

2023

## A Giant in the Field: Tribute to John S. Lowe

Monika U. Ehrman  
*Southern Methodist University, Dedman School of Law*

Author(s) ORCID Identifier:

 <https://orcid.org/0000-0001-6990-0777>

---

### Recommended Citation

Monika U. Ehrman, *A Giant in the Field: Tribute to John S. Lowe*, 76 SMU L. REV. 15 (2023)

This Tribute is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

# A GIANT OF THE FIELD: TRIBUTE TO PROFESSOR JOHN S. LOWE

*Monika U. Ehrman\**

**I**N his 1675 letter to Robert Hooke, Isaac Newton pronounced: “If I have seen further it is by standing on the shoulders of Giants.”<sup>1</sup> Professor John Lowe, the George Hutchison Chair of Energy Law at SMU Dedman School of Law, is, without question, a giant in the field of oil and gas law.<sup>2</sup> He is one of the preeminent academicians in the field, not only within the United States, but in the world. His writings, casebooks, and counsel are responsible for shaping U.S. and international law related to the field, and he has trained generations of practitioners, policymakers, and academics. His work defined a field; his mentorship sustained a community.

Oil and gas law is a unique and relatively established field of law, a complex legal hybrid based on real property and servitudes, estates and future interests, contracts, and tort. Its American origins are notable as

---

<https://doi.org/10.25172/smulr.76.1.5>

\* Professor Monika Ehrman is the Charles J. and Inez Wright Murray Distinguished Visiting Professor at SMU Dedman School of Law, where she will be joining as a Professor of Law in Fall 2023. She earned a B.Sc. in Petroleum Engineering from the University of Alberta; J.D. from SMU Law; and LL.M. from Yale Law School. During law school, she was a research assistant for SMU Professor John Lowe and the Yale Center for Environmental Law & Policy.

1. Chaomei Chen, *On the Shoulders of Giants*, in *MAPPING SCIENTIFIC FRONTIERS: THE QUEST FOR KNOWLEDGE VISUALIZATION* 163 (2003).

2. In 2001, Judge Joseph Norris delivered in the inaugural Deans of Oil and Gas Law lecture at the Institute for Energy Law, formerly known as the Southwestern Legal Foundation, which was co-founded and housed at SMU School of Law. In his brilliant lecture, *The Shaping of Oil and Gas Law by Academicians*, Norris described the four founders of American Oil and Gas Law and their monumental contributions to the field—W.L. Summers of the University of Illinois; A.W. Walker of the University of Texas; Eugene O. Kuntz of the University of Oklahoma; and Howard R. Williams of Stanford University. There were certainly other great scholars—Norris himself acknowledges Victor Kulp and Maurice Merrill, both of the University of Oklahoma, Richard Maxwell, of Duke University, William Meyers, former Dean of Stanford Law School, and several more. Joseph W. Morris, *The Shaping of Oil and Gas Law by Academicians*, Deans Oil & Gas Law Practice Lecture, Institute for Energy Law (2001), <https://www.cailaw.org/media/files/IEL/Remarks/joseph-morris-dl2001.pdf>. This first generation of scholars characterized the nature of mineral and lease interests; analyzed (and created) implied covenants; and determined the relationships between the surface owner and mineral interest owner. Following these founders is the second generation of giants—our John Lowe of SMU, Owen Anderson of the University of Oklahoma, Laura Burney of St. Mary’s University, Bruce Kramer of Texas Tech, Patrick Martin of LSU, David Pierce of Washburn University, Ernest Smith and John Dzienkowski of the University of Texas, and Jacqueline Weaver of the University of Houston. They defined the field, adding rigorous depth and insight to a discipline complicated by geopolitics, energy conflicts, and de/regulation.

the world's first commercial discovery of petroleum was made near Titusville, Pennsylvania, in 1859. Although the United States heralded the first discovery of oil, its law surrounding the exploration, discovery, and production is unique due to private ownership of minerals. While other countries' minerals remain the property of the sovereign or state, the enterprising American academicians not only needed to form a body of law based on a fugacious, dynamic resource hidden within the depths of the earth, they had to do so with multiple and variant property interests and owners over varying periods of time. The brilliance of their writings is highlighted in their analysis and criticism.

It is only fitting then that John Lowe was born and raised near the birthplace of oil—on a farm in Ohio, which also drilled its first well in 1859, about seventy miles from Titusville. John attended public school, later receiving scholarships to Denison University in Ohio and then Harvard Law School. He did not have an oil and gas law course at Harvard—none was offered—ironically remarking, “[T]hat didn’t bother me, quite candidly. I had never seen an oil well and I had little interest in learning about oil and gas law.”<sup>3</sup>

Instinctively, John thought about practicing labor law, inspired by his labor union officer father.<sup>4</sup> After graduating from Harvard, and following his first job as a teacher and government officer in Malawai, in eastern Africa, John returned home to practice law.<sup>5</sup> Unfortunately for John, the firm already had a practicing labor lawyer.<sup>6</sup> So he had to find another practice area.<sup>7</sup> Fortunately for the oil and gas law world, John became an oil and gas lawyer, learning from a firm colleague who had serendipitously taken an oil and gas law course in law school.<sup>8</sup> Five years passed, and John decided to enter academia, beginning his career at the University of Toledo, then moving to the University of Tulsa.<sup>9</sup> In 1987, John came to SMU Dedman School of Law, first as a Visiting Professor and then as the George W. Hutchison Chair.<sup>10</sup> He spent the remainder of his distinguished career at SMU, later serving as Senior Associate Dean for Academic Affairs and always a strong proponent and advisor in the graduate law program. His accomplishments are numerous and include academic scholarship and teaching, advisory guidance to practitioners and governments, and mentorship and counsel to early career scholars.

Among his scholarly achievements, John's works include his magnum opus article, *Analyzing Oil and Gas Farmout Agreements*.<sup>11</sup> To date, it

---

3. John S. Lowe, Deans Oil & Gas Law Practice Lecture, Institute for Energy Law: The Balkanization of Oil and Gas Law (2015), <https://www.cailaw.org/media/files/IEL/Remarks/john-lowe-deans-2015.pdf> [<https://perma.cc/V2BN-KG3P>].

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. 41 Sw. L.J. 759 (1987).

remains the leading article on the bespoke agreement, which is the most common oil and gas contract following the oil and gas lease. His book, *Oil and Gas Law in a Nutshell*, now in its seventh edition, was one of the first concise books written to guide practitioners and students in the field and remains a reliable resource in classrooms and courtrooms. He is well known outside of the United States, producing scholarship and giving guidance that is relied on by the international energy community and foreign governments. He is a co-author of *International Petroleum Transactions*,<sup>12</sup> published by the preeminent Foundation for Natural Resources and Energy Law,<sup>13</sup> which John served as President. He taught petroleum law and contract courses at schools around the world, such as the University of Dundee in Scotland; the Universities of Melbourne and Sydney in Australia; Qatar University; and Chulalongkorn University in Thailand. But home at SMU, John Lowe taught generations of students, helping them prepare for careers in energy or for the Texas Bar Exam, which, until 2021, contained an entire essay devoted to oil and gas law. As their professor, John was often his students' greatest advocate, helping them obtain internships for summers and jobs long after they graduated. He celebrated their achievements, sending congratulatory letters to students who earned an "A" in his classes, and he likewise motivated students during their disappointments, assuring them of future successes. And always, he inspired students to love the field as much as he did.

John's counsel was as world-renowned as his scholarship and teaching. U.S. practitioners rely upon his treatises for their cases and contracts. These storied volumes include Kuntz's *A Treatise on the Law of Oil and Gas*,<sup>14</sup> Hemingway's *Oil and Gas Law and Taxation*,<sup>15</sup> Summers's *Oil and Gas Law*, and West's *Texas Forms and Legal Forms*. Outside of the United States, foreign governments, such as Afghanistan, Brazil, Iran, and Iraq, often approached him to teach their ministries to help guide national petroleum development. But the U.S. government also recognized his brilliance and experience in the field of petroleum law. The Departments of State, Interior, and Commerce invited John to teach topics such as "Cross Border Unitization" to senior Iraqi government officials in 2012. Frankly, I do not recall attending an energy conference internationally where an attendee, upon learning I was from the United States, did not ask, "Is John Lowe also here?" His name is synonymous with petroleum law.

But one of John's accomplishments is particularly personal to me. His casebook, *Cases and Materials on Oil and Gas Law*, published by West

---

12. With Owen L. Anderson, Jacqueline L. Weaver, John S. Dzienkowski, Keith B. Hall & Frédéric Gilles Sourgens (4th ed., Rocky Mountain Mineral Law Foundation Press, 2020).

13. Formerly known as the Rocky Mountain Mineral Law Foundation. The Foundation's name changed in 2021.

14. With Eugene Kuntz, Ernest Smith, Owen Anderson, David Pierce & Christopher Kulander (Anderson Publishing).

15. With Owen L. Anderson, John S. Dzienkowski, Robert J. Peroni, David E. Pierce & Ernest E. Smith (West, 2017).

Academic, is now in its eighth edition. Generations of students have used this casebook—indeed, I learned from the fourth edition—which was developed by John’s mentor, Eugene (“Gene”) Kuntz, former Dean of the University of Oklahoma. Gene invited John and his co-authors, Owen Anderson and Ernest Smith, to join him as co-editors. And one of my most favorite photographs is of this heralded group, three-fourths of whom were junior scholars, celebrating the publication of the casebook. Not only would they become co-authors and giants of oil and gas law, but they would also become close friends.

One of John’s most critical accomplishments was his reciprocation of the mentorship and support he received by providing both to students and scholars. As John was mentored by the founders, and Gene Kuntz in particular, so John counseled his students and those who sought entry to academia. David Pierce, whom I list as one of John’s contemporaries and another giant in the field, often spoke of his gratitude to John, who supported David’s entry onto the academic path. David describes:

While working at Shell, I had my first encounter with the person who would have a major impact on my teaching career: Professor John Lowe. Another former Deans of Oil and Gas honoree. My first glimpse of John was at a natural gas conference . . . where he was presenting on the Natural Gas Policy Act of 1978 . . . . There were probably 600 people attending the event with many people standing along the sides of the ballroom. John was magnificent. Only John could make the NGPA the most exciting thing on earth. I learned later he can make anything he teaches exciting. That was an important moment for me because it was when I decided I wanted to do what John was doing. I waded through the crowd after the program and patiently waited for my turn to speak to the professor. He greeted me in his warm and engaging way and I proceeded to tell him of my interest in teaching. The rest is history. John became my mentor and biggest promoter. He was instrumental in landing my oil and gas law teaching job at the University of Tulsa College of Law and we proceeded to collaborate on a number of in-house training programs for Texaco. John introduced me to Gene Kuntz, Ernest Smith, and Owen Anderson, who subsequently brought me on as a co-author of their text book and other projects.

I soon learned that John’s willingness to mentor and assist a new professor was characteristic of all the academicians teaching oil and gas law. In addition to Owen, Gene, and Ernest, Pat Martin and Bruce Kramer soon entered the picture to offer their support and guidance. That tradition of support and promotion continues to this day. Instead of trying to jealously guard our positions as oil and gas professors, we seem to be constantly in search of new talent to take our place—or at least to share our space. One of the most gratifying developments of the past decade has been the arrival of new, young, dedicated professors who have chosen to focus their careers on the

study and teaching of oil and gas law.<sup>16</sup>

John Lowe was instrumental in my entrance to academia. As I moved from firm associate to in-house counsel after graduating from SMU, John kept in touch, asking me to guest lecture in his classes and consistently encouraging me to consider a career as a law professor. In 2012, he again recommended academia, counseling me to pursue the LL.M. A decade later, having begun my career at the University of Oklahoma, the home institution of John's mentor, Gene Kuntz, I am now a visiting professor at SMU, working with my mentor. Just as Gene invited John to partner with him on scholarship, John continues that tradition, providing scholarly opportunities for early career academics and inviting us to collaborate with him and his colleagues. I was so proud when John, Owen, Ernest, David, and Chris Kulander at South Texas College of Law Houston invited me to join the seventh edition of the casebook. And we were delighted to invite James Coleman, another outstanding SMU energy law professor, and Burke Griggs, of Washburn, to join the eighth edition in 2022.

Like all legal systems, oil and gas law continues its evolution. Now often taught in energy law or natural resources law, we continue to study the traditional property, title, servitude, contract, and tort issues, but also incorporate those related to climate change, environmental protection and justice, infrastructure resiliency, and the role of technology in the characterization and use of the subsurface. The only way we have learned to thank John Lowe and our mentors for every opportunity we were given is to pay it forward—continuing the tradition of academic scholarship and teaching, providing encouragement and guidance to our law students, and supporting and lifting junior academics.

The shoulders-of-giants metaphor can be traced to the French philosopher Bernard of Chartres, who said that we are like dwarfs on the shoulders of giants, so that we can see more than they, and things at a greater distance, not by virtue of any sharpness of sight on our part, or any physical distinction, but because we are carried high and raised up by their giant size.<sup>17</sup>

Thank you, John Lowe, for lifting us and providing unparalleled vision. We see brighter and farther because of your steadfast support.

---

16. David E. Pierce, *Oil and Gas Law: A Critique*, Deans Oil & Gas Law Practice Lecture, Institute for Energy Law (2018), <https://www.cailaw.org/media/files/IEL/Remarks/dpierce-deans-2018.pdf>.

17. Chen, *supra* note 1, at 163.

