

Interview with Gerald Nemiroff*

BRYAN P. SCHWARTZ

I. INTRODUCTION

Bryan P. Schwartz (BPS): So let's begin at the beginning. What did you do before law school, by way of education?

Gerry Nemiroff (GN): I was born and raised in Montreal. I went to McGill. In university, I got my science degree; I went to what was then called Sir George Williams University, now called Concordia University, to get my arts degree because at the time, in order to become a lawyer, you had to have an arts degree. And so, I did my arts degree over a period of 3 summers. Almost became a meteorologist, believe it or not. (Laughs) I figure that wasn't a bad job. You can be wrong 80% of the time and still pick up your paycheck.

BPS: Well, the thing about law is that since there's no objective means of proving you were wrong, you can be wrong 100% of the time. (Laughs) You don't have a definitive rejection; you just have an argument.

GN: That's true! (Laughs) That's why I went into law. I got my civil law degree, articulated in Quebec, practised with an insurance company for a couple of years, and went to Dalhousie for an LL.B. and an LL.M. Upon graduation, I had to decide whether I was going to return to practice with the insurance company. I wrote out a few letters about academic positions and ended up here.

* Interview conducted by Bryan P. Schwartz. Gerry Nemiroff (B.Sc. (McGill); B.A. (Sir George Williams); B.C.L. (McGill); LL.B, LL.M (Dalhousie)) was a law professor at the University of Manitoba from 1968 to 2008 and the Associate Dean of Robson Hall from 1977 to 1982. He was a visiting professor at the University of Melbourne in 1975, and a professor at the University of Calgary in 1977. In 1972, he was awarded the Olive Beatrice Stanton Award for Excellence in Teaching at the University of Manitoba. He was called to the Manitoba Bar in 1972.

BPS: What branch of science were you doing when you started?

GN: Math-Physics.

BPS: Oh, me too! Small world. So while you were doing math-physics, were you thinking about it as a career or you just wanted to understand the way the universe worked?

GN: No, neither of those. I was good at it in high school.

BPS: Oh.

GN: So I figured, “Listen; just carry on with what you’re good at.” And so I ended up doing math-physics. When I graduated from science, I had no idea what I wanted to do. I couldn’t see myself working in a lab anymore. I mean, it was fun doing it academically, but it was not something I saw I would want to do as a career. Frankly, I ended up going to law school because there were spaces. (Laughs). In those days, they had more seats than applicants, although you needed good grades to get in.

BPS: Now, you did your B.C.L.¹ at McGill, so you would have done the civil law program in English.

GN: Yes, they didn’t have a dual program at that time.

BPS: So you would go on to be a very Socratic, very classroom-oriented teacher, very much in the common law tradition, but your initial education being civil law might not have been, might have been more lecture-style, more deductive rather than Socratic?

GN: Absolutely. I had one professor at McGill, who later became Dean. His name was John Durnford² and he, of all the academics on the Faculty of Law at McGill, had sort of a Socratic method of teaching. Not entirely, but

¹ B.C.L. is a Bachelor of Civil Law.

² John W. Durnford is a Professor Emeritus at the Faculty of Law at McGill. He served as Dean of Law at McGill from 1969 to 1974.

it wasn't a pure lecture method. It happened to be in the area of insurance law; maybe that's how I got into insurance law in the first place. I enjoyed his classes immensely and when I went to Dalhousie, the majority of classes were conducted by the Socratic method or in an offshoot of the Socratic method. I had professors who I felt to be extremely interesting and captured my interest, who taught in that fashion: Art Foote³ was Remedies, I think; and Horace Read⁴ taught Contracts.

BPS: Now, where would they have adopted the Socratic method from? Would they have all gone to an LL.M. at Harvard?

GN: I think Horace Read did all his legal education in Minnesota, if I'm not mistaken.⁵ [T]here were some courses that were done in a more traditional fashion, but the teachers that I had that taught in the Socratic method—that encouraged and promoted and almost demanded discussion and participation—piqued my interest and made, for me, law to be interesting. I found that traditional lectures were very boring.

BPS: Now that you mention it, I remember when I went to Queen's, I had a lot of U.S.-educated professors, and I guess a lot of professors from the United States were heavily influenced by the Socratic case method that had been developed at Harvard. I think things have changed since then, because the Canadian government adopted a policy of preferential hiring for Canadian citizens and that might have reduced that particular cultural flow. It took place in another way, I think, which is almost everybody used to go to American universities to get their Master's degrees before becoming teachers. So the influence still was taking place, not by American professors coming to Canada, but by our being educated in the U.S. and then coming back.

³ Arthur Lloyd Foote was a Professor of Law at Dalhousie University for about 20 years. He studied at Dalhousie, Oxford University, and the University of Michigan. He taught at the University of Ottawa and Osgoode Law School before joining Dalhousie.

⁴ Horace Read was Dean of Dalhousie Law School from 1950 to 1964. He studied at Acadia University (B.A.), and Dalhousie Law School (LL.B.).

⁵ Read studied briefly at Harvard University. As a doctoral student, Read received an offer to teach a legislation course in the U.S., the first of its kind at that time, and subsequently became a member of the Minnesota Bar. He was a professor of law at University of Minnesota until 1950.

So you practiced at an insurance company for a while, and as I understand it, your classroom was very much based on constantly inviting students to think of real-world situations and how you would deal with things in a practical manner. Did you enjoy actually encountering the real world with an insurance company? Or what was it that caused you to think that you would rather be an academic?

GN: That's a very good question. I found the area of insurance law very interesting. It was an area in which relatively little had been written. I did my thesis on the obscure topic of waiver, election and estoppel in the law of insurance. It's a pretty important area because it serves as a way to cut off the insurance company's argument to deny liability if you can show that they can be estopped or waived or elected to do otherwise. I've found it very interesting because everyone more or less has an insurance policy of some sort—you have house insurance, life insurance, car insurance—so it seemed to me to be a very practical area that people, including myself, could easily relate to because it was a document that we all owned. But it was very complex. So I guess that piqued my interest in insurance law even more.

I found working for an insurance company very interesting because it was more appellate-type work than solicitor-type work. A lot of the fact finding is done by the claims examiners, by the adjusters, and when the file gets to the legal department it becomes an academic question, an interpretation of the policy. That appealed to me because the level of work that I ended up doing in insurance was at a higher level than it would be in other respects. I didn't have to do the drudgery of wills and estates. I was doing the academic stuff and that's what caused me to say, "Well, geez. Maybe I want to get more academically involved. I'll write off to law schools." At that time, if you had an LL.M. under your belt, you were guaranteed a job at some law school, because there were very few of us in those days, so I went off to do post-law work. Also, at that time I wanted to move away from Montreal because of the political climate.

BPS: You keep saying "at this time"...roughly, we're talking mid-60s?

GN: Yeah. Mid-60s was when the FLQ Uprisings happened, if I recall correctly. So I wanted to have escape routes available to me. That prompted me to go to Dalhousie, and having acquired my post-grad degree and knowing the demand for law professors at that time, I said, "Well, that's

great. I can go to Ontario or Manitoba or wherever as a law prof; I can stay with the insurance company and hope to get moved somewhere out of Montreal.” I just had all these options on the table; so I played all of my cards and gathered in all of my options, and I said, “What the heck! I’ll try teaching for a couple of years,” knowing full well that if I didn’t like it, or it didn’t work out, I wouldn’t fear that I had nothing else to do. The insurance company would have taken me back in a flash. I could go back to private practice. So I enjoyed an era where working at a very good job was never an issue or a fear, and I capitalized on that.

BPS: Yes, it’s such a different time now for people who will read this around the time this interview will come out because to be an academic now, you’re thinking in terms of: “I’ve got to get good grades to get into law school; I’ve got to get good grades to get out of law school; then I’ve got to get into a Master’s; and then I’ve got to get a Ph.D. and even then, I *still* might not get a job. And then if I don’t get a job, then it’s also a very competitive job market to go out and do other things.” So the opportunity, the flexibility, the mobility you would have had in those days is something that people would see as kind of a dream era, but the macro picture was that the whole economy is expanding. You had a very young population, very high rates of economic growth, endless opportunity: everything seemed to favour expansion.

GN: It was a wonderful era; I must say that I thank my lucky stars that I was around through that era.

BPS: Just a quick anecdote, you mention that anyone with a Master’s could get a job. I asked Cliff once how he so deftly managed to recycle people who weren’t working out, and he said, “Well, I never did tell them that their contracts weren’t being renewed.” He would always hire them on contract to audition them, not tenure track, and instead of saying, “I’m not renewing you,” he’d say, “I’ve found you a wonderful new job at the Law Commission, or in private practice.” And so I said, “But why did you hire so many bozos in the first place, Cliff?” And he would say, “Well, dash it all, most days it’s so hard to find someone with an LL.M.” So it fits in with your story. If you had an LL.M. you had a ticket to ride!

GN: You had open doors everywhere!

II. CHOOSING MANITOBA

BPS: So Manitoba makes you an offer and you come to Winnipeg. Now what are your expectations? Why Winnipeg?

GN: That's also a very good question. My wife was from Western Canada. I had never been west of Toronto my entire life. Remembering at that period of time again, travelling was not as common as it is today. So I said to myself, "Well, I wouldn't mind spending some time checking out Western Canada." I'd been on the Atlantic coast, at Dalhousie; born and raised in Montreal; spent a fair amount of time in Toronto. So this was a part of the country that I knew nothing about, except from my wife. So when I sent out these letters—I can't remember now, but I had more than one offer for sure—but it turned out that at the time, I think, Charlie Huband⁶ was teaching Insurance as a practitioner, and some other gentleman—the name of which escapes me—was teaching Negotiable Instruments, but was moving to Alberta. So I was offered those two courses, straight off the bat. And I said, "Oh, this is good. Insurance Law, right up my alley. Negotiable Instruments, I always found interesting and challenging and quirky." And then they threw Contracts into the mix; it was also tremendously welcoming to me because I so much enjoyed my course in Contracts from Horace Read, whose course I actually copied when I came here (with his permission). I used his casebook, in fact, for a couple of years. So I said, "Well, I've got everything I want here." And it was a two-year deal.

BPS: So this was a contract, not a tenure track?

GN: Oh, no, it was a two-year deal.

BPS: That was Cliff who hired you?

GN: Yeah, he gave me a two-year deal. I didn't want more than a two-year deal; I was happy with a two-year deal.

BPS: It's funny; I was offered two [year] and I took one. (Laughs)

⁶ Charles Huband, sessional lecturer 1956 to early 2000s. He was a judge of the Manitoba Court of Appeal from 1979 to 2007, and currently practices at Taylor McCaffrey. For his interview, please see page xxiii of this issue.

GN: So I said, “Ok, we’re going to Winnipeg for a couple of years, and we’ll see how that pans out. And you know, if we don’t like it, and we want to go elsewhere, we’ll just decide where it is that we want to go and then we’ll end up going there.” It was as simple as that.

BPS: So a two-year deal ends up being...

GN: A two-year deal ends up being extended into a forty-year deal.

BPS: Sometimes I have discussions with students about what they want to end up doing, and my sense of the world is that very few people have this very well-defined plan: “I want to end up practicing intellectual property in Toronto.” A lot of life is...in strategic management we call it “path-dependent.” One thing happens and then at least a whole lot of other things. So you happen to have Horace Read teaching you Insurance; you happen to work at an insurance company; you happen to have an opportunity to teach it here, and...

GN: ...Things fall into place. I always would counsel students who came to me, whether they were kids going into university, being the age of my own children, worried about what they’re going to do, and I said, “Things will happen. Trust me, things will happen. And most of which will be things you never planned on in the first place. You’ll fall into these things.” I think that’s true for most people. There are very few people who say, “Oh, I want to be a Crown prosecutor,” and end up being a Crown prosecutor.

BPS: We had a meeting about two years ago. There’s a group of large law firms that has meetings with Aboriginal students at the law school to try and encourage them to consider large firm practice as an option. And at the end of the meeting, we went around the table and said, “What one piece of advice would you give these students?” And we actually all independently came up with the same advice, which was, “Don’t decide too early what it is you want to do.” A very brilliant former student of ours⁷ spoke up; he was

⁷ Sacha Paul graduated as the Gold Medalist from Robson Hall in 2002 and was called to the Manitoba Bar in 2003, the Northwest Territories Bar in 2007, and the Nunavut Bar in 2014. He currently practices Aboriginal, Administrative, Dispute Resolution,

a First Nations citizen and was also our gold medal winner, and probably everyone expected him to be doing Aboriginal Treaty Rights, but he loves doing technical commercial stuff. He said, “I didn’t know when I went to law school this is what I’d love!” And you may grow up thinking, “I want to be a criminal lawyer,” and then you realize, “Well, wait a minute, how do I make a living being a criminal lawyer? I’ve got to do 200 cases a year and it’s hard to prepare.” Or you might think, “I want to make a whole lot of money in commercial, but this is soul-destroying; I want to do something that is more meaningful for me.” Don’t decide too early! You’d be amazed at what it is you turn out liking, so try and get a broad education.

GN: Although I will say that my generation is very fortunate knowing that if you didn’t make a final decision as to what you wanted to do for the rest of your life, it didn’t matter because if you tried it and didn’t like it, because the next day, you could try something else and see if you liked it. That was open to you at all times! It was entirely a different environment.

BPS: With the economy that’s not doing well and accumulating public debt from earlier generations that will have to be paid by later generations—thanks!—it’s quite a different world. I think this is the first generation that I’ve lived in that people are not confident that their life will be better than their parents’ lives. I came into the economy in the 80s—I think we still all thought the world was steadily progressing and each generation would be more prosperous than the previous one and opportunities would keep expanding. I think people coming to law school are looking at quite a different world. There’ll be lots of opportunities; it’s not all that glum, but the economy isn’t growing, the opportunities aren’t growing, the level of competition is increasing. The world you’re describing in which “Oh well, if that doesn’t work, I’ll do something else” is not one that sits as comfortably with this generation.

GN: Yeah, I mean, it was a time when you didn’t ever worry about getting a job, being able to maintain a decent standard of living, enjoying life. It was a tremendous era.

BPS: This was also a period of lifetime employment for those who wanted it. You mentioned earlier that people would come out of high school and go into the insurance company and eventually expect that they would progress.

GN: Absolutely! So much so, in fact, that large institutions used to come to the high schools to recruit upcoming graduates. That would include the oil companies, the big department stores, insurance companies—that's where they got their people. Why? Because people weren't going to universities as a matter of course as they do today. So you had to select your best high school graduates and consider them to be the future of your corporation.

BPS: Well, it is one point that I've often made in conversation to people about where the world is heading, is the apprenticeship for students or young adults is so long now. You have to get into law school, with at least a four-year degree now,⁸ and then you have to article and you're still not somebody. You know, in the old days, you could get a pretty good job coming out of high school or a B.A. with something. Now you need an extra degree to be what a B.A. was considered to be, and before that, what a high school degree was considered to be. Adulthood is being delayed five to ten years.

III. MEMORIES OF CLIFF EDWARDS

BPS: So you come to the University of Manitoba; you're recruited by Cliff. This is 19...?

GN: ...68-ish?

BPS: So one of the things we're doing is just going over recollections of Cliff. Did you have any impressions of Cliff? What kind of relationship would you have had as a new faculty member?

GN: Well, he flew me out for an interview.

⁸ The requirements for entry depend on the law school. While some simply require a degree, other schools, such as Robson Hall, may accept students who have completed only 60 credit hours.

BPS: Had you flown in a plane at that point?

GN: Maybe once or twice.

BPS: So this was a big deal: “If you got on a plane in that era...”

GN: “...You dressed up!”

BPS: You wore your Sunday best.

GN: You wore a tie; you wore a shirt! Travelling on the aircraft at that time was an experience to really relish and it was not common. They served you nice food on silverware and plates; there was a smoking section and a non-smoking section. It really was a wonderful way to travel.

BPS: That’s right: you could bring on a cigarette lighter and a Swiss army knife and not wind up in jail.

GN: No one cared if you carried toothpaste on the plane.

BPS: In fact, they would give you metal knives on the plane, right?

GN: Yes, sharp ones! So it was a big deal to get on a plane. So I fly out here, and I’d never set foot on Western soil before. It wasn’t during the winter season, so that was good. I had a short interview with him. He explained to me what was happening with the law school because at this point, the transfer over to campus from the law courts building was in the works. He explained to me what the old system was, what the current system was, what the new system was going to be. He asked me what I thought about teaching, how I would teach, what was my objective in teaching. It turned out to be a very interesting interview; it was very nice and very pleasant, and he said, “Go back home and think about it. We’ll give you a few weeks to think about it.” We worked out the terms of the contract and the moving expenses, and I decided to accept, simple as that!

So my first meeting with him was an interview and the next time I encountered Cliff was when I came out here and found an apartment and showed up at school.

BPS: Did you start teaching before or after the transition?

GN: Well, when I say I started teaching before the transition, prior to 1968—I don't know how far back, it was probably two or three years—when legal education was totally delivered by the profession. Then at some point, this Faculty of Law was established. Cliff, I think, was the first Dean under that new regime of full-time academics teaching the majority of law courses. It used to be all be handled by the legal profession during which times students went to work part of the day and had classes delivered by the profession. So I was not a part of that system, but I was part of the system that we are all now familiar with, and that is, legal education being delivered by a Faculty of Law, a full-time law teacher.

BPS: Ok, now you're walking into the classroom, and you would have had a brief conversation with Cliff. I understand, from interviews with other people, that Cliff was not that directive.

GN: No, Cliff was very open to what you had to say, and was very willing to be what may be described as experimental, or trying something that had never been done before. He was quite open-minded about it. I mean, if it didn't work out, he would let you know it didn't work out. He wasn't shy about that!

BPS: Yeah, you've got a long leash and it turns out that after two years, he might let go of the leash and you were on your own...

GN: ...which was very comforting to know that you had the boss's rope, and that he would give you a reasonable chance to run with it. I think that was something I appreciated as well, when I was looking around for a job. All the pieces seemed to fit for me at the time.

BPS: If you needed help with anything, logistics or what not, you found he was...

GN: ...he was tremendous. And so was his support staff! At the time, Mary Carey⁹ was the Administrative Assistant, similar to what Marcia¹⁰ is now. And they were magnificent. It was tremendous.

IV. TEACHING AT ROBSON HALL

BPS: So you're walking into the classroom and on day 1, you're already doing your Socratic stuff?

GN: Yeah.

BPS: Now, was that a culture shock for your students?

GN: Yes. Enormous culture shock! For which I was unprepared, because having just come from Dalhousie, where the Socratic Method was the norm, I assumed—quite wrongly as it turned out—that it would be the norm as well in Manitoba and Alberta and every other school that had an LL.B. program. I thought this was just what goes on in an LL.B. program. And I discovered on my first day—well, I knew something was wrong, because when I got here, I had spent the summer putting together a casebook. This was an unknown product when I came out here. I was asked, “What is a casebook?” I said, “Well, it’s a collection of cases that we’re going to examine and study during the course of the year.” And they said, “Oh?” And I said, “The students have to have these cases.” So the real issue became: how are you going to produce these cases? Well, of course, we didn’t have photo-copying machines in those days.

BPS: Hmm. That is a problem. So how do you get them out?

GN: You get a person who is a very good typist to take out the *DLR*¹¹ and type the entire case on a Gestetner stencil¹².

⁹ Mary Carey, Administrative Assistant to the Dean, 1960-74.

¹⁰ Marcia Kort, Administrative Assistant to the Dean, 2010 -present.

¹¹ The *Dominion Law Reports* is a general reporter.

¹² Gestetner stencil (quote from Wikipedia): “The Gestetner Cyclograph was a stencil method duplicator that used a thin sheet of paper coated with wax (originally kite paper was used), which was written [or later, typed] upon with a special stylus that left a broken

BPS: As my recollection, being a grade-school kid at the time, is they smelled good, but would dissolve your brain.

GN: That's right. And so you produce these long sheets on which you typed whatever you wanted to type and then this stencil would be run off this rickety-old machine that made a tremendous amount of noise and produce however many copies of that particular stencil that you just prepared.

BPS: So reproducing a casebook in itself, in those days, required commitment. It was really a scholarly exercise. You had to read a tremendous amount of material; you had to be very selective in what you would decide.

GN: You can't have the secretary typing meaningless cases! You only had a certain space of time in which the secretarial staff was able to retype the cases, and oftentimes—I should not be saying this—but I would mark up the DLR in light pencil which parts to edit out, because I didn't want to necessarily have every single word in the case reproduced. It would just produce a longer stencil, which would take longer, so you had to spend an enormous amount of time just editing to produce one case as part of your casebook.

BPS: So for you, throughout your career, there were many debates about how much scholarship we were doing compared to teaching. For you, doing casebooks was basically the core of your scholarly activities, right?

GN: Yeah, I mean you had to bury yourself in the library in those days. There was no LexisNexis, no Westlaw. In fact, the library was so important to the faculty that we had a faculty library, ultimately, on the third floor of our building here where our offices were located, to save time of having to run up and down stairs for the more common law reports. You'd have to discover your cases that were applicable to your areas of law by going

line through the stencil – breaking the paper and removing the wax covering. Ink was forced through the stencil – originally by an ink roller – and it left its impression on a white sheet of paper below. This was repeated again and again until sufficient copies were produced.” Accessed November 20, 2015. Online: <<https://en.wikipedia.org/wiki/Gestetner>>.

through a whole series of indices, such as *Canadian Abridgement Indices*, *English and Empire Digest Indices*, *Halsbury*, *Corpus Juris*, etc. So you plow through all these indices to try and locate case law that was relevant to you; then you'd have to go read all this stuff—hard copies of the law reports, pull them off the shelf, pile them up. At the beginning of the day, you'd have twenty of them piled up to the top; you'd go through them, and think, “This one is not relevant,” and then you'd read another one, and it wasn't relevant but it referred to another case that was relevant, so you would have to dig out that case as well and so on. So you're spending your entire summer—and it wasn't just me—gathering the case law that had developed over the course of the year, bearing in mind that having done so, you're still one year behind, because cases take a whole year to get published in the annual volumes of the various law reports!

BPS: Now when you're reading the cases, having practised in the area, even for a couple of years, you're looking at them not only doctrinally, but also from a practical standpoint, like you're saying, “This is a typical example of how the courts find a way around this when they're sympathetic.” Did you find that the practical background that you had was a major factor in your selections?

GN: Absolutely. What I found, even in my limited exposure to the real world, was that in law, there was a method to the madness, that a lot of things in law superficially seemed very contradictory. But when you examine it in a much broader way, you realize that the judges are not as crazy as you think they are, on the whole. So one of the things that I always did in reading any case was to try to figure out more about what was unwritten than what was written in getting to the bottom of why this case was decided the way that it was. I came to the conclusion—and I guess, my whole approach to law, that I formulated fairly early—and maybe prematurely, some might say—that I saw enough evidence that the law served as a tool to get to a just and fair result. The object of law was not just to have a whole bunch of rules that you just apply without regard to what the outcome is; that judges, being human beings, aren't going to sit there on the Bench and produce a result that they think is grossly unfair or unjust. That's just contrary to human nature.

BPS: When I went to law school, one of the very few precise quotes that I remember from a law faculty member—I don't know if you ever met him; his name is Marvin Baer¹³...

GN: Yes, I know Marvin Baer, from Queen's.

BPS: ...and I took Insurance with him. I very vividly remember—it was like an epiphany—he said, “Well, some of these cases may seem strange to you unless you realize that the judge believes that the insured committed arson. Arson is almost impossible to prove, and so what may seem very technical and unfair is actually because everyone in the courtroom knows that this guy burned down his business. We can't prove it, so we'll find some other way to prevent him from ripping off the insurance company.”

GN: Precisely, and I found that when I was in practice with the insurance company. We knew this guy burned the store and took a torch to his place. We knew that the evidence was going to be sketchy, but we also knew that if we could convince the judge that it was very highly likely that this guy had torched his place, or had arranged for it to be torched—we just fed him a whole series of ways to get to where we wanted the court to go—and the judge had no trouble latching onto them. Now, that to me, was a very important lesson that I learned, and I don't know how I learned it, but it's the way I then approached reading case law. I read case law with that kind of view of it: where did the judge want to go; why and how did he get there; and did the judge correctly apply the applicable legal principles.

BPS: There might be a paradox here, in the following sense, that when legal education was done mostly by practitioners, who actually experienced the real world and knew how it worked, the lecture method might have been more literalistic and more purely doctrinal than when you came at it with more of an academic approach, but was constantly asking students to think about the realities behind the doctrine.

So now let's go back to the culture shock point. You're just starting off there—well-meaning, amiable, young Gerry thinking he's just going to

¹³ Marvin G. Baer is Professor Emeritus at Queen's University Faculty of Law.

inspire students who will respect him with the kind of Mr. Chips¹⁴-respectful regard and amiability, and for what you're hinting at with your initial encounters was that students are looking at you like, "Huh? What?"

GN: So I guess my first class, I come in and explain what we're going to be doing: casebook, you buy them at the office. I think that the first course that I taught was Negotiable Instruments. So they have to buy the book, and I said, "In our class tomorrow, we will be doing the following three cases that you see in the syllabus and in the casebook. We'll discuss those three cases tomorrow." And so they came to class, supposedly all ready to discuss these three cases. I probably also gave an introductory lecture as well, just to tell them what a cheque is, what a promissory note is—they probably had never seen a promissory note; they'd probably seen cheques—and explain the paper that's involved in Negotiable Instruments.

So I come to class, ready to raise some questions about Section 16 of the *Bills of Exchange Act*,¹⁵ which is your starting point in that area of the law, as it has the definition of what is a bill of exchange. I posed some questions to students, so I put something up on the blackboard—chalk in those days—that resembled a cheque, but had some sort of defect to it, and said, "Is this a cheque according to Section 16 of the *Bills of Exchange Act*?" And they looked at me like I was crazy, and I said, "Case #1 that we're looking at deals with this particular issue as to whether this particular document I've put up here on the blackboard is a valid cheque within the meaning of the *Bills of Exchange Act*. And what did the court have to say about this?" Silence, of course, because no one had read the case. (Laughs)

So after asking for volunteers or just putting out the question and expecting some response, and having no response, I then took out my class list and said, "Mr. So-and-So, what did the courts say about this particular question?" and he says, "I don't know." And I said, "What do you mean, you don't know? Did you read the case?" "No." I said, "Did you understand my rules of the game that I mentioned at the start of the course, which was that you don't have to come to class if you haven't read the cases? No one is forcing you to come to class. But if you come to class, you are, by so doing, indicating that you have read the cases and are prepared to engage in a

¹⁴ *Goodbye, Mr. Chips* is a novella by James Hilton about the life of a beloved school teacher that was eventually adapted for TV, film, and stage.

¹⁵ *Bills of Exchange Act*, RSC 1985, c B-5, s 16. This is the most current version of the Bill.

discussion of these cases. Are you aware of that?" And he said, "Yes." I said, "And in spite of that, you came in here pretending that you had read your cases. That seems rather unethical for someone who wants to be a lawyer." (Laughs) I said, "You can leave." That's basically my first class.

BPS: Wow. Now you're just ad-libbing this; you didn't expect it was going to happen?

GN: No! I had no idea that this was going to happen.

BPS: ...But you instantly just kicked someone out. No fear about backlash or complaints?

GN: Why would I fear anything? (Laughs) I had nothing to fear. There was no downside for me, right? I had a two-year contract and was given the green light by the Dean to do what I want! They don't like me; I don't care. I'll go somewhere else. Not a problem for me! Basically, I have no reason to be concerned.

BPS: So did the student leave quietly?

GN: Very sheepishly. And then I go to the next student.

BPS: Oh my gosh, okay...

GN: And then I go, "Mr. So-and-So"—and it would be mister because there's probably only one female in the class at that time—same thing, I said, "That's pretty unethical. Out you go!" You can't represent that you've read the case when you haven't read the case! (Laughs) I mean, these guys are in third year, you know, and I said, "You can't do this as a lawyer!" Out they go. So I go, "Ok, how many people have read the case and are ready to discuss it?" There are about sixty-five people in class at this time; no one puts up their hand. I say, "Thank you very much." I close my book; I say, "Tomorrow we will be doing the next three cases." And I leave the classroom.

BPS: You leave and you think, "Well, that was interesting," but you're not saying, "What have I done? Are the angry missives coming in? Am I going to hear from the Dean?"

GN: All I know is that I've done my first three cases; I'm on pace. I'm going to get them all done whether they like it or not and I may get them all done by doing nothing!

The reason why I forced students to read cases is because most were not prepared to do it otherwise. And if they don't read the cases, I would have nothing to teach them. It's like trying to teach someone how to ride a bike. You can't just hand them a manual and say, "Read this and you will be able to ride a bike." If they don't want to get on the bike and learn through trial and error how to balance themselves, they will never be able to ride a bike. You learn a skill by working on it, not by reading about it. And I considered that my role was not so much to teach Contract rules per se but to teach the skill of reading case law in the context of a particular area of the law. And if I were told that my role was not to teach these skills but to just spoon feed rules, I would have quit and found a more interesting and challenging job. For me there was no room to compromise on what I considered to be the essence of legal education: the teaching of the many and various skills required to become an accomplished practicing lawyer. The skill of reading cases and developing legal argument are clearly not the only skills that can and should be intensively taught in law school—there are many others—but given my background and interest those were the skills I felt best capable of teaching.

BPS: So afterwards, you're not spending the afternoon worrying, like, "Are the students storming the Dean's office to complain about me? Is my career over?"

GN: No. Not at all.

BPS: You're at inner peace here.

GN: Well, I mean, geez, those are the rules of the game, right? You know, you read the cases. You don't have to come if you don't want to. You can tell me beforehand that something happened last night and you couldn't do your readings, that's fine. But if you come in here without telling me, you're lying. The students really have no argument against that.

BPS: So there's silence between your next class and you don't know what you're going to do.

GN: The next class, I'm going to do the same thing that I did the previous class.

BPS: So what happens next?

GN: I'm not backing down. Remember, I'm only about two years older than these guys, okay? That's the other thing. I'm pretty young and these guys are a little older than the average undergraduate student. But that doesn't intimidate me. I stand my ground, because this is the way I was determined I was going to teach. I wasn't going to let someone else dictate how I was going to do my job, right? Either I was going to succeed or I wasn't going to succeed, but I wasn't going to do it because someone else said, "No, you've got to do it that way."

BPS: And by succeed, you mean, succeed to teach the way you want to teach? You're not thinking in terms of getting tenure; you're just thinking, "This is what I want to do; this is how I'm going to do it..."

GN: No, nothing to do with tenure.

BPS: "...and I'm not worried. If they don't like it, I'll go somewhere else; I'll go back to the insurance company; I'll join the circus. But I'm not worried."

GN: Exactly. I can find another law school and I like to do this. I said, "Maybe I'll get a job at Dalhousie," because they do this at Dalhousie. It's not like I was doing something that was so completely off-the-wall. I had been at Dalhousie for two years and that's what students were expected to do. Now I wouldn't say they got tossed out of class, but I figured I had to do something to exercise my authority or I would lose them. So that's why I had to act this way; I could see right away that if they didn't know who was boss, they would become boss. And if it's a choice between them becoming boss and me becoming boss, the game's over. I'm the boss.

So we bumble on, and the next class, twenty people show up. (Laughs) I go as fast as I can. Get this stuff done. And this goes on, and eventually more students straggle in. I say, "Aha, so Mr. Jones, what does it say in this

case?" "I haven't read the case." (Head thunk on table) (Laughs) "What do you mean you haven't read the case?"

BPS: Now what's your demeanor when this happens?

GN: This is the second time this has happened!

BPS: Now, you're just doing this matter-of-factly; you're not angry; you're not raising your voice. You're just saying, "Oh." It's like giving a soccer player a yellow card or a red: "I'm just the ref here; go to the bench; you've got five minutes or whatever it is."

GN: That's right! "Five minutes for not reading!"

BPS: It's just business, right? Nothing emotional, nothing personal.

GN: Yes, just business. It was a real battle. There were a few people in the class who were getting interested in what was going on; the vast majority were scared as hell. It was a half-term course with an exam at Christmas time. I decided I was going to conduct a midterm exam real early, ok? And I said, "This midterm exam that you guys are going to have in a week from now is going to require you to have read and understood the cases because you're going to have to provide the legal arguments around a very tricky fact situation." I said, "You'd better start paying attention, because you guys are like, six months away from being a lawyer and you don't want me to stand in the way of that happening, but believe me, I will." That's how strongly I felt about professional responsibility.¹⁶

¹⁶ Editor's note: Professor Nemiroff took his professional responsibility quite seriously. He was awarded the U of M Excellence in Teaching Award in 1972. The University, however, has a policy that states a recipient can only receive the teaching award once. In Professor Nemiroff's last year of teaching (2007-08), the students nominated him again, hoping that the University would bend their policy of not granting multiple awards to the same person. In their letter of nomination for the Sauderson & Stanton Awards for Excellence in Teaching, the students wrote:

Gerry Nemiroff is somewhat legendary at Robson Hall...

A good law professor doesn't just tell you what the state of the law is, or how the law has developed. They teach you how to find the law and more importantly they teach you how to use the law....

BPS: Now in those days, we gave out what might be called “real” grades.

GN: I’ll tell you that in a minute. We had that sixty-eight students sat down for this midterm, only a few passed. The rest were D’s and F’s. I said, “This midterm counts for 30% of your final grade.”

BPS: Clearly there was no grade curve in those days!

GN: And I said to them, “You guys think I’m joking, but I hold a red pencil and you may not like what we’re doing, but unless you play along with me, you’re not going to become a lawyer come this May.”

BPS: Now, at this point, when all these people flunked the midterm, are there delegations and riots and revolution?

GN: No. They’re just nervous as hell knowing that I’m serious.

BPS: If anything like this happened today, there would be a line-up from the Dean’s office all the way to the exit.

GN: They’re nervous as hell, because they know that the Dean would back me.

BPS: And did Cliff know what was going on? And he was supportive?

GN: Yes.

BPS: You told him that this was the plan?

GN: Yes.

...It wasn’t until my third and final year of law school that I learned how to properly read and understand a case. It was in Gerry’s [sic] Nemiroff’s Insurance Law class where I began to understand how to argue the law.

According to Professor Nemiroff’s comments after this interview: “It is one thing to know the law but it’s another thing to know how to use what you know; while the former may be pretty interesting it is pretty much useless without the latter.”

BPS: And he said, “Well, dash it all; if that’s your plan...”

GN: I mean, if the students have to put in some work and they don’t put in work and that’s part of the program, well, then they get F’s and D’s. If they don’t do what they’re supposed to do, then they get F’s and D’s. It’s simple and straightforward.

BPS: This is not just a recollection of law school; this is a movie script. This is *The Paper Chase*.¹⁷ Ok, so now what happens?

GN: So they know that the Dean is going to support me because I’m not doing anything that is ridiculous. I’m expecting them to read the cases and be honest about whether they’ve done it or not. Who would say to me, “Well, that is unreasonable”? They could have come to class, without reading, if they had told me! Not all the time, they only get so many passes, but they could do it. So I think what happened there is that the students finally realized that I wasn’t joking. It was as simple as that.

BPS: Nothing says “I’m not joking” like a D on a midterm.

GN: They realized that if they continued on, that this rotten, miserable professor was going to prevent them from graduating this year.

BPS: Now was their perception of you that you were a mean, evil person or did they actually understand that even though it wasn’t pleasant, you were doing something legitimate?

GN: That evolved; it evolved into something very positive. After that midterm exam, they said to themselves, “Ok, we don’t like it but we’re going to have to do some work. This is the first guy that we’ve had, since we’ve been in law school, that required us to do so much work! So maybe we’ll have to read a case in a way that requires us to analyze the case, as opposed to just knowing the story.”

I always started my classes with an example. “Here’s the example for today. This is what happens: A, B, C, D, E. These are the facts and from

¹⁷ *The Paper Chase* is a novel by John J. Osborn, Jr. that tells the story of a first-year Harvard law student and his relationship with his brilliant but demanding contracts professor. The novel was eventually adapted for TV and film.

these facts”—because these facts are all designed to feed into the cases that we’re going to read for the day—“answer the question: ‘As a lawyer for X, what’s your position and argument on these facts?’” And if you should happen to be so unlucky to be Lawyer Y, I’d ask, “What is your argument?” This was how I ran every class: hypothetical problem built around the cases. What are the legal arguments in favour of X? What are the legal arguments in favour of Y? And in order to do that, you’d have to have read the cases because that’s where the legal arguments come from. It’s not, “Oh, I think he should win because he’s a nice guy.” Your answer has to be: “because the law says, as the judge says, ‘Blah blah blah.’” I think they started to find that interesting. Maybe I was lucky and chose some examples that they could relate to, and you can get a lot of fun with a forged cheque and some guy who had been fleecing someone. So they found that they could just play along—“we’ll read the cases, we’ll try to do what this guy is forcing us to do,”—and they liked it and got into it. Why they liked it and got into it, I guess I am not quite sure; out of necessity or they actually started to like it. Later, most students told me that once forced into the challenge, they really enjoyed playing the game. I could tell you now the names of the people who were in that class, and where they stand in their legal profession today. They’re very bright and very top-notch people—judges, lawyers—leaders today in the legal profession, who really actually got quite excited about studying law in this fashion and to this day thank me for having driven them the way I did. I don’t like to brag but the gratitude these very prominent members of the profession have expressed towards me is very, very rewarding.

BPS: Now when we have conversations of legal education, you’d always say that the real test of a good teacher is not whether you’re popular today or how they rank you today; it’s whether they look back five, ten years out, whether they look back and say, “I really learned something.” Now were you in contact with enough people that you were getting that feedback? Did you actually hear five to ten years later that “Gee, that was a course I really learned out of”?

GN: Oh, absolutely.

BPS: And that’s what kept you going out of all those years of teaching? That was the feedback that you were hearing from the people in the profession.

GN: Yes, and I mean, I got it pretty early. The first class I taught involved third year students who then went into articling and then into practice and I had feedback from them really early in the game where they thanked me. They said, “You know, of all the stuff we took in law school, much of it went in one ear and out the other and forgotten, except the process that you taught us in how to make and advance a legal argument. That’s a skill rather than factual knowledge” and that stuck with them, so that inspired me to carry on, even though in subsequent years students became much more vocal—maybe not as much as they are today—about voicing their displeasure about what might be going on in law school. Because I had such tremendous feedback from my first groups of students, I knew I could defend my ground.

BPS: Where did you stand with your teaching colleagues? You were doing something most of them weren’t. They were probably hearing student grumblings; did you hear it from them in a positive or negative way? Or were they like, “You do your thing, I’ll do mine”?

GN: No, no feedback, adverse or otherwise from my colleagues. I think at that time, it is fair to say that people didn’t grieve to the extent that they do today. People didn’t complain to the extent that people do today, and so there really wasn’t a lot of anti-noise because that’s not what you did in those days.

BPS: So you’re doing this for two years. Are the students coming into your classes knowing all about your teaching style? When did you get the name “Scary Gerry”?

GN: That year. (Laughs) 1968!

BPS: So does that mean, now that they know what to expect, the resistance is basically not manifesting anymore? Or does it mean that “forewarned is forearmed” so they’re coming in with the preparation?

GN: “Forewarned and forearmed,” and also anecdotally told by senior students ahead of them that they’re actually going to learn something valuable. So that was different. In my second go-around, I did not have the same kind of initial resistance. For quite some period of time thereafter, I

have to say, I enjoyed a peaceful co-existence with the students. In fact, in the ensuing years ironically and in spite of the Scary Gerry label, I had very large enrolments in my Insurance and Commercial Law courses, which were elective courses. Huge numbers of students chose to take my courses because they saw value in my classes. What they tended to grumble about more was the fact that I had harder exams and lower grades, but not with my conduct of my class.

BPS: Yes, my recollection is that I taught Contracts in parallel to you at one point and your grades were a little bit lower than most people, but not drastically. I don't know if you remember, but one time I had to cross-read your exam, and I thought, "Wait a minute, you're actually pretty generous here! I would have given this a worse grade."

GN: I mean, the reason why my grades were fairly lower—very few A+'s, if any; a few D's and F's—is because my exams were hard. I confess that I set really hard exams. And of course if you have hard exams, you're going to have people who have trouble with it and so the marks came down. I didn't see myself as an extraordinarily hard or easy marker. I thought I was a reasonably fair marker, but my exams were quite hard.

BPS: Now did they have SEEQs,¹⁸ the student evaluation forms, in those days?

GN: Eventually. Long after. I actually had very high positive scores and extremely favourable write-in comments on those course evaluation forms, so whatever I was doing was in fact going down extremely well with at least 90% of the students and in fairly large classes.

BPS: So you didn't have to worry about those in those days? But you didn't worry about them anyway, because the Dean would have backed you up in any event.

¹⁸ SEEQ stands for "Students' Evaluation of Educational Quality" and is the University of Manitoba's Senate-approved evaluation tool of educators. More information can be found on the University of Manitoba's website, located here: http://intranet.umanitoba.ca/academic_support/catl/resources/learning/

There was a political revolution; the younger 60s Faculty decided that they wanted a change in leadership and Jack London¹⁹ becomes Dean. Jack was himself also committed to the Socratic method, wasn't he? And he had very high expectations.

GN: Absolutely. I never sat in on his class, but what I understand, he conducted his class like that. Over time, there were a number of people who came on board doing some version of a Socratic method. The only thing that caused my "Scary Gerry" name to stay on is because I *insisted* that they read the cases. I think some of my colleagues dealt with this by saying, "Well, I'll discuss the materials with those who want to discuss them." So the six that read the cases would have a six-way discussion, and to heck with the other 95% of people. I stood my ground. I believe that students weren't entitled to be a parasite and they had to put in some effort.

BPS: Well, your view, from conversations with you, was that you were letting down your fellow students if you weren't contributing to the conversation.

GN: Yes, that's right! Everyone is contributing and you can't be a parasite, benefitting from everyone else's hard work without making any contribution on your own. To me, that was tremendously unfair. I just thought that law students ought to make a commitment; this is not Sociology 406 anymore. This counts. And because it counts, and you're going to be representing people who are going to be paying you large amounts of money to attend to their best interests, I took that notion very seriously. I felt it part of my responsibility to make the students understand what they were in for and how they ought to conduct themselves. To me, that was as important as everything else I was doing and I felt very strongly about that. Therefore, I would not allow myself to let students off the hook.

BPS: I think Jack [London] was the Dean who told me stories about having to deal with student agitation about the way you were teaching. Do you have any recollections about that?

¹⁹ Jack London, Robson Hall faculty, 1971-88, 1990-94; former Dean of Law at the University of Manitoba. Mr. London is now senior counsel at Pitblado Law. For his interview, please see page 191 of this issue.

GN: I was aware there were agitations. People would complain and say I should not be allowed to do what I am doing, that they should be allowed to lie and cheat and come into class and tell me they have read a case when they have not read a case and that was ok. To be honest with you, throughout my entire career, knowing full well that these complaints went on, no one ever came to me, such as a Dean or Associate Dean or even a colleague, and said to me, “You know, Gerry, maybe you ought to not be doing what you are doing.” No one ever took the position with me to try and get me to succumb to all of the complaints.

BPS: Were you ever worried in the later years when we adopted all of these respectful workplace policies and stuff that somebody would say, “Well, being tossed out of a class is humiliating me.” Did you worry about that at all?

GN: First of all, the real humiliation is having been caught not reading the cases and in effect, caught lying by not revealing to me before class that they weren't prepared. Being tossed out of class seemed to me to be a very light penalty for cheating. The bottom line is that those who cheated basically didn't want to do the work—that was their grievance. So the answer, of course, is no. The thing that I suppose I spent my entire life consistently, is that I did not worry about having to save my job. I did not do things in my job or my career that I thought would guarantee my job or enhance my chance at promotion. I did not pay the slightest bit of attention to that. I did what I did because I thought it was right. Other people whose views I highly respected encouraged me to keep doing what I was doing because they thought it was highly valuable and if the “powers that be” felt that it was not to their liking, so be it. I was not going to be marooned about it and say “Oh Geez, if I don't do this I am going to get canned, I am going to get axed and I won't get this and I won't get that.” I was secure enough in my life not to have to worry about dependency on a particular job.

On top of that, and much more importantly, I had outstanding Course and Professor evaluations from the students on those SEEQ forms, which was very reinforcing. The truth of the matter is that disgruntled students, typically poor and lazy, were very far and few between, but of course, they are the ones who make the most noise. I, and whoever was the Dean at the time, never paid attention to them. I think it is probably fair to say that if

year after year my evaluations had been poor, I would have thrown in the towel and looked for something else to do.

BPS: Now, I was at a faculty retreat five or six years ago, and we were going through and saying, “Who are our stakeholders?” And you know, the answers were: the faculty, the students. Until I raised it—nobody had made this point—my point was our most important stakeholders are the future clients of our students. Why else would we be here? Why is the government funding us? I mean, why are the people of this province contributing so much? Presumably they are investing in professionals who will serve future clients well. I don’t know if that sense that the future client is our ultimate stakeholder is all that prevalent nowadays, but certainly it was my sense—and it sounds like that was your sense of things, too.

GN: I felt very strongly. It’s interesting; it may be because of timing. I felt that the LL.B.s that were issued at that time were effectively a license to practice. No one failed the Bar Admission Course. So basically, realistically, the legal profession handed over the licensing responsibility to the universities. And I took that responsibility very seriously. And because I took that responsibility seriously, I felt that we had to do everything we possibly can do to satisfy ourselves that if we give someone this degree at the end of the day, they have actually learned the kinds of things and are able to do the kinds of things we’ve set out to teach them. I think that included, in my view, not just the knowledge of law and knowing how to represent a client and knowing how to make arguments, but to fulfill the responsibility as a lawyer when you undertake something, you undertake to do it 100% and you put all of your effort into it because you’re representing, at the end of the day, a client. Do you want to go to a doctor who says, “Ah, damn, I didn’t like kidneys. So I didn’t do kidneys very well.” Is that the doctor you want to go to? Put yourself in the position of a consumer; he’s not interested in what you didn’t like.

BPS: In those days, the failure rate in those days would be 20-30%?

GN: Probably 20%.

BPS: Now, failure rate in first year is extremely low. Is that because we are more selective about the kinds of people that can get in in the first place? Or do you think they should have stuck with the old system?

GN: I think it was hard for us to stick with it, because no other law school stuck with it. I think grade inflation happened, not just in law schools, but across the board in universities: undergraduate level, professional schools. Grade inflation went off the map. Why grade inflation went off the map is interesting for another study. I think it related in part to job security, a lot of professors had to do it, to try and win favour by handing out high marks. I don't know. I didn't have that concern. But I think what happened at this law school happened at every other law school. Why? It's a lot harder—to be honest with you—to be a tough examiner and tough marker, than to be an easy marker because you have to justify what you're doing and you have to be prepared to do the deferred exams and the supp-exams. It's a lot of work to be tough on people. And I suppose some people would rather be liked than be good at what they do.

BPS: My perception was, in fact, the same. I try not to be influenced by that, but certainly a student getting a D or an F was, to some extent, a punitive for the instructor because then you had to administer the supplemental exam, you had to deal with any appeals. Sometimes students would take things to [Law] Faculty Council: "I wasn't properly informed what was on the exam," "The exam wasn't fair," "The instructor is just a bad teacher". There was a rather cascading set of complaints, and the stakes were pretty high.

I think in your view—and some of your colleagues at the time; Phil Osborne²⁰, someone else who was also known as a tough marker—it wasn't a question of being nice or not nice; it was a question of being honest. You were just grading them honestly, so there was not a question of being generous or not generous. You were just calling it like you see it. I think my recollection is, when we have these discussions, folks like you that took a tough line, your view was that you weren't doing the student a favour either. If a student really wasn't good at this, find out in first year; there's still a lot of things you can do with your life, but you're not doing yourself any favours

²⁰ Phil Osborne, Robson Hall faculty 1971-2012. He is a Senior Scholar. He taught contracts and torts.

if it turns out that you're not really good at this. Meeting the basic standard, you're on your way to spending your whole life in something that you are not going to perform well. It's bad for the client, but it's also not the life that you want to lead; is that fair?

GN: Absolutely. The first course that I taught, they pulled pranks on me. They were quite funny. We were in the old law courts building and they once moved the lockers that were in the hallway so that when I opened the door to go into the classroom I walked into a locker instead of walking into the classroom. We had Jeff Gindin²¹ in that class, and Joe E. Hershfield,²² a tax judge. That class had remarkable people in it, in terms of people today who would be seen within the profession by reason of their standing on the bench and at the bar as really the elite of the elite. I think there were about eight judges from that class, and others. I see them quite frequently and they still talk about, in a joking way, "Do you remember when you tossed so and so?" I was like the umpire, you know, "You're outta here!" We sort of still joke about it but at the same time, even to this day forty years later, they continue to thank me. At the end of the day, do I have *naches*²³ from my job without having my name in print? The answer is, I would not have had it any other way, myself. It all worked out well in the end for me.

BPS: Okay, so the story has a happy ending for you.

GN: For me it has a happy ending.

BPS: And for the institution?

GN: I mean, I don't know, I cannot see anyone saying to me that this institution should be anything other than primarily dedicated to training practicing lawyers.

²¹ Jeff Gindin is a founding partner of Gindin Wolson Simmonds Roitenberg criminal law firm.

²² Joe E. Hershfield is a former partner at Taylor McCaffrey and associate professor at the University of Manitoba Faculty of Law (1974-1982) who currently sits as a judge on Tax Court of Canada after his appointment to the Bench in 2000.

²³ Yiddish: Pleasure, satisfaction, delight; proud enjoyment.

BPS: There are faculty members that would disagree with that assessment, but I agree with you.

GN: Then my answer to them is, my question to them is, “Ok, if it is not us, then who is doing it? 7-11?”

V. COLLEAGUES AT ROBSON HALL

BPS: Can I just ask a question, because you mention Phil Osborne. Phil was your colleague longer than anyone other than Cliff, I think.

GN: Close to, but not necessarily. Cam Harvey²⁴, Art Braid²⁵: both were here when I got here.

BPS: But Phil was here most of the time?

GN: He came in maybe my third year...three or four years after me.

BPS: So you taught Contracts the entire time at the same time?

GN: You’re right. When Phil came here, he was going to do Contracts, as well as myself. For the first couple of years I was teaching, I used Dean Horace Read and Art Foote’s joint casebook on contracts²⁶ and I used that here. The very same book. When Phil arrived, we said, “Well, we’ll take that as a model” and together we jointly produced another version of the Horace Read’s contracts casebook. So we taught the same course and more or less in the same fashion, for many, many, many years.

BPS: Talk about Phil as a colleague.

²⁴ Cameron Harvey, Robson Hall faculty, 1966-present, and has been Professor Emeritus since 2006, as well as Associate Dean from 1989-2005. For his interview, please see page 97 of this issue.

²⁵ Arthur Braid, Manitoba Law School and Robson Hall faculty, 1964-2000; Dean, 1994-1999. Currently he is a Senior Scholar. For his interview, please see page 77 of this issue.

²⁶ Horace Emerson Read & Arthur L. Foote, *Cases and Other Materials on the Common Law of Contracts in Canada* (Halifax: Dalhousie University Law School, 1970).

GN: Phil was terrific as a colleague and is a great person and friend. He had much of the same idea and approach and view of law as I had, interestingly enough. And maybe that's what made us so compatible so quickly.

BPS: And both being very young people at that time.

GN: We were both very enthusiastic and we were both taking, as I say, the same approach about what our responsibilities were and what was important and what wasn't. A day didn't go by where the two of us didn't engage in a very wonderful discussion about some issue of law. That's another thing I think that shouldn't be missed in your survey, is that during the first half of my career here, the chatter among colleagues—in the corridors, and in the faculty lounge—was constantly interesting. A day wouldn't go by where there'd be some discussion going on; Trevor²⁷ would mention something about the rule against perpetuities or someone was just dealing with a wills case. There was a lot of chatter going on a regular basis. The atmosphere that we had at that time was quite interesting. In the latter years here, you didn't see any of that.

Everyone is locked up in their office, doing their own little thing. I learned a heck of a lot of law—about wills and property, etc.—that I had long since forgotten that I took in law school just because we all engaged ourselves in these discussions that took place. They were all fascinating. We kept each other up on the law.

BPS: In 2002, you were near the end of your career, and Phil, as it turned out, was in the last decade of his. Younger colleagues have noted that if they had any problems in contracts and they couldn't figure it out, they would just come to you or Phil, because they'll know. I think this is why you focus on the teaching enterprise of this place more than anything else and that was one of the reasons that you didn't focus on what everyone else's research was, because you were genuinely interested in figuring out “how do I do this better; how do I teach this differently; these students are changing.” You've said that throughout this interview—you, by and large, didn't change how you conducted yourself. The examples you used probably changed over time.

²⁷ Trevor Anderson, Robson Hall faculty, 1971-2007. He is a Senior Scholar. He was a professor at the University of Manitoba starting in 1971, Associate Dean from 1972-1977, and Dean of Law from 1985-1989.

GN: Oh, sure. I try to make them as contemporary as possible. I would scour the newspaper, advertisements or offers. I'd see something from the Bay and bring it into class, slap it on the document reader, and say, "Ok, guys, what's this?" I did this as much as I could. That, to me, was how you engage the students, by bringing in a fact situation or a matter that is right before their eyes, so that they can identify. If I bring in a crazy complicated commercial contract between CIL²⁸ and the supplier of some chemicals, I mean, that's not the kind of event that a student is going to be able to identify with. I'm saying, "Geez, you see this ad for a car? Can you walk in and buy it tomorrow for \$32, 485? Yes or no?" Someone will get interested in that because they can see themselves becoming involved with it.

BPS: Because there was so much drama—as I understand it—associated with your sticking to your method, it seemed to attach to you, but Phil, who taught in a very similar way and had very similar expectations, didn't seem to be the subject of petitions, riots, demonstrations at the United Nations Headquarters. Why is that? Because I think the two of you basically did the same thing.

GN: Well, first of all, I paved the way a bit. So he benefits from that. Also he was a much nicer guy than I. (Laughs) He's a much more subdued dude. However, having said all of that, I mean, the exams we set in Contracts were common exams. We both contributed; he'd set one question and I would set the other and his was as tough as mine. Students at the end of the day, whether they liked or didn't like the conduct of my classes, what counts for them is the exam and the grade, and they didn't get a better deal with Phil than they did with me.

VI. CULTURE SHIFT: PROFESSORS AS SCHOLARS VS. TEACHERS

BPS: So I've asked this to a lot of people that we've interviewed. At the time we started teaching, my sense is that a person became a law teacher because first and foremost they wanted to be a law teacher. You roll the clock forward to where we are now: people think of themselves as scholars who teach, not teachers who do some scholarship. Did you have a sense that the

²⁸ Canadian Industries Limited is a Canadian chemical manufacturer.

transition was happening as it was happening? When does that cultural change start to happen from your perspective?

GN: That's a good question. Let me say this, that during the majority of my career, there was never—I'll say for the first half of it, I'm sure—any push to do what is now called publication. If you wanted to do it, that was fine. If you didn't want to do it, that was fine, too. The whole attitude or environment within the school was that you were here to teach and that if you wrote an article, that was great. If you wrote a book, that was great. If you felt you had time to do it and you wanted to do it, that was great. But you were basically here to teach the 101 students that come in every year how best to become a practicing lawyer. That's what you're hired for.

I don't know at what point that started to change somewhat, of it becoming more obligatory or more formal requirement of your job. I don't know if it's because the University put pressure on deans. Certainly the deans we had were not themselves publishers, so they wouldn't have been a cause to initiate a greater emphasis to be put on publication. So I don't know where it came from...perhaps from the University. I think the University also, for some reason or another—well, maybe not for some reason or another—compelled faculties, like Law, to only hire those who had LL.M.s or even beyond that. I mean, we had a number of people full-time on faculty who didn't have LL.M.s. They were practicing lawyers with twenty-five years of practice experience. Then the University brought pressure to bear upon deans who did not have the courage to resist that pressure and I think that's where the problem started. So we couldn't hire people unless they had an LL.M. and it's almost like you couldn't hire them unless they had an S.J.D. I said, "Well, this is the height of absurdity." Suppose the Chief Justice of Manitoba had enough of being the Chief Justice of Manitoba and would like to become a full-time law teacher. We'd say, "I'm sorry, Mr. Chief Justice, but you don't have your friggin' LL.M." I mean, could you imagine anything crazier? From what I understand, this University would say to the Dean, "No, no, no, he's got to have his LL.M. and now would say an S.J.D. The fact that he's been a Chief Justice for twelve years and turned down an appointment to the Supreme Court of Canada because he wanted to stay in Winnipeg doesn't cut the mustard at law school here." Could you imagine? So I think that happened, probably, I don't know, if I had to stab a date, I would say maybe 25 years into my career?

BPS: Early to mid-90s?

GN: Yeah, the push started to come, which I saw to be, in my view, a disaster coming down the road.

BPS: From your point of view as a scholar, I think we touched upon this earlier, your scholarship was a constant reworking of your casebook: every year, looking through the literature and reshaping the casebook to meet the requirements.

GN: I would stand by the statement that I've done as much, if not more, research in law as anyone in the history of this Faculty. I haven't published it in a formal journal, but I was always as current in my areas of law and as comprehensive as possible. And that took an incredible amount of research, especially wading through the massive amount of American law. Lawyers knew that and judges knew that and my phone never stopped ringing off the hook by people calling me knowing I was so well researched. I would say that most of my colleagues in my day were similarly on top of their subjects to the highest degree and also regularly consulted by lawyers and judges. We all had an extremely high level of expertise in our respective areas of law. THAT was the product of our research. To discount that and say that is not real research is ridiculous. There was an enormous amount of research going on in this law school in those days—not social science research, but law research.

BPS: And that was one of the ways that you stayed in touch with reality, was the consultation work that you did.

GN: I had files that I had to turn down because there were too many of them. A week didn't go by when I didn't get a QB judge or a CA judge give me a phone call about some kind of contracts matter or insurance matter that they were wrestling with. I had an unusual number of inquires in the area of Negotiable Instruments because nobody knows anything about that unique area of the law. And I can't tell you how many consultations I had sent to me by practising lawyers seeking my written opinion on a matter they were dealing with. Hardly a week would go by without at least a phone call.

All of this enabled me to remain in touch and involved with the actual practice of law.

BPS: It is my guess that if somebody adopted a similar approach nowadays, which was to do the research manifested in casebooks and classroom teaching, they probably could not stay here.

GN: Well you couldn't. The guidelines now seem to say that you cannot do that. It's totally crazy.

BPS: I was going to talk about for example our lively debates over curriculum reform, blueprints for change. We would have, let's say, frank and candid exchanges of opinions at faculty council; people would argue quite ferociously and vehemently. I don't know if you'll agree with me on this, but my recollection is—maybe it's just the glow of memory, as one of those people who had argued quite vigorously and would take contrarian positions and so on, challenged deans and so on—I was actually never worried that by doing that it would jeopardize tenure or promotion or that there would be some kind of retaliation. Whatever else was going on—and a lot of bad stuff happened, as it tends to in any institution—I think we had a sense that certain things just are not done and no matter how upset a dean or other senior administrators or colleagues might be with your view, they were not going to take it out on you in terms of your career situation. My sense is that younger faculty members do not have that sense of security. Is that because the institution has changed? Is that because people are just less confident, or have more invested in their careers? Is my perception of the different level of self-confidence and being outspoken; is that similar to your view, and where do you suppose that happened?

GN: Political correctness and just playing by the rules of the game that other people are imposing upon them. It is hard to know because I have never lived my life like that—I could never live my life under those conditions. Why is it different? I think it might be generational. Like I say I never at any time in my life worried about having to do things in a certain way to preserve my job or to preserve my career. I am not and have never been a conformist; maybe that is why I so much admired Lord Denning,²⁹ the most non-conforming judge there ever was.

²⁹ Lord Denning (January 23, 1899-March 5, 1999) was an English lawyer and judge.

BPS: That was your personal philosophy clearly, but it was also a product of your time.

GN: That was the reality.

BPS: The second thing is though, you got tenure very early. For people generally of that era, it did not take long for people to get promoted and tenured because that was the substitute for the lower pay that was generally imposed on law teachers compared with private practice. One of the ways they did that was they promoted you very quickly. I wonder if the lengthier untenured period and there not being as many jobs now has an impact.

GN: But when people get tenure, presumably they needn't worry about the things that I say I never worried about in the first place and never gave it a second thought. To me, tenure was not important. In fact, I think tenure is a bad idea because tenure protects the weak. I also think that many of the current academics have little or no practice experience and realize that they have little or no prospect of landing a job outside of academia, so they do whatever it takes to hold on to their cushy job.

BPS: Certainly some of it might just be the generation people came from. Some of it might be more material. Some people just might not know that if things don't work out, they can get a job somewhere else at a different university or in the private sector. Maybe the period that it takes to get tenure feels longer because it takes getting a PhD, then you have to get through tenure, and once you get that you want to get your promotion. Maybe it is an institutional environment in which things that used to be unthinkable, like that you would basically run somebody out of the University for taking a controversial public position was not on the radar screen in those days. But today it is.

GN: Today it is. And for me I also remember that I had a lot of positive reinforcement for me and it made me, people will say arrogant, cocky, you can use whatever adjective you want, but I got a lot of positive reinforcement; and in my fourth year of teaching I won the University Teaching Award, becoming the first professor of law to win the university-wide award. And I got that after my fourth year of teaching in spite of the

Scary Gerry label and the reputation of being an SOB, and an arrogant SOB, and the hardest marker in the school and all of that and nevertheless the first person to have ever won that award in the faculty of law. And I know for a fact that I was nominated multiple times thereafter but their policy was not to award it to the same person. I guess I had a love-hate relationship with my students.

BPS: And you would have been nominated by students?

GN: By students.

BPS: And you were not the sort of person to have lobbied for that.

GN: I had no idea that there was even such an award.

BPS: I think if you look back in time, I have done a lot of interviews with people and I have asked them about this, my sense is that when I came to law school in the early 1980s, that our identity was first and foremost as a teaching school. And in that regard I have the view, and I would be interested in your view, that as far as what we do for teaching we were as good as anybody in the country. That we had ten to twelve people out of twenty who were not just good but were outstanding. We had you and Jack London, John Irvine,³⁰ Phil Osborne, Alvin Esau,³¹ you can go on and on and on, and have a school of twenty people to have ten to twelve outstanding teachers, people who are capable in their own way to win the kinds of accolades that you did. You would come here and in terms of the quality of the classroom experience, in terms of the quality of instruction, we were, without being self-delusional, we were as good as anybody in the country. Do you have a sense that that has changed in terms of how we define ourselves and what the learning experience is now?

GN: I think so.

BPS: And how so?

³⁰ John Irvine, Robson Hall faculty, 1970-present. He currently teaches torts, property law and jurisprudence.

³¹ Alvin Esau, Robson Hall faculty 1977-2010. He is a Senior Scholar. For his interview, please see page 257 of this issue.

GN: I think that the push to direct people into research and writing papers took away from the thrust of teaching responsibility and our de facto responsibility for the certification of lawyers. I think the system sort of almost reversed itself in rewarding you heavily for strong research and teaching was allowed to be “eh”. You know, as long as you are half-assed decent in the classroom, or not even half-assed decent in the classroom, it’s fine so long as you’re publishing. If you are churning out publications with the University of Manitoba’s name on it, that’s our boy!

I think the emphasis went that way but I think a number of things happened as well. I think that in our day, most of our faculty were interested in the areas of the law that are known as the common areas: contracts, torts, property, wills. The hula hoops and sexy topics *de jour* for current academics are human rights, Aboriginal rights, international law, and all of that stuff. For one thing, very few practice those areas of the law. If you are in a downtown law firm, you will see a case like that maybe once every twenty years. You are going to see the run-of-the-mill stuff that lawyers see and have been seeing for years and years. We had members of faculty who had those interests and shared those interests, and I think that affects the teaching element that goes on in law school. I think we started to move away from a school that was dedicated to producing practicing lawyers; I mean, if we had to sum up what our philosophy was in my early and main years of my career, we saw ourselves as the best law school in Canada for teaching lawyers. We were the first to develop the moot court program; we were first to develop the litigation program. We saw ourselves as really excellent at training lawyers to be practicing lawyers and in fact, we enjoyed a tremendous reputation in western Canada. Firms from Alberta and firms from British Columbia, even after the University of Victoria and University of Calgary were established, were coming to Winnipeg to recruit our graduates.

BPS: Even though we were handing out tough grades.

GN: That’s right. One fellow that I knew, I asked, “Why do you come out here from Victoria to recruit our students?” He said, “Because I have twenty-six Victoria applicants whose GPA is 4.5 and I cannot tell one from the other. I come down here and I can tell one from the other. If I have one with a 4.5, maybe that is the guy I want because everyone else got less than that.”

VII. THOUGHTS ON CURRICULUM REFORM

BPS: In terms of the identity this is one area in which you were, to some extent, a lone holdout. It was the curriculum reform of the 1980s, sometimes called the Osborne-Esau reforms, with Jack London, who I believe was dean at the time, and a number of people were on the committee, but Alvin [Esau] was the main one. The philosophy was based on this balance curriculum: strong emphasis on mandatory doctrinal courses in upper years, and we pioneered this idea of perspective courses where you would look at material outside of the ordinary material and write a paper. We had a mandatory clinical stream and so on and so forth. In many ways I think that curriculum philosophy was consistent with your own vision because it tended to produce a student with a very broad understanding of the basics. I think you had a principled libertarian objection to the mandatory nature because you thought that students would generally make sound choices and we should not as an institution require them to take a significant mandatory component in upper years. Is that a fair characterization?

GN: It was, I mean, as miserable a guy as I can come off to be, I am someone who changes their mind from time to time and I am open to reasonable discussion and debate, unlike some others who plant their feet in the sand and never move from there. On the curriculum mandatory-elective, I think part of my problem in buying into the Osborne-Esau Report³² is what they had listed down as compulsory, and I think that some of the subjects that they listed as being the obligatory ones were to me not obligatory.

BPS: What courses would you suggest?

GN: The problem is that when you create an obligatory program, everybody has their own favourite menu items and it is very hard to get agreement on the menu. If I presented a menu of mandatory courses and the faculty liked them, then I would become known as a supporter of mandatory courses. It would just be “I don’t like yours and you don’t like my list.” So I said, “If

³² Please see: Jack R London et al, “The Report of the Curriculum Review Committee on a New Curriculum”, (2016) 39:2 Man LJ 155 [Osborne-Esau Report]; and Phil Osborne & Alvin Esau, “Curriculum Reform at Robson Hall”, (2016) 39:2 Man LJ 179 for the explanation of the Osborne-Esau Report by its main authors.

you do not like mine and I do not like yours, why should we have a list at all?" That is sort of where I came to. You might say, "Well, which courses didn't you have?" I do not even remember what they were; family law was the one I didn't think should be on there. And I thought that we made a big mistake on the perspective courses. I have no problem with perspective courses. I have no problem with requiring students to take one or two of them, but I have a big problem with a lot of students that take fourteen of them. You have a whole group of students here who are very incapable of passing real proper law exams, who write papers. I do not know if they write their own papers because it is so easy to steal or plagiarize a paper. You cannot steal an exam answer. You have students here who know the easy route out and the easy route out is take as many paper courses that you can because it is the easiest ride at a law school. To allow that was horrendous.

BPS: Okay, but you mentioned that you're a reasonable person who changes his mind. Have you changed your mind to some extent about the curriculum structure?

GN: Yeah, I am prepared—and probably always have been prepared although it has never come across that way—to have a largely mandated curriculum from first to third year, but it has to be taught properly. I think that is an important factor. I don't know how you are going to resolve the debate that you are inevitably going to have about the menu. I don't know. To me that's a problem because if I see a menu that I don't like and that is what is being offered as your mandatory program, then I'm not in favour of the mandatory program because I don't like the food. I would add that I totally agreed with Jack London; when he was Dean, he said that the curriculum is not nearly as important as how you teach the courses in the curriculum

BPS: I think the key concept of the so-called doctrinal courses is that they are building block courses. As someone who teaches labour law, I would say labour law is not a building block course, it is not something you have to know and it is also something you can learn on your own. Family law seemed to me like a building block course because it is the gateway to some other courses, laws involving children, for example, and it is pervasive. For example, if you are doing corporate law you still have to know family; so I guess I thought even though there is no absolute platonic example of that,

reasonable people could work out what is foundational and what is special pleading. Obviously the concern is always people tending to read their own faiths into it.

GN: A lot of it is ego-based and self-interest based.

BPS: Well, I am astonished that you think an academic is capable of being either egoistic or self-interested.

GN: Well, I can tell you, this curriculum over fifty years is substantially ego and self-interest based. You have a million courses being taught here only because people want to teach these hula hoop, small niche flavour-of-the-day courses that have very little, if any, relevance to every day law practice.

BPS: I think there is a certain tension between faculty wanting to teach a course in their own area of scholarly specialty. It is a nice overlap; it's a nice synergy for them: I don't have to learn a whole other area and I get to bring my own enthusiasm and knowledge into my teaching. [The tension arises with] students saying, "Yeah, that is your area of interest but that's really specialized and I don't want to do that; I want more courses of a more pervasive and fundamental nature." I think that is an issue in regard to the faculty interest and the student interest. I don't think one is right or wrong.

GN: I think the faculty interest has prevailed over the forty years that I've been here. I would say that the curriculum has been largely designed based upon self-interest. I hate to say this, but it's true. I'm prepared to plead guilty on some accounts as well. Let's face it, A, B, and C are your areas of law, you are not anxious to go teach area D unless that area D is a little pet area of yours and you're dying to teach it. And once you get into teaching that course, you establish yourself as teaching that course; at the same time, you use that niche course to get off the hook to teach other courses that you don't want to teach. Eventually you end up with very few fundamental courses being taught by full-time faculty because so many of them have filled up their teaching load with their little niche courses taken by only a small handful of students.

BPS: I think, at the time you were hired, the question of whether you were left-wing or right-wing or what your politics were would have been considered hilariously irrelevant in the hiring decision.

GN: I would say so.

BPS: Do you think there has been a change in the extent to which we see politics, political philosophy, or world view to being relevant to hiring decisions?

GN: I think that is the case. Why it is the case, others can speculate. I think that if you compare the older era with the newer era, we were all cut from a similar piece of cloth. We were all lawyers, all had good practical experience, were interested in the law, in doctrinal law, in the everyday practice of law; and so we hired people along the route who had that kind of mentality. Somewhere along the line, my sense is that there were two factors that evolved. One was the universities' push for a lot of research out of appointees. Second, I think the pool of candidates for law positions were those who went off to do Masters and S.J.D.s and who were interested not nearly as much in the doctrinal areas of law, but were interested in the broader areas of human rights, and Aboriginal rights, and international rights, and how to make the world a better place and make the legal system a better legal system. I think that is what infiltrated law schools. Once you have those seeds planted in the institution it germinates, just like it self-germinated in our time. So I think that's what happened at the law school. Look at who you have teaching at the law school now: a staggering number of people whose main area of law is not doctrinal law. It is a staggering number. Their research is not in doctrinal law and their interest is not in doctrinal law, and that's a dramatic change from what it used to be.

BPS: Doctrinal law—just let me be clear—what are you talking about?

GN: I am talking about private law.

BPS: What you are talking about is the effect of law as it relates to people.

GN: Yes, as it relates to consumers, the stuff that every lawyer downtown has engaged in for ninety percent of his practice. It has nothing to do with

today's fashionable stuff and has everything to do with all of the mundane stuff: commercial law, private law, property law. That's where all of the law is still being practiced today.

BPS: The Arthurs Report³³ might have provided a useful vocabulary for talking about it. The Arthurs Report on Legal Scholarship argues that there is a difference between research in law—which is what you are interested in in terms of how a case is argued in court and, of course, the law's own internal logic—and research about law—which is the effect of law on society. People who are drawn to the law and society perspective say, "We are practical, too; we are trying to perceive the social impact of law." You would say, "What I mean by practical is: what is practical professionally, in terms of actually assisting clients with their matters." There are two very different visions of what it means to be practical, I guess. From what you're saying, do you feel that the law-and-society perspective is more pervasive now and fewer people are looking at it from the point of view of training somebody primarily to deliver services to the individual client?

GN: Absolutely. I mean, a doctor can do all of the research he wants but he still has to be able to take out the gall bladder. Our responsibility is to produce people who can take out the gall bladder because if we don't produce the lawyer who's capable of doing the everyday things that a lawyer does, who is going to be training them? Someone has got to do it. Is there someone else that's going to do it? Who's going to do it?

BPS: You retired recently and I think one of the things that made it less fun for you is that you had a sense that students were less willing to "engage in the game," is how you have spoken to me about it.

GN: Absolutely.

BPS: The idea that "We are here," and "I should prepare the cases" and "This classroom is going to be both fun and edifying because we are going to wrestle with these cases" is not a student expectation. What do you think the change in the students has been? I have a few ideas; I'll run them by you

³³ Harry Arthurs' Law & Learning report of 1983 documented the low productivity of academic legal scholars in Canadian law schools. It recommended creating distinct streams for the academic study of law and professional legal education.

and see what you think. I think one thing is students don't come to law school without a larger formation in the university generally. In the university generally we have seen a trend—because of funding issues amongst other things—towards much larger classes. Students have written a few essays, been involved in fewer dialectic experiences in the classroom itself by the time they get here. I think that's one influence. The other thing is you could—the editorial you—could get into law school at a time with a decent-but-not-stellar GPA, but now students feel a lot of pressure when choosing courses that they have to choose courses that are going to get them an A or they're not going to get into law school. Fewer of them are going to take a really challenging course in Shakespeare because that is harder to get an A in, maybe, and more courses where you can get a higher grade. Now I'm not blaming the students, but I do think there is a lot of external pressure in terms of selectivity, which is discouraging students from doing that. I think maybe a third factor is students' expectations are built by what we do ourselves. We have more of us who are teaching through more of a lecture method, more PowerPoints. So there are three theories there. I'm not putting them up because I expect you to agree, but I'm just testing them out.

GN: I do agree with all of them. You know, we read a lot today about the younger generation's feeling of entitlement. I am not a studier of that human phenomenon but I think that it's right. I think we're experiencing a period of time where there is an entitlement mentality, as opposed to a "working your ass off" mentality, which is pretty pervasive. So to find it in our law students would not be unusual, in my view. That doesn't make me feel happy about it, but I can understand that it's there and for some of the reasons you have given. There's a reason to combat that: if you want to combat that, you put your foot down and say, "No, sitting back and feeling entitled is not going to cut it and it's not going to get you where you want to go unless you do A,B,C,D,E,F, and G." You have to be committed to that. I don't know that even many of my faculty would ever have been committed to it to that extent.

BPS: But if you're coming in as a newer faculty member—I was going to say younger, but you're not that young any more when you start now...

GN: Right because you have to spend so much time.

BPS: You have to get a J.S.D. A young professor in our time might have been mid-20s. Phil was 24, I was 24; how old were you when you started?

GN: 26.

BPS: A young professor now is probably early thirties. They have had to go through this whole extra odyssey in order to get there, but you come in with a new faculty member and you're worried about keeping your job, you're worried about getting tenure, you're worried about getting promoted, even if you bought into the theory that you want to be demanding, that you want the classroom to be this tense but ultimately edifying experience. Don't you think it would be tougher for someone in this generation of teachers to say, "I don't care if everybody else is doing Power Point, I don't care if everybody else is doing it this way?"

GN: You have to run your own show; you can't be a robot.

BPS: "I'm not really running the show because I have all of these pressures on me. I have course evaluations; I've got the pressure to get tenure and promotion." My sense is that it's more difficult for a newer faculty member to take a David Farragut,³⁴ "Damn the torpedoes, full speed ahead" view or the Frank Sinatra³⁵ view, "I've gotta do it my way." There is a lot more career and institutional pressure to address consumer-oriented student demands. Not a pejorative, just trying to put it in a phenomenological way, but we do have the SEEQs, which go a long way in terms of course advancement. Even more so the institutional attitude around faculty orientation which tells you flat out from the beginning: set up your lab, do your research, do your teaching, don't suck at it; but they want money in the door. It's very corporate...

³⁴ David Glasgow Farragut (July 5, 1801-August 14, 1870) was a flag officer in the United States Navy during the Civil War and is remembered for this paraphrased statement given at the Battle of Mobile Bay.

³⁵ Frank Sinatra (December 12, 1915-May 14, 1998) was a famous American singer. The statement "I did it my way" comes from the song "My Way", which was popularized by Sinatra in 1969.

GN: Yeah, that is where the money comes from. I understand it is much more difficult for that to take place than it was in my day. I understand that. To get back to the question earlier, how did I ultimately react to the changing nature of the law student that I experienced in my later years versus my earlier years? I did not enjoy it. I never enjoyed actually having to sell my product, which I always had to do because my product was always slightly different than the other products being sold in this building. I felt I had to justify my particular product. I always sort of resented that I had to do that, but I did it anyway because I wanted to sell my product so I was prepared to put up with it. As time went on, later towards the end of my career, it was a harder sell to sell my product. My product requires more work on the part of the student but also on my part, and there came a point where I said, "To heck with it, I am not going to do it anymore." I have to say I probably came sort of to that point on the line. No one really appreciates what you are doing, no one is backing you up, so I'm getting out of here, I don't need this. I am five years away from walking out of here so you know what? I am not going to break my back either.

Another thing that is part of the problem that I would have put an end to is computers in the classroom; that is an absolute friggin' disaster. I am trying to compete with porn.

BPS: (Surprised) I was going to say Minesweeper.

GN: I am much more realistic; you know, I am trying to compete with Facebook, Twitter, porn and whatever; I know they are not sitting there and typing Nemiroff's notes. I wanted to have installed a system that I saw at Comdex.

BPS: Which actually exists?

GN: It actually exists. I had them come up here and give me a quote. Comdex has a convention held in November every year in the computer industry. Now they lump it together with the entire entertainment industry, but this was just computers. This particular company had computer labs or a classroom set up where everyone has a computer that is plugged in at their desktop and I have a master control panel and I can see what is on everyone's computer.

BPS: I think someone once said, “It was one of God’s gifts that we cannot see what is in somebody else's mind”. We don’t want to know. If I actually knew what everybody was doing while I’m trying to teach, I would find that deeply, deeply, disturbing. I know when I sit at the back of the class for seminars, I see all the Minesweeper. I don’t know that I’ve ever seen porn, but maybe they’re turning it off because they know I’m there.

GN: The thing is, students should not be using the computer in the classroom except for what is going on in the classroom. You create a culture where it’s all right to be multi-tasking, in the sense that “I can be doing emails and listening to Nemiroff at the same time I close the door.” I’m sorry, I mean, we’re teaching important stuff here and you give the students a license to be distracted in the classroom that I don’t think should be tolerated here. That is how strongly I feel, and at the end of the day that also contributed [to my taking retirement when I did]. I said, “I don’t want to have to compete with the computer in the classroom because I know what’s going on with the computer.” And I am coming at this as someone who was one of the first Faculty members to get into computers, as someone who was responsible for establishing the Smart Classrooms with all of the latest technology and equipment, so I’m very far from anti-computers. For a long time, I was the only one who actually used all of that technology, especially the Smart Board. I was in most respects the Faculty's computer nerd.

BPS: My sense is whatever you say about theories of the mind, we are all people and generally speaking, people want approval in some form. There are some people nowadays for whom approval is: “I write this paper, I go to a conference, and that is my audience,” basically. For the generation that you came from, that was classroom-oriented; it was the same gratification that a theater performer gets. It’s a live audience; you actually feel the energy in the room. It is a reciprocal audience.

GN: Absolutely, in the classroom, you are an entertainer.

BPS: Yeah, so if you are not getting that energy back it is quite difficult to be projecting it.

GN: Precisely.

BPS: It is like a comedian or a play having a dead audience. Now one thing, just a couple more questions before we go. Looking back on your career, you're from a generation that had these long careers. Lawyers stayed in one place and did the same thing.

GN: Yep, I did not get traded or waived.

BPS: My sense is that your legacy from your point of view was not leaving behind articles in academic publications. From your point of view, your legacy was that you educated a bunch of students who went on to use what you taught them in practice. That what you taught them was something they could use, part of the furniture of practice that could help people in the real world.

GN: Absolutely. I feel very satisfied that my contribution to life and mankind, in this small limited context, was extremely rewarding and worthwhile.

BPS: I have asked a few people about this, my sense is also that if Gerry Nemiroff was coming into law and thinking about teaching today, Gerry Nemiroff would not get a job today. For one thing, you would probably have to have a doctorate.

GN: As I said to you before, law schools are hiring too many doctors and not enough lawyers.

BPS: And you probably would not have had the patience to, or see the value in spending three or four years, prime-of-life years, working on a doctorate. You probably would have ended up doing something else.

GN: Absolutely.

BPS: And even if you had, you might still not have been hired because if you had candidacy and had positioned yourself as teacher first, scholar second—rather than scholar first, teacher second—you might not have been seen as a desirable product. So the kind of life you have had and the kind

of career you have had, with the kind of satisfaction, might be quite difficult for your contemporary generation, or impossible to have.

GN: I would say absolutely correct. Just my last five or seven years, I have to confess, I could not stand it here. It was an environment that I found to be not appealing at all. Would I want to start up my career on something like that? No. Would I have been hired in the first place? No. So if you take me and place me as a 28-year-old now in this law school context, I'm eliminated from being in here on two accounts. They wouldn't want me and I certainly wouldn't want them. Ain't gonna happen.

BPS: There is something allegorical about all of these conversations that we're having, because what I described was this very teaching-oriented institution where people got that gratification in the classroom experience, and so on and so forth. A lot of things have changed since then, with the students and with the fact that we are much more embedded in the university, and the university has very strong research and publication orientation. Forever is a long time and I find myself saying "forever" and "this will never happen again," but the arc of history is very long and who knows which way the world is turning. In fact, in some ways it is turning towards more practice-ready education.

GN: I think it will turn around eventually.

BPS: Things do not move at the same pace in academia. They do not respond to the real world in the way that some other enterprises do. It might be a long time before we see a change. The real world seems to be wanting more practice-ready lawyers. There are feedback mechanisms now, such as students getting employment, which may not have been as evident as they were five years ago or ten years ago, so who knows, things might change again. But I do have the impression that a lot of people who loved what they were doing, did it very well, and did it primarily from the perspective of being classroom teachers, were also very outstanding scholars in their own right, for example Alvin or Phil.

GN: Oh yeah, they wrote, but you know they did it because they loved it, not because they knew it would get them apples in their career or wanted to

see their names in print. And their targeted audience was the legal profession, not their fellow academics as most of the stuff written today.

BPS: But even if you would ask people from that generation that you belonged to about Phil Osborne or Alvin Esau, they still would have said their self-defined identities were still as teachers.

GN: First and foremost, as a teacher. I always considered myself to be first and foremost a lawyer who happened to turn to teaching. Recognizing, as I did, that a law degree in Manitoba was a *de facto* license to practice law, I considered that my primary obligation was owed to the public at large and to the governing body of the legal profession, the Law Society, to ensure that the students I was effectively certifying as professional lawyers had attained a very solid and competent level of performance. Therefore I felt it was my duty, which I took very seriously, to conduct very rigorous examinations and evaluations. No less important was trying to inculcate a very strong work ethic and a full and serious commitment on the part of every student. Studying to become a professional practicing lawyer has to be taken as very serious business both by the students and just as importantly by the Faculty.

BPS: Some did really outstanding stuff in the scholarly vein. Alvin did really outstanding stuff and Phil wrote a textbook that is still preeminent among students in terms of learning torts. Even they would have seen themselves as teachers first. I guess that's not a form of self-identification that will lead you to want to become a law professor. Even the term "law teacher"—I still remember, I was in an accident once and I was taken to the hospital and asked what my profession was. I said, "Law teacher," and one of the people who drove me to the hospital said, "Oh that's very unpretentious of you to say law teacher rather than law professor." I don't know if people casually describe themselves as law teachers now; I would think they would use "law prof" or "law professor". It's a different sense of self-identity.

GN: No, I think you're right. If you look at people like Phil and Alvin, who did write, they always regarded themselves first and foremost as teachers, and that was the *raison d'être* of a law school in Manitoba; particularly Robson Hall, since it is the only law school in Manitoba. It's the law school's responsibility to teach people to become practicing lawyers. I mean, if you

asked the public, “Is that what this law school should be doing?” I think ninety-nine percent of the public would say, “Yeah I guess so, because if you’re not doing it, who else is doing it?”

I saw, over the years, a degrading of that kind of law school: that some of the academic staff who came on sort of had the idea that it wasn’t such a noble thing to have an institution whose main purpose was to teach and help people become practicing everyday lawyers. I think that it’s a tragedy to reach that kind of conclusion because, as I say, if we don’t have that done here, where do we want it to be done? Do we want to go back to the very, very old system and turn it back to the legal profession to train lawyers? Or do we want to sit here and only deal with law as a social science and leave it to the profession to help to prepare people for the everyday practice of law? I think that’s something that every law school should address and not be afraid to address: the question of, “Why are you here? What is the first and foremost reason for your being here as an institution?” And I would say if you ask the public—maybe that’s not the group you should ask, but if you ask the public—99.9% would think that the primary and major purpose of our law school is to help people become practicing lawyers—not social scientists, practicing lawyers. I believe the purpose of the medical school is, at the end of the day, to teach those students who can practice day to day medicine, not invent the next cure for cancer, although that would be nice. The primary objective is to produce people who are capable of properly carrying out the everyday practice of medicine, and for this law school not to take that point of view today with regard to teaching law is terrible.

BPS: Just so I have the dates correct, when did you retire?

GN: December 2008. So 2008 was my swan song year. 2009 I was in Palm Springs playing golf (quite interestingly with some former students who also vacation there), and I enjoy life a lot more than I had the last six.

It was not only the new wave of colleagues really; the students really changed as well. In my time the students changed before the faculty changed over, as I say, hiring [Ph.D.] doctors, instead of lawyers. As you’ve has pointed out, there was definitely a slow but clear difference in the nature of the student you had sitting in the classroom. I found that when I entered the classroom, I understood that I was really an entertainer with a serious script. When the audience is no longer interested in your show, it’s not a

lot of fun being there. It was time for me to go. I don't think I was any less entertaining in my fortieth year than I was in my first year.

BPS: It's too bad that your lectures weren't recorded so they could come back on Netflix like these 1970s sitcoms.

GN: They have you teaching all of this other stuff. "Okay, what would these people who disagree say? What would their answer be?"

BPS: The typical answers we get are: "I'm at the university and I am in an academic discipline, and it's the profession's job to train professionals."

GN: So they would be inclined to encourage a return to the archaic system that we had before this became a faculty?

BPS: Oh, they say that can all be done at CPLED³⁶ and articling; that it's not our problem. We had an episode in which the President of the Law Society came to our school and one of our colleagues said, "Well, why are we even talking to you? We're at a university!"

GN: It disturbs me greatly too, because what my generation of law teachers achieved by developing what came to be regarded as one of the best law schools in Canada—especially in terms of providing strong doctrinal teaching with intense academic analysis—has been systematically demolished and turned into a school of social studies. In my opinion and in the opinion of many lawyers I know, the law school has gone down the tubes and has become a bad joke, and as I understand it is now ranked as the worst law school in the country. So disturbed are some members of the profession that they have vowed to no longer offer financial support to the Faculty.

I used to go around and I used to do this as a sort of joke, but to prove my point, there is a clause on every standard offer to purchase a house in Winnipeg. On the standard form that every real estate agent uses, there is a small little clause, 14, 15, that it says, "Time is of the essence." Now why is that clause in there? You know, I've asked a bunch of lawyers why that clause is in there and they say they have no idea. And I say, "Okay, you're a lawyer, you just charged someone \$4000 to close this house deal. Part of which was

³⁶ CPLED: Canadian Centre for Professional Legal Education Program.

this offer to purchase. And you're charging money for the document and you don't even know what it says. Isn't that something?"

I'm just giving this as an example. "Time is of the essence" means that you can repudiate the contract and not just get damages, because if time is of the essence, it allows you to terminate rather than just get damages if the other party doesn't fulfill their obligations by the due date. But I mean, I know it sounds beneath us to deal with forms, whether it's an offer to purchase or standard lease or anything else that is done in a law firm by paralegals, by and large. You tell your paralegal to whip out boilerplate 602a, but in doing that, it seems to me as a lawyer you ought to know what the document says. And someone has to teach you. The paralegal is not going to teach you; the paralegal has no clue what this document is all about. Someone has got to be providing this education.

BPS: Yeah, and if you are not advising your client that they may have trouble getting financing and so this may fall through because time is of the essence, that is something the client should know. The client should and not be able to say, "Oh I didn't realize that if I was a few days late, the deal would fall through."

GN: That's right, and if it's one second late, the deal will fall through. It's about things like that that I could never understand those sorts of academics who say, "That's paralegal work; that's too beneath us." Well, I'm afraid I have to disagree with that, because that's what actually produces money in your bank account at the end of the day. You're a professional charging money for this.

VIII. MOVING TO ROBSON HALL

GN: Just to backtrack, when I came here and I found that we were moving to the university, I was strongly opposed to it. The reason why the school moved was twofold. One was physical space: they needed physical space. We only had about sixty law students at the time and there was a demand for lawyers, believe it or not, at that point in time. Sixty students were not enough, so we had to expand but there was no room to expand. The Law Courts building was more or less full, and there was no other existing space downtown that was available to us, so going down to the university where they put up a brand spanking new building had a lot of sex appeal. I think

there was also a feeling that the funding from the university would be valuable in terms of operating the Faculty of Law rather than basically running on a fee-covers-all-costs basis. But I tell you, I taught two years downtown, and that was a marvelous set up for someone who took the view I do about what legal education is all about. Judges' offices were just down the hall, and sometimes I would see a judge and he would say, "Gerry I have an application on something or other, what time is your class?" I said "10:30." He said, "I'll postpone it until 10:30; you bring your class in and we'll deal with this application." Talk about "Isn't that cool, eh?" I bring my first-year students into something like that.

I mean, this is the kind of relationship we had with the judges. We saw them every day. We were all on a first name basis. They knew what we taught. It seemed to me like, okay, we're going twenty kilometers away from all this—why are we doing this? This is a great set up. It would never have happened if we had stayed down there.

BPS: But staying down there really was not an option.

GN: I don't know if it was an option considered with enough seriousness, because the deal from the university was so delicious—brand spanking new building, more funding—that maybe it caused them not to think about everything else. It wasn't very long afterwards—even the guys that came in shortly after me, guys like Osborne and Esau—that we had students that were used to sitting on the radiators in university buildings, instead of sitting in the judge's office.

BPS: Well actually, if it's Winnipeg and it is January, sitting on the radiators isn't a bad idea.

GN: But it was really so instructive to have access to the profession in that way. Also, being in a building like that instilled upon the students a certain sense of identifying with the legal profession and acting in sort of a more professional way than just being in Arts years four, five, and six, which is what I think happened at the campus. You've been there on campus for three years and taken your Arts degree, and instead of going to the Fletcher Argue building, you simply now go to another campus building, Robson Hall, and so it feels like it's years four, five, and six of Arts. The atmosphere isn't any different, right? But back then when we were at the Law Courts,

when you graduated from your Arts degree you entered a completely new and different milieu and found yourself surrounded by the legal community, where all the work gets done. This is an environment which you cannot manufacture on a university campus.

BPS: Yeah, if you're out on campus as a faculty member, the people you see outside the faculty will be social scientists, academics.

GN: Nary a judge. What you see in court are lawyers and judges, not political scientists; it's a very different experience. Not taking into account or seriously underestimating the adverse effect of completely changing the physical environment where law students were to study was a tragic mistake.

BPS: Well, thank you very much Gerry.

GN: You are not going to type all of this up.

BPS: That is the idea.

GN: That is a lot of stuff to type up!