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CHARLES H. WHITEBREAD

MICHAEL J. GRAETZ*

Late in April when Charlie Whitebread learned that he had Stage 4 lung cancer, it occurred to me that I might someday be asked to say a few words about him. But these are comments I hoped never to make. I do not have words to describe to you the emptiness in my life that Charlie had filled for so many years. But our purpose here is not to mourn our loss; rather it is to celebrate Charlie’s life.

Charles Whitebread walked into my life on a beautiful October evening, into an old farmhouse on 350 acres of land overlooking the Blue Ridge Mountains in Charlottesville, Virginia, where I was living with four other law students in 1968. It was Charlie’s first year of teaching, my last year of law school. From then until September 16, 2008, the day he died—nearly forty years—Charlie and I were the closest of friends. We always referred to one another in speeches as my “great good friend,” and often described ourselves as oil and oil. Charlie was twenty-five years old then, and soon to become the University of Virginia Law School’s teaching superstar, as well as a scholar of the first rank. In the conservative climate of the Law School in those days, Charlie was unique: full of energy, charismatic, larger than life. He always insisted that laughing is one of life’s greatest callings; he had that unmistakable Breadman twinkle in his eye.

Thirty-five years later, giving the commencement address at the University of Illinois Law School, Charlie told the graduating class:

It is not enough in my view to stop and smell the roses. It will be essential to go and look for some roses. Take in museums, art galleries, theater, rock clubs, and live a life of joy in the law. ¹

* Justus S. Hotchkiss Professor of Law, Yale Law School. This remembrance is adapted from remarks delivered at memorial services for Charles H. Whitebread at the University of Southern California on November 13, 2008, and the University of Virginia Law School on December 6, 2008.

¹ Charles H. Whitebread, George T. and Harriet E. Pfleger Professor of Law, Univ. of S. Cal. Law Sch., Commencement Address at the University of Illinois College of Law (2003).
Charlie Whitebread and I often looked for roses—and not just roses, if one were to be completely candid. He, in particular, had something of a taste for thorns. And we lived a life filled with joy. We listened to a lot of music in a wide array of places. At University Hall in Charlottesville we saw what had to be the worst concert Janis Joplin ever performed. Elsewhere we also saw one of Warren Zevon’s best, Pink Floyd, David Bowie and Iggy Pop, Bobby Short doing Cole Porter, the great Paul Simon, and we saw Little Feat—America’s best 1970s rock and roll band—more times than I can count, to name just a few. We had season tickets to the Los Angeles Chamber Music series at the Ambassador Auditorium in Pasadena, where the signs in the bathroom warned us not to “step on the ONYX,” and we spent untold evenings in unnamable dives where we would have hesitated to use the bathroom, if only we could have found it.

We traveled together in Europe, more than once, and Charlie—who confessed to a pampered and preppy upbringing, and often aptly referred to himself as “Mr. Know-It-All”—used much of our time there to fill in some of the gaping gaps in my liberal arts education.

Charlie and I also spent a lot of time together on beaches: Virginia Beach, Biarritz, Jamaica, and Agious Nicolaous—a small town on the Southern coast of Crete—to name a few. After a time, our favorite beach became the Santa Monica beach, in particular, Lifestation Number 9, where much of the USC faculty spent the late 1970s and early 1980s together riding the waves, enjoying the sunshine, ogling the local fauna (without any discrimination on the basis of sex, color, creed, or national origin), and, I am sure, thinking and discussing profound thoughts.

Charles Whitebread played a crucial role in helping secure my appointment to the UVA law faculty in 1972, and that he was so enthusiastic about his life there no doubt erased any small doubts I might have harbored about entering the teaching profession myself. During our time together there, we were inseparable. Our offices in Clark Hall were only three doors apart. We ate lunch together nearly every day, and before the law school moved, we usually crossed Mr. Jefferson’s magnificent lawn to eat at the corner. At faculty events, we always formed the core of the infamous table Number 3, which over time became so boisterous that when he became dean, Emerson Spies stopped having sit-down dinners. We started throwing Halloween parties for the Virginia law school community, a tradition we picked up again when we reunited at USC. In Charlottesville, we partied at the VFW lodge and the Bren Wanna Club, in Los Angeles, in students’ family homes in Beverly Hills. Charlie often viewed these costume parties as occasions to don a toga.
As a law student at Yale and during his early years of teaching at UVA, Charlie served as a resident advisor in various dorms. He liked living rent free. But there came a time for him to give up dormitory life. Reluctantly—and only after I insisted—Charlie purchased his beloved Charlottesville home, where he and John Golden continued to spend Christmases and summers even after he had moved to Los Angeles. It was the first time in Charlie's life that he had borrowed any money, and for months after taking out his home mortgage, Charlie said that he felt like a criminal every time he entered the bank. I tried, time and time again, to explain to him that lending money was how banks make money, but Charlie would hear none of that. He paid off that mortgage as fast as he could.

You see, Charlie Whitebread, for all of his outrageous style, had a very conservative streak. For a long time, he was a committed Republican; in fact, he had headed the Goldwater for President club at Princeton. Charlie came by his conservatism naturally, having come of age in the late 1950s in Bethesda, Maryland, the grandson of a curator of the Smithsonian Institution.

And Charlie always had a keen regard for the civic virtues. We all know of his impressive hands-on philanthropic endeavors, raising more than $1 million for the Jeff Griffith Youth Center in Los Angeles. Charlie was also unfailingly polite; he never dined at my home without dropping me a note of thanks. Nor did he ever fail to acknowledge a birthday or holiday gift, and never by email or typed by his secretary—always by a handwritten note.

Charlie also liked to return frequently to familiar surroundings—the same hotels, the same restaurants. Often he ordered the same dishes. In New York for example, he stayed at the UN Plaza Hotel and dined at The Palm. Even in Paris, he favored a small bistro on the Left Bank, a place he returned to regularly, paying no attention to any other culinary delights he might be foregoing elsewhere in the City of Lights.

Charlie loved the holidays, especially Halloween and Christmas. His Christmas cards were legendary. They were selected with great care, always stuffed with a photograph (also carefully selected), and finished off with a handwritten note—a bit about him, something about you. Charlie Whitebread cared deeply about his relationships, and his Christmas cards were only one example of his efforts to maintain them. More than five hundred cards, painstakingly handwritten year after year.

I was also on Charlie's birthday list. And—until this year—he never
missed. With me, he liked to be early.

Charlie and I often exchanged gifts, often at Christmas, usually on birthdays. We spent many years simply exchanging polo shirts; the same brand, the same size, in different colors. Every once in a while, I would receive a shirt from Charlie that I knew he must have been given by someone else. So if you, for example, are the person who gave Charlie that blue-checked shirt from Joseph A. Bank and have felt bad because you never saw him wear it, do not despair: I have been wearing it for years. Charlie, you see, believed in “regifting.” Once we abandoned our tradition of exchanging polo shirts, I often had trouble knowing what to buy for Charlie. One year when I was living in Florence, Italy, I came upon the perfect present—a number of handmade Italian silk bow ties. I bought several for Charlie and some for myself. Three years after I had given these to Charlie for Christmas, I was surprised to open my Christmas gift from him and see that I had gotten them back. To this day, I do not know whether he had forgotten from whence they came or was sending me a not-so-subtle message about my taste in ties.

The first fifteen years of my friendship with Charlie Whitebread was a time of American life often referred to as an era of sex, drugs, and rock and roll. This means that much of my time together with Charlie necessarily fits into what John Golden calls the “do-not-recall box”—a box designed to fortify that core presumption of innocence, which meant so much to Charlie. But one of the things I miss most about Charlie is that he took so many of my memories with him. I have a terrible memory; I forget far more than I remember. Not Charlie, he remembered everything. He loved quoting back to me what he called “sayings of the Chairman,” little aphorisms I had uttered long ago and long since forgotten.

Charlie also remembered everyone: students, acquaintances, friends, business associates, and judges. And Charlie made every effort to stay in touch with his friends. When he was on the road giving his lectures to first-year law students, to bar review courses, or to judges, he would often call and tell me whom he had just seen in one of the cities or towns he was visiting, usually someone from USC, UVA, Yale, Princeton, or even the Landon School. Charlie treasured his friends and he refused to allow his friendships to atrophy from inattention. Over the past two decades, when we lived thousands of miles apart, Charlie and I frequently got together, often on one coast or the other, and we talked at least once a week on the phone. I hate the thought of not seeing him and will miss what—until this May—he usually called our “cheery phone calls.” Charles Whitebread and I shared many great times together—and a few difficult ones.
Others have applauded Charlie's legendary stature and prowess as a teacher. Each of us who teaches harbors the hope that at some alumni event or another, one of our former students, or maybe two, will offer up our name during debates about who was their most important teacher. But none of us can fail to marvel at the outpouring of student affection that followed Charlie's death. Nearly two thousand posts on the web, remembering him, indeed revering him. Who among us expects even a small fraction of that? Charlie was a unique figure in American legal education.

I do want to add a few words about Charlie's professional life, for there too he and I were closely connected. First, Charlie's book with our friend and colleague, Richard Bonnie, *The Marijuana Conviction: A History of Marijuana Prohibition in the United States*, went through six printings at the University of Virginia Press before being sold out, and then was republished thirty years later, since it remained important, wise, and unfortunately still relevant. Few among us can claim such scholarly success.

Shortly before his death, Charlie was in the process of revisiting what he regarded as the common theme of all such prohibitions: the confluence of a difficult social, economic, or medical problem that divides "us" from "them"—divides, as Charlie often said, "the movers and kickers" from "the moved and kicked." Charlie was certain that the next prohibition, and the next failure of prohibition policy, would be against tobacco. He felt it was ten or fifteen years away, but that it was inevitable. Unfortunately, he did not live long enough to make his case or to see if his prediction proved right.

Charlie's interest in drug prohibitions was just one reflection of his commitment to what, in a graduation speech at the University of Virginia Law School in May 2000, he described as "the ultimate issue of any great law school: the promotion of social justice." It was the discriminatory history—and present—of the drug prohibitions that he was battling against. In that graduation speech—and throughout his life—Charlie often quoted Calvin Woodard's words that "law schools must assume, as their basic premise, that the man who first understands his obligations to Justice will be better able to fulfill his legal 'function' whatever it might be. Justice, in a word must take precedence over law." Charlie told the graduating

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3. Charles H. Whitebread, George T. and Harriet E. Pfleger Professor of Law, Univ. of S. Cal. Law Sch., Commencement Address at the University of Virginia School of Law (May 21, 2000).
students, "You will decide if justice rather than parochial or economic benefit is to prevail." He also told the students that keeping the promotion of justice in the forefront of their thoughts would ennoble their daily work and enrich our nation and our lives.

When Charlie entered teaching, there was turmoil in the legal academy, conflict between what our Virginia colleague Tom Bergin called law school schizophrenia between the "true academics"—those "who have the potential for serious scholarship"—and those he labeled the "Hessian-trainers"—people who were excellent at training practicing lawyers. Bergin fretted that the Hessian trainers were being forced to produce "vast tonnages of trivia . . . in the name of scholarship." For evidence of this, he referred his readers to what he called "that vast Forest Lawn of catalogues, the Index to Legal Periodicals." Bergin titled his article: "The Law Teacher: A Man Divided Against Himself."

In this battle, the academics, the scholars, have long since won out. But Charlie Whitebread's overwhelming commitment to teaching—indeed to teaching over scholarship—did not produce any schizophrenia. Charlie Whitebread was a man with an adamantine sense of self. He knew that his calling was to teach. He had proved early in his career with his and Richard Bonnie's book on the marijuana prohibition that he could do scholarship at the highest level. But that is not what he wanted to do. He wanted to teach.

And so the vast bulk of Charlie's scholarship as his career matured was in the service of his teaching: our piece together on Monrad Paulsen and the role of a university law school; his annual review of Supreme Court cases, written mostly for state court judges; his coursebooks on juvenile justice and criminal procedure; his book on how to take law

689, 737 (1968).
5. Whitebread, supra note 3.
7. Id at 646.
8. Id.
11. CHARLES H. WHITEBREAD & CHRISTOPHER SLOBOGIN, CRIMINAL PROCEDURE, AN
school exams;¹² even his Green Bag article on how to make the bar review fun.¹³ These were all writings in the service of teaching, materials mostly for a student audience, reflections on the process of teaching itself. In my view, it was Charlie’s self-awareness, his thoughtfulness about teaching that set him apart. That, along with his unbending quest for greater justice, his marvelous sense of humor, his limitless energy, his humanity, his novelist’s eye for detail, and his love for the classroom. Those things, coupled with his uncanny ability to make learning both fun and memorable, made him the great law teacher of our generation. Winning USC Law School’s teaching award this year meant more to him than you can imagine.

Charlie almost always told his students the truth. His mother, for example, really did express sadness at Mr. Miranda’s passing, because of “all that he had done for us,” as she put it. And I was the witness who suffered the cross-examination that set up Charlie’s oft-told story about seeing jurors rocking. That trial involved an armed robbery on the fourth floor of the USC Law School. But sometimes Charlie exaggerated a bit. When he did so, he always did it in an effort to put his students at ease, to make a point of law more memorable, or to make his students more confident about their own prospects. For example, Charlie claimed he was a nonsmoker when the bar examiners made him take his exam in a room for smokers. But when I met Charlie, he was smoking at least two packs of cigarettes a day. The New York Times, on November 3, 1973, published an article entitled, “Despite the Warnings, Millions Can’t, or Won’t, Give Up Smoking.”¹⁴ The article has no byline, but it was written by a very young Maureen Dowd when she was a stringer for the Times. She was captivated by Charlie. The article begins: “Charles H. Whitebread, Professor of Law at the University of Virginia, sat in his cramped, book-lined office, lit a cigarette and talked about smoking.”¹⁵ Later in the article, after recounting the well-known health hazards of cigarettes, Ms. Dowd asks, “Why do people keep on smoking?” She says:

With some, like Professor Whitebread, it has become part of the personality structure, part of the public role. Pacing up and down before

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¹. ANALYSIS OF CASES AND CONCEPTS (5th ed. 2007); SAMUEL M. DAVIS ET AL., CHILDREN IN THE LEGAL SYSTEM: CASES AND MATERIALS (2d ed. 1997).
¹⁴. Despite the Warnings, Millions Can’t, or Won’t, Give up Smoking, N.Y. TIMES, Nov. 5, 1973, at 45.
¹⁵. Id.
a class of 100 students, Mr. Whitebread waves an unlighted cigarette to emphasize a point or pauses dramatically, snaps his fingers and accepts a quickly offered light from his audience.\textsuperscript{16}

"He also illustrates another common reason: Compulsion, deep-rooted and fanatical, perhaps a little mad. 'I would rather smoke than eat,'” she quotes Charlie to say.\textsuperscript{17} Charlie was always an outsized personality: Anything worth doing a little was worth doing to excess. Moderation was never a virtue to Charles Whitebread.

Nearly three years later, on the same July 1976 day that John Golden and I set out in an underpowered, half-filled U-Haul for a bicentennial trip across America, Charlie quit smoking. His mother, like his father before her, had just been diagnosed with lung cancer. It never occurred to any of us that it might already be too late for Charlie himself.

I was moving to California. None of us knew it at the time, but Charlie and John would soon follow. As John and I got into the U-Haul, which was filled with some of my prized possessions, Charlie said, "When you get old, you need to have some of your things around you.” I was thirty-one; Charlie was thirty-three.

Whenever Charlie and I faced any adversity, the time between our phone calls and our visits shortened. We checked in with each other regularly, often daily. Last spring, when Charlie’s doctors thought that his lingering bronchitis had turned to pneumonia and that he might not be able to travel to Charlottesville, we talked regularly. When he called at the end of April to say that his illness was actually lung cancer, I came to see him. He had asked me to wait until the day after USC Law School’s graduation; he wanted nothing to interfere with that very special day.

I arrived just after Charlie had received his first chemotherapy. He was realistic; he knew his chances for survival were not good, but he was determined to fight. Charlie and I had always described “good advice” as advice that you know you should take, but just cannot. The last good advice I ever gave Charlie was to live at least until January, when his estate tax would be $600,000 to $700,000 less. He promised to try.

During the years when Charlie and I lived next door to each other on Ocean Avenue in Santa Monica, we would often take walks along the bluffs overlooking the Pacific Ocean. Frequently, we talked of growing old there together, moving into the EL Tovar retirement home near the San

\textsuperscript{16} Id.
\textsuperscript{17} Id.
Vicente intersection, and we argued about who would be in the wheelchair and who would be pushing it. The EL Tovar is no longer in our future.

Despite his illness, Charlie was determined to try to remain upbeat. That—of course—was an essential element of his personality. One day in June, he called my house wanting to chat. When he learned that I was in London and that my nineteen-year-old son Jake was at home alone taking care of the house, Charlie asked Jake if he had been throwing any wild parties. When Jake insisted that he had not, Charlie replied, “Well then, you are not half the man your father was.”

I saw Charlie for the last time in August. He had returned to Los Angeles from Charlottesville both exhausted and exhilarated from all the friends who had visited him there. By then, the combination of his deadly illness and the poisons they had put into his body had beaten him down. By twilight each evening, he was exhausted, his head drooped down on his chest. His enthusiasms had largely left him. Manny Ramirez had just come to the Dodgers, and after dinners we watched parts of a few games together. The last day we spent together, Charlie summoned the strength to go shopping with John and me at the Santa Monica Farmers Market. A spark or two of the old Charlie remained. A young man selling cheese there was as magnificent a specimen of California youth anyone could imagine. Even I noticed. So, of course, did Charlie. He showed a little of the old energy, the old humor, the old Charlie. That night, we spent our last moments together watching the Dodgers.

Appropriately, the last real conversation I had with Charlie was from an airport. We had often talked when he was waiting for a plane to take him to some law school, some conference of judges, or a bar review lecture. This time I was in the airport waiting for a plane to take me to watch my son play soccer—a pastime Charlie could hardly comprehend. He told me that if his days now were what it meant to be living after a cure, he had no use for it. He saw no point in carrying on. I couldn’t convince him otherwise; I hardly tried. The next week Charlie went to the hospital for the last time. Two weeks later, he was gone. Charlie died peacefully in his apartment on Ocean Avenue in Santa Monica with two of his best friends at his bedside.

Shortly after my mother died, one of my daughters, then age six, caught me in a moment of profound sadness. “Dad, why are you so sad?” she asked.

“I was just thinking about your grandmother,” I said.

“Oh,” she said, “I’ve been thinking of her too.”
“What are you thinking?” I inquired.

“I am thinking of her in heaven, having tea with Louie Armstrong,” she said.

This, I realized, is the best way to think about people who have passed. So I now try to think of Charlie Whitebread in heaven telling stories to anyone who will listen, maybe talking to Jackie Robinson about baseball or Lowell George about rock and roll, perhaps exchanging quips with Oscar Wilde, chatting with Agatha Christie about her novels, and no doubt pacing in front of some large classroom entertaining and educating the large crowd that has gathered around to listen and learn from him.
It is a challenge to write about a friend of thirty years and to capture the essence of the space he filled in your life. A true friend connects to a place in you that is unique. Charlie was like that for me.

Charlie was in his early thirties when I met him, and already displayed the attributes that others will no doubt mention: a commentator on the Supreme Court, an entertaining professor of trusts and estates and criminal law, a teacher at the FBI Academy and elsewhere, and a BAR/BRI lecturer of great renown. I leave it to others to describe his contributions in those areas. Others will write about him as a professional colleague or as a professor, but for me he was mostly my friend.

We met as lawyers, I practicing in a West Side Los Angeles law firm, and he visiting from the University of Virginia and then joining the University of Southern California Law School faculty. But though we met as lawyers, our relationship quickly outgrew that context. This is a strictly personal reflection with snippets of memories from our times together.

To me, Charlie was above all, a conversationalist, freely offering his opinions on a wide range of topics. Of course, we enjoyed talking about the law and its figures, both the towering personages and those who were scoundrels or scalawags. But our exchange of ideas extended to so many other things. He was a reservoir of riches as a friend—always opening doors into new experiences and sharing his observations, challenging my views. What a wonderful wit! Sometimes relentless, but always so quick and funny to the point of tears.

Charlie had enjoyed a classical education. He spoke French and knew

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to use (and give) Crane’s stationery. His thank you note arrived like clockwork after each event, and he used to laugh that he was the “most-invited-to-dinner man in America” because he never failed to help in cleaning up afterwards. He was certainly a gentleman in the best sense of the word.

He was also a lover of Thomas Jefferson, and very knowledgeable about our third president’s life. When my husband, David, and I visited him once in Charlottesville, he insisted that we tour both Monticello and the University of Virginia, and he enriched our experience of these historical treasures with both insightful and witty comments. I am happy that the last gift I gave him was a newly published biography, *Thomas Jefferson, Lawyer*, which he read with enthusiasm. In turn, he shared with me most recently Jim Newton’s biography of Earl Warren.

Charlie took life very matter-of-factly. He resolutely avoided discussing the sad or unpleasant, preferring to keep the focus on fun. He was determined to be upbeat, to keep it light. But he was never superficial, always thoughtful and kind, a fundamentally good soul.

He rarely asked much of me in return. In one respect though, he was grateful to me for helping him out in a way that I could, since I was among his most ordinary and reliable friends. I was on hand to spend time with his mother whenever she came to Los Angeles. He always made certain that David and I would be available to entertain her for an evening during her visits, and we did it gladly.

Time with Charlie was always stimulating. I loved his repartee and it was a challenge to keep up with him. We loved discussing our shared passions, including reading, both the exalted and the potboilers.

Charlie, who regularly suffered the commute from his Santa Monica home on the far West Side to USC’s downtown Los Angeles campus, got into the habit of listening to books on tape. He, in turn, got me hopelessly hooked, and we often traded our favorites, though he was much more often my source than I his. Whether it was Ken Follett, Agatha Christie, or Nero Wolf, whenever I saw him he pressed the latest set into my hands, and I was then transported to another time and place by a murder mystery or adventure story while sitting in traffic.

Our many good times frequently revolved around shared observations of life and its quirks. In the time since his death, I have realized that when the person with whom you shared these thoughts is gone, it is as if the part of you that connected to that person also dies. There is no way to replicate the connection created by the subjects you talked about and how you talked.
about them. Will I ever enjoy a Nero Wolf mystery on my CD player while driving the freeway without thinking of him?

Charlie’s voracious appetite extended to his very large circle of friends. He was a real friend to many, many people, and he was always looking for a way to advance his friends. He pushed opportunities in my direction, boosting my stock with potential lecture opportunities. How else would I have been invited to Minnesota to lecture to lawyers there about alternative dispute resolution if it had not been for Charlie?

Not all of our ventures enjoyed commercial success—once, in the early 1980s and under the spell of the desert, we each decided to buy a second home there, in the town of Desert Hot Springs. It was a fateful choice, for the town that we chose for what seemed to be a promising future developed instead into a haven for gangs and bikers, some of whom became our tenants. The predictable cycle of rent delinquencies and evictions ensued, and we eventually sold out, lucky to escape without foreclosure and with our credit ratings intact.

Our real estate escapades behind us, in the late 1990s and into the next century, we chose more tame pursuits—orchid shows became a pastime we enjoyed together. This was especially so after my family and I moved to Santa Barbara, where orchid shows and growers dominate the floral landscape. Once I made that move, we still managed to see each other, though less frequently. I was flattered that he continued to enjoy our time together.

With Michael Kelly and John Golden, Charlie drove to Santa Barbara and we combed the aisles of the local growers, oohing and aahing over the blooms and choosing a few to buy for our home gardens. He was clear about his favorite—not the cymbidiums or phalenopsis or even the vandas, but the cattelyas—those were his special loves. We always made a day of it, enjoying a lunch on Stearns Wharf or at a downtown Santa Barbara art gallery cafe.

When Charlie and John first moved to Los Angeles, they lived in an apartment on Ocean Avenue in Santa Monica. In those years, when I lived close by in Santa Monica Canyon, we used to joke that we would end our days chatting, while stretched out in comfortable lawn chairs at Santa Monica’s El Tovar Hotel. The hotel, of course, was later transformed into luxury condominiums, but that did not impede our “plans” to retire there, with an ocean view, under the palms. Though that won’t happen now, I will continue to enjoy in memory those wonderful conversations, sadly interrupted.
HE WAS A TEACHER

MICHAEL SIMS*  

"I am Charles Whitebread from the University of Southern California."

Well over one hundred thousand first-year law students, BAR/BRI students, practicing attorneys, FBI agents, and sitting judges heard Professor Charles Whitebread utter that simple opening phrase each time he began a lecture. While the opening phrase may have been simple, the lectures that followed that opening were anything but simple. For Charlie Whitebread was not just a law professor, he was a truly gifted teacher of the law. He was a lifelong student filled with an insatiable curiosity. And he was a dear friend not only to me, but to thousands of students with whom he shared his gifts.

I first met Charlie when he came to the University of Texas to speak about the “first year of law school in general and exam taking in particular.” Charlie had come to Austin as part of his annual seventy-two-school fall tour—a tour he did while maintaining a full-time teaching load at USC. He arrived in October of my first year. Like so many 1L’s, I had been told that the key to success on the fast approaching first set of final exams was to IRAC. The problem was that none of my professors were teaching us how to IRAC beyond explaining that the acronym stood for “Issue, Rule, Application and Conclusion.” In fact, as far as my classmates and I could tell, none of our professors were teaching us anything at all. They were just asking us questions.

It was a quite a shock, therefore, when Charlie started his lecture and began to teach. Even more shocking was that he employed humor in his teaching. In an effort to help us grapple with the intimidation we were feeling as first year students, Charlie recalled his first day of law school at Yale when his Civil Procedure professor introduced a case and asked the class, “Who should decide this issue?” According to Charlie, an

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overachieving student in the front row began frantically waving his hand. When the professor called on the student, the student answered, "Twelve good persons tried and true drawn at random from the laity." Charlie’s response to that answer was to worriedly think to himself, "Do you think he means a jury?" and then consider dropping out of law school. The punch line, of course, was that the frantically waving student finished near the bottom of his first-year class.

Having helped us get over some of our 1L anxiety, Charlie spent the rest of the hour humorously, but effectively, teaching us a step-by-step approach for spotting issues, stating rules, applying facts, and reaching conclusions on our final exams. The roar of applause from two hundred University of Texas first-year law students was testament to the good Charlie did for each of us that day.

After graduation from law school in 1992, I went to work for BAR/BRI, and had the opportunity to travel with Charlie each fall on his first-year tour and each summer for his BAR/BRI bar review lectures. Seeing him lecture again and again, I came to appreciate his teaching even more.

While Charlie felt strongly about reducing the intimidation factor of the first year of law school, he was even more passionate about helping bar review students cope with the abject terror of the bar examination. Charlie would always arrive early for each lecture to meet the students and share a kind word. At each break during the lecture, he would walk into the audience to make sure the students understood the material, and see how they were handling the stress of studying for the bar exam.

Charlie frequently used humor during his BAR/BRI lectures to relieve stress and help clarify difficult concepts. To help students grapple with the extraordinary amount of rules that must be memorized for the bar exam, Charlie would always remind students that many are quite simple. For example, when teaching the elements of the law of kidnapping, Charlie told the students there are two requirements, "(1) a kid, and (2) a napping." What could be easier or more memorable than that?

When teaching the rules surrounding police interrogation and confessions, Charlie had a unique perspective on the *Miranda* warnings. Here’s how he described it:

“I am reluctant to insult your intelligence by telling you what the *Miranda* warnings are. If you really don’t know the *Miranda* warnings, you separate yourself from every person who watches television in America. If you don’t know the *Miranda* warnings, you should study a
little less tonight and watch a cop show on T.V. and you will learn them."

After reciting the warnings, I admonish students to look for two triggers for the need to give the warnings: custody and interrogation. The police must be engaging in interrogation to require them to give the *Miranda* warnings. As to interrogation, no warnings are required to admit what courts call spontaneous statements or threshold confessions. To exemplify this point, I once again resort to a case I had in my very limited criminal practice. One of my clients, on seeing two police officers coming up the walkway of his home, ran out the front door and blurted out, "You must be here about that Buick I stole." The police did not need any warnings to admit that spontaneous statement. I then pause to explain to the students what the two police officers were doing approaching my client's home—they were raising money for the Fraternal Order of Police. Who were many of my clients? Life's losers, that's who.1

Charlie understood, however, that even making the material humorous or memorable did not necessarily make it manageable. To help the students deal with the volume of material, he always told the story of his own bar exam study.

"You can't learn all the stuff in these books and it is even dangerous to try. If you are taking our course, you have no reason to fear lack of knowledge on the bar. My golly, these books are so chock-full of knowledge they would choke a horse! Your only fear if you are taking our course is that, in the face of all this material, you will panic. To show you what you shouldn't do, let me tell you what I did do. I graduated from Yale Law School in 1968. In those days, we went to school right up until the first of June. I sat for the D.C. bar exam which, in those days, was given the last week in June. I had three weeks to prepare for the exam. I rushed to D.C., where I took a review course in which a single guy drearily lectured on every topic eight hours a day. As I like to say, I wish you (pointing at the students) could have been with me for that. But I was just like bar review students everywhere. I didn't care what he said, I just took notes as fast as I could. We must have been two weeks into this course before I even looked up from my note-taking. As I recall, he was lecturing on Commercial Paper: Negotiable Instruments. I looked up and a little light bulb came on over my head and I thought to myself—do you think he means a check? I later found out that I answered all ten commercial paper questions on the D.C. bar correctly but, to this day, I have just one little problem about commercial paper: I don't know what it is.

“Well, I attended eight hours of lecture and then went home at night and studied some more. My mother threw food in at me like I was some kind of animal.

“Came the day of the D.C. bar exam. The exam was given at the old Georgetown University Law Center, which was then an unair-conditioned, five-story, walk-up fire trap. Where do you think I was assigned? The fifth floor. I climbed up there to a room that was hot and airless. You can believe this or not—it really happened. I found I had been assigned to the smoking room, but I didn’t smoke and, worse yet, it was a typing room and I didn’t type. I am in this hot, nasty, smoking and typing room when I try to remember my outlines and mnemonics. I am starting to panic. I can’t remember any of my material. The sweat beads are pouring off my head. I am having what I have always thought of as the Toilet Flush—I am in total panic. I can’t recall any of my notes and it looks like I am doomed. Just as I was in that totally panicked state and they were getting ready to hand out the exam, the fellow sitting in front of me did one of the most charitable things anyone has ever done for me in my life. Just as they were about to hand us the exam and I am in total panic, this guy turned around to me for no reason I ever figured out and said, ‘You know, I hear some people take a course before they take this test.’ What did I think? I thought, ‘O.K., that’s one.’ That’s what I thought. And what is the moral of the story? The moral of the story is: Don’t panic no matter how little you know! You can take it from me, there will be boatloads of folks sitting for the bar exam who know less than you.”

In reality, there were few people who knew more than Charlie Whitebread. Part of what made him a great teacher was his insatiable curiosity—about everything. At home, he was never far from one of many reference volumes. When we traveled together, he was a voracious reader of newspapers, and he kept his suitcase full of nonfiction books, historical novels, and mysteries. Wherever we went, we found something new to see. For example, in Atlanta, we went to the Cyclorama, a nineteenth-century painting-in-the round and sculpture depicting the Civil War. In Houston, we toured the Museum of Science and Nature, spending hours in what Charlie referred to as “the butterfly aquarium,” an indoor rain forest filled with thousands of butterflies. No matter what city we were in, no matter how many lectures he had to give, Charlie required us to learn something new every single day.

Even though he jokingly referred to himself as “Mr. Know-it-All,” he never took himself too seriously. Nor did he take the entire process of

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2. Id. at 268–69.
education too seriously. He always reminded his BAR/BRI students,

In 35 years of law teaching it is my observation that the acquisition of knowledge—all knowledge—falls into three levels or stages. Level one: You come to the course each day. You more or less listen to the lectures. You sort of do the homework. You kind of understand the stuff. Level one is glib understanding.

At the other end of the spectrum is level three. At level three you realize there are grave problems with your glib understanding. At level three you have worked through all of those problems. Level three is true insight and knowledge. Level three is where all the “A” answers are on law school exams.

However, between level one—glib understanding—and level three—true insight and knowledge—there is a vast level two.

At level two you realize there are grave problems with your glib understanding. But at level two you can’t figure out those problems. At level two you lose the glib understanding, but at level two you do not gain true insight and knowledge. At level two you lose sight of the forest for the trees. At level two you get all balled up. You even forget your own name.

Let’s remember what we are talking about here: the bar exam. It’s a pass-fail exam. You don’t want to finish first on a pass-fail exam. Where do you want to finish? You want to finish in the money. You want my advice: Don’t even think of leaving level one. Glib understanding is more than enough to pass any bar exam in the United States of America.3

Over the years, I have had many of Charlie’s former bar review students tell me that glib understanding is not only enough to pass any bar exam in the United States, but it is in many cases enough to pass many of the tests that life or the practice of law throws at you.

As I think of one story that sums up my experience with Professor Charles Whitebread, it is this one: Late one evening after an eleven-hour day in which we had traveled to three separate cities and Charlie had spoken at five different law schools, I asked Charlie how he could deliver the same speech over and over again with the same freshness and vitality. He looked at me, paused, grinned, and offered this reply. “I’m not giving speeches. I’m teaching. That’s what I do. I am a teacher.”

He was indeed. For those of us who were fortunate enough to have been his students, we are richer for it.

3. Transcribed from Charles Whitebread’s Criminal Procedure bar review lectures.