

FORTY YEARS WONDERING IN THE LAW

*Judge Michael P. Mills**

It was the summer of 1978 and I had tumbled into the study of law at the University of Mississippi School of Law, an exciting, yet fearful challenge for this former Itawamba County construction roustabout.¹ All my dreams of achieving something in life hinged on getting in and getting out of law school with a degree. At orientation, Dean Parham Williams told us how lucky we were to be there. Then, Professor Aaron Condon² told us to look to our left and look to our right; one of us would not be back for the fall semester. I looked to my left and saw a natty young Jack Hayes. I looked to my right and saw an affable Phil Mansour. I did not know these two characters at the time but sizing them up in the moment from their outward appearances, I felt some comfort that I might survive. This is also the day I met Mr. Hayes' sidekick, the doe-eyed Bobby Gholson.

We were assigned to take a single exam, six credit hour Contracts class in what was then called the "New Law School," a remarkable monument to a collapsing Soviet Union glass and concrete school of architecture known as "Brutalism." And "brutal" aptly describes the ordeal some of us were about to endure as the inaugural class in the New Law School.³

* This Article is written as a memorial of sorts for the law school class of 1980 who could not celebrate their 40th anniversary in person due to the COVID-19 pandemic. We have lost many, including my dear friend Judge Eddie Bowen, who died of COVID-19 on February 7, 2021. I spoke to him a week before he died about this Article and he did not mention he was sick. See *infra* note 8 and accompanying text. The author thanks Jordan Thomas, Editor-in-Chief, of the *Mississippi Law Journal*, for her encouragement and editorial assistance with this paper, and his judicial intern, Taylor Story, for his guidance and suggestions.

¹ The author has footnoted as many arcane and irrelevant topics as he can in an attempt to appear learned and profound.

² In addition to those named in the text, other giants casting intellectual lightning from the legal mountain of knowledge included: Abbott. Bradley. Case. Champion. Cochran. Ellis. Ethridge. Frugé. Hodge. Khayat. Robertson. Sweat. Weems. Wharton.

³ The irony is not lost on the author that the "New Law School" of this article is now the "Old Law School."

The lovely Mary Ann Connell taught our Legal Writing class in the law library which remained in the “Old Law School,” and today houses the University of Mississippi School of Journalism. This is where a few of us first sensed a troubling premonition that we may be facing an existential crisis.

Our small summer school entry class had been separated, like farm stock, into two groups. There were the lucky goats and then there were the sacrificial lambs. The lucky goats had the affable, red-haired wonder, Bill Walker, as their professor.⁴ The lambs were not so lucky. Affability did not attach to stories we were hearing about our professor, though not everything we heard was necessarily bad. It was rumored that our professor had played poker at Yale with Vice President George H.W. Bush’s prodigal son, George W. We heard that a member of his New York law firm, a fellow named Dewey, once ran for President. Other professors hinted that we should feel honored that such a great man had come down from New York to teach our six-hour summer school class in Contracts. I suspected he might be:

*one of those unambitious lawyers who never addresses a jury,
or in any way draws down public applause; but in the cool
tranquility of a snug retreat, do a snug business among rich
men’s bonds and mortgages and title-deeds.*⁵

⁴ Another friend from the Summer of ‘78, the very pleasant Richard Coker was in Walker’s class. Mr. Hayes, Mr. Mansour and Mr. Gholson and I were later assigned to Professor Bill Shaw’s Federal Jurisdiction class, where we quickly discerned that we had little hope of distinguishing ourselves. In fact, it soon appeared that it made little difference whether we attended his class or not, as long as we showed up for the final exam. So, we skipped Shaw’s class at least once a week to play Risk at the Gin, where our bartender was the friendly Howorth brother, Andy, who was trying to find himself at the time. Richard Coker was also a regular in the bitter Risk battles at the Gin. Others who sometimes joined us included classmates Lanier Hurdle, Lee Perry, Wayne Jacobs and Larry Wynne. Future Oxford Mayor Pat Patterson, proprietor of Pat’s Package Store at the time, sometimes joined us. The Mayor is every bit as cunning, mendacious, and petty as some of the others. Hayes, Mansour, Gholson, Coker and I still meet once a year, at places far and near, to renew our bitter Risk rivalries and keep the old enmities going. I enjoy annually schooling these boys on the arts of war and diplomacy and the importance of keeping your word! There really is something comforting about maintaining grievances over slights and abominations from the past.

⁵ HERMAN MELVILLE, *Bartleby, the Scrivener: A Story of Wall-Street, in* SHORT STORIES 1, 2 (Easton Press ed., 1996).

One might reasonably presume that such a timid man would be easy to get along with.

My estimation cried out for revision when an upperclassman asked me for a cigarette in the cool, alabaster tomb fronting as a hall leading to the law library. I shook out a Marlboro. Cupping his hands around my Zippo lighter, he asked who I drew for Contracts.

I lit one myself, then answered without emotion, "Howorth."

He took a draw, then hissed, "Dr. Death!" He accented the *th* like *thith!*

I winced.

"They bring him in every year or so to clean up the numbers," my friend said. "To keep from flooding the Bar. Be careful. Be very, very careful."⁶

"Right." I tried to chuckle, but it came out as a cough as I put out my cigarette, turned and walked away.⁷ (Yes, we smoked inside the buildings in those days. Some professors even smoked in class.)⁸

⁶ *Matthew 25:31-46*.

⁷ THE FREE MOVEMENT, *I've Found Someone of My Own*, on I'VE FOUND SOMEONE OF MY OWN (Columbia Records 1971).

⁸ Letter from author to Reed Cochran (May 30, 2018) (on file with author).

[Professor George] Cochran had a couple of stars in [his 1978 Constitutional Law] class. One, a young man from Greene County, whom I will call Mac to protect his anonymity, sat directly in Cochran's line of fire in the front desk of the middle row of seats. Mac was a real class participator, often raising his hand to ask questions and frequently expressing his opinions about what the law was and what it ought to be and such. One Eddie Bowen, a Smith County denizen, sat in the front seat of the next row and was then, and is now, a very quick wit. (I identify Eddie herein because he is now a Circuit Court Judge for the State of Mississippi and is thus a public figure under the holding of *New York Times v. Sullivan*. [And a]s you know . . . Judge Bowen now enjoys a reduced expectation of privacy. In any event, I do not know this anecdote to be false, nor is it, so far as I know, told in a spirit of reckless disregard for the truth. Finally, and this is only an excuse, and certainly not a defense, but I believe Judge Bowen has had worse things said about him. But now is not the time to get into any of that.)

Well one day Cochran was lecturing and smoking a cigarette when he opined that 'the outcome in this case hinged on whether the Court found that a **Force Majeure** clause would be recognized under the norms of international law.'

Mac's hand shot up. Cochran looked at him. 'Yes?'

'Mr. Cochran, ain't that pronounced **May-jeer**,' asked Mac.

I soon inquired of Mr. Hayes and Mr. Mansour, who had also drawn Dr. Death, if they had heard anything similar. They confirmed my worst fears.

The next day Mansour, Hayes and his chum, Gholson, and I, filed into the classroom. Hayes and Gholson sat near the front so the professor could see them. Mansour and I took seats high up in the back for opposite reasons.

A long shadow leaned through the doorway and leapt along the wall, then cut across my face. I sensed darkness. Doom. Annihilation. Dr. Death strolled into the room. Suave, sophisticated, sure of himself. Horn-rimmed glasses and penny loafers. Blue sport-coat, starched white shirt, a prim bowtie. He smiled craftily down upon those in the front row. A spectral chill drifted through the classroom. Do I detect a faint whiff of sulfur?

We stared. The man was tall, very tall! The tallest of five brothers from ancient Oxford dynasties.⁹ No, he was not a

Cochran took a drag on his cigarette, looked at Mac with a homicidal mein, and replied, 'No. It is pronounced *mah-jhoor*. It is a French term. **Force Majeure**. It means irresistible circumstances. Greater force. Act of God.' He then pinched the heat out of his cigarette and flipped the butt into the waste basket.

Undeterred by Cochran's pained response, Mac said, 'Well we have a feller who lives down the road from us in Greene County and he spells his last name that way but he pronounces it **May-ger**.'

The class was stunned! Waiting for Cochran's head to start spinning! Should they crawl under their desks? Let me out of here! The world is about to end!

And that is when Eddie Bowen leaned across the aisle and asked laconically, 'Mac, was the feller's first name **Force**'?

Well, that was too much! The class exploded with laughter. Cochran glared them to silence. 'You two fools pull your seats up to the blackboard and sit there for the rest of the semester! I don't want to hear any more out of you!'

They dutifully scooted their desks up to the blackboard.

With Mac and Eddie now at his back, Cochran continued his discussion of the **Force Majeure** clause. There was peace in the land.

And that is when a real Act of God occurred. An act so striking that it can only be described as Biblical, for nothing like it had happened since Moses heard a voice from the burning bush.

The trash can was on fire!

⁹ One should be chary of expressing subjective value judgments in non-fiction. So I will note objectively that Dr. Death is the tallest of five very tall brothers. Others have opined that he is also the smartest, most charming, and, possibly, the handsomest of

Faulkner or a Lamar or a Sartoris or a Benbow.¹⁰ But he was close. He was a Bishop *and* a Howorth. David Bishop Howorth. Bluebloods de remous.

He began to speak. He told us a bit about his background, nothing too immodest, and quickly moved into his goals for the summer. I remember very well the tall patrician stating in all his high-minded sophistication, “Some say you go to law school to learn how to think like a lawyer. I do not believe that is the purpose of the study of law. In this course, I will not teach you to think like a lawyer.” He then straightened to his full height and shifting his gaze about the room, measured his audience with a cold gimlet eye and said boldly, “I shall teach you to think!”

I do like this man’s style! Looking at Professor Howorth, I was painfully aware that my own origin history was far removed from his Brahmin roots. In fact, I possessed no pedigree of note at all. I was just a ragged individualist who had never been much of a scholar. I was as scared of him as a possum is of an axe handle. My short attention span has always robbed me of attaining any academic distinction, and my natural vanity interferes with my ability to take instructions from others, though these flaws have not kept me from seeking the truth.¹¹

I knew that I was treading deep water in this law school experience and needed someone to teach me to swim. So, despite our apparent differences, and being fully aware of the hand that I had been dealt, I hitched my wagon to Dr. Death and resolved to gain all I might from his promise to teach me to think, hoping to escape this ordeal with little more than a limp!¹²

the brood. These being subjective qualities, I reserve judgment in the premises, yet I concede that he may obtain some purchase in these postulations.

¹⁰ I am sure the reader knows that two of these families are real and two are fictional. The author is obviously blurring reality for purposes of effect. Editor’s note: Others suspect the author has been doing that for some time in his legal opinions.

¹¹ Editor’s note: Some might say these qualities make a good judge.

¹² And Jacob was left alone. And a man wrestled with him until the breaking of the day. When the man saw that he did not prevail against Jacob, he touched his hip socket, and Jacob’s hip was put out of joint as he wrestled with him. Then he said, ‘Let me go, for the day has broken.’ But Jacob said, ‘I will not let you go unless you bless me.’ And he said to him, ‘What is your name?’ And he said, ‘Jacob.’ Then he said, ‘Your name shall no longer be called Jacob, but Israel, for you have striven with God and with men, and have prevailed.’ Then Jacob asked him, ‘Please tell me your name.’ But he said, ‘Why is it that you ask

Professor Howorth used the case law method, a technique first begun by L.Q.C. Lamar many years ago in the Old, Old Law School, now Ventress Hall.¹³ He also used the Socratic method, sometimes sharing anecdotes. And he assigned students to make in-class presentations.

I spent the semester digging ever deeper into the arcane minutiae of the world of contracts and listening closely to Professor Howorth for gems such as: when a client comes into your office, he does not know the law or the issues. He can only give you facts. And not all of them are relevant. Further, the facts may be incomplete. It is your job as the lawyer to get the facts right and then determine the issue. The client cannot tell you what the issue is. You must determine the issue. You then apply the law as best you know it to the relevant facts and give your client your best guess as to the answer. And that is your value as a lawyer. Your ability to predict an outcome for your client.

On two occasions Professor Howorth inspired glimmers of self-confidence and hope into this scared young law student's psyche.

Others deny remembering the great event, nor do they confess its importance, but I well recall being the first student called upon to present a case to the class, and I also remember others looking at me as though I was being called into the courtyard to face a firing squad at the altar of the sun. Some did not seem particularly sympathetic to my plight that lonely Friday afternoon. Perhaps the winnowing had begun.¹⁴

my name?' And there he blessed him. So Jacob called the name of the place Peniel, saying, 'For I have seen God face to face, and yet my life has been delivered.' The sun rose upon him as he passed Penuel, limping because of his hip. Therefore to this day the people of Israel do not eat the sinew of the thigh that is on the hip socket, because he touched the socket of Jacob's hip on the sinew of the thigh.

Genesis 32:24-32 (ESV) (Editor's note: Has the author betrayed his Jesus complex here?).

¹³ *History*, UNIV. OF MISS. SCHOOL OF LAW, <https://law.olemiss.edu/about/history/> (last visited Apr. 10, 2021).

¹⁴ In fact, I thought I spied a cloying grin breaking across Mr. Gholson's face, not to mention an unexpected look of inappropriate delight dancing in Mr. Hayes' eyes. I shuddered with a sudden epiphany that perhaps they had looked to the left and to the right and settled on me!

Anxious to not let the others down, I sweated all weekend over my presentation, worried that I would not get it right, while my classmates enjoyed *The Rocky Horror Picture Show* at Ronzo's Hoka Theatre or pursued other more esoteric pastimes.¹⁵

Come Monday, Professor Howorth invited me to address the problem. I stood before the class and stated the relevant facts as best I remembered them. I then said what I thought the issues were. I next applied what little law I had found to the facts I thought relevant and predicted a solution. I was done! Hearing no applause, I nervously turned my eyes to Professor Howorth, who smiled as though witnessing some nascent wonder, and, nodding me back to my seat, exposed an unsuspected streak of modesty and self-restraint when he said to the class, "I have nothing to add. That is exactly how you do it."¹⁶

That slight recognition by Professor Howorth worked wonders for my confidence. The man I had feared, I now revered.

But on with our story. A dark cloud gathered. As we moved deeper into the summer, the approaching day of our final exam stalking us like a spectre. We were learning to function under pressure. Even today I shudder when thinking of the risks I faced in the summer of 1978 and the consequences of failure. I hoped to be a good lawyer someday, but I dared not predict the outcome of my final exam.

The dread day dawned. We filed into the classroom to take our one and only exam for the semester. Everything hung in the balance. Professor Howorth handed out a rickle of empty bluebooks, then passed a stack of photocopied sheets of paper to the student on one end of the front row and told her to pass it around the class. I watched from the back row as each classmate took a sheet and, glancing at the contents, saw some wince as they passed the stack on to another. A sense of angst spread like a virus as more students focused on the paper. We were facing a collective existential crisis.

I now held my copy of the test. There were no questions to answer! There were no blanks to be filled in! I heard someone

¹⁵ A literary device, unreliable narrator. I have seen a similar gambit in many briefs.

¹⁶ I wanted to echo with "Yes, Jack and Bobby, this is how you do it!"

sniffle. There were no boxes to be checked! A student got up and stumbled out of the room, never to return. Never. Never.

I looked more closely at the sheet of paper and read the words. A wonderful feeling of relief seeped into my consciousness. The dread dissipated. I felt like I was coming home. I was where I was supposed to be and this was what I was meant to do! Professor Howorth's facts dealt with law, with literature, with history, with the Word . . . and with all suffering humanity pulled together into one elegant problem. Sensing an epiphany, I wondered should I kick off my shoes!¹⁷

The exam consisted entirely of these verses quoted from the Book of Genesis:

25

29 And Jacob sod pottage: and Esau came from the field, and he was faint:

30 And Esau said to Jacob, Feed me, I pray thee, with that same red pottage; for I am faint: therefore was his name called Edom.

31 And Jacob said, Sell me this day thy birthright.

32 And Esau said, Behold, I am at the point to die: and what profit shall this birthright do to me?

33 And Jacob said, Swear to me this day; and he sware unto him: and he sold his birthright unto Jacob.

34 Then Jacob gave Esau bread and pottage of lentils; and he did eat and drink, and rose up, and went his way: thus Esau despised his birthright.

. . .

27

6 And Rebekah spake unto Jacob her son, saying, Behold, I heard thy father speak unto Esau thy brother, saying

7 Bring me venison, and make me savoury meat, that I may eat, and bless thee before the LORD before my death.

8 Now therefore, my son, obey my voice according to that which I command thee.

¹⁷ Exodus 3:1-17.

9 Go now to the flock, and fetch me from thence two good kids of the goats; and I will make them savoury meat for thy father, such as he loveth:

*10 And thou shalt bring it to thy father, that he may eat, and that he may bless thee before his death.*¹⁸

Etc., Etc. . . .¹⁹

I am, I said!²⁰

Here are some of the issues I identified that hot August morning in the brutal New Law School:

On the matter of the selling of the birthright for a bowl of lentils:

- Was the consideration valid?
- Was there Duress?
- What about the fact that Esau thought he was about to die?
- What is in a birthright?
- Did the contract need to be in writing?
- Was the evidence admissible?
- Is the parol evidence rule applicable?
- What about capacity of the parties?
- Did he have a birthright yet to give?
- Were conditions precedent needed?
- Should punitive damages be a remedy?
- Did Jacob engage in predatory practices?

On the matter of the stealing of the blessing:

- What is the effect of Rebekah's conspiracy?

¹⁸ *Genesis* 25:29-34, 27:6-10 (KJV).

¹⁹ You should know the rest of this story. If not, we have other concerns. It is critical that young lawyers have a grasp of the stories and traditions buttressing our Western canon. Otherwise, you will never attain the coveted state of Situational Awareness!

²⁰ NEIL DIAMOND, I AM. . . I SAID (Universal City Records 1971). A popular song by Neil Diamond in the 1970s. The sturdy reader will note echoes of the Almighty telling Moses: tell them I Am sent you, which leads us to a discussion of existentialism vs. an awareness of all-being, conscious and unconscious. Sartre v. Jung. Reflection on I Am leads to the resulting You Are. Ipso fatso (to borrow from Archie Bunker), we all have a place. (Editor's note: A cunning observer might also note that the author may now be exhibiting symptoms of a full-blown Loaded God Complex, often found in those who have worn a robe too long and particularly acute when dosed with life tenure.)

- What is the effect of listening to private conversations?
- Should Rebekah have any liability?
- What Evidentiary considerations attach?
- Dying Declarations?
- Hearsay?
- Was there fraudulent concealment?
- Was there failure of consideration?
- What are Esau's damages?
- Was there fraudulent manipulation?
- Was there third-party interference?
- What must be proved to establish a nuncupative will?
- Who would be witnesses?
- What about the senility of the testator?
- Can you orally transfer real property?
- Does the rule against perpetuities apply?

Did all these issues become moot when Esau confronted the old man about the fraud and his father said to him:

*Behold, I have made him thy lord, and all his brethren have I given to him for servants; and with corn and wine have I sustained him: and what shall I do now unto thee, my son?*²¹

So, Esau endured the saddest words in all creation! A father tells one child, I have nothing more for you. I have given it to your brother. This verse wasn't in Professor Howorth's facts. But I knew enough of the Bible from having spent countless mornings in Sunday School being taught the Bible by dear old blue-haired ladies to know how the story ended. So, I threw that in for the good Professor's edification and spiritual growth!²²

This exam represented an awakening. All my experiences in the law over the last forty years relate back in some way to Professor Howorth's exam. The conflicts created by the simple Esau and the deceitful Jacob, the challenges faced by Isaac in his dotage, the plotting Rebekah, and similar schemes by hundreds of other miscreants and victims, have played out time and time again in my calling. Verily, my friends, there is nothing new under

²¹ *Genesis 27:37* (KJV).

²² One never knows where Synchronicity will alight!

the sun.²³ I left class that day grateful to Professor Howorth for what he had given. And with no expectation of ever seeing him again.

Seasons come and go. Old friends pass away. Memory is both boon and burden. The past shapes the now. A piece of time takes my breath away.

On a recent, sparkling spring morning, I put on my robe and strode into the courtroom to the pomp and circumstance of “All Rise” ringing out from Charlie Woods, my Courtroom Security Officer. I tried to appear humble as I sat at the bench, while Ms. Pennebaker-Wilkerson called the docket. I glanced at the crowd. And spied a grey-haired head in horn rimmed glasses sitting a head taller than the other citizens summoned for jury duty. Dr. Death!

The lawyers began voir dire and I, pretending not to recognize him, casually glanced at my former professor. I was struck by how much he had changed over the past forty years but I also wondered at how much he resembled the young professor of my youth. I wondered if he remembered me. We made eye contact and I thought I detected a twinkle of recognition. The intellectual pride and confidence bordering on hauteur had mellowed into a kindly wisdom revealed by his deferential responses to the lawyers’ questions. It was soon clear that the tall grey-haired gentleman sitting among the factory workers, shop keepers, and retired schoolteachers knew more about the law than anyone else in the courtroom. Alas, jury selection is not based on merit. Lawyers are not anxious to put anyone in the jury box who may be smarter than themselves. To my disappointment, and I suspect his, Professor Howorth was not selected to serve on the jury.

Now and then, I see my old professor wandering like Ishmael about town in old chinos and a rumpled sweatshirt. I have a notion he has found what he is looking for, comfortable in the knowledge that he has led a meaningful life marked by applied intelligence and congenial wisdom. Passed on to others in ways he never dreamed. As time goes by, I wander in the hallways of memory and wonder at the rule of law and those essential

²³ *Ecclesiastes* 1:9 (“What has been will be again, what has been done will be done again; there is nothing new under the sun.”).

qualities of the legal profession that I first glimpsed in Professor Howorth's class. Civility. Professionalism. Intelligence. Respect for the views of others.