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The Whole Truth: A Tribute to Professor Beth Thornburg

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THE WHOLE TRUTH: A TRIBUTE TO PROFESSOR BETH THORNBURG

*Julie Patterson Forrester Rogers**

THE retirement of Professor Elizabeth Thornburg brings a great hue and cry¹ because the Dedman School of Law is losing one of its best. Our responsibilities as members of the law school faculty are teaching, scholarship, and service, and Beth has excelled in all three areas. She has won teaching awards, has published in top journals and presses, and has served the law school and university in countless ways. The law school will not be the same without her.

One of Beth's outstanding accomplishments is her co-authored book, *Lawtalk*,² published by Yale University Press, which explains and provides interesting stories about familiar expressions used in law. The book is popular, not just among lawyers but also among non-lawyers. It is an enjoyable, educational read, and I have taken the liberty of including some of the entries and explanations in this tribute.

After clerking for the Honorable Robert Hill of the Northern District of Texas and spending several years at a white-shoe firm³ chasing the billable hour,⁴ Beth made her way with all deliberate speed⁵ to the law school, giving up the opportunity to be a rainmaker⁶ for the challenge of

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* Professor of Law, former Associate Provost, former Dean *ad interim*, SMU Dedman School of Law. Thanks to Paul Rogers for his comments on a draft of this tribute.

1. “*Hue and cry*—now a general expression for any public clamor, uproar, or outcry—started out as a legal term and is one of the law’s many redundant expressions” JAMES E. CLAPP, ELIZABETH G. THORNBURG, MARC GALANTER & FRED R. SHAPIRO, *LAWTALK: THE UNKNOWN STORIES BEHIND FAMILIAR LEGAL EXPRESSIONS* 129 (2011) [hereinafter *LAWTALK*].

2. *Id.*

3. “A *white-shoe* law firm is an old-line upper-crust firm—the kind that in bygone days selected its members using much the same criteria as an exclusive gentlemen’s club.” *Id.* at 285. Beth was an associate with Locke, Purnell, Boren, Laney & Neely, now Locke Lord, which would certainly qualify. The big Dallas firms first began hiring women lawyers not too long before.

4. We all know what this is, but see *id.* at 27 for some interesting insights about the billable hour.

5. The United States Supreme Court used this term in *Brown v. Board of Education*, 347 U.S. 483 (1954), “attempt[ing] to fashion an order that would require steady progress toward desegregation while allowing a degree of flexibility.” *LAWTALK*, *supra* note 1, at 94. The phrase also appeared in earlier Supreme Court opinions. *Id.* at 94–95.

6. “[T]he concept of a partner who specializes in obtaining clients—as distinguished from actually doing their legal work—long antedates the arrival of this colorful label [in the 1970s]. The earlier term was the prosaic *business getter*.” *Id.* at 206.

teaching our students how to think like lawyers.⁷ Beth was among the first of the tenure-track women on the law faculty, moving to the tenure track after serving as director of our legal writing program. Appointing Beth to a tenure-track position, where scholarship as well as teaching is important, was a good decision, as she is a world-class scholar with many oft-cited articles in top journals, in addition to casebooks, treatises, and *Lawtalk*.

As one of the first women on the faculty of the law school, Beth served as a wonderful mentor to other faculty women. She was my go-to person for questions and advice about teaching, research, tenure, and promotion. I gave birth to my first child at the end of my first year at SMU, and Beth gave invaluable advice about how to balance motherhood with professional responsibilities. She was an excellent mentor in part because she was such a good role model. As one of the first women on the faculty, it was important that she excel as a scholar and teacher, and Beth met that challenge from the start.

Beth is a prolific scholar, and her articles tend to be on current topics that are interesting, even to those of us who are not litigators or scholars of procedure. Her articles have enticing titles—examples include *Twitter and the #SoCalledJudge*⁸ and *Just Say “No Fishing”: The Lure of Metaphor*.⁹ Her work is highly valued, and for many years she has been one of the most cited of our faculty colleagues.

As for teaching, Beth has been the most innovative on our faculty. She used the “flipped” classroom before any of her colleagues had even heard the term, assigning videos of lectures containing some black letter law¹⁰ for her students to watch before class so that class time could be reserved for problems and discussion. When the pandemic began, sending us all to Zoom to teach our classes, Beth was already adept at both synchronous and asynchronous classes before the rest of us even knew the terminology, and she offered many helpful teaching tips.

Beth’s classes were always popular with students, and although never one to demand a pound of flesh¹¹ from her students, she was nevertheless

7. “The phrase *thinking like a lawyer* refers to a set of qualities of mind prized by lawyers. These include precision, caution, relevance, focus, resourcefulness, practicality, ability to make pertinent and sometimes startling distinctions, clearheaded detachment, lack of sentimentality, and prudent judgment.” *Id.* at 258 (emphasis added).

8. 70 SMU L. REV. 749 (2018).

9. 40 U. MICH. J.L. REFORM 1 (2006). Other examples are *(Un)Conscious Judging*, 76 WASH. & LEE L. REV. 1567 (2019); *The Lure of the Internet: The Limits on Judicial Fact Research*, LITIGATION, 40 (Summer/Fall 2012); *The Managerial Judge Goes to Trial*, 44 U. RICH. L. REV. 1261 (2010); *The Curious Appellate Judge: Ethical Limits on Independent Research*, 28 REV. LIT. 133 (2008) (winner of 2008–09 Eisenberg Prize for best article on appellate practice and procedure, presented by the American Academy of Appellate Lawyers); *Judicial Hellholes, Lawsuit Climates and Bad Social Science: Lessons from West Virginia*, 110 W. VA. L. REV. 1097 (2008); and *Designer Trials*, 2006 J. DISPUTE RES. 181.

10. “Black letter is the English name for the style of type in which books were first printed. . . . [It] was therefore the style of all of England’s earliest printed books, including the first printed reports and treatises on English law.” LAW TALK, *supra* note 1, at 31.

11. The phrase *pound of flesh* “thrives today as a rhetorical device to taint an action that is legally proper as unsavory, cruel, or disproportionate.” *Id.* at 205.

plenty rigorous, finding just the right balance. She received numerous teaching awards at both the law school and university levels.¹²

Beth provided invaluable service to both the law school and the university without making a federal case out of¹³ the extra work. She served twice in the thankless job of Associate Dean for Academic Affairs in the law school, receiving the title of Senior Associate Dean the second time around. She served the university as Director of the Center for Teaching Excellence, which supports academic innovation and teaching excellence at SMU. As an excellent and innovative teacher, Beth was the perfect choice for the job, and she spent countless hours at it.

I was pleased to have the privilege during my year as the law school's interim dean of awarding Beth the Richard R. Lee Endowed Professorship. She was only the second woman on the law faculty to hold a named position, and I was happy to acknowledge Beth's scholarship, teaching, and service to the university with a title.

We will miss not only Beth but also her husband John, a graduate of SMU's Perkins School of Theology and a fourth-generation Methodist minister who shares an interest in baseball with my husband. Beth and John will now be able to spend more time in Austin with their grandson, enjoying the Texas Hill Country and maybe even going fishing.¹⁴ But we are happy that they will be maintaining connections in Dallas and hope that there will be no wall of separation.¹⁵ It is certainly the whole truth¹⁶ that we will miss Beth as a colleague, and it is not just hearsay¹⁷ that her contributions to our legal community were meaningful and enduring.

12. Beth's teaching awards include the 2016 Altshuler Distinguished Teaching Professor Award, the 2014 Peruna Professor Award, the 2013 University Scholar/Teacher of the Year Award, and the 1990–91 Dr. Don M. Smart Teaching Award.

13. "[T]o *make a federal case out of* something means to blow it out of proportion—to make a mountain out of a molehill." *Id.* at 160. The phrase is misused here because Beth's service has been more a mountain than a molehill.

14. I use the term literally here, but Beth explains the metaphor as follows: "In criminal cases, a *fishing expedition* is an investigation not justified by adequate suspicion and thus an abuse of government power. In civil cases, the fishing metaphor refers to a wide-ranging request for discovery of documents and information from an opposing party, or to a lawsuit filed before the claim can be proved, but commenced in the hope of uncovering the necessary evidence." *Id.* at 106.

15. Use of this term here is a stretch as it refers to the separation of church and state. *See id.* at 276.

16. "Like religion, the law has been characterized from earliest times by rhythmic, repetitious language that lends itself to memorization and ritual use. 'The truth, the whole truth, and nothing but the truth' emerged from that tradition." *Id.* at 288.

17. "Broadly speaking, *hearsay* is just secondhand information." *Id.* at 121. Beth's contributions, on the other hand, are known to us all.

