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Front Matter

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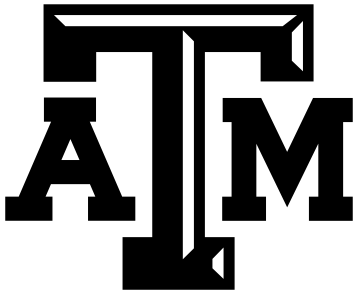

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Ways of Knowing and the Law: A Tribute to Joseph William Singer

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Fineman Speaks to Dobbs

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INTRODUCTION

A PRESUMPTION OF "POSSIBLE"

*by: Robert B. Ahdieh**

Something which we think is impossible now
is not impossible in another decade.
–Judge Constance Baker Motley[1]

Time flies. Or so they say.

Perhaps for that very reason, a decade might hardly seem something to celebrate. *The Old Farmer's Almanac* could be read to confirm as much. Its designation of ten years as the "tin" anniversary might be an improvement on *wood*, but it's far from crystal.

Texas A&M School of Law, though, may be the exception that proves the rule. With the striking things that have been accomplished in the decade since Texas A&M University acquired the Law School, a bit of celebratory zeal might be excused.

In 2013, after at least a few decades of unrequited longing, Texas A&M fulfilled its dream of having a law school. At the intersection of that desire and Texas Wesleyan University's strategic interest in selling the law school that it had itself acquired two decades earlier, there emerged a match made in heaven.

Texas Wesleyan had laid a strong foundation for a law school of impact and consequence. From its location in fast-growing Fort Worth and North Texas to its keen focus on community engagement and service, the then-unranked law school enjoyed significant capacity to accomplish more.

To their credit, the Board of Regents of the Texas A&M University System and the Chancellor of the System, John Sharp, recognized that untapped potential. What they saw was not only the opportunity to (finally!) have a law school, but the potential to build a law school of value, prominence, and impact. And starting in the Fall of 2013, that was precisely what they set out to do.

Lest a bit of "Monday-morning quarterbacking" take away from that decade-old aspiration, it bears saying the quiet part out loud: What they set out to do was essentially *impossible*. Taking an unranked, effectively local law school and making it—in relatively short order—a top national institution was not something anyone outside of

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1. *About the District*, U.S. DIST. CT. FOR THE S.D. OF N.Y., https://www.nysd.uscourts.gov/about [https://perma.cc/R6YE-DAM5].

Texas A&M would have considered a serious—or even credible—goal.

But the Aggies, to their credit, think differently.

Even discounting for the hyperbole by which we deans make a living, I have often identified the secret to Texas A&M School of Law's success as the utter inability of Aggies to *start* with the assumption that something is impossible.

Most of us are born and raised with an acute awareness of our limitations. Growing up the child of financially insecure immigrants in New York City, I often played basketball on public playgrounds in the evenings and on weekends. And with time, I wasn't so bad at basketball. But if someone had told me, even as a ten-year-old, that I might one day play the sport professionally, I would have pointed out to them the height of my Iranian mother and father—and suggested they reconsider their career aspirations in talent scouting.

By contrast, the Aggies *never* start with the presumption that some goal is out of reach. They might, to be sure, come to conclude as much along the way. But it's never where they start. And that, as much as anything, is the starting point for why their law school has succeeded as it has. Any other university would never have even taken up so impossible a task.

So, what exactly did Texas A&M undertake to build on the foundation Texas Wesleyan had laid?

They started with the question of who we should be. From the distance of College Station—and from the vantage of a school renowned for its strengths in engineering, the sciences, and agri-life—they decided their new law school should be a "patent law school." Of course, it does not work quite that way in our modern system of legal education. But that understandable aspiration translated into a decision to invest in faculty and programs focused on intellectual property and technology—resulting in an IP program that has enjoyed incredible success, impact, and recognition in the years since.

The essence of that aspiration, meanwhile, was extended to identify other areas that made sense as potential areas of distinction—based on strengths of the Law School and University, relevant needs of Texas and the entire nation, and areas of opportunity for our students and graduates. Thus, the University invested in faculty recruitment and programming in alternative dispute resolution (or "Aggie Dispute Resolution," as ADR came to be known at the Law School), as well as in environmental, energy, and natural resources law. From there followed efforts to grow in health law and policy, in privacy and cybersecurity, and in yet other fields.

Even more, though, Texas A&M's focus ten years ago was on the human capital that is at the heart of excellence in legal education—

and in higher education generally.[2] That began, of course, with efforts to recruit world-class students to the Law School. Even as the diversity of the class grew, a campaign to reduce the size of the Law School's classes and to invest heavily in student scholarships produced dizzying gains in incoming student metrics.[3]

We likewise embraced the notion that the mission of legal education ought not be limited to the education of future lawyers—but rather should be seen as *teaching law* more broadly, whomever the audience might be. Our student body grew to include non-lawyer professionals seeking a high-quality education in law, regulation, compliance, contracting, and other law-related topics of direct relevance to their careers. With strikingly impressive students from healthcare, banking and finance, the energy sector, and other industries, that program has grown into one of the largest in the nation—and one through which we help advance the University's mission to meet the educational needs of all.

Alongside innovative teaching and a diverse array of clinical and other experiential learning opportunities, University investment in the faculty and staff needed to foster student success has similarly paid dividends, in the striking outcomes that our students have managed to achieve upon graduation.

At the intersection of our graduates' capacity and diligence and the systematic investment of thought, time, and energy into academic support, individual graduates earned the highest scores on the State of Texas bar exam two of the last four years. More broadly, the Law School's bar exam pass rate was not only the highest this year, but the highest of any Texas school in a decade.[4]

Striking employment results followed, thanks to the indefatigable efforts of the Law School's career services staff. The Classes of 2020 and 2021 each saw employment rates for long-term, full-time, bar-passage-required or JD-advantage positions among the top ten in the na-

2. Over time, Texas A&M began to engage the physical plant needs associated with the Law School's continued success as well. It has now launched an ambitious plan to build a new multidisciplinary, innovation-focused, academic/industry campus in Fort Worth, with the Law School as its academic anchor. For more information, see TEX. A&M FORT WORTH, https://fort-worth.tamus.edu/ [https://perma.cc/KW3H-2FGB].

3. The Law School had a median undergraduate grade point average of 3.09 and a median LSAT score of 152 at the time Texas A&M acquired it. Those measures rose to 3.97 and 166, respectively, in the most recently admitted class. *Texas A&M Law by the Numbers*, TEX. A&M UNIV. SCH. OF L., https://law.tamu.edu/prospective/admissions/class-profile [https://perma.cc/TAX7-UU86].

4. Texas A&M Law students had a 94.63% first-time pass rate for the 2023 Texas Bar Exam. *Texas A&M Law Ranks No. 1 in Texas Bar Pass Rate*, TEX. A&M UNIV. SCH. OF L. (Oct. 17, 2023, 9:07 AM), https://blog.law.tamu.edu/blog/texas-am-law-ranks-no.-1-in-texas-bar-pass-rate [https://perma.cc/59KZ-2ZZG].

tion. The Class of 2022 did them one better, however, earning the highest employment rate in the nation.[5]

What may have most distinguished the aspirations of Texas A&M University for its new law school ten years ago, however, was its forceful emphasis on what this Issue of the *Texas A&M Law Review* seeks to celebrate. Without doubt, the University wanted to build top programs and to recruit top students, who achieved top outcomes. And of course, it liked winning—including in the rankings.[6] But it was singularly clear on the need to build not just a highly ranked law school, but one that would advance human knowledge through scholarship and research of the highest caliber.

Referencing a negotiation I had with Texas A&M's president some years back, I have described it as the only time in history that a university president and a law school dean fought over how much money to invest in the law school, with the dean proposing the lower number. In that case, as throughout the decade the Law School has been part of the Texas A&M family, the University was anxious—and even insistent—to provide whatever was needed to achieve scholarly excellence.

That began with the Law School's own faculty. Building on the scholars of excellence already at the Law School, the University has recruited more than 40 faculty over the last decade. And not just any faculty, but scholars of distinction—many of whom gave up appointments, and even faculty chairs, at prestigious schools to be a part of what Texas A&M was building. The faculty who came to the Law School, as such, were both great scholars and great builders.

That investment has manifested itself in measures of scholarly impact—from rising citation counts to increasing SSRN and bepress downloads. Top placements offer a further reflection—especially in capturing the engagement of our faculty with critical scholarly debates of the day. Most broadly, the University's investment in our faculty is reflected in the qualities of Texas A&M Law's scholarly community—in the faculty's vibrant annual scholarship retreat, in its leadership in interdisciplinary and grant-funded research, in our place as one of the most diverse faculties among highly ranked schools, and much more.

As reflected in this Issue of the *Texas A&M Law Review*, the University's decade-long emphasis on scholarly impact has also manifested itself in the Law School's role as a "convening place" for

5. The employment rate for the class of 2022 for long-term, full-time, bar-passage-required or JD-advantage positions within ten months of graduation was 98.3%. *Stellar Employment Outcomes Help Boost Rise in Rankings*, TEX. A&M UNIV. SCH. OF L. (May 12, 2023, 11:48 AM), https://blog.law.tamu.edu/blog/employment-outcomes-help-boost-rise-in-rankings [https://perma.cc/2UC8-YVVZ].

6. For 2023–2024, Texas A&M University School of Law was ranked 29th in the nation by *U.S. News & World Report*. *Texas A&M University*, U.S. NEWS & WORLD REP. (Apr. 20, 2023), https://www.usnews.com/best-graduate-schools/top-law-schools/texas-a-m-university-03179.

scholarly dialogue of the highest caliber. Texas A&M School of Law aspires to be a place that brings together—and brings to light—transformative contributions to human knowledge.

Of course, that has taken the form of world-class gatherings of scholars—on topics ranging from *Property Rights and Social Justice* to emerging frontiers in NIL contracts for college athletes, and from *Creativity and Innovation is Local* to the development of effective, practical, and realistic climate change goals.

Over the last decade, the Law School has also been honored to host a succession of impactful scholars—from across the nation—as fellows of the Hagler Institute for Advanced Study.[7] Through the time that each Hagler Fellow has spent with us, we have gained immeasurably as a community. We hope we have likewise helped to advance and elevate their work.

In this Issue, we celebrate the seminal work of our Hagler Fellows over the years. For each, we have asked another scholar, prominent in their own right, to offer reflections on the significance of the Fellow's career-long contributions. Each Fellow, in turn, offers their response.

Looking ahead, it is just this type of high-level scholarly engagement and dialogue that we hope will characterize Texas A&M University School of Law over its second decade. Looking back ten years from now, our hope *and presumption* is that the Law School will be counted among the very top scholarly communities in the nation—one that brings together the very best of scholarly thought, insight, and leadership. And one that, in doing so, helps to transform the world.

That may sound impossible. But just a decade ago, so did everything else.

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7. The Hagler Institute for Advanced Study at Texas A&M University selects annual classes of distinguished scholars, who come to the University to provide "a catalyst to enrich the intellectual climate and educational experiences at Texas A&M." *About the Hagler Institute*, TEX. A&M UNIV., https://hias.tamu.edu/about/ [https://perma.cc/9EKT-23LY].