FOREWORD

Charles Alan Wright and The University of Texas School of Law

DOUGLAS LAYCOCK†

SUMMARY

I. INTRODUCTION ........................................................................................................ 367
II. THE LAW SCHOOL IN 1955 .................................................................................. 368
III. CHARLIE’S CONTRIBUTIONS .............................................................................. 371
IV. SOME CHARLIE STORIES ................................................................................... 376

I. INTRODUCTION

This issue of the Texas International Law Journal honors Charles Alan Wright on the occasion of his retirement from The University of Texas Law School. Charlie’s retirement is a momentous event in the Law School’s history; he has served the Law School well for forty-two years. For most of those years, he was the best known and most respected member of this faculty; for all of those years, he was one of its major figures. His remarkable career spans more than a third of the Law School’s history; his story and the Law School’s story are inseparable. His personal accomplishments and his institutional loyalty contributed mightily to the Law School’s progress over the last four decades.

I cannot imagine Charlie as a callow youth, and maybe he never was one. He has been described as a brash young man, and he was at any rate a remarkably young tenured law professor when he arrived at the Law School in 1955. Born in Philadelphia in September 1927, he graduated from Wesleyan University in 1947 and from Yale Law School in 1949, clerked for Judge Charles E. Clark on the Second Circuit, and assumed his duties as Assistant Professor at Minnesota on or about his twenty-third birthday. He was

† Alice McKeen Young Regents Chair in Law and Associate Dean for Research, The University of Texas Law School. I am grateful to Jodi Westbrook for research assistance, to Scot Powe and David Robertson for providing information, and to Michael Widener, who runs the Rare Book Room of Tarleton Law Library at the University of Texas School of Law. The Rare Book Room contains law school yearbooks (the Peregrinus), the University of Texas Law School Bulletin, and a Charles Alan Wright Biographical File, all cited below. Charlie agreed to read the final page proof for factual accuracy, but he declined to comment on any but the most objective facts. Occasional sentences about probabilities or motivations are my own speculations and are labeled as such.

367
promoted to Associate Professor, with tenure, in 1953. He came to Texas just as he turned twenty-eight.\textsuperscript{1}

Whether or not Charlie was any different in 1955, everyone and everything else was very different. Several of my younger colleagues had not been born and were not in contemplation; I suspect that their future parents had not met and were still in high school or even junior high. I was in second grade, proudly wearing my Davy Crockett T-shirt and artificial coon skin cap. If Charlie took his young son to see the Disney movie that fueled the Crockett craze, he learned that the eroded desert canyons of far west Texas begin at the Arkansas border.\textsuperscript{2}

II. THE LAW SCHOOL IN 1955

Disney's portrayal of Texas was bad fiction, but the reality of Austin and the Law School in those days was dramatically different from the Austin and the Law School of today. The U.S. flag carried only forty-eight stars, and Texas was the biggest state in the union. The interstate highways had not been authorized, and no jets were yet in commercial passenger service.\textsuperscript{3} Charlie has long been a train buff, and train service was still viable in 1955. Even so, Texas was a very long ways—even further than Minnesota—from all of Charlie's early life in the Northeast.

Austin's northern city limit was Anderson Lane, with small irregular peninsulas of incorporated land reaching as far as Rundberg and Peyton Gin Roads.\textsuperscript{4} The extreme southern city limit was just below where Ben White Boulevard is now, but Ben White did not exist. Ed Bluestein Boulevard did not exist on the east, MoPac was only a railroad track on the west, and Koenig Lane did not connect with the north-south highway through the middle of town, then called East Avenue. Closer to the Law School, 26th Street jogged half a block south at Speedway, then ended altogether at San Jacinto. The Law School sat on the corner of Red River and Park Place. Red River has since been re-routed away from the Law School, and 26th Street has been straightened, widened, and extended, and now renamed in honor of Page Keeton. One block of Park Place still survives as a narrow residential street running diagonally from Keeton to San Jacinto. Austin was much smaller in 1955, but its population was growing fast, from 132,000 in 1950 to 212,000 in 1960.\textsuperscript{5} If this rate of growth had been maintained, the city's population would now be 1.3 million.

At the Law School, \textit{Sweatt v. Painter}\textsuperscript{6} was still recent, and its impact had been small. Leafing through the student photos in the 1955 \textit{Peregrinus}, I found only three or four students who appeared to be black. \textit{Brown v. Board of Education}\textsuperscript{7} had not yet been implemented in Austin or anywhere else in the South. Stores, restaurants, and theaters were

\begin{itemize}
\item Basic biographical information in this paragraph and elsewhere is from \textit{WHO'S WHO IN AMERICA 4665 (1997) and ASSOCIATION OF AMERICAN LAW SCHOOLS, THE AALS DIRECTORY OF LAW TEACHERS 1996–97 at 981–92.}
\item See (literally) Walt Disney, \textit{Davy Crockett, King of the Wild Frontier} (1955) (available at most video rental stores).
\item The first commercial jet, a Boeing 707, was placed in service October 26, 1958. \textit{See The History of Transportation—Machine-Powered Transportation—Aviation: The Ultimate Ubiquity—The Jet Era, BRITANNICA ONLINE (1997), <http://www.eb.com:180/cgi-bin/g?DocF=macro/5006/38/toc.html>}. Needless to say, no one in 1955 had seen or imagined citations to an on-line encyclopedia. Computers still filled rooms, and the Law School would not acquire one for another quarter-century.
\item This paragraph is based on Ashburn's Austin City Map (1955) (in the map collection of Perry-Castañeda Library, The University of Texas at Austin).
\item 339 U.S. 629 (1950) (invalidating the University's refusal to admit black students to the Law School).
\item 349 U.S. 294 (1955) (holding that implementation of school desegregation should proceed "with all deliberate speed"); 347 U.S. 483 (1954) (invalidating deliberate segregation of public schools).
\end{itemize}
segregated in Austin and would remain so for most of another decade, as would social life at the University. Charlie would play a leading role in desegregating the University of Texas Faculty Club and the Episcopal schools in Austin.8

My review of yearbook photos revealed thirty-two women, one of whom was annually elected "Porcia," the law-student beauty queen. Porcia rode in a convertible in the Round Up Parade, accompanied by Dean Keeton and a Justice of the Texas Supreme Court.9 As Dave Barry would say, I am not making this up.10

In 1955 the Law School was beginning its third year in Townes Hall, the stone structure that we now think of as the old part of the building. One of the most important things about the then new building—the first fact mentioned in some descriptions—was the air conditioning.11 Surely that innovation made it easier to move here from Minnesota.

Chief Justice Vinson had rightly noted the Law School’s “history of consistently maintained excellence.”12 But excellence is an evolving concept, and much was yet to be done to create the Law School we know today. The only requirements for admission as a law student were “a bachelor’s degree from an acceptable institution,” or ninety-two undergraduate hours “in an approved program” with a C average.13 Some 40% of the students admitted under these standards flunked out, so the Dean proposed to require the Law School Admission Test of applicants whose undergraduate average was below C+. Total enrollment was about 800, half the size of today.14

Charlie joined a faculty of about twenty-six, including such giants as Leon Green, Page Keeton, and Charles McCormick.15 In an age of paper and pen, typewriters, carbon paper, and mimeograph machines, this faculty was productive. They had published more than fifty articles and reviews and ten books, mostly casebooks, in the three years ending in 1955.16

---

8. For segregation in Austin and desegregation of the Faculty Club, see E. Ernest Goldstein, How LBJ Took the Bull by the Horns, AMHERST; Winter 1985, at 12, 14 (copy available in Biographical File). For desegregation of St. Andrew’s Episcopal School, see Charles Alan Wright, A Salute to Tom Gee (and a Lament for the Federal Judiciary), 69 Tex. L. Rev. No. 3, at i, iii (Feb. 1991). Charlie served as a Trustee of St. Stephen’s Episcopal School from 1962–66, and not surprisingly, he also had a hand in desegregation there. See CHARLES A. WRIGHT, LEGAL EAGLE, endmatter at viii (1977) (citing Harry Hampton, Watergate Mire Snags UT Law Professor, FORT WORTH STAR TELEGRAM, Sept. 16, 1973); Ruth Bader Ginsburg, Statement Presenting the 1989 Fellows Research Award of the American Bar Foundation (in Biographical File). LEGAL EAGLE is also available in the Rare Book Room of Tarlton Law Library; the Charles A. Wright who compiled LEGAL EAGLE is Charlie’s father.


10. See generally DAVE BARRY, DAVE BARRY IS NOT MAKING THIS UP (1994).

11. See Advertisement for The University of Texas School of Law, 33 Tex. L. Rev. and papers (1955) [hereinafter Advertisement]. Photographs of Townes Hall in this period are available in the Inside front cover of the Peregrinus and at <http://www.law.utexas.edu/heritage/rareval.htm>.


13. Advertisement, supra note 11.


15. See Advertisement, supra note 11. Three of these professors are not listed in the faculty pictures in the 1955 Peregrinus. The reasons for the disparity are not immediately apparent.

16. For the articles, see 10 INDEX TO LEGAL PERIODICALS (1955); Faculty Publications During 1954, U. Tex. L. Sch. Bull., Feb. 1955, at 1. For the books, see WILLIAM F. FRITZ, THE FEDERAL LAW OF CONVEYANCING (1953); WILLIAM O. HUE, TEXAS CASES AND MATERIALS ON THE LAW OF MARITAL RIGHTS (1955); PAGE KEETON, CASES AND MATERIALS ON FRAUD AND MISTAKE (1954); CHARLES T. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE (1954); STANLEY MORRISON & GEORGE W. STUMBERG, CASES AND MATERIALS ON ADMIRALTY (1954); ROBERT W. STAYTON, CASEBOOK ON TEXAS CIVIL ACTIONS: CLAIMS, PARTIES, VENUE, JURISDICTION (1952); ROBERT W. STAYTON, CASEBOOK ON TEXAS CIVIL AND CRIMINAL APPEAL PROCEDURE (1952); ROBERT W. STAYTON, CASEBOOK ON TEXAS CIVIL AND CRIMINAL PLEADING (1953); ROBERT W. STAYTON, CASEBOOK ON TEXAS CIVIL AND CRIMINAL TRIAL (1953); GEORGE W. STUMBERG, CASES AND MATERIALS ON TEXAS CRIMINAL LAW AND ITS ADMINISTRATION (1954).
The range of the Law School's work may have been narrower than today, and the proportion of doctrinal scholarship may have been greater, but these were differences of degree. The influence of legal realism was apparent in the faculty's scholarship and in its teaching. There was an active commitment to interdisciplinary work, most ambitiously illustrated by the Law-Science Institute, jointly sponsored with the medical school and under the direction of the Harvard-trained lawyer-physician Hubert Winston Smith. The Legal Aid Clinic, founded in 1941, handled 409 matters in 1955, seventy-seven of which went to court. The faculty had played an active advisory role in the Texas legislature's enactment of the Uniform Commercial Code. The international and comparative law curriculum had just been redesigned to include a course in public and private international law, a civil law seminar emphasizing Latin American trade systems, and a world trade seminar.

Despite its well-deserved national reputation, the Law School was still essentially a regional institution. Of the 199 graduating seniors, 188 listed Texas home addresses in the *Peregrinus*. Of the fifty faculty articles published in the three years before 1955, thirty had appeared in the *Texas Law Review* and five more in the *Texas Bar Journal*. Of the twenty-six faculty, twenty had at least one degree from The University of Texas, and eleven had received both their undergraduate and legal education here. Of those with no Texas degree, only one had been at the Law School for as much as ten years: George Stumberg was a graduate of Louisiana State University (Class of Ought Nine) and of the Yale Law School. He had taught at LSU before his appointment at Texas in 1925.

Some of these professors had national reputations; some had taught or studied in Ivy League or European universities. Green had been Dean of Northwestern for eighteen years, and McCormick had been Dean of North Carolina for four. Their southwestern origins did not indicate lack of ability or lack of opportunity so much as regional affiliation and institutional loyalty. The predominance of Texans and other southwesterners on the faculty reflected the difficulty of attracting and retaining professors from elsewhere, and the

Joel Westbrook and I looked up each professor listed in the faculty roster in volume 33 of the *Texas Law Review* in the Index to Legal Periodicals and in the current on-line catalog of the libraries of The University of Texas at Austin. I also examined bibliographies compiled in 1959 for Leon Green, Page Keeton, Robert Stuyton, George Stumberg, and Charles Alan Wright; these are available in the Tarlton Law Library. I hedge the number of publications with "more than" because I made no serious effort to find every publication, the available bibliographies do not entirely agree, dates are ambiguous because the cumulative volume of the *Index to Legal Periodicals* begins and ends in the middle of a calendar year, and I have not counted teaching materials and legislative materials that appear to have been published for local use only, some of which are cited in note 20 infra.


22. Most of the information about the faculty comes from the 1955 *Peregrinus*. Information on T.J. Gibson, Wayne Thode, and Gray Thorton, who are not pictured, comes from the 1956 *Peregrinus* and from *Association of American Law Schools, Teachers' Directory* 1950–51. The AALS Directories from the middle 1950s appear to be missing from the Tarlton Law Library collection.
comparative ease of attracting and retaining those who were already tied to Texas in other ways.

Not until after World War II did the Law School begin to regularly hire young faculty in the national market: Corwin Johnson, Keith Morrison, Millard Ruud, Gray Thoron, and Jerre Williams—none with any apparent prior connection to Texas—had all been hired in the late 1940s. This was a substantial breakthrough, but it may have been limited to the West. Four of these new appointments had been educated west of the Mississippi or on its banks, and the fifth, Gray Thoron, eventually returned to the East. The difficulty of retaining those faculty not motivated by institutional loyalty was perhaps the most serious problem facing the Law School in 1955. In the 1950s, Clarence Morris left for Penn; Richard Maxwell for Berkeley; Howard Williams, Charlie Meyers, and William Young for Columbia; Joseph Sneed and Gray Thoron for Cornell.23

In Charlie’s first year at Texas, the average salary at the Law School was $8,465. The average salary was more than 5% higher at Virginia and Ohio State; more than 10% higher at North Carolina and Stanford; more than 20% higher at LSU, Northwestern, and Cornell; nearly 30% higher at Duke and Minnesota; about 40% higher at NYU; more than 40% higher at Columbia, Illinois, UCLA, Harvard, and Berkeley; about 60% higher at Michigan and Yale; and 90% higher at Penn.24 In 1950, when most Texas salaries were capped by statute at levels below the average salary at other good state law schools,25 Berkeley had unsuccessfully offered $5,000 raises to McCormick and Stumberg.26 Minnesota offered Page Keeton a $6,000 raise to become its Dean, a year after Page had hired Charlie away from Minnesota.27

In 1952, Page had created the Law School Foundation, hoping to raise money with which to supplement faculty salaries.28 But when Charlie arrived in 1955, very little of that money had actually been raised. Two years later, the Foundation would announce that it hoped to raise a total endowment of $500,000.29 Today the Foundation’s endowment is well over $100 million; it is clear that faculty salaries have not kept pace.

III. CHARLIE’S CONTRIBUTIONS

Improving the quality of an institution is a long, slow process; it depends on many separate decisions, many incremental improvements, and the work of many people. It is easy to overstate claims about turning points. But the appointment of Charles Alan Wright in 1955 was at least a step of unusual magnitude, and his loyalty over the next four decades was a larger step yet. Remarkably, this momentous appointment appears to have passed unmentioned in the Law School Bulletin, which generally chronicled the comings and goings of Texas faculty.

Charlie’s appointment differed from the Law School’s other recent hires on the national market because those had been entry level appointments or nearly so. We had not been able to hire laterally; other schools were hiring laterally away from us. Charlie was a lateral hire with star value; he had already earned tenure and a reputation at another good

23. These departures are reported in the University of Texas Law School Bulletin for July 1951, July 1952, July 1953, April 1954, March 1956, and June 1957.
29. See Letter, supra note 24, at 2.
law school. Indeed, in the three years preceding his appointment here, Charlie had published as much as anyone on the 1954–55 Texas roster. In 1958, at the age of thirty-one, he was elected to the American Law Institute.

Equally important, Charlie stayed put. He was not passing through Texas on his way to a coast. Over the years he accepted visiting appointments at Harvard, Yale, Penn, and Cambridge; but he repeatedly turned down permanent offers and inquiries from other schools, instead lending his immense personal prestige to this Law School's long climb to greatness. The faculty's oral tradition is that Georgia once lured him away with a well-endowed superchair, but that he decided at the last minute that he could not leave Texas. He encouraged loyalty in others, always by example, and sometimes more tangibly. After Mark Yudof became our Dean, Charlie gave him a bottle of The Macallan twenty-five year-old (a very fine scotch whisky) every time he turned down a job somewhere else.

Anyone reading the outline of Charlie's formative years—Philadelphia, Episcopalian, Wesleyan, Yale, Second Circuit—would assume him to be entirely a creature of elite northeastern institutions. One stereotype of northerners, more valid in the fifties than today, is that they are provincial types who are barely aware of the rest of the country. There is at least a kernel of truth in Saul Steinberg's famous New Yorker cover portraying Manhattan as larger than the rest of the world combined, or in the story of the Boston matron who proposed to go around the world "by way of Dedham" and who wondered how San Francisco restaurants could get good seafood three thousand miles from the ocean. I would not be surprised to learn that Charlie had never been west of the Mississippi, or even of the Appalachians, prior to his first interview at Minnesota.

Charlie was a northerner coming to the southwest, a Republican coming to a Democratic one-party state, an integrationist coming to a city with entrenched segregation, a successful academic coming to a law school with a significantly lower pay scale than the school he was leaving. I assume that Texas somehow matched his Minnesota salary, although if he examined the comparative salary data we had published, or if he read our fundraising appeals, he should have doubted our ability to match the future raises he could expect at Minnesota. How Page Keeton attracted Charles Alan Wright to Texas is an untold story, a story that probably only Page or Charlie could tell.

Charlie in this period has been described as brash and confident, and his writings contain corroborating evidence. My favorite among his early writings is A Critical Analysis of a So-Called "Critical Analysis." The article is not a prescient treatment of critical legal studies, but an essay on religious liberty and freedom of speech, defending the


31. The cover is also described without citation in Sanford Levinson, The Embarrassing Second Amendment, 99 YALE L.J. 637, 637 (1989).

32. I heard of this sycophantal lady from Bruce Mann, a New Englander now on the faculty of the University of Pennsylvania Law School.

33. See Wright, supra note 8, endmatter at 11 (quoting Prof. Stanley Kenyon).

34. Wright, A Critical Analysis, supra note 30.
Supreme Court’s holding that the First Amendment does not permit states to ban sacrilegious movies. Here are a few sentences, extracted from an otherwise serious argument:

In the January issue of this Law Review, one Howard Newcomb Morse, who has written widely if not wisely, offered what he termed “A Critical Analysis and Appraisal of Burstyn v. Wilson.” . . . [F]our pages of overblown rhetoric does not constitute a “critical analysis” as that term is usually understood. . . . This is utter nonsense. . . . Mr. Morse had the gall to call his paper a “critical analysis.” The truth is that its principal vice is its uncriticalness.

He would not write it that way today, and no one today would call him brash. He is still supremely confident, but with a large measure of justification.

Charlie’s reputation rests on both the quality and quantity of his work. An unannotated listing of his publications as of January 1993 runs for seventeen pages. Of course the greatest contribution—what for anyone else would have been a life’s work—is Federal Practice and Procedure, the essential reference work on federal courts, now approaching fifty volumes with pocket parts and monthly supplements, with a tag team of distinguished co-authors: Wright; Wright & Miller; Wright, Miller, & Kane; Wright, Miller, & Cooper; Wright, Miller, & Marcus; Wright & Gold; Wright & Graham. Charlie is the one author common to all volumes, the leader and organizer of the whole project, and probably the only person to have read every word of every volume.

It is hard to overstate the importance of this work. A recent Westlaw search for “Wright within ten words of Federal Practice” yielded 42,001 citations in on-line texts, periodicals, and judicial decisions. The pleasing symmetry of forty-two thousand citations in forty-two years is misleading and temporary; neither the work nor on-line citations to it have been available for forty-two years. The volumes were published at intervals beginning in 1969. Judicial citations are available on-line from the beginning, but scholarly citations came on-line at intervals only after 1981. There were 2,503 new citations in 1996. I will not name names or report competing numbers, but I did similar searches on other luminaries with famous treatises, and I found no one else who came close.

Federal Practice and Procedure is cited so often in part because it deals with procedure, and every litigated case potentially raises procedural issues. But the work is also cited so often because its persuasive authority is accepted, and because its explanations of complicated matters are so lucid. I remember once struggling with the complicated federal rules for appealability of civil contempt orders. I looked up Charlie’s explanation, and I struggled no more; everything made sense. Countless lawyers and judges must have had similar experiences over the years.

This statement will seem odd at first reading, but Charlie’s genre is the short essay or comment. He wrote relatively few full-length law review articles, and they are not his best work. He also has an extraordinary memory, a talent for organization, and a prodigious capacity for work. And so his great contribution was the treatise—a never ending series of

35. See Burstyn v. Wilson, 343 U.S. 495 (1952).
38. Specifically, I searched for “Wright /10 ‘Federal Practice’” in the Allfeds, Allstates, and Text & Periodicals All databases. The search was conducted on May 17, 1997.
short essays explaining, clarifying, and resolving one issue, one ambiguity, one section of rule or code at a time.

Charlie’s reputation has also been based in part on his fame as a Supreme Court advocate, a fame that depends more on quality than quantity. A Westlaw search reveals that he personally argued twelve Supreme Court cases—more than all but a small number of Supreme Court specialists, but fewer than I would have guessed. He won ten of the twelve, and several were landmarks. He won his first Supreme Court cases in 1963, securing reversals on behalf of an injured railroad worker and a mentally ill criminal defendant. He handled some cases in which certiorari was denied, one of which is noteworthy for its facts: he successfully resisted Supreme Court review of a decision granting a new trial to one of the first plaintiffs alleging personal injury from tobacco products. In 1968 and 1969, he won three important cases on behalf of criminal defendants, two on the privilege against self-incrimination and one on the speedy trial rights of defendants incarcerated in another state.

By this time, he was regularly retained in cases with enormous stakes, both constitutionally and financially. He represented the states in Maryland v. Wirz, unsuccessfully arguing that Congress could not subject the states to the Fair Labor Standards Act. He represented Texas in Oregon v. Mitchell, successfully attacking Congress’s power to lower the voting age to eighteen in state elections, and in Furman v. Georgia, unsuccessfully defending the constitutionality of the Texas capital punishment statute. He successfully defended the power of circuit judicial councils to remove federal judges from active duty. He represented the defendant school districts in San Antonio Independent School District v. Rodriguez, successfully arguing that even extreme local variations in educational funding were beyond the reach of the Equal Protection Clause. Perhaps most spectacularly, he successfully argued for reversal of a default judgment in excess of $145 million against Hughes Tool Co., entered eight years earlier and unsuccessfully appealed once before.

Then he took on a client even more difficult than Howard Hughes—he agreed to represent Richard Nixon on constitutional issues pertaining to Watergate. Charlie has steadfastly refused to comment on his representation of the former President, resisting the temptation to clarify his own role at the expense of a client’s confidences. We know that Charlie was on the wrong side of the Saturday Night Massacre, apparently believing that the President had the right to instruct the special prosecutor and to fire him for insubordination. This was tenable legal advice, but it was an immediate disaster.

47. 408 U.S. 238 (1972).
51. An account of Charlie’s role compiled from press reports at the time appears in Wright, supra note 8. For an analysis of the constitutional issues raised, see Philip B. Kurland, Watergate and the Constitution (1978). For a listing of books recounting the facts of Watergate, see id. at 1–2.
52. See Wright, supra note 8, at 57. For those too young to remember, the President ordered the Attorney General to discharge the special prosecutor. The Attorney General and the Deputy Attorney General resigned rather than carry out the order. The Solicitor General, Robert Bork, then fired the special prosecutor. You may by now have inferred that the two resignations and the termination all occurred on the same Saturday night.
politically, and the Supreme Court eventually rejected it legally, at least in the form in which the client attempted to act on it.53

Law and politics were inseparable in Watergate; but Charlie never claimed political expertise, and there is no reason to believe that he ever gave political advice. The Watergate litigation differed in another critical way from the usual appeal on a fixed record: the known facts were constantly changing. Charlie told the press that he had not listened to the tapes because he believed the President of the United States.54 His confidence was misplaced, and he was repeatedly surprised by new revelations.

In the wake of the Saturday Night Massacre, Charlie was largely replaced by James D. St. Clair. It was never clear whether he withdrew or was demoted, whether he was more disillusioned with the President or whether the President was more disillusioned with him, whether someone decided he was too honest or simply that his appellate skills were the wrong skills for this fight. He continued to consult with the President’s legal team,55 and he was called back at the last minute to rewrite the reply brief in United States v. Nixon, unsuccessfully defending the President’s right to withhold his tape-recorded conversations from the new special prosecutor. Charlie did not argue Nixon in the Supreme Court, and although that was probably one more mistake by Nixon, it seems highly unlikely that any advocate could have changed the unanimous result.

Watergate increased Charlie’s fame but seems to have ended his career at the Supreme Court. Perhaps he reevaluated the amount of time he was committing to litigation, or perhaps potential clients mistakenly blamed Charlie for Nixon’s own blunders and ultimate disgrace. Whatever the reason, Charlie has argued only one case since Watergate, successfully defending the free speech rights of a citizen who had been prosecuted for speaking to a Houston police officer.56 He has been somewhat more active as an advisor or consultant to other lawyers with important cases before the Court, and as an author of amicus briefs.

A third leg of Charlie’s reputation is based on his work for the American Law Institute. In 1963, he became one of the Reporters for the Institute’s Study of the Division of Jurisdiction Between State and Federal Courts. He later became an active member of the Council, the small group that reviews every draft document before its submission to the membership. He now serves as President of the Institute, the first academic to hold that post.

Other public service reflects both his prominence and the range of his expertise: more than two decades on various committees on the Federal Rules of Procedure, ten years on the Committee on Infractions of the National Collegiate Athletic Association, eight years on the permanent committee to supervise the Oliver Wendell Holmes Devise History of the Supreme Court, seven years on the Commission on the Bicentennial of the Constitution, and a long list of boards of various schools and community groups in Austin.

Inside the Law School and the University, he always avoided full-time administration, but he took his turns at committee work. He served on three Presidential Search Committees. He was a strong supporter of international programs, and his British

53. United States v. Nixon, 418 U.S. 683, 692–97 (1974), held that the President could not give binding instructions to the special prosecutor, at least not without first amending or repealing the regulation that guaranteed the special prosecutor’s independence. The political difficulties of amending the regulation would presumably have been even greater than the political difficulties of giving one controversial instruction.
54. See Wright, supra note 6, at 62.
connections were important to the creation of our various exchange programs with British universities. The distinguished list of contributors to this volume attests to his international reputation.

He played a critical role following the Law School's dean search in 1979. That search led to the highly successful team of John Sutton as Dean and Mark Yudof as Associate Dean. But the search was a procedural and public relations disaster; the President rejected the search committee's list of nominees, and the word went out to law professors all over the country that The University of Texas Law School was at the mercy of meddling alumni. A large portion of the faculty threatened to go on the market and leave Texas at the first opportunity, although hardly any of them actually did so. It is not clear who was right on the merits of the committee's nominees, who were very talented but also very young. But it is clear that a great law school could not have its faculty and alumni at war and remain a great law school.

One element of the successful plan to undo the damage from the dean search was to make Charlie chair of the Appointments Committee. Charlie put his credibility on the line, personally assuring candidates that what had happened was a singular event with no long-term implications. He delivered that message quite successfully; three future holders of endowed chairs accepted lateral offers in 1979–80: Sandy Levinson, Louise Weinberg, and myself.\footnote{I accepted late in the spring of 1980, but the appointment did not begin until fall 1981.} I remember Charlie confidently explaining that academic freedom and faculty governance at Texas were secure, and that nothing had happened that should cause me to walk away from a Texas offer. Charlie was more right than he knew; the combination of Sutton, Yudof, and the capital campaign organized around the centennial of The University promptly led to a period of dramatic progress for the Law School.

Charlie's recruiting in 1979–80 is a particular and active example of what his mere presence did passively. His career at Texas single-handedly raised the stature of the Law School; it signaled potential new faculty that a law professor with unlimited choices might choose to spend his career at Texas, and that there were no limits to what a member of this faculty could accomplish. As Justice Ginsburg once said, Charlie stands "like a Colossus... at the summit of our profession."\footnote{Ginsburg, supra note 8.} Of special importance to The University of Texas, he was our Colossus.

IV. SOME CHARLIE STORIES

Serving on the same faculty with Charlie has always been instructive, nearly always pleasant, and sometimes eye-opening. As Fitzgerald said of the very rich, Charlie is different from you and me. Material success is only a small part of the reason; the personality runs much deeper.

Charlie's dress, speech, demeanor, and manner is formal, something carried forward from a less egalitarian age. He does not impose his style on anyone else. For instance, he has worked frequently and closely over the years with Scot Powe, who often teaches in shorts and a T-shirt. But neither would it ever occur to Charlie to moderate or conceal his own formality. He prefers to get his suits from his London tailor; he once dropped jaws in the faculty lounge by casually commenting that £750 was "not a bad price to pay for a suit." In every picture I have ever seen of the Legal Eagles, Charlie's famous intramural football team, the team is wearing jerseys and Charlie is wearing a full suit and tie.\footnote{One such photograph can be found at <http://www.law.utexas.edu/rare/photo.htm>. He once said he drinks beer for breakfast on vacation and watches three football games on Sunday afternoons, and I believe him, but I sometimes wonder if he wears a suit while he...}
does these things. It is only fair to note that he appears at the Law School in shirt sleeves
with some frequency in the summer.

It was classic Charlie to write in a letter to a cruise magazine: "Few of us today have
servants to wait on us at home when we eat. Cruise ships have enabled us to enjoy this
kind of splendid service that earlier generations knew." He will have difficulty
understanding my reaction that the intense discomfort of receiving anything that smacks of
personal service would be sufficient reason to avoid any cruise ship that offered such
"splendid service."

Charlie's self confidence extends to intellectual matters. He has no doubt that any
question that arouses his own curiosity will also arouse the curiosity of any other "true
scholar," a category he defines as one who "cannot stand idle whenever an answerable
question remains unanswered." He has published an essay on his investigations into the
proper spelling of the apocryphal St. Catherine, and a lengthy exchange of letters debating
the merits of various complimentary closes to letters. I once gave him a manuscript to
read and got back a memorandum noting with surprise that I had hyphenated "pre-empt"
and "pre-emption," and reporting his investigations into the practice of other legal writers
and Supreme Court Justices. It appeared that I was in a small minority in fearing that
"preempt" might be mistaken for a hard-to-pronounce word of one syllable. He can be
equally taken with trivia that arouses the attention of others: he once singled out for
favorable comment my tongue-in-cheek footnote on whether anyone from Connecticut had
died at the Alamo.

Some of my younger colleagues found Charlie intimidating; they were reluctant to
approach him with manuscripts or questions in his field. I always urged them to overcome
their reluctance, and none ever reported being rebuffed when they did so. Charlie's
phenomenal memory of cases and his familiarity with the vast store of information in his
treatise make him an extraordinary resource for all sorts of questions.

Faculty from other law schools frequently ask if it is true that a special chair is
reserved for Charlie in the faculty lounge at Texas. The story is not true, but like many
myths, it has a starting point in reality. Charlie comes into the lounge each morning,
spreads the newspaper two-pages wide on the center of a small coffee table, plants himself
in the center of the couch facing the coffee table, leans forward, and pages through the
paper. If he were to sit on either end of the couch, it would seat two with room to spare,
but then he could not have his newspaper completely open and flat on the coffee table. If
he were to come in and find the couch occupied, I have not the slightest doubt that he
would read his paper elsewhere. But he does not find the couch occupied, and the same
people who are reluctant to approach him in his office think it daring to sit on the couch
without first ascertaining whether Charlie has finished his paper. I am told that there was
similar deference to his choice of a favorite seat in earlier lounges with different furniture,
and that he also sits in the same pew at church every Sunday.

Charlie's treatise now covers the Federal Rules of Evidence, but he has his own rules
of evidence for academic life. One Charlie rule is that his own prior consistent statements
are the best evidence of the depth and sincerity of his current views on any contested issue.
For example, a memo from Charlie recommending a person will quote all the other good things he has ever said about the person. He surely knows that the law of evidence treats prior consistent statements as hearsay, admissible only if the witness has been accused of recent fabrication. So he writes as though he were constantly accused of recent fabrication, when in fact his reputation for integrity is so great that no one would dream of such a thing.

I first interviewed at Texas in the fall of 1973, probably after Charlie’s return from the Saturday Night Massacre. I met with the faculty in ones and twos in thirty-minute interview slots, except for Charlie, who saw me for fifteen minutes. Bob Dawson, who chaired the Appointments Committee that year, was apologetic. He said that saving fifteen minutes might not sound like much to me, “but Charlie can write a chapter in fifteen minutes.” In later years, Charlie took the position that he would not interview candidates at all, because no information from a brief interview could reliably outweigh the evidence of a candidate’s lifetime record and the recommendations from those who knew the candidate best. As one who struggles in unstructured interviews—I was not offered an appointment in 1973 after substantial interviews, and I was offered an appointment in 1980 with minimal interviews—I could hardly quarrel with Charlie’s stated position. I also know that he does not really write two chapters in the thirty minutes he would have spent on each interview. But I suspect he may write two chapters in the time he would have spent interviewing all the candidates in the course of a year.

In 1982–83, my second year on the faculty, I chaired the Appointments Committee and Charlie was a member. At the beginning of the year, David Robertson contacted Dean John Sutton to say he wanted to return to the faculty from private practice. John referred the matter to me without comment, and I divided David’s major publications among the Committee, asking each member to read one and report his evaluation. I got back a short note from Charlie that said he was too busy. Totally misunderstanding what was at issue, I thought I had a case of the star athlete refusing to be a team player. I sent back a short note that said we were all busy and I needed his report. I soon got it, without further comment.

Neither Charlie nor anyone else told me what was really going on. I was new to Texas; I was the only member of the Committee who did not know who David was, who did not already have a sense of his work and how fortunate we were that he wanted to come back. Reading all his publications was a waste of time, because the outcome was a foregone conclusion. In context, Charlie’s note meant that he was too busy to waste his time on illusory procedures that would not affect the decision. But he never said that.

My experience over the subsequent years has been that, subject only to his travel schedule, Charlie commits whatever time is required to participate in faculty meetings and faculty committees. He generally speaks but once, at or near the end of the debate, announcing a firm position that he often supports by invoking some larger principle. It is usually easy to see why the larger principle is relevant, but often hard to see why it is a dispositive rule instead of a factor to be considered. He generally sits silently through the lengthy, rambling, and often repetitive debates of his colleagues. He rarely prolongs those discussions, but if he is impatient, he never shows it. His position sometimes prevails and sometimes does not, but I have never, ever heard him argue or imply that we should vote his way because of his stature in the discipline.

I do remember one exception to his habit of speaking only near the end of a meeting. I once distributed a memo to the Appointments Committee reporting on preliminary interviews conducted in Washington, D.C., and I dismissed some unpromising candidate.

---

65. See Fed. R. of Evid. 801(d)(1)(B). It is barely possible that Charlie does not know this. The discussion of this rule in the treatise appears only in an Interim Edition that does not yet have the Wright imprimatur. Michael H. Graham, Federal Practice & Procedure § 6712 (Interim ed. 1992).
with a slang term that seemed perfectly familiar to me and elicited no comment from any other member of the Committee. Charlie opened the meeting by asking the meaning of the term; he said that he had never heard it used and that it was not in his unabridged dictionary. I cannot remember ever hearing a colloquialism emerge from Charlie’s mouth.

The stories in this section are mostly minor incidents that happened to stick in memory and that may reveal glimpses of the man to those who have not had the chance to know him. For all of Charlie’s admirers—for those who work with him regularly and for those who regularly use his work—the good news about his retirement is that it has a certain illusory quality. He will continue to teach half-time, and he will continue his scholarship and his ALI work for as long as he is able. The real retirement, the day when Charlie stops coming to work and ceases to be a presence in the Law School, is still somewhere off in the future. With any luck, it will be far off in the future.