion of such course toward the requirements for graduation.

Where "C.A.S." appears on the record, it refers to the Committee on Academic Standing.

1/73

Note: This system was abandoned in 1995, in favor of conventional letter grades.

Document 14-2: Law school diploma

VNIVERSITAS
PENNSYLVANIENSIS

OMNIBVS HAS LITTERAS LECTVRIS SALVTEM DICIT

Cum academiis antiquus mos sit scientiis litterisve humanioribus excultos titulo iusto condecorare nos igitur auctoritate Curatorum nobis commissa

DAVID F. PHILLIPS

ob studia a Professoribus approbata ad gradum

JURIS DOCTORIS

admisimus eique omnia iura honores privilegia ad hunc gradum pertinentia libenter concessimus
Cuius rei testimonio nomina nostra die mensis Maii xxiv Anno Salutis MCMLXXI et Vniversitatis conditae CCXXXI Philadelphiae subscripsimus

HIC GRADVS CONLATVS EST CVM LAVDE

William G. Owens
Sigilli Custos

Martin Meyerson
PRAESES

Bernard Wolfman
DECANVS