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## CENTENNIAL ESSAY

### THE WIND WAS AT OUR BACKS: THE THIRD GOLDEN PERIOD OF RUTGERS LAW SCHOOL

*Gary L. Francione\* & George C. Thomas III\*\*1*

For most of the history of sea travel, sailors were at the mercy of the wind. When the wind was at their backs, the ship made top speed. When ships were becalmed, there was nothing to do but drift and wait for the winds to begin again. No one knew what caused the winds to blow and then to die down. During most of the years between 1984 and 1995, the wind was at the back of Rutgers Law School. We begin in 1984 because that was the year that a major report was issued calling for a push to place Rutgers into the first rank of American universities. We end in 1995 because that is when the Board of Governors approved the new law building. In this essay, we will set down some of our recollections of that period and what other colleagues have told us.

First, we explain our methodology. Many of the stories recounted here are simply part of the lore and legend of the Law School, told and retold many times in the faculty lounge and hallways. If we provide no source, it means that we are relying on those legends. Sometimes we requested confirmation or clarification. In those cases,

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\* Distinguished Professor of Law and Nicholas deB. Katzenbach Scholar of Law and Philosophy, Rutgers University School of Law–Newark.

\*\* Rutgers University Board of Governors Professor and Judge Alexander P. Waugh, Sr., Distinguished Scholar, Rutgers University School of Law–Newark.

1. We dedicate this essay to our colleague, John Payne. We thank Roger Abrams, Al Blumrosen, Norman Cantor, Charles Davenport, John Leubsdorf, James Pope, Diana Sclar, and Peter Simmons for reminiscing with us. We give an especially large thanks to our colleague in the library, Paul Axel-Lute, who painstakingly put together a list of faculty publications in the years 1984-1985, only a small part of which we used in the essay. He also researched the origin and history of the Rutgers School of Law-Camden and provided most of the material we used in that part of the essay.

we indicate by footnote the source of the information.

If the full history of Rutgers Law School is ever written, it will surely include at least three golden periods. The first occurred in the late 1950s and early 1960s, when a wave of bright young lawyers, many from Yale, transformed the Law School from a place that educated (mostly) young men to become New Jersey practitioners to a school that valued research, scholarship, and the development of academic values in our students.<sup>2</sup> The movement can be summed up by something said at the time: The goal of the young faculty at Rutgers Law was to make it a public Yale Law School. A lasting testament to that era is a book, *The Law School of Tomorrow*,<sup>3</sup> drawing from a series of seminars held at the law school in 1966 and featuring some of the top academics in the United States. David Haber and Julius Cohen organized the seminars and edited the volume that appeared in 1968. A remark by Robert Hutchins, the first speaker, captures the nature of a transformed law school. A law school should “proclaim to all and sundry that the object of the law school is to understand the law, that the law school prepares students for the practice by helping them to such understanding, and that its emphasis is on theory because the best practical education is a theoretical one.”<sup>4</sup>

But the tragedy that struck the city, the state, and the country in 1967 stopped the movement to Rutgers-as-Yale. Six days of rioting left twenty-six dead, hundreds injured, and caused over ten million dollars in property damage.<sup>5</sup> It also brought to the surface long-simmering resentments about the way people of color had been effectively disenfranchised in Newark despite being, by the 1960s, the majority population in the city.<sup>6</sup> Progressive members of the law school community argued in favor of two fundamental changes. They wanted to help the disenfranchised citizens of Newark in their day-to-day lives. Thus was born the program of clinical education. Moreover, many on the faculty felt a special obligation to integrate the bar and empower more broadly African-American citizens in the state and region. Thus was born the Minority Student Program (MSP). We consider this period—from the late 1960s until the early-to-mid 1980s—as the second golden period.

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2. Interview with Peter Simmons, Professor, Rutgers University School of Law, in Newark, N.J. (Feb. 11, 2009).

3. *THE LAW SCHOOL OF TOMORROW: THE PROJECTION OF AN IDEAL* (David Haber & Julius Cohen eds., 1968).

4. Robert M. Hutchins, *The University Law School*, in *THE LAW SCHOOL OF TOMORROW: THE PROJECTION OF AN IDEAL*, *supra* note 3, at 5, 6.

5. Andrew Jacobs, *Through 40-Year Prism, Newark Surveys Deadly Riot*, N.Y. TIMES, July 8, 2007, at A19.

6. *Id.*

We leave to others to write in detail about the first two golden periods.<sup>7</sup> We write about 1984 to 1995 because we were on the faculty for almost the entire period<sup>8</sup> and can offer first-hand accounts of how it felt during those years when the wind was at our backs. In 1984, the Committee on Future Financing of Rutgers, appointed by Rutgers University President Ed Bloustein, released its report.<sup>9</sup> The panel assumed that Rutgers was “within reach of becoming one of the finest research universities in the country,” but needed additional, and more creative, sources of financing.<sup>10</sup> Bloustein embraced the report, saying, “For the first time in my memory of higher education in this state, a group of key citizens has now come together to say they believe that New Jersey needs, and can afford, a state university of first rank.”<sup>11</sup>

In 1984, Rutgers Law School began to pursue a commitment to becoming a law school of the first rank. One of the ways to measure both the appeal of a law school and the commitment of the university to that school is the number of faculty who come from other schools to join the law school community. Most law faculty do not abandon positions lightly to move to a new school. In addition, lateral hires, particularly of senior, tenured faculty, are more expensive and thus indicate a greater commitment of resources of the school. In 1984, John Leubsdorf joined us from Boston University and, a year later, Wendy Gordon from Western New England. Other lateral hires followed quickly—David Rice from Boston University (1987); Gary Francione from the University of Pennsylvania (1989); and Bill Bratton from Cardozo Law School (1990). Budget difficulties associated with the recession of 1991 and 1992 slowed down faculty hiring from other schools, but it soon picked up again: Carol Roehrenbeck came to us from Nova (1994); Drucilla Cornell came from Cardozo (1994); and Sherry Colb came from Rutgers-Camden (1995). During this period, we also created a half-time position in the law school for Douglas Husak, one of the most prominent scholars of legal philosophy in the nation and a member of the internationally acclaimed Rutgers–New Brunswick philosophy department.

Another measure of a law school’s appeal is the quality of the junior faculty it attracts. On that score, also, we had a very good period. Among those hired as junior faculty who are still on our faculty are Helen Garten (1984), Twila Perry (1984), James Pope

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7. A good start is FRANK ASKIN, *DEFENDING RIGHTS* 27-53 (1997).

8. George Thomas joined the faculty in 1986, Gary Francione in 1989.

9. Pricilla Van Tassel, *New Policy Is Proposed For Rutgers*, N.Y. TIMES, Dec. 2, 1984, § 11 (New Jersey Weekly Desk), at 1.

10. *Id.*

11. *Id.*

(1986), George Thomas (1986), Ronald Chen (1987),<sup>12</sup> Bernard Bell (1994), and David Troutt (1995). Among the junior faculty who stayed with us for several years before moving on were Dorothy Roberts (1988-1998; she left us for Northwestern) and Scott Gould (1989-1998; he left for the University of Maine). Dorothy Roberts's first article was published by the *Harvard Law Review* in 1991, setting a very high bar for the rest of the faculty. The amount and quality of scholarship produced by the faculty during this period matched that of the very best law schools in the nation.<sup>13</sup>

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12. Although still on our adjunct faculty, Ronald Chen now serves as the Public Advocate of the State of New Jersey and is a member of Governor Jon Corzine's Cabinet.

13. See ALFRED W. BLUMROSEN, *MODERN LAW: THE LAW TRANSMISSION SYSTEM AND EQUAL EMPLOYMENT OPPORTUNITY* (1993); NORMAN L. CANTOR, *LEGAL FRONTIERS OF DEATH AND DYING* (1987); NORMAN L. CANTOR, *ADVANCE DIRECTIVES AND THE PURSUIT OF DEATH WITH DIGNITY* (1993); GARY FRANCIONE, *ANIMALS, PROPERTY AND THE LAW* (1995); Cynthia Blum, *How the United States Should Tax Foreign Shareholders*, 7 VA. TAX REV. 583 (1988); Helen Garten, *A Political Analysis of Bank Failure Resolution*, 74 B.U. L. REV. 429 (1994); Helen Garten, *Regulatory Growing Pains: A Perspective on Bank Regulation in a Deregulatory Age*, 57 FORDHAM L. REV. 501 (1989); Wendy L. Gordon, *A Property Right in Self-Expression: Equity and Individualism in the Natural Law of Intellectual Property*, 102 YALE L.J. 1533 (1993); Wendy L. Gordon, *On Owning Information: Intellectual Property and the Restitutionary Impulse*, 78 VA. L. REV. 149 (1992); Wendy J. Gordon, *Toward a Jurisprudence of Benefits: The Norms of Copyright and the Problem of Private Censorship*, 57 U. CHI. L. REV. 1009 (1990); Wendy J. Gordon, *An Inquiry into the Merits of Copyright*, 41 STAN. L. REV. 1343 (1989); Alan Hyde, *Ownership, Contract, and Politics in the Protection of Employees at Risk*, 43 U. TORONTO L.J. 721 (1993); Alan Hyde, *Clyde Summers and the Idea of the Activist Scholar*, 138 U. PA. L. REV. 627 (1990); Jonathan M. Hyman, *Discovery and Invention: The NITA Method in the Contracts Classroom*, 66 NOTRE DAME L. REV. 759 (1991); Jonathan M. Hyman, *Trial Advocacy and Methods of Negotiation: Can Good Trial Advocates be Wise Negotiators?* 34 UCLA L. REV. 863 (1987); Charles H. Jones, Jr., *An Argument for Federal Protection Against Racially Motivated Crimes: 18 U.S.C. 241 and the 13th Amendment*, 21 HARV. C.R.-C.L. L. REV. 689 (1986); Howard Latin, *"Good" Warnings, Bad Products, and Cognitive Limitations*, 41 UCLA L. REV. 1193 (1994); Howard Latin, *Good Science, Bad Regulation, and Toxic Risk Assessment*, 5 YALE J. ON REG. 1478 (1988); Howard Latin, *Ideal Versus Real Regulatory Efficiency: Implementation of Uniform Standards and 'Fine-Tuning' Regulatory Reforms*, 37 STAN. L. REV. 1267 (1985); John Leubsdorf, *Pluralizing the Client-Lawyer Relationship*, 77 CORNELL L. REV. 825 (1992); John Leubsdorf, *Theories of Judging and Judge Disqualification*, 62 N.Y.U. L. REV. 237 (1987); John Leubsdorf, *Deconstructing the Constitution*, 40 STAN. L. REV. 181 (1987); Eric Neisser, *Charging for Free Speech: Insurance and User Fees in the Marketplace of Ideas*, 74 GEO. L.J. 257 (1985); John M. Payne, *Title VIII and Mount Laurel: Is Affordable Housing Fair Housing?*, 6 YALE L. & POL'Y REV. 361 (1988); James Gray Pope, *Some Possible Lessons for Canada of the United States' Experience with Major Constitutional Change*, 37 MCGILL L.J. 1 (1992); James Gray Pope, *Labor-Community Coalitions and Boycotts: The Old Labor Law, the New Unionism, and the Living Constitution*, 69 TEX. L. REV. 889 (1991); James Pope, *Republican Moments: The Role of Direct Popular Power in the American Constitutional Order*, 139 U. PA. L. REV. 287 (1990); James Gray Pope, *Labor and the Constitution: From Abolition to*

During this period, our clinical program grew, and Rutgers–Newark became known nationally as an innovator in clinical legal education. Our library staff and collection increased, and our library was not only the best law library in the state, but one of the finest in the tri-state area. For most of this period, we had five cutting-edge clinics. Nadine Taub’s Women’s Rights Law Clinic was nationally known. Among its cases was one that forced one of the Princeton University clubs to admit women as members. The Urban Legal Clinic was truly innovative because its goal was to take cases that students could see to completion in a single semester. It also offered the most individual help to those who could not afford to hire a lawyer.

Frank Askin’s Constitutional Litigation Clinic, which he founded in 1970, was also nationally known.<sup>14</sup> One of Askin’s cases, near and dear to our hearts, was *Delaware v. Prouse*,<sup>15</sup> holding that the Fourth Amendment to the U.S. Constitution forbids police from making random vehicle stops to check for driver’s license and registration.<sup>16</sup> Askin and Eric Neisser, also a faculty member in the Constitutional Litigation Clinic, put together a team of clinic students to write the brief for the U.S. Supreme Court.<sup>17</sup> Askin recounted in his memoirs that he was stopped by a New Jersey state trooper on a deserted country road about six months after *Prouse* was announced.<sup>18</sup> When the trooper discovered Askin’s line of work, he asked his opinion of *Prouse*.<sup>19</sup> Modesty, or good judgment perhaps, overwhelmed Askin and he did not disclose his role in the litigation.<sup>20</sup> But he did say he

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*Deindustrialization*, 65 TEX. L. REV. 1071 (1987); Louis S. Raveson, *Unmasking the Motives of Government Decisionmakers: A Subpoena for Your Thoughts?*, 63 N.C. L. REV. 879 (1985); Dorothy E. Roberts, *The Genetic Tie*, 62 U. CHI. L. REV. 209 (1995); Dorothy E. Roberts, *Irrationality and Sacrifice in the Welfare Reform Consensus*, 81 VA. L. REV. 2607 (1995); Dorothy E. Roberts, *Motherhood and Crime*, 79 IOWA L. REV. 95 (1993); Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991); Mark J. Roe, *Corporate Strategic Reaction to Mass Tort*, 72 VA. L. REV. 1 (1986); Mark J. Roe, *Bankruptcy and Mass Tort*, 84 COLUM. L. REV. 846 (1984); Mark J. Roe, *Mergers, Acquisitions, and Tort: A Comment on the Problem of Successor Corporation Liability*, 70 VA. L. REV. 1559 (1984); George C. Thomas III, *A Blameworthy Act Approach to the Double Jeopardy Same Offense Problem*, 83 CALIF. L. REV. 1027 (1995); George C. Thomas III, *Rethinking Guilt, Juries, and Jeopardy*, 91 MICH. L. REV. 1 (1992); George C. Thomas III, *The Poisoned Fruit of Pretrial Detention*, 61 N.Y.U. L. REV. 413 (1986); Alan Hyde, *Endangered Species*, 91 COLUM. L. REV. 456 (1991) (book review).

14. See ASKIN, *supra* note 7, at 43.

15. 440 U.S. 648 (1979).

16. *Id.* at 663.

17. See ASKIN, *supra* note 7, at 52.

18. *Id.* at 53.

19. *Id.*

20. *Id.*

didn't think that "it was such a bad decision."<sup>21</sup> The trooper said he ought to give him a ticket for saying that, but he didn't.<sup>22</sup>

The largest clinic during this period was the Environmental Law Clinic, run by Ed Lloyd. It employed a full-time scientist and two staff attorneys who worked alongside Lloyd to seek to bring environmental justice to a state that had more Superfund Toxic Waste sites than any other state in the nation. The newest clinic was one established by Author Francione. He had attracted private funding to start the Animal Rights Law Clinic, which he ran with attorney Anna E. Charlton, and which generated a significant amount of national and international attention for its work on the use and treatment of animals. Although the Clinic was involved in a number of high-visibility matters, of particular note was its representation of the human companions of Taro, a dog scheduled to be killed under New Jersey's law concerning dangerous dogs. Francione and Charlton succeeded in persuading Governor Christine Whitman to "pardon" Taro, and the publicity was nothing short of remarkable.<sup>23</sup>

The veterans of the first golden age were still mostly with us during the period of our study. From 1979 to 1987, Saul Mendlovitz was the Ira D. Wallach Professor of World Order Studies at Columbia University, teaching one semester each year at Columbia and, for most of that time, one semester for us. He was also on leave to the United Nations from 1986 to 1989, where he ran the World Order Models Project, one of the first global studies "think tanks." Its goal was world peace. When, years later, we would tease him about his lack of success, he would simply reply that big jobs required many years. Author Thomas joined the faculty in 1986 and had not met Mendlovitz during these three years, but he had heard him discussed in hushed tones by members of the senior faculty, something along the lines of "You don't want to cross Mendlovitz." At a faculty meeting in the fall of 1990, Dean Peter Simmons defended one of his decisions. A slightly-disheveled man with a voice of authority rose to ask why that answer was responsive to the question asked. Author Thomas said to himself, "Oh, *that* is Saul Mendlovitz."

Al Slocum, one of the architects of the Law School revolution in the 1960s, was larger than life as he sought to influence the faculty to make good on its commitments to equality and access. He was also a much-loved and much-feared teacher who made good on his belief that students came to class prepared. He had a rule that no student

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21. *Id.*

22. *Id.*

23. Governor Whitman had the power under state statutory law to remit forfeitures and she exercised this power to prevent the killing of Taro. *See* Exec. Order No. 7 (N.J. Jan. 28, 1994).

could come to class unprepared. One day in the late 1980s or early 1990s, he called on a student who said “pass.” Slocum told the student that he was not allowed to pass in a Slocum class. The student responded, with a touch of defiance, that he had to pass because he was unprepared. Slocum then reminded the student of his rule that students were not allowed to attend class unless they were prepared. “You knew this was my rule?” “Yes.” “You are present in class?” “Yes.” “Then you must be prepared. Let me tell you the facts of the case and then you can answer my question.” “No,” the student said. “I am not prepared.”

Slocum looked at the student for a few seconds. The silence in the classroom was thick. Finally, he said, “I won’t teach students who don’t follow the rules.” He closed his book and began to walk toward the door. “Class is dismissed. Today’s material will be on the exam but we will begin tomorrow with the next assignment.” By the time Slocum had reached the door, the classroom was buzzing. The offending student recanted. Slocum told him the facts of the case and then grilled him for the rest of the hour. Given that story, it was little wonder that we would see a few students in the hallway with their ears pressed to the door of Slocum’s class. They did not want to miss what was said but, unprepared, they were not willing to risk being called on in class.

Arthur Kinoy, who joined the law faculty in 1964, was a fiery proponent of the causes for which Rutgers Law became known. In 1966, he was physically removed from a hearing of the House Un-American Activities Committee. He was convicted of disorderly conduct, but the conviction was overturned by the U.S. Court of Appeals for the District of Columbia.<sup>24</sup> At Rutgers, he was one of the co-founders of the *Women’s Rights Law Reporter*, the first law journal devoted to women’s issues. The years we overlapped with Arthur were 1986 to 1992. These were, of course, the years that Ronald Reagan and George H. W. Bush were president. Every faculty member heard, on many occasions, of Arthur’s daily “constitutional crisis,” a remark he would deliver with gusto, sometimes raising his hands above his head. Author Thomas, as a first-year untenured faculty member, recalls Kinoy visiting his office the day after Attorney General Ed Meese issued a report asserting that Congress had the authority to overrule *Miranda v. Arizona*<sup>25</sup> and *Mapp v. Ohio*.<sup>26</sup> “It’s a true constitutional crisis,” he said. “And George, we have to do something. I want you to think about ways that we law professors can head this crisis off before the country is destroyed.”

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24. Kinoy v. District of Columbia, 400 F.2d 761 (D.C. Cir. 1968).

25. 384 U.S. 436 (1966).

26. 367 U.S. 643 (1961).

Thomas spent hours thinking about this problem, but Kinoy never revisited the issue. There was likely another crisis the next day. Author Francione was one of the leaders in the unfortunately unsuccessful effort to keep the University from forcing Kinoy's retirement because he had reached seventy, which was then permitted under the law.

Others from the "founding generation" include Allan Axelrod and Sid Posel. When the Law School was located in Ackerson Hall, Axelrod and Posel would serve tea to the colleagues who stopped by at four o'clock in the afternoon—tea time!!—when there was much discussion, planning, and at least a little arguing. Axelrod joined us from the University of Nebraska. Posel came from Stanford by way of a New York City practice. One of Posel's passions was bird watching, and he managed to persuade Pat Loughlin, a former prosecutor who was then a junior member of the law faculty, to join him on at least one bird-watching venture in Central Park. Loughlin was such a novice that Posel had to show him how to use binoculars.

At Axelrod's memorial service in 2008, it was generally agreed (with Mendlovitz filing a partial dissent) that he was perhaps the smartest faculty member in the history of the Rutgers Law School, though Peter Simmons's wife, Ruth, told a story illustrating that he was a lousy cook. He called to ask her how to cook artichokes. She told him to wrap them in Saran Wrap and steam them in a microwave for five or six minutes. Instead, he cooked them in a pressure cooker for thirty minutes and then called Ruth to report that the artichokes were the size and consistency of a nonagenarian's testicles.

We have already mentioned Frank Askin and Nadine Taub, who were members of the faculty who would remake Rutgers Law School in the late 1960s and early 1970s. Others included Annamay Sheppard, a gracious person, always smiling, who made the people's business her passion—in the clinics, in the classroom, and in her work outside the school. She was, for example, president of the American Civil Liberties Union of New Jersey from 1987 to 1991. Paul Tractenberg was a major force in the state, mostly due to his tireless work on behalf of schools in poor neighborhoods. Through his Education Law Center and his speaking to many groups, as well as arguing frequently before the New Jersey Supreme Court, Tractenberg managed to obtain millions of dollars in additional funding for poor school districts that are now known as "Abbott" districts.<sup>27</sup> David Haber, who came to us from Yale and the Broadway stage, was his irrepressible self. When the faculty voted on an issue,

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27. For the latest iteration, see *Abbott v. Burke*, 960 A.2d 360 (N.J. 2008) (holding that the "thorough and efficient" education clause in the state constitution requires equality in funding among school districts).

Haber would often rise to make an impassioned, almost angry, dissent. He sometimes dissented alone and when he did, he admonished the meeting secretary, "Let the record show my dissent!!" (After a few years, some of us came to believe that Haber's emotional outburst were at least in part theatrics.) Bob Carter was the "dean" of the faculty lounge, entertaining junior and senior faculty with tales ranging from his time as a reporter on a New Haven newspaper to contemporary accounts of colleagues, students, and lawyers he knew.

Al Blumrosen was for decades a leader on the faculty and in the civil rights community. Blumrosen was acting dean during the 1974 to 1975 academic year. During that year, he butted heads with Rutgers University President Ed Bloustein, who questioned the constitutionality of the Minority Student Program. Blumrosen staunchly defended the program, but he never informed the MSP students about the controversy because he believed that it would only serve to distract them from their studies. When the students eventually found out, they became angry with Blumrosen and demanded a meeting to discuss why he had not shared the matter with them. Blumrosen turned to his assistant dean for minority students, Wade Henderson, who had just graduated (and is now President of the Leadership Conference on Civil Rights), and asked if could calm the situation. As Blumrosen affectionately recounts the story, Henderson "threw [him] to the wolves," and Blumrosen had a tense, but ultimately successful meeting with the students.<sup>28</sup>

Blumrosen's illustrious career in civil rights began at Rutgers in 1963, when people of color picketed the building site of the (then) new Law School, claiming that the unions were excluding them from employment on grounds of race. Blumrosen investigated their claims, and he and then Dean Willard Heckel recommended to President Mason Gross that the University support the picketers. Over the strong objection of University Counsel, Gross agreed and the University filed a complaint against the unions with the New Jersey Division of Civil Rights. This incident ultimately lead to Blumrosen being appointed to the position of Director of Federal-State Relations for the newly formed Equal Employment Opportunity Commission (EEOC). His spouse, Ruth Blumrosen, went with Al and joined him at the EEOC. Ruth, by the way, went on to become an adjunct professor at Rutgers and was, in her own right, a giant of labor and employment law.

Al Blumrosen eventually became Chief of Conciliations for EEOC and he was responsible for the early and highly important

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28. Phone interview with Alfred Blumrosen, Thomas A. Cowan Professor Emeritus, Rutgers University School of Law–Newark, May 1, 2009.

EEOC actions, including the agreement by Newport News Shipyard to promote people of color to supervisory positions and to provide promotions to many non-supervisory employees of color. He was responsible for the guidelines on disparate impact analysis that the Supreme Court ultimately upheld in *Griggs v. Duke Power Company*.<sup>29</sup>

Alex Brooks was one of the first-generation faculty members committed to making Rutgers Law into a “public Yale.” He despaired at some of the decisions that we made in the period after the Newark riots—none of us will forget his “Rutgers is now a third-rate law school” speech. Yet, he never gave up trying to improve the stature of the school. Instrumental in drafting the New Jersey Rules of Evidence, he was a prominent scholar in law and medicine, as well as evidence. Brooks had a rolodex that contained hundreds of names and phone numbers of scholars, lawyers, and political leaders. He called those in his rolodex regularly to remind them that Rutgers Law was still a place where academic excellence counted.

In the 1980s, Brooks and Loughlin co-taught a seminar in law and psychiatry. Drawing on his many contacts, Brooks invited several psychiatrists to contribute to discussions on insanity, mental illness, and the predictive power of diagnoses of future dangerousness. The materials for the course consisted primarily of Brooks’s book, *Law, Psychiatry and the Mental Health System*, published by Little Brown & Co. in 1974, which received the Guttmacher Award from the American Psychiatric Association as the outstanding contribution to the literature of forensic psychiatry in 1975.<sup>30</sup>

This course, and Brooks’s award-winning book, were early examples of the interdisciplinary movement in scholarship and teaching known as the “Law and” movement. Howard Latin taught a Law and Economics course, Paul Tractenberg taught a Law and Education course, and Saul Mendlovitz taught Law and Literature, later renamed Law and Humanities to accommodate other forms of art, including an excellent presentation of the paintings of Henri Matisse by Marshall Izen. Over the years, Mendlovitz attracted three co-teachers: J. Allen Smith, David Haber, and Author Thomas. Part of the legend of Rutgers Law is that J. Allen Smith could, while intoxicated, recite from memory pages of *Finnegans Wake*,<sup>31</sup> but we lack a videotape.

We were lucky to still have with us members of the first wave of

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29. 410 U.S. 424 (1971).

30. American Psychiatric Association, Guttmacher Award, <http://www.psych.org/Departments/EDU/Library/guttmacher.aspx> (last visited May 13, 2009).

31. JAMES JOYCE, *FINNEGANS WAKE* (1939).

faculty to join the school near the end of the revolutions wrought by the Newark riots. James C. N. Paul was dean from 1970 to 1973, when a director of admissions matriculated a first-year class so large that, in one year, we outgrew the new building that the University had just built for us. The explosion in the size of our class led us in the mid-1970s to 15 Washington Street. (We will have more to say about the quaint structure at 15 Washington Street in a moment.)

Norman Cantor, John Payne, Charles Davenport, Charles Jones, Jonathan Hyman (who came to us from Northwestern University Law School), Eric Neisser, Howard Latin, Alan Hyde, and Diana Sclar joined the faculty in the 1970s, and were thus a part of the wind being at our backs in the 1980s and 1990s. Hyde and Latin published cutting edge articles in jurisprudence, environmental law, and tort law. Neisser worked tirelessly in the sphere of public interest, mostly through our clinics. Payne and Sclar alternated as associate dean of academic affairs for much of the period. Payne was instrumental, largely through our clinics, in the Mount Laurel litigation that forced municipalities to offer affordable housing. Davenport published massive tomes on tax law and taught thousands of tax students. Jones, who had worked closely with Dr. Martin Luther King Jr., was a popular teacher and a political force among the faculty.

Cantor was young and foolish enough in 1970 to agree to serve as an untenured associate dean of academic affairs, but he quickly became wise and gave up the job in 1972. By the 1980s, his passions were teaching and scholarship. His work on “death and dying” influenced the N.J. Supreme Court in the 1985 case of *In re Conroy*.<sup>32</sup> He also was instrumental in arguing *Karcher v. May*,<sup>33</sup> a case holding unconstitutional the “minute of silence” in New Jersey public schools. Cantor argued the case for appellees in the U.S. Supreme Court, assisted by Eric Neisser.<sup>34</sup>

Phil Shuchman joined us from the University of Connecticut in 1981. He had multiple talents, publishing in the fields of bankruptcy and commercial law, as well as civil procedure and jurisprudence. He was also the resident expert in statistics. His empirical work “has been cited in the opinions of leading judges like [Richard] Posner and had a considerable influence.”<sup>35</sup> One of our colleagues now teaching at Marquette University Law School, Keith Sharfman, “had encountered and was familiar with” Shuchman’s empirical work “prior to joining the Rutgers faculty, a fact that Shuchman was glad

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32. 486 A.2d 1209 (N.J. 1985) (citing two of Cantor’s articles a total of six times).

33. 484 U.S. 72 (1987).

34. *Id.* at 73.

35. E-mail from Keith Sharfman to George Thomas (Jan. 30, 2009) (on file with Rutgers Law Review).

to hear about from me at his retirement gathering.”<sup>36</sup> Upon retirement, Shuchman endowed a scholar’s fund to assist faculty engaging in empirical research. When he died, he was lauded as a scholar who “spent a lifetime teaching and writing and testifying for decent bankruptcy and consumer credit laws,” and someone who “was a champion of the underdog—the average debtor in bankruptcy.”<sup>37</sup> Author Francione, who had a close friendship with Shuchman, spoke at his funeral service.

Peter Simmons was dean during most of the period 1984-1995. One of his goals was to move Rutgers-Newark into the top ten of state university law schools. To that end, he encouraged faculty to publish widely, attend conferences, and give papers. At one point, Dean Simmons circulated a “ballot” and asked us to rate the top state law schools. While the law faculty was, of course, a biased group, it provided an interesting exercise nonetheless. Our recollection is that the Rutgers Law faculty put Rutgers Law School at about tenth or eleventh. There was much anguish about number one, which (as we recall it) was the University of Michigan. Dean Simmons, being a Boalt Hall graduate, argued that Boalt Hall was really number one. That we were even entertaining the idea of being on a par with, for example, the law schools of Ohio State University, University of Illinois, University of North Carolina, and University of Iowa shows the positive view we had at the time of ourselves. Every year we would be better than the year before. It seemed almost certain that, in time, we would be every bit as good as the “Big Ten” state law schools.

And we had a quirky charm that led, for example, Author Francione to resign his tenure at the University of Pennsylvania Law School to join us—at first as a visiting professor. During one of his first days in the building, he went to the faculty lounge to check his mail. There was a heated discussion going on, centered around whether posters proclaiming “Heterosexual Awareness Day” and featuring a movie still of John Wayne hitting gay actor Montgomery Cliff, which had been displayed throughout the building by the Rutgers Federalist Society, constituted protected speech or unprotected “fighting words.”<sup>38</sup> The then dean of students, Lew Kerman, had taken down the posters, and a large contingent of the faculty supported him. A controversy raged in which the faculty was thoroughly embroiled in debate and discussion, but the free speech argument ultimately prevailed. James Pope played an instrumental role. As he recalled the events, “I can see myself defending free

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36. *Id.*

37. Neil Fogerty, Consumers League of New Jersey, Tribute to Professor Philip Shuchman, [http://www.clnj.org/shuchman\\_tribute.htm](http://www.clnj.org/shuchman_tribute.htm) (last visited Apr. 3, 2009).

38. *See* Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

speech with such firmness and conviction that Lew had no choice but to put the posters back up.”<sup>39</sup> Although Francione’s sentiments were with those who supported the removal of the posters, the debate, discussion, and ultimate victory of free speech endeared the Law School to him.

Bill Bratton resigned his tenure at Benjamin N. Cardozo School of Law to join our faculty. Bratton was a motorcycle enthusiast. When he visited for a semester at Stanford, he drove his motorcycle from New York City to Palo Alto. He spent a summer touring Sicily on his Harley-Davidson, which he had transported on the airplane with him. Carlos Garcia left a lucrative practice in Puerto Rico to join us in the 1980s. One of the most engaging, brilliant colleagues and teachers to grace our faculty, Garcia loved to entertain colleagues in the faculty lounge with stories on many topics, but that often included discussion of his favorite operas. Whenever the topic turned to law and something contestable was said, he would poke his finger at the speaker and say, “Ah, ah, ah, but look at what you have said.”

Author Thomas’s first teaching experience at Rutgers was Trusts and Estates. Fresh from practice, he stressed the gift and estate tax law. The very large class included two or three CPAs who pushed the tax discussion into pretty technical areas. Thomas did not want to give an exam that was too easy and erred on the side of devastatingly difficult. Years later, Garcia explained that “when you open the door of the room where Thomas’s first exam was given, you can still hear the screams.” Thomas curved the grades. Sadly, Garcia later left us to return to his practice.

Alan Schwartz joined us from Ohio State University in 1972 and was instrumental in recruiting Peter Simmons to the deanship in 1975. A chain-smoking mercurial character, he wore the same herring bone gray jacket the whole time we knew him. He kept chalk in his jacket pocket so he would always have it with him when he taught. He hated to be interrupted in class when he was in the middle of explaining something about business or finance. One day, a student raised his hand and Schwartz impatiently waved him off, “Don’t interrupt me.” The student cried out, “But professor, you’re on fire!” Sure enough, he had put his lit cigarette into his jacket pocket, thinking that it was chalk.

That Schwartz smoked in class—probably against the rules even then—shows his rebellious nature. An even clearer example occurred in a grocery store in Montclair.<sup>40</sup> Not only did he wear the same

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39. E-mail from James Pope to George Thomas (Feb. 10, 2009) (on file with Rutgers Law Review).

40. The Montclair story is drawn from an e-mail from Peter Simmons to George Thomas, Feb. 10, 2009, and one from Norman Cantor to George Thomas, Feb. 10, 2009, both on file with the *Rutgers Law Review*.

jacket, he also appeared as if he never combed his hair or shaved in the past few days. This disheveled man picked up a pack of cigarettes and, being too impatient to wait in line, put a dollar close to the cash register and walked out the door. The clerk, not seeing the dollar, called the store manager, who accosted Schwartz in the parking lot. He explained what had happened, they returned to the store, and the clerk told the manager that she had found the dollar. Schwartz demanded an apology from the manager, who refused to apologize. As Schwartz left the store, a police officer arrived and engaged him in conversation about the incident. At some point, the officer asked Schwartz for identification. Schwartz refused, saying that he was a professor of constitutional law and, therefore, knew that the officer had no right to compel him to identify himself. The conversation turned angry and the officer arrested Schwartz as a disorderly person.

In the police car on the way to the station, the officer asked Schwartz if he was a resident of Montclair. When he answered in the affirmative, the officer said he didn't want to make trouble for Schwartz, and if he would just show his driver's license, to prove that he was a Montclair resident, he would release him and forget the whole matter. Schwartz refused, standing on his constitutional rights.

At the trial before a municipal judge, Cantor was Schwartz's lawyer and Peter Simmons testified as a character witness. But Cantor's carefully planned constitutional defense evaporated when the police officer changed his theory of the case from Schwartz's refusal to identify himself to the commotion he caused in front of the store. When the case was submitted to the judge, he said, "Mr. Schwartz, you are an educated man. You know better than to divert the officer from his responsibilities to the community." He found Schwartz guilty and fined him \$50. According to Cantor, "Schwartz did have the good sense to end my services at that point and pay the \$50 rather than have me conduct a *de novo* trial at the county court level." According to character witness Simmons, Schwartz said after the trial, "I never thought the cop would lie!" The case was known thereafter as the "Case of the Montclair One."

As nineteenth century sailors knew, winds can change suddenly. The budget difficulties of 1989 to 1991 caused a pretty stiff headwind. By 1992, the faculty had shrunk from forty-three to only thirty-four. The Law School salaries, once third in the New York City metropolitan region, had fallen to the median or seventh out of thirteen schools.<sup>41</sup> The funding for the Law Library, once one of the

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41. Memorandum from Diana Sclar to the Faculty of Rutgers Univ. Sch. of Law 5

very best law libraries in the Northeast, had been cut drastically.<sup>42</sup> According to a 1993 response to the 1992 Reaccreditation Report of the American Bar Association and the Association of American Law Schools (1992 Reaccreditation Report), law school morale was in a crisis.<sup>43</sup>

To fully appreciate the budgetary and morale headwinds requires a bit of history about the two Rutgers Law Schools. Reacting to political pressure from South Jersey politicians, Rutgers University in 1950 took over a private law school in Camden, South Jersey Law School, and made it a satellite of the Newark Law School.<sup>44</sup> The dean of Rutgers–Newark was also the dean of Rutgers–Camden. In the late 1950s, the University wanted to close the very small Camden Law School—it graduated only about forty students a year—and consolidate it with the Newark Law School.<sup>45</sup> Again, politics intervened. The state legislature passed an appropriation for the Camden Law School.<sup>46</sup> The University accepted the money, and Camden Law continued to be a branch of the Newark Law School. In the late 1960s, a large new law building was constructed for Camden Law, the University accorded it independent status, and Russell Fairbanks became its first dean.<sup>47</sup>

Given its modest beginning, the Camden Law School, for many years, was smaller and less well-financed than the Newark Law School. The Newark faculty members had always assumed that we were the “flagship” Rutgers Law School and that Camden was the “other” Rutgers Law School. During the budget crisis of 1989 to 1992, we were frustrated by the steady erosion in our salaries, the loss of faculty positions, the inadequate funding of the library, and the lack of money to support research. Reacting to that frustration, the faculty sought to examine the “books” to see where money was being spent. Unfortunately, Rutgers University in those days did no financial planning, and essentially, just gave each unit the amount of money it had operated on the year before, with a dollop more for inflation. But one set of papers that Dean Simmons gave us indicated that the Camden Law School had a bigger budget than we did. In a faculty meeting at which the budget was discussed, Al Blumrosen

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(Mar. 4, 1993) (on file with Rutgers Law Review) (referencing the attached response to the Reaccreditation Report of the Association of American Law Schools and the American Bar Association).

42. *Id.* at 6.

43. *Id.* at 7.

44. CHARLES EDWARD CONSALUS, THE HISTORY OF LEGAL EDUCATION IN NEW JERSEY 308 (1979).

45. *Id.*

46. *Id.*

47. E-mails from Paul Axel-Lute to George Thomas (Feb. 9-10, 2009) (on file with Rutgers Law Review).

rose to ask a penetrating question of Dean Simmons: “You mean Camden Law gets more state money than Newark Law?” “Yes,” answered Dean Simmons. It was an eye-opening and somewhat humbling moment. We were no longer *the* Rutgers Law School. We were *one of the* Rutgers law schools. One could feel the wind at our backs begin to abate.

Another problem we faced during the 1990s was the fifteen-story building at 15 Washington Street that we called home. We told the world that it was the S. I. Newhouse Center for Law and Justice, but it was really an aging structure that was built to house an insurance company. Isolated from the main campus, we had a guard in the front lobby, with visual and audio access to the back door. To enter the back door, one had to buzz the guard, who would open the door if he was satisfied with what he saw and heard. Author Thomas’s first trip to the Law School was in the company of Charles Davenport, who buzzed the guard while Thomas stood behind him. The guard said something incomprehensible over the intercom. Davenport asked him to repeat. He did so but it was still not understandable. Davenport then said, “This is Charles Davenport. I’m on the faculty.” The guard responded, “I know *you*. It’s the guy behind you I’m worried about.” That was only the second time in his life, to his knowledge, that Thomas had been taken for a criminal. (The first one is funnier, but too long and completely unrelated to the Law School. Send him an e-mail if you are curious. He loves to tell stories.)

On another occasion, Author Francione was standing in the lobby waiting for one of the no-show elevators. A man entered the building and was stopped by the guard, who demanded identification. The man replied, “But I am Ed Bloustein, I am the President of the University!” The guard smiled and said, “You say you are but can you show me something that says that?” For once, the failure of the elevators to appear had a good result—Francione, still standing in the lobby, walked over to the desk and assured the guard that the man seeking entry into the building was, indeed, Ed Bloustein, and that Bloustein was, indeed, the President of Rutgers University.

There was also a guard in a tower in the parking lot behind the building. The idea was to deter would-be car thieves. The guard was not armed and was not authorized to make arrests, which Pat Loughlin learned the hard way one day. Loughlin was a junior member of the faculty (he left us to go back to practice in the early 1990s). It was a bitterly cold day and Loughlin saw a young, pregnant woman standing next to the exit ramp on I-280 that was close to the Law School. Loughlin took pity on her and told her that he would take her to the Law School (though that was only a few blocks so he did not have *that* much pity), but he would take her no further. He figured she would benefit from the warmth of the car for

a little while.

When he pulled into the parking lot, the young woman insisted that he continue to her destination. He explained that he had agreed to take her only to the Law School, but she wasn't impressed by his contract analysis. After a brief argument, she said that if he didn't take her where she wanted to go, she would begin screaming "rape!" Loughlin, a former prosecutor, mulled this over for a moment and then decided to make a break for the guard tower. He figured that if he got far enough away from the car before she yelled "rape," it would make her case more difficult to prove. It was important, to make this theory work, that he get the guard's attention.

Loughlin opened the car door, lunged out, and began running toward the guard tower while yelling and waving his arms. He ran up the steps to the tower. The guard, a gentle soul, looked at him incredulously. "What can I do for you?" he asked tentatively. Loughlin explained what had happened. "You really shouldn't have let her in your car," the guard said.

"I know that," Loughlin said, "but the issue is what do we do now?"

"You *really* shouldn't have let her into your car."

"Can you help somehow?"

"I have no arrest power. You *really* shouldn't have let her into your car."

"What should I do? Can you call the campus police?"

Before the guard could answer, Loughlin saw that the woman was climbing out of his car with his car radio in her hand.

"Look! She's stealing my radio!"

"You *really* shouldn't have let her into your car."

Loughlin ran down the tower steps, but the young woman was already outside the fence. He gave chase. When she realized that he was gaining on her, she threw the radio to the sidewalk, where it broke into pieces. Loughlin scraped up the pieces and returned to the guard tower. He showed the pieces to the guard. "Look what she did to my radio."

And you already know what the guard said in response. Loughlin now defends white collar criminal defendants, but not (as far as we know) radio thieves.

On another occasion, clinical attorney Anna Charlton was walking across the parking lot, having just come from the train station. A young man ran up to her, knocked her down, grabbed her bag containing her wallet and other items, and ran across the lot right past the guard's station. Charlton got up and went to the guard tower to ask why he did not stop the thief. His response was: "I cannot arrest anyone and I am instructed not to interfere in any way other than to call campus police." At least he did that.

The building itself had its charm—"faded elegance" is how Author Thomas often described it. The marble and brass front entrance lobby was impressive indeed, and the marble throughout the building spoke of expensive construction. But it had never been successfully transformed from an insurance building to a building for classroom instruction. We had never, for example, figured out what to do with the Great Hall that occupied almost all of the first two floors of the original building. The elevators famously were out of order for days. The "tower" part of the building was fifteen stories tall, which made out-of-work elevators more than a minor annoyance. When John Leubsdorf was interviewed at the Law School, he saw Dean Simmons in the hallway pleading with workmen to please make the elevators operational.

Author Francione seems to have an extensive relationship with our elevators. He once got stuck in one of them with a federal judge (he cannot remember which one) for thirty minutes, which, given that the judge was in the building to give a lecture, resulted in the lecture being late. Once, Francione was in the lobby and heard a faint voice coming from the shaft of one of the elevators. Rosie Correia, one of our wonderful secretarial assistants, was stuck between floors. She had been in the elevator for almost an hour on a day in which the temperature had exceeded ninety degrees. Francione called campus police and, after a not insignificant further period of time, Rosie escaped being baked to death. There was another set of the elevators in the back part of the building, and those were often out of order as well. Francione and Charlton were once trapped between floors in one of the back elevators and the elevator door opened. Physical Plant was called and the two had to crawl through the open space and jump down. They were assured that the elevator would not restart and cut them in half during this process, but Francione made it clear to Physical Plant that the legal liability for the two being cut in half would be substantial.

The plumbing and electrical wiring were decaying. We were often prevented from entering parts of the building because asbestos removal was taking place. When the building was wired for the Internet, it was done on the cheap. We often saw Physical Plant people looking into closets filled with wiring. One day, Author Thomas saw a man in a business suit, accompanied by Physical Plant employees, standing in front of the cabinet. The man in the suit had a maze of wires in each hand and with an incredulous look on his face said, "Look at that wiring. Would you look at *that* wiring!"

The 1992 Reaccreditation Report found that the "entire building is drab, poorly maintained, inadequately lighted, and inefficiently laid out. The general appearance is depressing. Heating and air

conditioning are unbalanced and unreliable.”<sup>48</sup> The elevators, “of critical importance in an office-tower law school, break down frequently. Doors sometimes open up to vacant shafts. One student . . . had fallen out of the elevator, sustaining serious physical damage. The building shows evidence of massive lack of short term and long term maintenance.”<sup>49</sup> The site team found the Law School’s “demoralizing appearance” to be “striking in light of the significant amount of new building and remodeling that has gone on in most U.S. law schools. . . .”<sup>50</sup> It concluded, “It is difficult to adequately describe the deficiencies in the physical space. The problems are . . . pervasive.”<sup>51</sup>

When Peter Simmons announced in 1991 that he would be returning to the faculty in 1993, the University conducted a national search for a new dean and chose Roger Abrams, dean of Nova University Law School. One of Dean Abrams’s accomplishments at Nova was raising money for a new law building. He arrived with a burst of energy in the fall of 1993, putting a sunny, optimistic stamp on our ambitions to improve the reputation and quality of the school. Indeed, in 1994, the first year that the U.S. News & World Report ranked law schools beyond the top twenty-five, Rutgers Law-Newark ranked forty-seventh and the next year improved to forty-first.<sup>52</sup> Despite the budgetary woes and loss of faculty positions and funding for library and research that we had experienced, it began to look like the headwind could be converted to a wind at our backs.

A critical part of changing the direction of the wind was a new, cutting-edge law building. Dean Abrams, never one to avoid a challenge, decided to take aggressive action to persuade the State and the University that we needed a new building. Late in 1993, he set up a meeting at the Law School that included New Jersey Senate President Donald DiFrancesco, Rutgers University President Francis Lawrence, and Newark Provost Norman Samuels. Dean Abrams took Senator DiFrancesco up the back staircase on purpose because it showed the old building at its worst, paint peeling off the walls and a fetid odor hanging in the air. The meeting was in the Talbott Room at the back of the library. The curtains were so thin you could see through them and the wallpaper was literally falling from the wall.

Provost Samuels spoke about how important a new building

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48. Memorandum from Diana Sclar to the Faculty of Rutgers Univ. Sch. of Law, *supra* note 41, at 6.

49. *Id.*

50. *Id.*

51. *Id.* at 7.

52. *America’s Best Graduate Schools*, U.S. NEWS & WORLD REPORT, Mar. 20, 1995, at 84; *America’s Best Graduate Schools*, U.S. NEWS & WORLD REPORT, Mar. 21, 1994, at 72-74.

would be for dealing with the ABA, but Senator DiFrancesco seemed uninterested, and President Lawrence had yet to speak a single word. Then Dean Abrams used what he would later call his “trump card.” Knowing that Senator DiFrancesco was a graduate of Seton Hall Law School, which had recently built a beautiful new building, Dean Abrams explained that the State’s law school in Newark should have at least as good a building as his law school. As Dean Abrams later recalled,

DiFrancesco turned to me and said, “Roger, how much do you need?” I responded: “forty million.” He turned to Lawrence and said: “Fran, I’ll do half if you do half.” Dr. Lawrence did not want to spend a penny on the law school, but was cornered. He agreed. Down in Trenton, [DiFrancesco] scribbled on the Higher Education bill—“add \$20 million for new law school building in Newark.” It took Dr. Lawrence six months to fulfill his promise, but that was how the basic new building was funded.<sup>53</sup>

The *New York Times* reported in October 1995 that the Board of Governors had

resolved to go ahead with plans to build a new \$49 million law school building next to the university’s downtown campus in Newark. The new building is needed because it would cost too much to improve and maintain the existing S. I. Newhouse Center for Law and Justice, university officials said on Friday.<sup>54</sup>

The *Times* reported that, true to Senator DiFrancesco’s word, the State had “allocated \$20 million of the new building’s cost, and the rest will come from a Rutgers bond issue and private donations.”<sup>55</sup>

Dean Abrams raised about five million from donors. Throughout the planning process, the University officials and the architects would periodically perform what was called “value engineering,” that is, cutting from the plans to stay within budget. At one point, the University officials suggested cutting the staircase and atrium, but Dean Abrams refused. He said later that he considered the staircase and atrium to be “the heart of the project.”

Because we have to stop the history at some point, we choose to stop with the Board of Governors’s authorization of what turned out to be a modern, beautiful law building. Eric Neisser was acting dean from 1998 to 1999. We attracted Stuart Deutsch to leave Chicago-Kent and become our dean in 1999. We continued to hire excellent teachers and scholars and our clinical operations expanded in the late 1990s. But we leave that period for other historians.

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53. E-mail from Roger Abrams to George Thomas (Jan. 11, 2009) (on file with Rutgers Law Review).

54. Terry Pristin, *New Jersey Daily Briefing; New Home for Law School*, N.Y. TIMES, Oct. 9, 1995, at B1.

55. *Id.*

