

May 1992

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Recommended Citation

Sanford H. Kadish, *Jesse Choper's Decanal Decade*, 80 CALIF. L. REV. 555 (1992).

Link to publisher version (DOI)

<https://doi.org/10.15779/Z38873P>

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California Law Review

VOL. 80

MAY 1992

NO. 3

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Jesse Choper's Decanal Decade

Sanford H. Kadish†

The end of this academic year will mark ten years since I passed the hot potato to Jesse Choper. A cartoon appeared about that time in the law school newspaper. I don't recall the paper's name, since it kept changing as the students figured out better ways to get under our skins. I think perhaps its name at the time was "The Truth." The cartoon showed two turkeys, one with my head and one with Jesse's, and the Choper turkey, one wing around the shoulder of the Kadish turkey, was saying: "Don't worry, Sandy, us turkeys are still in charge."

Well, I don't know about being in charge—that's hardly an apt description of whatever it is the Dean does around here. And you couldn't expect me to accept the turkey sobriquet. But the "us" certainly got it right, in sense if not in grammar. We're not peas in a pod by any means—we've had our academic squabbles. But when it gets down to basics—like what the academic enterprise should be about—we're pretty much together. The "us" got it right in another way as well: we're old pals. I was a charter member of the faculty cabal in 1965 that worked to lure him from Minnesota, and in the ensuing twenty-seven years we've become fast friends, sharing the triumphs and travails of our professional and personal lives.

Why do I say all this? Just so you don't get the wild idea that these remarks are going to be neutral, detached, and uncolored by feeling. No way. I promise to tell the truth, but the truth as I see it, from the perspective of one with deep affection and admiration for the man and compassion for anyone unfortunate enough to have gone through the decanal

† Alfred F. and May T. Morrison Professor of Law, Emeritus, Boalt Hall School of Law, University of California, Berkeley. Professor Kadish was Dean of Boalt Hall from 1975 to 1982.

wringer for as long as Jesse has—ten years, as long as any dean of a major law school has served since Prosser here and Griswold at Harvard.

What qualities did the faculty see in Jesse that led them to choose him as Dean? Easy.

A young person in his mid-forties with an established reputation as a constitutional and corporations law scholar, with casebooks in both fields, an impressive array of articles, and a recent book on constitutional law, *Judicial Review and the National Political Process*, which a year later was to share the Coif Award for the best work of legal scholarship in the preceding three-year period.

An enormously successful classroom teacher, by general repute one of Boalt's star teachers.

An obsessively hard-working person who saw his own professional self as integrally tied to the institutions within which he acted, and who devoted himself unsparingly to the needs of the school and the University, serving long terms on and leading some of their most sensitive and important committees.

A man with an extraordinary quickness of mind, surely one of the fastest drawers (of inferences) in the West, who could fathom what you meant to say as well as reply to it not only before you finished saying it, but sometimes before you thought it. And a memory to match. With Jesse in on a meeting you never had to bother about minutes. This fellow could remember not only when you owed him money, but, much rarer, when he owed you.

Someone who instinctively and naturally liked people and was immediately like by them, with a kit of foibles (his penchant for ill-chosen ties and bargain-rack clothes just two of many) that made him an easy target for teasing. And such an endearing target. The guy just wouldn't take personal offense. Even when the gibes had an edge to them, as when they reflected serious disagreements, his amazing good nature and equanimity persisted. I can't say I never saw him mad. It happened, but rarely, and only when the provocation would try a saint.

A person without pretensions (except perhaps the single pretense of being completely without any), who made no claim to the classy or the fancy: "Just an ordinary small-town kid from Wilkes-Barre with small-town tastes, that's me," was what he always seemed to be saying about himself. Not the whole truth, surely, but not wholly untrue either.

These are some of the qualities Jesse brought to the task of presiding as Dean. His years were hardly the most tranquil in the history of the law school, any more than mine or Ed Halbach's were. Looking back, I expect Frank Newman had the last easy years (though at the time I'm sure he didn't think so). Something happened in university mores in the early sixties and it has been happening ever since, reflecting profound

changes in the national temper. It's too early for me to be sure how much of all this ferment will prove to be worth it. Time will tell. But I feel confident in predicting this, that these qualities of Jesse's, not least among them his devotion, sweetness of temperament, and sense of a fixed star of academic excellence, will be seen, when the reckoning is finally made, to have made a lasting contribution to the common welfare of Boalt Hall.

Of course you can't please everybody, and Jesse didn't. One of the primary functions of a Dean is to serve as a punching bag, a scapegoat, a dumping site, choose your metaphor. (I've always been partial to Ed Halbach's earthy analogy to dogs and fire hydrants.) Jesse did his fire-hydrant duty well and faithfully. He certainly had one advantage over me in this respect. Passing some placards containing unflattering statements about him in the language of the streets, I asked him later whether he had seen them. He replied: "Of course not. That was your trouble. You went out to lunch and read them. I skip lunch."

This is not the occasion for a detailed accounting of his stewardship. But let me list a few of the ways in which we're significantly better than we were ten years ago. Some of these improvements were wholly his doing, some the work of many hands under his overall leadership, but all occurred on his watch.

Jesse put a lot of effort into upgrading our first-year writing program. He succeeded finally in transferring much of the responsibility for its instruction from recent graduates to members of the faculty. Moreover, appreciating the value of good judicial clerkships for our graduates and for the school, he pushed himself and the faculty to greater efforts on behalf of our students. As a consequence, the number and prominence of clerkships increased substantially. Speaking only of the United States Supreme Court, Boalt produced twice as many clerkships during his deanship as in any comparable period of time. Further, concerned to maintain the highest level of excellence in law review writing and research, he supported a faculty research seminar for editors of the *California Law Review* and the *Ecology Law Quarterly*.

Who is invited to join the faculty is in the hands of its individual members, but the faculty member with the most influence is the Dean. Jesse has had a greater opportunity to exercise that influence than any other Dean in Boalt's history. We now have a regular professorial faculty of some fifty-four persons. Of those a total of twenty-one were hired during Jesse's tenure. That's just under 40% of our present faculty, and it includes notable lateral hires of professors from other law schools as well as a bright and diverse collection of extremely promising young men and women. As one of time's casualties around here I'm not about to admit that the new crop has it all over the old (notwithstanding

the evidence). But it's clear to me that the renewal of faculty resources on Jesse's watch assures the continued distinction of Boalt Hall.

Finally, no sketch of achievements during the Choper era could conclude without mentioning the gains in alumni relations and fund-raising. Like those who went before him, Jesse found that raising money for the school from alumni, far from being a dreaded chore, was one of the more rewarding aspects of being Dean. I don't speak only of reward in its material sense (though money, like virtue, is its own reward). I mean it also in the sense of personal satisfaction. That's partly so because it's plain fun mingling socially and personally with the lawyers who are our alumni, especially for someone like Jesse, given his warmth and openness to people and his generally extroverted predilections. But it is also because the alumni a Dean deals with care for the school, are devoted to it for what it has done for them and what it offers to do for others, and are usually eager and willing to help and support the school in continuing to do its job. No one has done more to tap into this reservoir of goodwill and support than Jesse has.

When I left the deanship we were just completing a Centenary Campaign, which raised annual giving to a half-million dollars, and we thought we were doing great. Jesse has now tripled that figure. He succeeded in establishing no fewer than thirteen new endowed chairs, bearing such esteemed Boalt names as Traynor, Selvin, Jennings, Kragen, Riesenfeld, Bridges, Simon, Robb, and Peyser. He launched a capital campaign that has exceeded its goal of ten million dollars and, an achievement no less Herculean, finally prevailed in obtaining approval from recalcitrant faculty committees (competition for space is tough around here) for the conversion of Manville dormitory into an extension of the law school. In earlier capital improvements Jesse succeeded in converting shabby halls and depressing and unworkable classrooms into acceptable facilities. With Manville, Boalt still won't be beautiful—the Age of Miracles is over—but we'll finally have room to breathe.

And what was he doing with his "free" time during this ten-year period? He published revisions of both his casebooks, delivered eight endowed lectures at various universities, and published over a dozen articles in the law reviews and elsewhere. When he leaves the deanship this summer he will hit the ground running with a Rockefeller Foundation fellowship at the Bellagio Center in Italy, where he will work on an overall theory of the religion clauses of the First Amendment, a task that has so far baffled the best and the brightest.

All that Jesse has accomplished is an achievement of noble proportions, a tribute to his talents, energy, and devotion. He has justly earned a place of honor and distinction in the history of Boalt Hall.

Herma Hill Kay†

As I watch Jesse streak toward the finish line, waving his ten-year banner triumphantly over his head, I find myself thinking about what it will mean—to me, as well as to Boalt—to follow him into the deanship. It is commonplace for the incoming Dean to honor the outgoing Dean by recounting his good qualities, praising his many accomplishments, and overlooking his few foibles (there are no failures), and concluding with the modest hope that one can succeed half as well in one's own deanship.

But Boalt is not a commonplace law school, and this is not an ordinary transition. I will follow Jesse as the ninth Dean of a school where four of the prior Deans (including Jesse) are still faculty members. Indeed, this is my first experience in following Jesse, for I preceded him both into this world (I am one year older than he) and onto the Boalt faculty (I came in 1960, he in 1965). I was hired by Boalt's last external Dean, the master of Torts himself, William Prosser. I have been a faculty colleague of the four prior Deans—Newman, Halbach, Kadish, and Choper—and as Jesse would be the first to tell you, Boalt has quite a tradition of collegiality among its former Deans. So I do not really think of myself so much as Jesse's successor, but as one in a line of Boalt professors who have been chosen by their colleagues to run in the Dean's races for a season or two and then to return to the academic stable with the other faculty ponies, hopefully having improved the breed and maybe even having garnered a few prizes along the way. In that spirit, I'd like to reflect on the Boalt tradition as I will receive it from Jesse when the time comes next July.

First of all, as we all know, there's a lot of money in the bank. Thanks to Jesse, when July 1 rolls around, I will have \$10 million to remodel Manville Hall and the Boalt Hall building to give us a law school complex we can all be proud to occupy. One of Jesse's favorite remarks when he became Dean was that when he asked himself what he could do to improve a school that already had a great faculty and an outstanding library, he decided to spend his time improving the building. He has indeed succeeded brilliantly in that endeavor. Of course, if we find unforeseen and expensive problems, and the remodelling turns out to cost more than that, I'll be literally following in Jesse's footsteps to ask for more help. But I hope to be able to direct my fund-raising efforts toward enriching our program of legal education.

Second, there is a world-class faculty on board who have all the strengths and weaknesses of law faculties everywhere. Their primary

† Richard W. Jennings Professor of Law, Boalt Hall School of Law, University of California, Berkeley. Professor Kay will become Dean of Boalt Hall in the summer of 1992.

strength is that they know how good they are; their major weakness is that they all think they are smarter than the Dean. I can give Jesse full credit for having encouraged the faculty in both traits. My problem, given the state of the California economy, is to figure out how to pay them even a fraction of what they think they are worth. It would help if other law schools stopped offering them more money than they make here, but Jesse says I can't count on that. Oh, well, in a pinch there's always the California climate: that is, if you ignore the drought, the fires, and the earthquakes.

Third, we have the most independent, contentious, diverse, and intellectually stimulating student body in legal education. I'm not sure whether Jesse wants to take credit for all of them. He may not like remembering the scenes in which he was photographed sitting behind his desk while the Coalition for a Diversified Faculty was occupying his office. Still, a goodly percent of the best and brightest applicants for the Class of 1995 are even now trying to get into Boalt, so I think I need have no fear that our students will suddenly become dull, boring, or tractable.

Fourth, there is a loyal and dedicated staff who are, like all such groups, overworked by that same highly self-regarding faculty I mentioned earlier and underpaid because merit increases have been frozen. My job, following Jesse's example, will be to find incentives apart from actual cash to help them keep their good humor as they continue to put up with a bunch of prima donnas day in and day out.

Fifth, there is a law library that has staked out a position on the leading edge of the Information Age and that boasts a canon and civil law collection that is the envy of the world. Unfortunately, the library is so underfunded in other areas that it can't afford to keep all its subscriptions current and barely manages to reshelve its books. With other Boalt Deans, including Jesse, I believe that a law school ultimately is only as good as its law library; so I will be following in his footsteps by trying to raise private funds to safeguard its excellence in hard times.

Sixth, there is a loyal, dedicated, responsive, and wonderful group of alums. No doubt about it: Jesse says often that his relationship with our graduates is the best part of his job. I am prepared to believe that. I look forward to renewing my friendship with my own former students as well as getting to know others, and I welcome your ideas about how to make Boalt even better.

Jesse's relationships with all of these specific segments of the Boalt community produce a more intangible quality that is one of the most important aspects of his legacy. I hope I will not embarrass him if I call it a passion for excellence. Put simply, Jesse wants Boalt to be the very best. If pressed, he will grudgingly admit that some people (mostly on the East Coast) think Harvard holds first place among American law

schools, but he does not concede for a minute that first is always best on all the points of measurement. Jesse's commitment to excellence shows in a lot of ways. It is what drives his effort to place our students as clerks with the best judges and as junior associates with the best law firms. It is what motivates him in faculty selection. It is why he set out to raise more money for the building than any Boalt Dean had ever dared to try before. It explains his fierce determination to defend the school against its critics, internal as well as external. It may even explain his attraction for horse-racing; he is just as willing to gamble on his hunches at the law school as he is at the track.

Speaking of the races, some people might have noticed that in the stable of Boalt Deans, I will be the first filly. Like other females entering a male domain, I have checked the records to see who my foremothers were. Those of you who follow the ponies may recall that a filly named Regret first won the Kentucky Derby in 1915. I wasn't around then, but I did take notice when the second filly, Genuine Risk, won in 1980. I read the newspaper stories about her victory with a strong interest. Alas, I found them all too predictable. On the morning after the race, the *San Francisco Sunday Examiner & Chronicle* ran the winner's picture on the front page with the caption: "Queen of the Sport of Kings." The sports section headlined the story, "Ladies' Day at the Derby." Sports fans and other interested readers learned that Genuine Risk was "a pretty chestnut, 'a very feminine filly' in the eyes of her trainer, LeRoy Jolley," and that, in the opinion of her jockey, Jacinto Vasquez, she "moves like a man."

The more restrained *New York Times* apparently was so ambivalent about the result that it ran the picture of another horse under its headline, "Genuine Risk, a filly, wins Kentucky Derby." The accompanying story did not waste time discussing Genuine Risk's appearance or movements. Instead, it quoted "experts" as saying that the 1980 Kentucky Derby was really only a trial run to see which horse would get to meet the best three-year-old colt in the nation in the Preakness: Tartan Stable's Codex, who had not been entered in the Derby. The story also mentioned the "widespread theory" that there would be no Triple Crown winner in 1980. Obviously, in the view of the *Times*, Genuine Risk might be an exceptional filly, but it remained to be seen whether she could measure up to really good colts.

As it turned out, of course, Codex did win the Preakness and there was, indeed, no Triple Crown winner in 1980. The saga of fillies winning the Kentucky Derby, however, does not end in 1980. Another filly, Winning Colors, managed to come in first in the Derby in 1988, but she didn't win the Triple Crown either. Still, I'm not ready to throw in the towel. After all, Barbara Armstrong was the nation's first woman law

professor when she was appointed at Boalt in 1919, and today, seventy-three years later, we have ten women professors and our first woman Dean. Some things just take time. I won't be throwing away Jesse's racing forms. There may be more to this sport than I had thought.