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## *Laughter And Pain In The Criminal Injustice System*



# **TALES AS OLD AS CRIME**

## **Laughter And Pain In The Criminal Injustice System**

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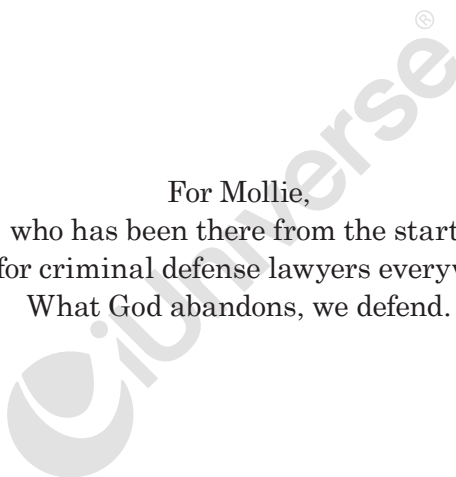
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For Mollie,  
who has been there from the start,  
and for criminal defense lawyers everywhere.  
What God abandons, we defend.





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## *Prologue*

I've been a criminal defense lawyer in Houston and practiced throughout Texas since September 1973. I've shared many stories of the courthouse and beyond with my son, Josh, who has practiced with me since 2002. Josh has implored me for a decade to write a book so those stories will not be "lost to time." I didn't take him seriously.

I invited about 50 close friends and relatives to my home for my 70<sup>th</sup> birthday party in January 2020. I told a story about each of them after dinner. My cousin, state District Judge Bob Schaffer, and my oldest friend, Dr. Mark Jacobs, made a beeline for me afterwards and said, "You have to write a book." I said, "About what?" They said, "About anything." I countered, "Who would buy it?" They assured me, "We would." I said, "So I sell two books. Hardly worth the effort." I didn't take them seriously either.

I had dinner in Fort Worth in July 2024 with my former law partner, Ken Sparks, and his wife, Patty. Ken told me that he'd written a book to give to his family about the interesting cases he'd handled. That got my attention. I figured that, if Sparky can write a book, so can I.

Ten days later, I wrote the outline for this book as I sat by the Guadalupe River in Hunt, Texas, at the 45<sup>th</sup> annual reunion of my best friends from law school. At first, the memories were murky, like the initial burst of water through a rusty pipe. Once the memories started flowing, they became as clear as yesterday, and I could barely write them all down. Not all of them were pleasant.

The life of a criminal defense lawyer is littered with clients who don't pay or pay with hot checks. I saw a defense lawyer, Charlie Melder—who was red in the face and shaking—scream at his secretary over the telephone in a court coordinator's office, "What do you mean the check bounced? I just pled him out!" That afternoon, Melder dropped dead of a heart attack. The courthouse

scuttlebutt was that the heart attack was occasioned by that bad check. If true, he took it a bit too seriously. But you get the point.

A criminal defense lawyer also must deal with (mostly undeserved) grievances. Some clients or family members believe that a lawyer who loses a case should return the money and, if he refuses, they file a grievance. A grievance is like a fly buzzing around your face—annoying, but you have to deal with it.

A criminal defense practice is not all hot checks and grievances. The courtroom battles are only part of the story. The personalities and the backstories often are more memorable. I've gone the extra mile to share mine with you.

I've omitted or changed the names of some clients to protect their privacy. I've omitted the names of some lawyers and judges to protect the guilty. I've omitted the stories that are too politically incorrect or risqué to memorialize in writing; perhaps they are best "lost to time."

I occasionally conclude an argument by telling the judge, "The ball's in your court." This time, the ball's in my court. Settle in, it's going to be a bumpy ride.

# *Part I*

## IN THE BIG INNING



## *Chapter 1*

# The Road Not Taken



I was supposed to be a doctor. My dad, Dr.® Randy Schaffer, a pediatrician, helped found Texas Children's Hospital in Houston. I thought that being addressed as "Dr." sounded much cooler than "Mr."; the best parking places were reserved for doctors; and, when Dad was stopped for speeding (a frequent occurrence), the officer wouldn't write him a ticket upon learning that he was a doctor. So I decided to become a doctor to get out of speeding tickets. It didn't matter to me that I had no interest or ability in math and science. I wanted to be like my dad.

After I graduated from high school in May 1967, Dad arranged an interview for a summer job with Opal Benage, the Director of Nursing at St. Luke's Hospital. As I waited in her reception room, a good-looking redhead wearing a scrub dress with a stethoscope around her neck (protruding prominently over her chest) sauntered into the room. She appeared to be about 25 years old (although she was 18). I immediately became interested in getting hired so I could ask her out. She leaned over the desk and chatted up the receptionist. Correctly sensing that I was checking her out, she cocked her head in my direction, and said, "What are you looking at, boy?" I replied, "Your stethoscope." We were on. Not to get too far ahead of the story, but Mollie Sylvester and I have been together for 58 years (which demonstrates the poor taste of some women).

I spent the summer of 1967 delivering lab slips, helping admit and discharge patients, and flirting with the nurses and staff. The highlight was escorting Elvin Hayes, the star of the University

of Houston (UH) basketball team, to the cashier to settle his bill following the birth of his son. There was a notation on the discharge papers to send the bill to the Houston Mavericks, the local pro basketball team in the American Basketball Association (that planned to draft Hayes after he graduated). If I'd blown the whistle on Hayes for receiving this financial benefit, the NCAA probably would've declared him ineligible to play his senior year. UH wouldn't have defeated UCLA and Kareem Abdul-Jabbar (né Lou Alcindor) in the Game of the Century before 52,693 spectators at the Astrodome in 1968. Indeed, that game probably wouldn't have been played. I've always claimed partial credit for that landmark UH victory and for altering the course of college basketball—in the future, big games would be played in domed stadiums and telecast in prime time.

After completing my freshman year at the University of Pennsylvania (with mediocre grades in math and science), I returned to St. Luke's Hospital in the summer of 1968 to work as an orderly in surgery during the heyday of Dr. Denton Cooley, one of the greatest cardiovascular surgeons of all time. Mollie's mother, Ruth Sylvester, was the director of the operating room. Mrs. Sylvester watched me like a hawk—probably trying to determine why her nice Catholic daughter was wasting time on a sarcastic Jewish boy. Eventually, I became a scrub tech, passing instruments to the surgeons during operations. This led to the pivotal moment that changed my career path.

One afternoon, I was preparing to scrub in with Dr. Alec Brodsky, the premier orthopedic surgeon in Houston. Dr. Brodsky and my dad were long-time friends who referred patients to each other. When I was nine months old, I fell out of my highchair and broke my collarbone. (Fifty years later, I had a recovered memory of my mother pushing the highchair over, but that story is for another book.) Dr. Brodsky set my collarbone in the emergency room. I was a frequent visitor to his office throughout high school as a result of various sports injuries.

As we washed our hands at the sink, Dr. Brodsky said, "You know, Randy, I'm just a mechanic who works on people instead of cars. The patient is covered except for the area I'm operating on. To me, the patient is just a piece of meat." Yikes! That job description ended my desire to be a doctor. I wanted to interact with people

who were conscious. I had an epiphany and decided in that moment that I wouldn't be a doctor. I have Dr. Brodsky to thank for that. And I do, most sincerely.

When I got home, I told my parents I was going to law school instead of medical school. My mother was excited because that meant that she'd be able to tell me how to try cases, as she'd become an expert by watching several seasons of *Perry Mason*. I've always maintained that I decided to go to law school when I found out that I'd get paid to argue with people, as I'd been arguing with her for free my entire life.

I never again thought about becoming a doctor. I resigned myself to the fact that I'd have to pay my speeding tickets.

## Chapter 2

### Longhorns, Beer, and Barbeque



Having decided to go to law school, my career path became clearer. I was advised that, if I intended to practice in Texas, I should attend the University of Texas (UT) Law School in Austin to learn Texas law and establish connections. Mollie and I were married and living in Philadelphia. The winters were miserable, and the cost of living exceeded our meager budget. I learned that I could transfer from Penn to UT, receive an additional 15 hours of advanced placement credit, and graduate in December 1970 instead of May 1971. I could start law school in June 1971 and, if I took classes year-round, graduate in August 1973 instead of May 1974. I'd be licensed to practice law when I was 23 years old. I transferred to UT, and we moved to Austin in September 1969 for my junior year of college.

I'd never been a UT football fan. I followed a local Houston team, the Rice University Owls, my dad's alma mater. I rooted for

David, not Goliath. That said, the atmosphere on the UT campus was electric when the Longhorns won the national championship in football in 1969.

I had to take only two classes during the fall semester of 1970 to graduate. To supplement our income, I accepted a job with the YMCA to run an after-school sports program at Sims Elementary, an all-Black school in East Austin. I coached the fourth, fifth, and sixth grade boys. I was the first white male they'd ever encountered. It was an eye-opening experience for all of us. Mollie and I invited them to our apartment for spaghetti dinners and took them to UT basketball games. In December 1970, I informed the principal, John Belle, that I had to get a full-time job in January and would no longer be able to coach the boys. He offered me a full-time job as a teacher's aide, which I accepted. I had a party for the boys at the end of the school year and gave them my sports equipment as awards. With two exceptions, I didn't see them again after I started law school in June 1971. In 2015, one of those boys, Clifford Bowser—then a minister—sent me an email asking if I was the same Randy Schaffer who had coached at Sims. I pled guilty. We reconnected and organized a reunion of the Sims boys—now men—in 2016. We have had a reunion every two years since then.

I started law school in June 1971 and made some of the best friends I would ever have.

Lloyd Seljos, my study partner, had blonde hair, blue eyes, and was very handsome. Little did we know during law school that I would represent him five years after we graduated. Lloyd practiced personal injury law in McAllen (about 350 miles south of Houston). In 1977, his former girlfriend, an Asian, gave birth to a daughter who had blonde hair and blue eyes. She sued Lloyd to establish paternity. He pled not guilty and put her to proof. In 1981, a jury found that he wasn't the father, notwithstanding that blood testing established a 78 percent probability of paternity. I've heard many clients exhale when acquitted by a jury; none exhaled louder than Lloyd.

Dick Craig lived on Hampton Road, within walking distance of the law school, in what turned out to be our party house. Dick was the hub of our group's social life. On a typical Saturday night, he'd organize a barbeque dinner at the Salt Lick or the Old Coupland Inn followed by a keg party on Hampton Road. Dick kept us well-lubricated.

Richard Hubbert was seven years older than most of us because he'd served in the Navy before he went to law school. He regaled us with stories of drunken sailors and their tattoos. One sailor, after getting a tattoo of a woman's leg on each side of his armpit, was awakened in the middle of the night by another sailor trying to have sex with his armpit. Another sailor got a tattoo of an anchor on his ankle with the chain running up his leg into his butt. Richard kept us entertained.

Rod Crowl, who had graduated from Rice University, lived with Dick Craig on Hampton Road. Bill Mlkvy, a star basketball player for the Temple University Owls in the 1950s, had the nickname, "The Owl without a Vowel." I called Rod, "The Owl with a Vowel." I watched Rod break up with his very attractive girlfriend at a party on Hampton Road because he disapproved of the way she'd made nachos (she placed the beans on top of the cheese). Rod kept us well-fed.

Jimmy Charles Curtis, a country boy from New Boston, Texas, had played on the freshman basketball team at Rice University. We bonded over basketball and cynicism. We took our wives to New Orleans for spring break in March 1973. We were waiting for a taxi outside the St. Charles Hotel when we heard a female at the adjacent diner yell, "Stop him, he robbed me! Stop him, he robbed me!" An older man wearing a jacket exited the diner and ran between Jimmy and me. Coins were falling out of his pockets. I said to Jimmy—probably as a result of the drinks we just had at the hotel bar—"Let's get him!" We ran about ten yards before I saw a gun in the man's jacket pocket. I grabbed Jimmy's arm and said, "Fuck it. We aren't taking a bullet for a pocketful of change." We went to Commander's Palace for dinner. After the waiter took our order, I asked him to bring us four pens and sheets of paper. He looked at me quizzically but provided them. I told the group, "Write down what you remember about the robber's age, height, weight, hairstyle and color, clothes, and anything else you remember about him." It was my first opportunity to conduct a real-world test on the accuracy of eyewitness identification. Everyone dutifully complied. When I read what each person had written, I was amazed at how dramatically we differed on every detail. That proved to be a valuable lesson.

UT Law School paid me \$125 per month to teach legal research to a class of first-year students during my last year. One student,



Glenn Perry, asked to talk to me after class. We sat at a table in Keeton's Casino, the law school café. Glenn had been a pole vaulter at a small college in Arkansas. Austin was the "big city" to him. He expressed concern that he wasn't smart enough to be a lawyer, as he didn't seem to "get it." I told him, "Neither did I during my first semester. Stick with it." That conversation led to a lifelong friendship. Glenn became one of the most feared personal injury lawyers in East Texas. He was so successful in medical malpractice cases that no doctor in Longview would treat him or any member of his family. He lived in an estate that dwarfed the size of J.R. Ewing's in the television show, *Dallas*. He wrote a letter in 2020 thanking me for that pep talk. He didn't send any money.

In 1980, Dick Craig and I organized a reunion of our law school friends at the River Inn in Hunt, Texas. Seven lawyers, accompanied by their wives or girlfriends (but not both at the same time), attended the first reunion. We've continued to meet there for 45 years; our children and grandchildren are now in the mix. I was blessed that our friendships survived the test of time.

UT Law School had brilliant professors. Page Keeton, the Dean, was my torts professor and wrote our textbook. Lino Graglia, my constitutional law professor, was the best teacher I ever had. There were some classic classroom moments.

In first year property class, Professor Bill Fritz prefaced a comment with, "I don't know anything about real estate deals, but..." and made a substantive point. A classmate, Robert Thompson, blurted out, "I agree with you..." at which point Fritz interjected, "Then I must be wrong." The class erupted with laughter. Robert replied, "You interrupted me before I could finish the sentence. I was going to say that I agree with you that you don't know anything about real estate deals," and explained why. The class doubled down on the laughter. Alas, there wouldn't be much more laughter for either of them. Fritz died of a heart attack weeks later. Robert died of cancer within a year of graduation. But on that memorable day in class, everyone laughed.

Gerald Holtzmann, who'd been a shot putter at Rice University, smoked cigarettes in class. He'd blow a smoke ring as each class was about to end. The entire class—including the professor—would watch the smoke ring ascend to the ceiling and disappear.

It became a law school tradition. No one knew that his first name was Gerald; he was known as “Smoke Ring” Holtzmann. He was the Red Auerbach of the law school.

My favorite classroom moment occurred in August 1973, during my last semester. Richard Hubbert—who was 30 years old but looked 50—had closed down Scholz’s Beer Garden on a Thursday night. He entered our trial procedure class the next morning, hung over and unshaven, wearing a striped T-shirt and short pants. He looked like a 50-year-old kindergartener. He sat in the back row, hoping that the professor, Gus Hodges, wouldn’t call on him. Hodges, an elderly Irishman, was bald on top and had long, white hair flowing down the sides and back of his head, and a huge, white handlebar mustache (think of Hall of Fame relief pitcher Rollie Fingers). Hodges kicked unprepared students out of class. Most unprepared students would pretend to know the case they were called on to recite. Hodges inevitably would ask whether the student had read the case; if the answer was no, the student got the boot. That was the law school equivalent of the walk of shame. Hodges called on Hubbert to recite the first case. Hubbert didn’t even try to fake it. He picked up his books, turned toward the door, and in his West Texas drawl said, “Unpreparrrred.” Hodges twirled his mustache and said, “Ah’ll excuuuse ya.” It was a joy to watch these two no-bullshit guys go at it.

I was at the top of the class at the end of my first year in May 1972. Because I was taking classes year-round, I didn’t apply for a summer clerkship with a law firm. However, Fulbright and Jaworski (F&J), a large Houston law firm, invited me to clerk for the two weeks between the spring and summer semesters. I responded that I saw no point, as I intended to be a criminal defense lawyer, and the firm didn’t have a criminal practice. The firm asked for two weeks to change my mind and offered me \$400 (the equivalent of about \$3,000 in 2025). We needed the money, so I accepted the mini-clerkship.

The clerkship proved to be exhausting, as it required not only a full day of work but also constant eating and drinking at night. A lawyer took me to lunch every day. A group of lawyers took me for drinks after work, and another group took me to dinner every night. A partner would have a party at his home on the weekends.

I observed that many of the partners hunted deer or geese and wore white shoes on the weekends. Their homes were ornately decorated, prominently displaying items such as an open antique book with a quill pen carefully positioned on the page. Clearly, they prioritized appearances. I had to give F&J credit for devising a unique strategy in an effort to recruit me. Instead of trying to convince me not to become a criminal defense lawyer, the firm worked on Mollie. Bob Carsey, one of the firm's top trial lawyers, sat next to Mollie at a dinner party and told her not to "let me" practice criminal law. He explained, "You don't want those people calling your home at night and on the weekends." I decided that I'd rather spend time with "those people"—whoever they were—than with white-shoe deer hunters.

The career path for most criminal defense lawyers is to work as an assistant district attorney for a few years to get trial experience. However, I wanted to be Perry Mason, not Hamilton Burger. While I was clerking for F&J, I wrote letters to the two most famous criminal defense lawyers in Houston—the legendary Percy Foreman, and the new kid on the block, Richard "Racehorse" Haynes. Mayo Davidson, a lawyer at Haynes and Fullenweider (H&F), responded and arranged an interview with Donn Fullenweider.

I was selected for the Texas Law Review in September 1972. That seemed to be a prerequisite for a big firm job offer. I was required to check my inbox every day before I left school. On the first Friday, as I was leaving at 5:00 p.m., I received an assignment to cite check a 50-page article that contained about 300 footnotes by 8:00 a.m. on Monday. I read several hundred cases involving corporate law to ensure that the author had cited each case correctly. I spent the entire weekend—including all three nights—in the law library. This was boot camp and fraternity hazing rolled into one.

I complained to Bill Hankinson, the editor who gave me the assignment, about receiving it at the last minute. I said that I wanted more time to complete assignments so I wouldn't have to spend every waking moment working on the weekend. He said, "Get used to it. This is how big firms operate." I replied that I wasn't going to work for a big firm, so I didn't care how they operated.

I checked my inbox the next Friday at 5:00 p.m. and found a similar assignment due by 8:00 a.m. on Monday morning. I left it in the box. On Monday, Hankinson ripped into me for ignoring it. I asked whether he recalled our conversation from the previous week. He said he did but that he dictated the terms of the assignments, not me. I said that I wasn't his servant. He said that I was as long as I was on the Law Review. I said, "Then I'm out of here." He said that he'd make sure I didn't get a job with any big firm in Texas. I told him to save his breath, as I didn't intend to work for a big firm. I'd heard through the grapevine that he desperately wanted to work for F&J. Ironically, F&J offered me a job but didn't offer him one.

The next day, I was summoned to the office of T.J. Gibson, the Associate Dean of Students. He asked why I resigned from the Law Review. I told him. He said that the big firms "would be concerned." I said that I wasn't, as I intended to be a criminal defense lawyer, not a white-shoe big firm lawyer. He looked at me with dismay, shook his head, and said, "I hope you know what you're doing." I did.

In September 1972, Steve Susman, an F&J partner (who was my distant cousin and later founded his own extraordinarily successful law firm, Susman, Godfrey, & McGowan), called to offer me a job with F&J. He mentioned that F&J was eager to hire another Jewish lawyer. I found that telling. F&J didn't want just the two token Jews it had—it wanted a third. I asked how long I had to decide. He gave me ten days. I called Mayo Davidson and said that F&J had offered me a job, which I'd accept if I didn't have an offer from H&F within a week. Davidson asked how much money I wanted. I said that I wanted \$50 per month less than F&J's starting salary—which, at that time, was \$1,100 per month (the equivalent of about \$8,400 in 2025). A few days later, H&F offered me a job. Thus, I had the job I wanted 15 months after I started law school.



The Austin days





The UT Law School reunion group



The Men of Sims 45 years later





The UT Law School reunion group



