Thomas L. Shaffer, Legal Ethics, and St. Mary’s University

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Recommended Citation
Vincent R. Johnson, Thomas L. Shaffer, Legal Ethics, and St. Mary’s University, 10 St. Mary’s Journal on Legal Malpractice & Ethics xxviii (2020).
Available at: https://commons.stmarytx.edu/lmej/vol10/iss1/3

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TRIBUTE

Vincent R. Johnson*

Thomas L. Shaffer, Legal Ethics, and St. Mary’s University

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I. ONE OF THE GIANTS

As a law professor and scholar, Thomas L. Shaffer (April 4, 1934 to February 26, 2019) was one of the giants in the field of legal ethics as it emerged in the last quarter of the twentieth century. Along with other great law teachers who have recently passed—including Monroe Freedman, Geoffrey Hazard, and Ronald Rotunda—Shaffer molded the ideas about attorney professional responsibility that were shaped anew in the wake of

5. See Thomas D. Morgan, In Memoriam: Ronald D. Rotunda, BUS. L. TODAY (Apr. 20, 2018), https://businesslawtoday.org/2018/04/memoriam-ronald-d-rotunda/ [https://perma.cc/4C8K-6QEW] (“Ron Rotunda . . . entered the academy at a moment when effective teaching and serious research about legal ethics were in short supply. Ron recognized the need for new materials and brought his seemingly endless energy to the job of producing them.”).
Justice Tom C. Clark’s American Bar Association report on the “scandalous” deficiencies in lawyer discipline\(^7\) (1970) and the Watergate Crisis\(^8\) that tarred President Richard M. Nixon\(^9\) and other prominent lawyers with the stigma of criminal and ethical misdeeds (1972–1974).\(^10\)

Throughout his career, Shaffer taught law mainly at the University of Notre Dame and Washington and Lee University.\(^11\) He also served as a visiting professor at several other law schools, including UCLA, the University of Virginia, the University of Maine, and Boston College.\(^12\) Shaffer never taught at St. Mary’s University, but he did have ties to both the law school and the university.

II. TIES TO ST. MARY’S UNIVERSITY

A. Study Downtown

Improbably, in the spring of 1955,\(^13\) Shaffer took a course at St. Mary’s when the law school, then less than thirty years old and little known outside of Texas, was located in downtown San Antonio.\(^14\) It was housed in the

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\(^7\). See Vincent R. Johnson, Justice Tom C. Clark’s Legacy in the Field of Legal Ethics, 29 J. LEGAL PROF. 33, 35 (2005) ("The [Clark Committee] Report was the starting point in a revolution which, over ensuing decades, has wholly reshaped the field of legal ethics."); id. at 39 ("the Report received widespread attention, in part because its use of the word “scandalous” attracted the scrutiny of the media").

\(^8\). See Vincent R. Johnson, Causation and "Legal Certainty" in Legal Malpractice Law, 8 ST. MARY’S J. LEGAL MAL & ETHICS 374, 404 (2018) (noting "the embarrassing involvement of many lawyers in the Watergate Scandal").

\(^9\). See generally BOB WOODWARD & CARL BERNSTEIN, THE FINAL DAYS (1976) (listing varieties of criminal conduct for which Nixon "had to account").

\(^10\). See Glenn M. Grossman, Watergate at 40, 47 MD. B.J. 54 (Nov./Dec. 2014) ("The Watergate cast of characters included a score or more of lawyers. Not only did the scandal deepen the distrust of government, . . . the institutional reputation of lawyers was gravely damaged"); Kathleen Clark, Legacy of Watergate for Legal Ethics Instruction, 51 HASTINGS L.J. 673, 673 (2000) (quoting former White House counsel John Dean as stating, "[H]ow in God’s name could so many lawyers get involved in something like this?").

\(^11\). See Thomas Lindsay Shaffer, supra note 1.

\(^12\). See Thomas Lindsay Shaffer, supra note 1.

\(^13\). Nancy Shaffer pinned the time period down to fall of 1954 or spring of 1955. Interview with Nancy Shaffer, Spouse of Thomas Shaffer, in Niles, Michigan (Apr. 11, 2019). Shaffer’s Application for Admission to St. Mary’s, dated January 24, 1955, suggests that Shaffer’s matriculation occurred in spring 1955. See infra note 18.

\(^14\). The law school was then very small. In 1955, there were only twenty-nine students in the graduating class. See EARNEST A. RABA, ST. MARY’S UNIVERSITY SCHOOL OF LAW: A PERSONAL HISTORY (unnumbered page) (1981) (listing the members of the class of 1955).
Society of Mary’s historic building at 112 College Street,\(^{15}\) on the banks of the San Antonio River. The accommodations were far from ideal. The facilities were cold in winter, hot in summer, poorly lighted, and infested with bats that swooped down on students trying to enter the lavatories.\(^ {16}\)

At the time of his enrollment, Shaffer was stationed in San Antonio while serving in the Air Force.\(^ {17}\) His application for admission\(^ {18}\) to St. Mary’s, dated January 24, 1955, shows that Shaffer, then twenty, applied for admission as a Sophomore in the Department of Arts (rather than the Departments of Law or Pre-Law).\(^ {19}\)

The application disclosed that Shaffer had attended Fruita High School, in Fruita, Colorado, between 1948 and 1952. It said he had also attended two colleges: Holy Cross College, Canon City, Colorado in 1952–1953\(^ {20}\) and Trinity University in San Antonio, Texas, in 1954–1955—the same academic year for which he was seeking admission to St. Mary’s.

Specifically, Shaffer was seeking “[e]ntrance complete as [a] regular student for credit.” There was a question on the application form which asked where he planned to study. Shaffer was given three choices: “x. Woodlawn,” the main university campus about five miles from downtown, “y. Downtown,” presumably meaning somewhere in downtown San Antonio, or “z. Law School,” which for many years had been located at 112 College Street, downtown.\(^ {21}\) Shaffer chose “y. Downtown.”\(^ {22}\)

If Shaffer carried through on the plans reflected in his hand-completed application, it seems clear that he was a student in the university’s undergraduate program, rather than in the law school. Today, there are no surviving records at St. Mary’s University related to Shaffer’s having been a student, other than his completed application. However, there is no doubt

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\(^{15}\) See Charles E. Cantú, An Oral History of St. Mary’s University School of Law (1961–2018), 50 St. Mary’s L.J. 309, 319 (2019) (“The building was old and the ceilings were high. It was very, very cold in the wintertime and somewhat warm in the summertime.”).

\(^{16}\) See Cantú, supra note 15, at 319 (“The men’s room was on the second or third floor as I recall, and it was not unusual for bats to swoop down on us as we went in.”).

\(^{17}\) See MEMOIRS, supra note 1, at 113–14 (discussing Lackland A.F.B. and Kelly A.F.B.).

\(^{18}\) See St. Mary’s University of San Antonio, San Antonio, Texas: Information Form and Application for Admission, completed by Thomas L. Shaffer, Jan. 24, 1955 (on file with author) [hereinafter “Application for Admission”].

\(^{19}\) See Application for Admission, supra note 18 (other options included the Departments of Science, Business, Music, Pre-Dentistry, Pre-Engineering, and Pre-Medicine).

\(^{20}\) See Application for Admission, supra note 18; MEMOIRS, supra note 1, at 76 (“I graduated with Fruita Union High School in 1952; thence to my year with the monks”).

\(^{21}\) See Application for Admission, supra note 18.

\(^{22}\) See Application for Admission, supra note 18.
that he matriculated because, in a talk to St. Mary’s law students in 1983
(mainly students from my Torts classes), he reminisced fondly about his
days as a student at St. Mary’s. Nancy Shaffer, Tom’s surviving wife,
remembers Tom’s enrollment and has no doubt that Tom successfully
completed whatever course he took at St. Mary’s.

In a letter to me after I had joined the St. Mary’s law faculty almost three
decades after his time as a student, Shaffer described St. Mary’s during the
1950s as a “sleepy place.” That was probably a fair assessment. During
that era—the early years of Ernest A. Raba’s record thirty-two-year
deanship—the emphasis at the law school was on teaching, not on
research, publication, or intellectual innovation. The emphasis in the
university’s undergraduate program might not have been much different.

However, Shaffer might have had a different and more favorable first
impression if he had attended the law school at St. Mary’s just a year earlier
when Carlos Cadena, one of the first Hispanic law instructors in the
country, was teaching there. Cadena went on to a brilliant career as a
professor, civil rights litigator, and jurist.

If Shaffer had been enrolled at the law school, or if students in the Arts
Department mingled with law students, Shaffer may have met Charles L.
Smith ’55, who would later become the first St. Mary’s law graduate elected
to be president of the State Bar of Texas, or Hattie Elam Briscoe ’56, the
“[f]irst Black woman to graduate from St. Mary’s University School of Law,

23. The letter seems not to have survived, but I remember clearly that it gently described St.
Mary’s as a “sleepy place” in the 1950s, and I occasionally mentioned that to my faculty colleagues. My
best recollection is that I received the letter from Shaffer sometime between when I accepted a
position on the faculty in February 1982, and when Tom received his honorary doctorate from St.
Mary’s in the fall of 1983.
24. See RABA, supra note 14 (discussing the deans of the St. Mary’s University School of Law).
25. See Cantú, supra note 15, at 347 (St. Mary’s had “a teaching faculty. That is what Ernie Raba
focused on, teaching in the classroom.”).
26. “Carlos C. Cadena . . . was a professor at St. Mary’s University School of Law from 1952–
27. See Cantú, supra note 15, at 315 (discussing Cadena’s position on the faculty).
28. See Cantú, supra note 13, at 321 (Carlos Cadena’s reputation as a teacher at St. Mary’s “was
societies/cadena/ [https://perma.cc/XF88-F8J7] (“Carlos Cadena (1917–2001) was the only
Mexican-American in his class when he received his LL.B. summa cum laude from the University of
Texas School of Law in 1940, after serving as an editor of the Texas Law Review.”).
29. See Smith Takes Office as State Bar President, 48 TEX. B.J. 677, 677 (1985) (announcing Charles
Smith as the 105th president of the State Bar of Texas).

31. See Newton, supra note 2.

32. See MEMOIRS, supra note 1, at 158–59 (explaining that Shaffer received Notre Dame Law School’s “most generous” scholarship despite his “bizarre college record” which was, “at least unusual.”). For the last half of my three years at Notre Dame Law School, I held the same scholarship, which covered full tuition and fees.

33. See Thomas Lindsay Shaffer, supra note 1.

34. See Newton, supra note 2 (Shaffer “practiced law in Indianapolis with Barnes, Hickam, Pantzer & Boyd from 1961 to 1963.”); MEMOIRS, supra note 1, at 175–83 (discussing the firm).

35. See E-mail from Sarah Carruthers to Author (Mar. 4, 2019, 08:14 CST) (on file with author) (Order of St. Thomas More Newsletter) (“Shaffer joined the NDLS faculty in 1963”).

36. See Newton, supra note 2 (specifying dates). When Shaffer assumed the deanship, he inherited a difficult situation. The prior dean, William B. Lawless, Jr., who served for only two-and-a-half years (1968–1971), had decided to build a new law school building. To help raise funds for that project, Lawless increased the law school enrollment “up to 200 students in each class, more than 600 in the school.” MEMOIRS, supra note 1, at 235. Fundraising lagged and the new building was never built. After Lawless resigned, Shaffer was left with the dilemma of how to pack the enlarged study body into a very crowded building that was “built for fewer than 200 students.” Id. Many students were unhappy.

Chair. At Notre Dame, Shaffer was the Robert and Marion Short Professor of Law. “At the time of his retirement, . . . [Shaffer] was the nation’s most prolific legal author.”

B. The St. Thomas More Award and an LL.D. Honoris Causa

In spring of 1975, during the waning days of Shaffer’s deanship, I was admitted to Notre Dame Law School. Like my classmates, I received a letter from him, which emphasized that lawyers need to be persons of good moral character with high ethical standards. Shaffer explored and amplified those themes in many of his “nearly 300 scholarly works.”

After I graduated from Notre Dame Law School in 1978 and joined the St. Mary’s law faculty in 1982, I suggested to Harold Gill Reuschlein that we should honor Shaffer with the St. Thomas More Award. Since 1957, the St. Thomas More Award has been given annually by the St. Mary’s law faculty to “a judge, lawyer, law teacher, or layperson who has made exceptional contributions to legal education, the legal profession, or government.” Reuschlein was a nationally prominent figure in legal education. After serving for 19 years as the founding dean of Villanova University law school outside of Philadelphia, Pennsylvania, Reuschlein taught in San Antonio for 11 more years at St. Mary’s as the Katherine A. Ryan Distinguished Professor of Law.

Reuschlein readily agreed with my suggestion that Shaffer would be a worthy recipient of the St. Thomas More Award, but said we could do even better. At a meeting of the faculty, Reuschlein proposed that Shaffer receive the St. Thomas More Award and that “we hang him with an honorary doctorate.” The dean of the law school, James N. Castleberry, Jr., and the

38. See Thomas Lindsay Shaffer, supra note 1.
39. See Thomas Lindsay Shaffer, supra note 1.
40. Email for Sarah Carruthers, supra note 35.
41. See RABA, supra note 24 (listing St. Thomas More Award recipients from 1957 to 1981).
42. Email from Yvonne Olfers, Director of Student Records, to Author (Jan. 19, 2010, 09:30 CST) (on file with author).
43. See Sandra Schultz Newman, Dedication, Dedication to Dean Harold Gill Reuschlein, 45 VILL. L. REV. 9, 9 (2000) (“[D]uring a 1992 awards ceremony in which the Dean was honored with the Robert J. Kutak award, it was said, ‘No individual has given more to the cause of American legal education than Harold Reuschlein.’”).
45. See generally Ernest A. Raba et al., Tribute to James N. Castleberry, Jr., 21 ST. MARY’S L.J. 761 (1990).
faculty unanimously agreed, as did the leadership of St. Mary’s University. That was not surprising in light of Shaffer’s ground-breaking and highly original book, *On Being a Christian and a Lawyer*, which had recently been published, and his scholarship about religiously-based theories of attorney professional responsibility. Shaffer was part of “the community of scholars exploring interdisciplinary issues at the intersection of law and religion, law and community, law and humanities, and law and literature.”

In the fall of 1983, Shaffer and his wife Nancy returned to San Antonio for the festivities surrounding the presentation of the St. Thomas More Award and the doctorate *honoris causa*. During the nearly thirty years that had passed since Shaffer was a student at St. Mary’s, the law school had moved from downtown San Antonio to the main campus of St. Mary’s University, about five miles west of downtown, and had greatly expanded. The law school was in the process of building a spectacular new law library in the post-modern style with Texas ranching money. Eventually, that building nicely complemented three other law buildings that had been constructed in the mid-century modern style in the late 1960s with

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47. THOMAS L. SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* (1982); see also Mark H. Aultman, *Book Reviews*, 57 NOTRE DAME L. REV. 892, 892–93 (1982) (“Thomas L. Shaffer . . . has shown an uncommon interest in the realities of the legal profession, legal education, and legal ethics. His writings have been unusual for an American law professor, both for their specifically Christian character and for the depth of their psychological insight. . . . Thomas Shaffer's book comes at a time . . . when the legal profession is undergoing an identity crisis. One of the first things “innocents” must learn about ethics codes is that they have nothing to do with ethics as we usually understand the word.”).


51. See RABA, *supra* note 24, (“Law Center Groundbreaking.”).
funding from President Lyndon Baines Johnson’s Great Society programs for higher education.

Reuschlein and his wife Marcie hosted a lovely party at their home to honor the Shaffers. Wine was poured, ballads were sung by Harold, and stories were told for hours. The following day, Shaffer spoke to an assembly of students in the law classroom building and then later addressed a packed house at the annual Red Mass at the historic San Fernando Cathedral.

Before the Shaffers returned home to Washington and Lee University laden with honors, we toured the McNay Art Museum and enjoyed lunch at the Plaza Club, overlooking the city.

C. Publication in the St. Mary’s Law Journal

A few years later, Shaffer published an article in the St. Mary’s Law Journal entitled “The Profession as a Moral Teacher.” In that article, he explained

If the profession is, to . . . a lawyer today, a moral teacher, it is because the profession has become the law firm. Otherwise the profession is not a moral teacher . . . .

The legal profession in America, when I came into it in 1961, was, in this way, a moral teacher. When I later left my law firm, to become a fulltime teacher, I could say—I did say—that the lawyers I had practiced law with there were persons of character who taught their junior colleagues how to practice the virtues in their practice of law. One of the most ordinary of these lessons—and the one I have found it most difficult to persuade my students of—is that

52. See Harry Middleton, LBJ: THE WHITE HOUSE YEARS 97 (1990) ("Johnson’s faith in the power of education equaled his faith in the ballot . . . . [B]efore he left the White House, he would sign 60 education bills in all.").


54. See San Fernando Cathedral: The Heart of San Antonio: Our History, SAN FERNANDO CATHEDRAL, https://sfcathedral.org/our-history [https://perma.cc/V4VL-FLHB] (“San Fernando Cathedral was founded on March 9, 1731 by a group of 15 families who came from the Canary Islands at the invitation of King Phillip V of Spain and is the oldest, continuously functioning religious community in the State of Texas.”).


the lawyer in modern business practice in the United States is a source of moral guidance for his clients. 58

Shaffer never published in the *St. Mary’s Journal on Legal Malpractice & Ethics*. However, he did something more important. He planted the seeds from which that journal grew.

III. PLANTING THE SEEDS FOR THE *ST. MARY’S JOURNAL ON LEGAL MALPRACTICE & ETHICS*

A. *Shaffer’s Professional Responsibility Course*

I was a student in Tom Shaffer’s Professional Responsibility class at Notre Dame Law School in spring 1977. Shaffer taught in a way that was both mesmerizing and engaging. As I have explained elsewhere:

Shaffer’s classes routinely presented moments of exquisite dilemma. We spent hours pondering ethical problems, discussing and debating the difficult choices that lawyers face. What should a lawyer do if a client commits perjury on the witness stand, or wants to disinherit a child, or seeks assistance with marketing a vile product, drafting a predatory lease, or investing in a politically repressive country? Or suppose a truthful statement to the press about the non-enforceability of a police promise might cause a hostage-taker learning of the statement to execute the captives. Or what if a lawyer knows about an unfortunate loophole in the anti-discrimination laws and a client asks for advice? Almost a quarter of a century later, I remember the issues and I remember the discussions. But I do not remember many clear answers. Often there seemed to be multiple answers, and sometimes no answers at all. Either way, solutions did not come easily. That may have been the point. The message, as best I understood it, was that for lawyers seeking to do the right thing there are no simple answers to ethical questions. Resolving such dilemmas required weighty deliberation and clear, mature judgment. Ethical problem-solving, we learned, depended on the lawyer’s character and skill in making moral choices. The decision-making process was arduous and uncertain, but it provided an opportunity for moral growth. At Notre Dame, being a good person, as well as a good lawyer, was a stated goal. And one quickly learned that was no easy feat. As taught by Tom Shaffer, the subject of legal ethics was tantalizing and inspiring, and the fulfillment of one’s professional obligations always threatened to be unachievable.

58. *Id.* at 214.
I am sure that my classmates and I paid some attention to the Code of Professional Responsibility in Shaffer’s class, but the code did not loom large. Mere adherence to codified professional standards did not hold much promise for young professionals who were urged to aspire to a goal much higher than legal compliance. There was more to professional ethics than interpreting the words of a statute.

Legal ethics with Shaffer was moral philosophy with a religious orientation. Ultimately, Shaffer “influenced generations of lawyers and legal scholars to integrate their work and faith.”

Shaffer’s course on Professional Responsibility was so good that it made me want to teach the subject. It set me on the road to becoming a law professor.

B. Shaffer’s Other Courses

During my third year at Notre Dame, I took a capstone course taught by Shaffer. Somewhat opaquely called “General Practice Comprehensive,” it was meant for students who intended to set up their own law practices after graduation. I never had any interest in doing that, but I knew the course would be great because Shaffer was teaching it.

While in law school I read much of what Shaffer had written, including five of his books: *Death, Property, and Lawyers*; *Lawyers, Law Students, and*
People, Planning and Drafting of Wills and Trusts, and the manuscript for what later became On Being a Christian and a Lawyer. I also read many of Shaffer’s articles, and took his four-credit course on Property Settlement (i.e., wills, trusts, and estates). Intellectually, we seemed to be well-matched as teacher and student. I was not daunted by the fact that Shaffer was a bold scholar, frequently reaching for ideas into fields like psychology, theology, medical ethics, literature, and cinema.

The capstone course was excellent, but it was also quite demanding. General Practice Comprehensive was an eight-credit course taught in a single semester, with about twelve or thirteen students total. We met two hours a day, four days a week. Students had fifty pages of reading every night, and a paper due every morning before 8:00 A.M. Shaffer graded the papers immediately and returned them to us when class began at 10:00 A.M. Everyone in the class was expected to participate in the discussions. The students in the class were a varied bunch, but we quickly bonded. It was a congenial group.

The course was intellectually lively, well-planned, and interesting. Shaffer was a quiet teacher, but often peripatetic. He would think things through out loud, raise important questions, toss out witty asides, and invite discussion as he walked about the room. He was an excellent storyteller. In

64. Thomas L. Shaffer, Planning and Drafting of Wills and Trusts (2d ed. 1979).
66. See Shaffer, supra note 47.
67. See Memoirs, supra note 1, at 205 (discussing how Shaffer taught estate planning: “If ‘estate planning’ is not about logic and lawsuits, what is it about? Well, for one thing, it is about feelings. . . . Feelings about the people one cares about.”).
68. See Memoirs, supra note 1, at 213 (discussing a seminar Shaffer taught at the University of Virginia).
69. See Memoirs, supra note 1, at 212 (“I even boldly dipped my toe into medical ethics.”).
72. Maybe I am wrong. In his Memoirs, Shaffer says his eighth-grade teacher had the “insight” to “peg” him as an “extreme extrovert.” Memoirs, supra note 1, at 63; see also id. at 78 (By eighth grade, I . . . had “obtained a reputation as a loud mouth, the sort of aura that used to call my teacher to tell me I ought to become a lawyer.”). Still, when I was a student in Shaffer’s classes, he was not the sort of dynamic lecturer who tries to shout the law into the students’ minds.
analyzing problems, he tried to make things clear by going over to the whiteboard and listing his points.

Shaffer’s classroom presence was congruent with his writing persona. As I said in a typewritten paper from my law school days, in a discussion of Shaffer’s manuscript for *On Being a Christian and a Lawyer*:

His approach is one of gentle persuasion, rather than a diatribe against traditional legal practices. The approach is seductive. The focus on the human, as opposed to the technical, aspects of lawyering is also very familiar... Shaffer always gives careful attention to the participants in the [legal] process.

... Shaffer’s ideas go far beyond the status quo. They are founded not merely on respect for the system, but on respect for people. Anything less than that is an inadequate goal... At the end of the course, in late November or early December 1977, we had a day-long party at the Shaffers’ home not far from the Notre Dame campus. There was a heavy snowfall that day, which made the warm house all the more inviting. Several of us had already been to the Shaffers’ home several times before because he often had small groups meet there. The celebration was a splendid way to wrap up a unique course which, as far as I know, was never repeated.

Studying under Tom Shaffer in a small and intimate, but intellectually intense, setting was an excellent lesson in learning to think like a lawyer. From my perspective, the course was a complete success, and I think my classmates felt similarly.

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73. The paper, entitled “Legal Ethics in an Advocacy Setting,” does not bear my name, the date, or the name of the course for which it was written, and there is no indication that it was turned in to anyone or graded. Judging from the books I discuss in the paper, it is likely that I wrote the paper for Professor Edward McGlynn Gaffney, a dynamic young professor who made me read thirteen books for a one-credit independent study.

74. *Id.* at 3–5.

75. When I took Shaffer’s course on Professional Responsibility, he divided it into smaller groups that would focus on particular issue, such as issues in criminal defense work or in corporate practice. These small groups were led by various members of the Notre Dame faculty. I was in Shaffer’s own small group, which might have focused on religious theories of professional responsibility. We met one evening at the Shaffer home. The living room was packed by about a dozen students as Shaffer and his colleague, Fernand “Tex” Dutile, discussed legal ethics issues related to a hypothetical hostage-taking. It was extremely interesting.
Today, at the distance of more than forty years, I remember almost nothing substantive about what I learned in General Practice Comprehensive, with one important exception that proved to be life-transforming. What I learned in the course was that the risk of committing legal malpractice lurked around every corner in law practice. Shaffer was not particularly interested in the details of legal malpractice law, such as the rules, the causes of action, or the defenses. However, he continuously flagged the issues and clarified the risks related to a lawyer’s reputation and financial security, not to mention the risks of harm to clients. Because I listened carefully to what Shaffer said, I could see threats of lawyer liability everywhere. To some extent, that makes sense. Everything a lawyer does can be done negligently or disloyally.

When I started teaching law at St. Mary’s, I noticed that William Prosser, the great torts scholar, occasionally noted in his casebook that lawyers were liable for certain types of tortious conduct. I thought this was important, so I started keeping a list of the ways in which lawyers are exposed to civil liability, either to clients or non-clients.

Before long, I realized that my two main teaching areas—torts and legal ethics—intersected. That intersection was the field of legal malpractice law. By testifying as an expert in legal malpractice lawsuits, and writing on legal malpractice issues, I developed expertise on a range of issues related to lawyer civil liability. When I published one of my books on legal malpractice law, I stated in the Preface that the book had started decades earlier in Shaffer’s class. Regarding my worries as a law student that “malpractice liability lurked around every corner in law practice,” I asserted that “[h]istory has proven that concern to be correct.”

76. See Craig Joyce, Keepers of the Flame: Prosser and Keeton on the Law of Torts (Fifth Edition) and the Prosser Legacy, 39 Vand. L. Rev. 851, 852 (1986) (“Rarely in the history of American legal education has one author’s name been so clearly identified with his subject as the name of William L. Prosser is with the law of torts.”).
79. Id.
IV. THE ST. MARY'S LAW JOURNAL'S FOCUS ON LEGAL MALPRACTICE AND ETHICS

For many years, the *St. Mary's Law Journal* hosted an annual symposium and published the resulting papers in a special issue of the journal. The topic changed from year to year, focusing on interesting legal matters, such as questions related to water law, education law, tort reform, and environmental issues along the Mexican border.84

A. A Permanent Symposium Topic

Because the substantive focus of the symposium varied continuously, it was hard for the *Law Journal* to develop a reputation for quality scholarship in any particular field—notwithstanding its excellent general reputation for addressing issues of importance to lawyers and courts.85

In preparation for a gala dinner celebrating the 50th anniversary of the *St. Mary's Law Journal*, I personally conducted a survey of cases reported in Westlaw in which works published in the *St. Mary's Law Journal* were cited or quoted by courts or articles. The survey revealed that during its first half century, the law journal had been quoted by or cited in:

- 194 cases decided by the Texas Supreme Court;
- 58 cases decided by the Texas Court of Criminal Appeals;
- 856 cases decided by the Texas Courts of Appeals;
- 3 cases decided by the United States Supreme Court;
- 94 cases decided by the United States Courts of Appeals in 12 of the 13 circuits
- 101 cases decided by United States District Courts sitting in 31 states and Puerto Rico;
- 36 cases decided by United States Bankruptcy Courts sitting in 19 states;
- 3 cases decided by the United States Tax Court, the United States Court of Federal Claims, and the United States Court of Appeals for the Armed Forces;

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80. See Barbara Hanson Nellermoe, 50 Years of Excellence: A History of the St. Mary's Law Journal, 50 ST. MARY'S L.J. 1, 70 (2019) (“In the very early years, particularly in Volumes 5, 6, and 7, the editors settled on the student symposium format in which a professor or a visiting professor guided several law students in writing short pieces on related issues of a general topic and the professor would write an introduction that tied it all together. . . . [Eventually,] A symposium editor was added to the board to select a timely topic and the entire board worked under that editor to solicit and edit the symposium issue, which was usually the third or fourth issue.”).
83. See Symposium: Developments in Tort Law and Tort Reform, 17 ST. MARY'S L.J. 669 (title page)
85. See Johnson, supra note 44, at 569–70 (In 1985, “[t]he St. Mary’s Law Journal was publishing solid articles that would eventually earn it the honor of being named the law review published in Texas that was most frequently cited by state and federal courts.” (citing Jim Paulsen & James Hambleton, Reviewing the Law Reviews, Texas-Style, 56 TEX. B.J. 284, 284 (1993)); Nellermoe, supra n. 80, at 2 (“In Texas, the Journal has been quoted or cited by intermediate courts of appeals in over 800 instances and in about 200 cases decided by the Texas Supreme Court.”)).
sometime in the mid-1990s, I suggested to the editors of St. Mary’s Law Journal that they should focus the symposium every year on Legal Malpractice and Professional Responsibility. In the United States, there was no specialty journal dedicated to legal malpractice law, and only a few journals consistently addressed issues related to attorney professional responsibility. My idea did not immediately take hold, but eventually, a group of editors decided to accept it. The first symposium on Legal Malpractice and Professional Responsibility was held in 2002, and the resulting articles and comments were published in one of the four volumes of the St. Mary’s Law Journal. That pattern was followed until 2010.

B. A Separately Titled Journal on Legal Malpractice and Ethics

During the 2010–2011 academic year, the Law Journal decided to publish the ethics scholarship related to the symposium under a separate title, the St. Mary’s Journal on Legal Malpractice & Ethics. The other three issues of the St. Mary’s Law Journal continued to be published under that name. Then, because it was too hard to attract material for a specialty journal that published only once a year, the Journal on Legal Malpractice and Ethics began to publish two issues per year. And because, by widespread custom, a law school’s flagship law review should publish at least four issues, the St. Mary’s Law Journal soon resumed publishing four issues per year.

Eventually, it was decided that the ethics enterprise had become so substantial that the head of the St. Mary’s Journal on Legal Malpractice & Ethics should be called the Editor in Chief of that publication, rather than just the Symposium/Legal Malpractice & Ethics Editor, as was true for the first few years. Moreover, the editors concluded that the new Editor in Chief should

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- 302 cases decided in state courts sitting in 45 states and other tribunals sitting in 3 territories and the District of Columbia (including decisions by the highest courts of 43 states, the District of Columbia, Puerto Rico, and the Virgin Islands); and
- 6,778 scholarly articles published in law reviews throughout the United States.

87. See Title Page, 41 St. Mary’s L.J. 4 (2010).
88. See Editors’ Foreword, 1 St. Mary’s J. Legal Mal. & Ethics 1, 1 (2011) (“The fields of legal malpractice and professional responsibility deserve a scholastic niche set aside solely for the purpose of legal analysis and comment on these topics.”).
89. Id. at 1 (“The Editorial Board will produce three issues of the St. Mary’s Law Journal and one annual issue of the St. Mary’s Journal on Legal Malpractice & Ethics.”).
90. See Title Page, 5 St. Mary’s J. Legal Mal. & Ethics 2 (2015).
be assisted by a designated member of the editorial board holding the position of Legal Malpractice & Ethics Articles Editor. ⁹²

The law faculty needed to approve all of these changes over the years. But that was generally no problem because I chaired the Law Journal Faculty Advisory Committee, and had a good deal of experience in navigating the potentially troubled waters of faculty politics.

Piece by piece, the law journal’s focus on legal malpractice and ethics has grown. Such incremental growth was always anticipated. The last word of the new journal’s title—“Ethics”—was intentionally left unrestricted so that, as opportunities arose, the journal could, if it chose, focus on legal ethics, judicial ethics, government ethics, ⁹³ educational ethics, and perhaps other types of ethics as well.

Today, both the St. Mary’s Law Journal and the St. Mary’s Journal on Legal Malpractice & Ethics are published by a student organization called the St. Mary’s Law Journal (the Law Journal). The Managing Executive Editor of the Law Journal allocates Staff Writers and other talent in a way that keeps both publications, and their total of six issues annually, on track. The Editor in Chief of the St. Mary’s Journal on Legal Malpractice & Ethics enjoys a measure of authority and independence. He or she is, in a sense, a feudal lord with broad rights to govern legal malpractice and ethics fiefdom. But as I explain each year, he or she also owes duties and loyalty to the feudal overload, the Editor in Chief of the St. Mary’s Law Journal. This arrangement, if unconventional, has provided to be quite workable. The St. Mary’s Journal on Legal Malpractice & Ethics is publishing its tenth volume this year. Last year, the St. Mary’s Law Journal celebrated its fiftieth anniversary. ⁹⁴
V. THE APPLE AND THE TREE

Tom Shaffer was the law professor who had a greater impact on my legal education and intellectual formation than any other. What surprises me so much is how far the apple can fall from the tree.

Shaffer was the best law professor I encountered at any of the three law schools where I earned degrees: Notre Dame, Yale, and the London School of Economics. I enjoyed his classes immensely, and I eagerly read what he wrote. However, I do not at all teach or write like Shaffer. That was never my goal.

Shaffer was interested in moral growth; I am interested in consumer protection. Shaffer saw moral struggle at the center of lawyering. I see it at the periphery.

In my view, American lawyers practicing law today do not write on a clean slate when interacting with clients or nonclients. To a large extent, the choices lawyers can make are limited by a now extensively developed body of law—the law of governing lawyers—which very clearly sets limits on fees, conflicts of interest, handling of property, and scores of other matters.

The rules of professional conduct address many of the ethical issues that arise in law practice. Those rules cannot be ignored. Admittedly, questions arise about how the attorney conduct rules should be applied in particular factual contexts. There are also many unanswered questions in the field of legal ethics, which is a comparatively young academic field. Moreover, there are larger issues as to what types of clients lawyers should represent. In resolving these uncertainties, it is often appropriate to ask, “what would a good lawyer do?” However, it is probably even more

95. In his Memoirs, Shaffer offers his thoughts on his high school teachers, many of whom he found lacking. See MEMOIRS, supra note 1, at 87–89 (“I enjoyed my history classes in high school, but few of them were taught well. . . . They were taught by a football coach, who sat behind his desk and lectured to us. . . . That is not a very vivid teaching method, but I found it refreshing when compared with say, the courses in English, which consisted mostly of filling in blanks in grammar workbooks.”).
97. See Vincent R. Johnson, The Limited Duties of Lawyers to Protect the Funds and Property of Nonclients, 8 ST. MARY’S J. LEGAL MAL. & ETHICS 58, 64–65 (2017) (“As articulated in the Model Rules of Professional Conduct, and the law of most states, the relevant provisions seem to impose extensive obligations. Those duties relate not only to safekeeping the assets in which the third person has an interest, but to notification and delivery of the assets to the interested third person, or sequestration of the assets in trust pending resolution of a dispute over who is entitled to receive the assets.”).
98. See, e.g., MODEL RULES OF PROF’L CONDUCT (2019).
important to remember that that is not the way the relevant questions will be phrased in disciplinary actions, malpractice lawsuits, and sanctions hearings. In all of those enforcement mechanisms, the language of legal obligations and statutory construction, rather than the language of moral philosophy, will set the terms of the debate.

Does this mean a lawyer should not be concerned with the moral dimensions of law practice? Certainly not. But it would also be wrong to pretend that wrestling with moral issues is likely to ensure clients a predictable level of protection every time they walk into a law office.

Shaffer and I were featured on an ethics program held at Notre Dame Law School in 2000. I was honored and delighted to be on the same stage with him. As I explained in an article I wrote for that occasion:

It is difficult to identify today any source of moral beliefs shared throughout the legal profession. . . .

Absent a common shared moral tradition, it is unrealistic to think that a million lawyers, independently resolving the ethical questions that arise in the practice of law, would arrive at the same answers. If clients are to be afforded reasonably equal treatment by the lawyers who serve them, the existence of ethics codes is indispensable. Resolving ethical questions by reference to a code may offer little opportunity for moral growth on the part of lawyers, but it holds fair promise for ensuring equality of client treatment. 99

I could see Shaffer’s points. 100 In the same article, I said:


100. I could also see Shaffer’s points when I was his student. In a paper I wrote at Notre Dame Law School, I asserted:

A principle problem . . . [with] the Code of Professional Responsibility is [that] . . . the new Code, like the old Canons, remains primarily rule-oriented rather than person oriented. . . . [The Code gives] inadequate scope to the human dimension of lawyering and inadequate encouragement to those who might otherwise seek to fulfill that responsibility.” Legal Ethics in an Advocacy Setting, supra note 73, at 1–2.

In hindsight, after witnessing decades of development of the law of lawyering, I think my assessment of the 1969 Code of Professional Responsibility was wrong. The Code sought to mesh rules of professional conduct with ethical obligations, and did not do badly in carrying out that task. See The Virtues and Limits of Codes in Legal Ethics, supra note 99, at 43 (“The Model Code . . . used a format that embraced both aspirational principles and mandatory standards. In each of the nine chapters of the Code . . . there was a set of aspirational principles, called Ethical Considerations (ECs), and a set of mandatory standards, called Disciplinary Rules (DRs). The ECs had the flavor of moral
The transformation of attorney professional ethics into a field of legal regulation has not gone without question. Tom Shaffer has been prominent among the critics. Addressing this phenomenon, he has written that:

Americans in the late twentieth century evade moral discussion of what they are about. . . . [T]his is true of law students in “professional responsibility” courses, as it is of law faculties and lawyers in practice. The methods of evasion are diverse but consistently banal. They include resolutions that dig no deeper than rules of practice imposed by courts—rules which virtually everyone identifies as ethically inadequate, or labels as a superficial moral minimum, or both. . . .

Assessing the current state of affairs, Shaffer laments: “The claim that a lawyer must obey his conscience (and that his conscience is one conscience, at home or in town) fades a little more every time the profession recodifies its rules of professional behavior.” “Somewhere . . . professionalism stopped meaning that lawyers are responsible for justice.”

I concluded that:

Tom Shaffer may be right. Ethics codes may indeed tempt lawyers to let others do their ethical thinking for them and to eschew responsibility for the actions they take. But even if that is true, it would be neither wise nor feasible for the profession to dispense with such formulations. Lawyers’ ethics codes provide an important basis for the equitable delivery of legal services and a valuable tool for stating professional aspirations, re-examining ethical choices, and promoting open discussion of ethical issues. In the absence of such codified standards, the ethical quality of law practice would quickly degenerate into inconsistency and unpredictability, with each of a million lawyers ruling principles; they attempted to identify the goals toward which a good lawyer should strive. The DRs were enforceable legal standards.”).

101. Id. at 28–29; see also MEMOIRS, supra note 1, at 300 (in a discussion of corporate governance, Shaffer asserted that “regulation . . . destroys conscience.”).

Ironically, in light of Shaffer's comments on re-codification, by appointment of the Texas Supreme Court I now serve on the nine-person Committee on Disciplinary Rules and Referenda, the gateway committee for re-codifying attorney standards in the nation’s second largest state. See Committee on Disciplinary Rules and Referenda, ST. BAR TEX., https://www.texasbar.com/AM/Template.cfm?Section=cdrr&Template=/cdrr/home.cfm [https://perma.cc/9MAJ-6RJT] (The committee “[r]egularly reviews the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure . . . [and oversees] the initial process for proposing a disciplinary rule.”).
a different fiefdom. Chaos on ethical matters would be the order of the
day.102

Shaffer and I did not so much disagree as have different perspectives, and
perhaps different priorities, on issues of attorney professional responsibility.
I doubt that Shaffer would mind how this particular apple fell far from the
tree. Something of the same kind had occurred with Shaffer and Joseph
O’Meara, the dean at Notre Dame Law School. O’Meara greatly influenced
Shaffer’s career, and hired him for the law faculty.103 But Shaffer was a
different sort of law professor than O’Meara—less tough and demanding,
more approachable and forgiving. Shaffer knew this, and it bothered him
for a while. Reflecting on his own career, Shaffer wrote that the academic
companionship that he developed with other members of the Notre Dame
faculty cemented his interest “in being a teacher as nothing else could have
and got me through many weeks of struggle over not being the sort of
teacher Dean O’Meara seemed to want me to be but . . . [rather] the sort of
teacher students remember with a smile.104

VI. SHAFFER’S MEMOIRS

Because Shaffer was one of the founders of modern legal ethics, he is a
historically important figure in understanding the development of this area
of the law. It is, therefore, appropriate to mention that there is a book,
“written and assembled 1989—2009”105 by his own hands, which vividly
brings him back to life. Privately published in 2014, the book was
Harrington.”106 Intended mainly for family members, the book is entitled
simply Memoirs. It spans 310 pages. As a friend of the family, I was given a
copy.

102. Id. at 46.
103. See Memoirs, supra note 1, at 264 (“the old dean—Joseph O’Meara, who . . . backed me
all the way through a maze of academic advancement—was a faithful patron.”); id. at 265 (“The Dean
got tenure for me early.”).
104. MEMOIRS, supra note 1, at 211; see also id. at 268 (discussing how Shaffer developed his
teaching style).
105. MEMOIRS, supra note 1.
106. MEMOIRS, supra note 1.
A. **Colorful Tales and Formative Events**

Shaffer’s *Memoirs* recount colorful tales about his youth and upbringing in the Mountain West as part of a working-class family, where he had a horse, herded cows, and did country chores. There are numerous vivid tales, often so interesting that they could easily provide inspiration for a novel or a television series. Sometimes he comments on life, as when he observes that “for working people, conscience can be a luxury.” Other vignettes document the history of an era, as where Shaffer writes that:

Grandma started three one-room schools for the children of ranchers . . . all ages in one room, with one teacher, who lived with one of the families, was paid very little, and had responsibility of caring for the building, including the job of pushing the desks to the wall for babies to sleep on during the Saturday night dances.

The *Memoirs* give readers glimpses into events and decisions that shaped Shaffer, such as his early and continuing interest in journalism; his failure of the physical after being nominated to go to the Naval Academy in Annapolis; his survival under the strict academic regime of Dean O’Meara, which whittled an entering class of eighty-nine students down to a mere fifty-one by graduation; his being offered a position teaching at

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107. *Memories, supra note 1*, at 50 (“[A]ll four of us Shaffers were children of a Mountain Western, pioneer, cowboy culture.”).

108. *Id.* at 11, 53.

109. *Id.* at 85.

110. *Id.* at 16.

111. *See id.* at 80 (Shaffer’s high school column, called “School Daze,” was published under the by-line “Butch.”); *id.* at 81 (“Benjamin Franklin would have been proud of us.”); *id.* at 84 (discussing his work at the *Gallup Independent*); *id.* at 85 (“I worked after my first year of law school as a reporter for the South Bend Tribune, and continued to work there, now and then, as a fill-in, for the rest of my law-school days.”); *id.* at 85 (discussing his column called “Footnotes.”); *id.* at 167 (“I had tried to be a newspaper person from the age of twelve on. . . . It has been, for me, the road not taken.”).

112. *Id.* at 111.

113. *See id.* at 187 (“By the time O’Meara . . . [retired] in the summer of 1968 Notre Dame had become both the toughest and the smallest law school in America.”); *id.* at 193 (“I doubt that there has ever been a law program of equal vigor.” [Notre Dame professor] Ed Murphy told me.”).

114. *See id.* at 159. When I spoke at Notre Dame on a program with Shaffer in 2000, I went to dinner with a small group that included both Shaffer and Professor Robert E. Rodes, Jr. Rodes had been a member of the faculty during the O’Meara years when Shaffer was a student. Rodes also taught classes on Jurisprudence and English Legal History, in which I was enrolled. The story that Shaffer and Rodes told at dinner, as I remember it, was this. Students during Shaffer’s day (1958–1961) knew the time slots for final examinations at the end of the semester, but they did not know which examination would be given on which day. Worse yet, an examination could test upon any of the
Notre Dame Law School without anyone on the faculty knowing that; his role in fighting housing discrimination in South Bend; his struggles with the University of Notre Dame Administration while he was dean and thereafter; and his “career as a corporate magnate” serving on the board of directors of Fort Howard Paper Co.

B. *Shaffer's Catholicism*

Particularly interesting are the glimpses into Shaffer's Catholicism. He was raised as a Baptist, but converted to Catholicism in Denver as a rebellious teenager, after answering a newspaper ad placed by the Knights of Columbus and taking correspondence course on the Catholic faith.

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subjects they had studied during the prior three semesters. Shaffer’s Memoirs suggest that the regime was a bit different. *See id.* at 193 (O’Meara “abolished elective courses” and “set up cumulative examinations that tested students on everything they had studied in law school, regardless of how many semesters along they were.”).

According to Shaffer, when O’Meara required the faculty to employ a ‘problem method for teaching upper-level courses, Rodes (‘my teacher and good friend”) used problems that “were incredibly complex and took weeks to work through.” *Id.* at 162.

115. *See id.* at 164 (“This would have been unheard of in other law schools.”).

116. *Id.* at 270–71.

117. *Cf. id.* at 82 (referring to a print shop supervisor he worked for during high school as “the worst boss I had before I became dean of the Notre Dame Law School.”);

118. *See id.* at 231 (“Catholic university administrators are odd aggregations of petty power.”).

119. *See id.* at 232 (“The law dean’s task, as I look back on my days at the job, was to get the people in the head house to be as interested as the dean and law faculty were in having the law school be a good school . . . rather than a cash cow.”); *id.* at 238 (“the friars . . . undermined me as they undermined all the other Notre Dame law deans”); *id.* (discussing how the law review editors were instructed not to publish the Shaffer’s dean’s report in volume 51 of the law review); *id.* at 240 (discussing the struggle over a “tenure quota”); *id.* at 273 (the negative reason I left Notre Dame for a decade to teach at Washington and Lee was the way Father Jim Burtchaell handled the tenure system.”); *id.* at 275 (“The hottest part of the struggle, for me, was when I was an officer in the campus faculty labor union, our chapter of the American Association of University Professors.”).

120. In his early day on the faculty, Shaffer had irritated University of Notre Dame President Theodore Hesburgh by acting as “general counsel for the disaffected young” during anti-Viet Nam War protests and by “acting as Civil Liberties counselor” and opposing the seizure of alleged pornography from the campus, and representing clients in the resulting prosecution. *See id.* at 266, 273. Years later Hesburgh blocked Shaffer’s return to the faculty for a year when Shaffer sought to return from his “adventure in the Blue Ridge Mountains of Virginia.” *Id.* at 265.

121. *Id.* at 282.

122. *Id.* at 95.

123. *Id.* at 82; *see id.* at 99 (“age of 17”).

124. *See id.* at 98 (“one of the best correspondence courses I have ever taken.”).
Following high school, Shaffer spent “a year with the monks” at Holy Cross Abbey in Canon City, Colorado, but ultimately decided that he “did not, after all, want to be a priest.” After getting married and experiencing “several years of indifference to the faith” while practicing law in Indianapolis, he “found his way back to Nancy’s side in church.”

The strongest Catholic influence on Shaffer at the Notre Dame campus was his teacher and later colleague Robert E. Rodes, Jr., who taught natural law jurisprudence and wrote books examining “the frayed connections between the Anglican Church and the Roman Church.” However, there were other brilliant academics on campus whose conversations made for “a sparkling lunch-table symposium every day.” Some of these friends, in Shaffer’s word, “had a lot to do with my regaining my Baptist boyhood.”

According to Shaffer, Notre Dame “has always been consistently Catholic, even when it was far from clear what ‘being Catholic’ meant.” “After half a century in the American Catholic Church,” Shaffer concluded that most Catholic preachers “are not as good at preaching as their Protestant counterparts are.”

Near the very end of the book, Shaffer asserts that it is “stupid . . . for my church to deny its pastoral offices to married men and to women.” He lamented that:

[The] way for me to get over feeling strange only does more to make me feel, as I often do these days, like an alien Catholic. A deeper and not political part of this is that I will never be . . . one of those Catholics who is comfortable, all the way to the ground with being a Catholic. Who just lets myself take it

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125. Id. at 95.
126. Id. at 106.
127. Id. at 110.
128. Id. at 209.
129. Id. at 210.
130. Id. at 210 (naming Bernard J. Ward, John Noonan, Fred Crosson, Ken Sayre, and Father John Dunne); id. at 211 (naming Stanley Hauerwas and John Howard Yoder).
131. Id. at 105.
132. Id. at 225. As Shaffer explained, “Catholic law schools are a distinct phenomenon. That is mostly . . . because law has been a ladder of vertical mobility for the children and grand-children of the late immigrants. . . . Virtually all of these late immigrants came between the end of the Civil War and the tightening of immigration that began to restrict entry to the U.S. from about 1910.”
133. Id. at 212.
134. Id. at 308.
all for granted, with a smile. Even in my most devoted days, there has always been a certain defensiveness about being a Catholic. . . .”135

VII. CONCLUSION

“Shaffer was my mentor at Notre Dame and is more responsible for my being a law professor than any person I know.”136

Tom once said in jest that his letter of recommendation on my behalf had “a circulation just slightly less than Time magazine.” Tom’s letters opened the right doors. When I did my LL.M. at Yale immediately after graduating from Notre Dame, I walked into the assistant dean’s office at Yale. The first thing he said to me was, “You’re Tom Shaffer’s boy.” I knew why I had gained admittance to Yale’s small class of about sixteen American and foreign LL.M. students. Later, when I was a finalist for a U.S. Supreme Court Fellowship interviewing at the Court, Noel Augustyn, the Administrative Assistant to the Chief Justice said, “You have a letter of recommendation in your packet from the man I admire more than anyone else, Tom Shaffer.” I got the fellowship.137

Shaffer’s patronage also got me two offers of admission to the Harvard Graduate School of Education to pursue a degree that would have focused on client counseling, although that never worked out. (The first time I went to Yale instead, and the second time I accepted a clerkship with a judge who was the first merit appointee to the New York Court of Appeals.138) He also helped me become a semi-finalist for a Danforth Graduate Fellowship, which, had it worked out, would have directed my teaching career toward the undergraduate level.

135. Id. 308–09.
137. Id. at 555 n.114.
138. See Vincent R. Johnson, Judge Bernard S. Meyer: First Merit Appointee to the New York Court of Appeals, 75 ALB. L. REV. 963, 1033 (2012) (“Meyer reached the Court of Appeals later than he had hoped, and was required to leave long before he was ready. A highly talented jurist, he worked as hard as he could, for as long as he was permitted to serve.”); id. at 974–75 (“I gave Judge Meyer an enthusiastic acceptance within a few hours. I had been offered admission into a degree program at the Harvard Graduate School of Education for the coming year, but clerking for a judge at what many lawyers thought of as the best state court in the nation was clearly the better option. ‘For generations,’ the New York Court of Appeals ‘had[ld] been regarded by legal experts as one of the leading tribunals in the country.’”).
During law school, and thereafter, I got to know Nancy Shaffer well, and it was always apparent to me that she was the love of Tom’s life.\textsuperscript{139} When I was a student at Notre Dame, Nancy was my chief witness in the mock trial that a classmate and I prosecuted in a classically appointed courtroom in the Beaux Arts courthouse in South Bend.

I saw the Shaffers occasionally over the years, including the two times when I taught for a semester or a year as a visitor at Notre Dame Law School. We also exchanged a small mountain of Christmas cards. When it can time to turn in the manuscript for my Advanced Torts textbook, I wrote on the dedication page “To Tom and Nancy Shaffer at Notre Dame, good friends for more than thirty years.”\textsuperscript{140}

During the latter part of his career at Notre Dame, beginning in 1991, Shaffer began working with students at the Notre Dame Legal Aid Clinic, and was regarded as a “beloved mentor by every clinician who served there.”\textsuperscript{141} Reflecting that development in Shaffer’s career, when the Center for Legal and Social Justice was established as the home of the St. Mary’s clinical program in 1996,\textsuperscript{142} my wife Jill Torbert and I named one of the faculty offices in honor of Shaffer. For almost a quarter of a century there has been a plaque bearing his name beside the door to that office.

One of the things that made Shaffer such a great professor was that he was student-centered. As he said in his \textit{Memoirs}, “the happiest part of being a teacher is living and working with the students.”\textsuperscript{143} Shaffer exuded that happiness every day, and that is the way he should be remembered.

\begin{footnotes}
\footnotetext[139]{\textit{Memoirs}, supra note 1, at 112 (“I asked [Nancy] to marry me, and she said she would. That became the best thing that ever happened to me.”); \textit{id.} at 115 (describing their wedding day as “far and away the most important day of my life, and the happiest”).}
\footnotetext[140]{\textit{Vincent R. Johnson, Advanced Tort Law: A Problem Approach} iii (2d ed. 2014).}
\footnotetext[141]{\textit{Newton, supra note 2} (quoting Notre Dame professor Bob Jones).}
\footnotetext[142]{See Cantú, \textit{supra note} 15, at 370 (“To build the clinical program, . . . [Dean Barbara Bader Aldave] acquired the former Marianist facility on Northwest 36th Street, north of the campus. It became the Center for Legal and Social Justice (CLSJ). This fifth building of the law school . . . [is] about a half mile down the road . . .”).}
\footnotetext[143]{\textit{Memoirs, supra note} 1, at 204.}
\end{footnotes}