

## MAY IT PLEASE THE COURT

I practiced law in Monroe, NC for 37 years, from 1971-2008, when I was 62. When asked why I retired at 62, I say that I only practiced and never got very good at it so I decided to hang up my spikes, or, put another way, to take down my shingle.

Several years after I retired, my wife Janet's 1st cousin, Lee Douglas Flowe called me at home about a small legal matter, foreclosing on some property in neighboring Stanley Co on which he had taken a mortgage (a mortgage can be used to secure a debt with real estate in NC, but I've never seen one because a deed of trust is used for the same purpose probably 99.99% of the time in NC, but the term "mortgage" is often used in lieu of "deed of trust") to secure a loan he had made to a friend of his grandson. He had contacted the Trustee in the deed of trust, normally the lawyer who prepared it, who explained the foreclosure process, but his explanation left Lee Douglas (hereinafter [I love these legal, or I guess, quasi-legal terms, used for brevity, that is, one word instead of many, which I'm now using, many that is, to explain how handy they are and how they eliminate the use of so many words, thus aiding brevity {being the sharp reader that you are, I'm sure you picked up on my subtle humor here}], "LD"), somewhat perplexed.

I made a few calls and got things moving for LD and he asked how much I owed him, to which I replied that I was no longer practicing law and in fact no longer had my law license (I didn't give LD this long explanation, but I retired mid-2008, and when the end of the year came, I had not taken my required CLE [Continuing Legal Education], so, deciding that I was never going to put my spikes back on, or, put another way, to hang my shingle back up, and further, not wanting to have to pay to take the CLE and my State Bar dues for the next year, I turned my law license in [I wonder if it's sitting in a drawer in Raleigh]), I told LD that it wouldn't be proper, or even legal for me to charge him. I was sitting at the kitchen table talking to LD on my cell-phone with the speaker phone on, and Janet was sitting across the table from me. After I told him that I couldn't charge him, the conversation went something like this:

LD: "You can't?"

Me: "No"

LD: "Well, I'd like to do something."

Me: "Well, your cousin Janet's birthday is coming up soon."

LD: "It is?"

Me: "Yes; maybe you could do something for her."

LD: "I could?"

Me: "Yes."

LD: "Well, like what?"

Me: "Well, she likes money pretty good."

LD: "She does?"

At this point, Janet gesticulates by pulling her hand across her throat. I got her drift but ignored it and continued the conversation.

Me: "Yes she does."

LD: "Well, how much do you think I should give her?"

Janet continues gesticulating!

Me: "Well, one hundred dollars has a good ring to it."

LD: "It does?"

Several days later a check comes in the mail from LD to Janet for \$100. I want to say that you could see the dried drops of perspiration on it, but that's probably stretching it a bit, or, as my sons would say, putting a little meat in the story. The next year, as Janet's birthday approached, she said, "I sure hope Lee Douglas has some more legal trouble!"

I can't remember when or what prompted me to become a lawyer. Growing up, I didn't know any lawyers. None that I knew of lived in our neighborhood on Sharon Amity or on Rama. None went to Matthews Baptist Church. I don't remember any of my classmates' at Oakhurst (grades 1-5), Idlewild (6-7), McClintock (8-9), or East (10-12) fathers or mothers being lawyers.

I was one of 6-8 Morehead Scholarship nominees my senior year at East Meck. The first round of interviews was on a Sunday night in the Doctors' Building at the corner of Kings Dr and Morehead. I assume that the interviewers were all UNC grads, maybe even Morehead Scholars, headed by a lawyer named Tom Creasy. I remember him being the suavest, most debonair, articulate guy that I'd ever met. I never had any dealings with him in my law practice. Probably in the late 70's, early 80's, Creasy, who was practicing with a couple of blue blood lawyers, filed bankruptcy. He owed American Bank & Trust, headquartered in Monroe, or maybe by then it was United Carolina Bank, after its merger with Waccamaw B&T in Whiteville. My senior partner Frank Griffin, representing the Bank, to whom Creasy owed money, attended the First Meeting of Creditors in his bankruptcy, at which Creasy took the witness stand after swearing to tell the truth, and was subjected to questions by his creditors. Bill Diehl, a Charlotte attorney who had gained some notoriety for some high profile cases that he'd been involved in as well as for his almost shoulder-length hair, representing some creditor, asked, "Mr. Creasy, is it true that you're a queer?" Frank didn't remember Creasy's response or anything that was asked or answered thereafter. As it turned out, Mr. Debonair, married, with a family, high on the social register, was in fact gay and had borrowed money from anyone who would lend him any to pay his blackmailer. I don't know what happened to Tom. As for me, I didn't get past the first Morehead interview!

Dad and Uncle Frank, his oldest sibling, were the administrators of their mother, Ella, or Ellie Shannon Caldwell's estate when she died in 1958. I don't know whether it was before or after Grandma died that her 12 children decided to sell what they called the "Creek Place", several hundred acres which became the core of what's now Providence Plantation, a relatively upscale residential subdivision where Kathy Walker, one of Aunt Vernon's daughters and therefore Grandma's granddaughter, Dad's niece and my 1st cousin (I wanted to spell the relationships

out in case any readers hereof didn't take Decedents' Estates in law school), lives. I think it was Four Mile Creek that traversed or maybe formed a border of the land, and some investors formed The Four Mile Land Company to buy it. They were represented by Ms. Lela Alexander. In checking the title to the land, she found a minor notary error in a deed way back in the chain of title (if I have time and feel like it, I'll explain what is meant by that term, though it's not very exciting, in fact, most would find it about as boring as checking the title to real estate, which I've done hundreds of times) and pointed it out to Uncle Frank and Dad. A title insurance company insured over the defect and the deal closed. Dad was so impressed by Ms. Alexander's thoroughness that she drew a deed or two for him over the years and also prepared his will.

I'm fixing to bore you with some minutiae about wills, but it's relatively important to the story. There are several ways for wills to be legally valid, the most common way being having the signature of the testator (the person who's wanting to prepare for death, knowing that he/she can't take his/her stuff with him/her) witnessed by at least two witnesses. When I started practice with Griffin & Clark (Frank Griffin and Bob Clark-for more about Clark, see my story FRANK and JIM) in August, 1971, it was our practice to use three witnesses, in case one dies or is otherwise unavailable to attest to their signature when the time comes to probate the testator's will (for the curious, there are methods to authenticate wills even if all of the witnesses have vamoosed, in one way or another). Sometime during my practice, a law was passed allowing self-proving wills, in which the witnesses could sign in front of a notary public, whose acknowledgement would follow their signatures. A self-proving will can be probated solely upon its presentation to the Clerk of Court, who, in NC, is also the Judge of Probate, and the testator's stuff can be divvied up as directed therein.

All this to say, Dad had signed his will in Ms. Alexander's office before the advent of self-proving wills and she and her secretary had witnessed it. I don't remember whether I had seen Dad's will before he died (it and Mother's were simple "Mom and Pop" wills, i.e., all to the survivor of mom and pop, then to the kids equally). If I did see his will, I could and should have gotten him to resign and had it witnessed and notarized, making it a self-proving will, but I didn't. So, when Dad died, I took the will to Ms. Alexander's office and she and the other witness signed the necessary papers so that it could be probated. I told Ms. Lela about Dad being impressed when she found the error regarding the Creek Place and she got a kick out of it!

An aside: Ms. Alexander practiced with Irving Boyle, reputed, by Frank Griffin, and others to be a brilliant lawyer. He defended a case in which Frank represented the plaintiff. They settled it and I went with Frank to meet Mr. Boyle in the Clerk of Court's office in Charlotte to file the appropriate papers in the lawsuit. He may have been brilliant but his brilliance was outshined by his profaneness. Right there in front of the Clerk and within earshot of those close by, every other word was GD, and I don't mean Good Dude. I never saw or heard him again!

I feel sure, but am equally sure that I'm mistaken, that any potential readers hereof like to stay informed about the journey I make in writing this and other stories that I've written, so, I'll clue you in. It's 12:30 PM on May 8, 2023 and I'm sitting in my recliner in my small condo in Louisville, KY, looking at the rain through a sliding glass door and listening to some intermittent

thunder. I haven't added hereto since early last week, so I had to scroll back, which I hate doing, to see what I've said heretofore (I've mentioned in earlier stories; have I mentioned in this one [?] that I love these words that lawyers invented to make writings clearer and briefer, such as I'm sure, at least pretty sure that the word "heretofore" accomplishes herein [cool, another such victory for clarity and brevity]...dang, now I'm lost, so...

I began Davidson College in September, 1964 with no idea whatsoever as to how I would feed myself and any who came along with me once I had to leave the ivy towers, but I had to pick a major. I chose what would prove to be a worthless one, Psychology. One might think that learning about human behavior and its causes would be very helpful regardless of what career path one chose. I was so wrong. I can't think of one thing I learned, or probably more accurately, was exposed to in Drs. Kelton and Workman's 6 or 8 psychology classes, that have been of direct help in my 77 years; indirectly, maybe! So, why did I pick that Psychology? It sounded interesting and seemed easier than any other available majors, such as Economics, which I minored in. My minor consisted of Econ 11, micro, and 12, macro economics, one semester of the history of economic thought, and one of international economics. They certainly didn't qualify me to be chairman of the Federal Reserve, or even a bench-warming reservist.

I'm not sure when during my college days that I decided to become a lawyer or whether or when I gave any thought as to what courses of study might benefit me in that quest. Some say an aspiring attorney should major in political science. I took one poly sci course, a survey course. It might have been beneficial if I was going to become a Constitutional lawyer or politician; otherwise, it was reasonably interesting, but ultimately useless. I should have majored in English, because all careers, maybe especially one in law, requires good communication skills, both written and verbal, maybe with a minor in Philosophy, because one's writing and speaking ability is no better than one's ability to think. Or, as it turned out, for the general practice of law that I ended up in, a business, better yet, an accounting major or at least minor would have been extremely helpful, which I may get around to explaining why before it's over.

I got married the second semester of my junior year and we had a son on Christmas Eve, 1967. Nothing will help concentrate one's focus on the future and one's career like a wife and child. What were my choices? Well, I guess anything, but realistically, becoming a psychologist, a teacher, a preacher, a life insurance salesman, or a banker were what occurred to me, none of which seemed appealing. That left lawyering, which, at some point, I guess during my senior year, I decided was my best bet.

I started law school at the University of North Carolina in September, 1968. As they probably do at most law schools, we were told to look to the guy (or gal, there were 2 or 3 in my class) on your right and on your left, and that by Christmas, one of you three would be gone. I studied my rear end off first semester and made 4 C's and 1 B, and thought, this is ridiculous, working this hard and making "Gentlemen C's" (a Davidson term). Second semester, I learned my Social Security #, which was also your student ID #, which you had to sign in with to play golf at Finley Golf Course, the University course, where I played 18 holes at least twice a week, cutting my

studying time by  $\frac{1}{2}$ - $\frac{2}{3}$ , and I made 4 B's and 1 C. At graduation, I received the award for most improvement in my grade point average from my first through my last semester in school. Frank Griffin and Bob Clark from Monroe came to law school to interview for an associate and hired me. After the worst 2-2.5 months of my life, cramming for and taking the bar exam, we moved to Monroe before we received the results. Fortunately, I passed. I don't think we received a grade, we were just told whether we passed or failed, but actually, I wasn't too worried. The exam wasn't as tough as I had expected.

In my story FRANK and JIM, I told about my first year or so of practice, and the mess with Bob Clark. Bob took me to calendar call on my first Monday, in the courtroom, which was on the second floor of the old courthouse, directly across from our office at 314 North Hayne St. A new 9 story county office building with two courtrooms on its second floor was under construction and was occupied 9 months later. The calendar that was being called was for criminal District Court, held every Monday, where misdemeanors were tried or pled to and probable cause hearings for felonies were heard.

The following court info might be helpful hereafter. In 1968, the court system in NC was completely revamped into 3 trial and 2 appellate courts. The trial courts were 1) Small Claims, up to \$500 or \$1,000 in controversy, if I remember correctly, conducted by one of two, or maybe it was three magistrates appointed, if I remember correctly by the Resident Superior Court judge initially, and, if I remember correctly, elected thereafter; 2) District, which handled all domestic law cases, tried misdemeanors, as mentioned above, and had jurisdiction over civil cases with \$5,000 or less in controversy; and 3), Superior Court, which had jurisdiction over all other criminal and civil matters. The '68 court reform added the Court of Appeals, which heard all appeals from Superior Court to the existing Supreme Court, which heard appeals from the Court of Appeals if the 3 judge panel which heard the case in the Court of Appeals was not unanimous, could decide to hear cases on its own if the case raised a point of law which had never been previously decided or if the Court deemed an appeal necessary "in the interest of justice". In criminal death sentences, an appeal from the Superior Court death sentence went automatically to the Supreme Court.

The state was divided into judicial districts. I've forgotten the number of the district that Union Co was in, but it included, in addition to Union, Stanly, Anson, Richmond and Moore Counties. In 1971, there were four District Court Judges; Ed Cruthchfield, a lawyer from Albemarle in Stanly Co, Fetzer Mills, a lawyer from Anson Co, Amy Webb, a lawyer from Rockingham in Richmond Co, and Walt Lampley, a former Deputy Sheriff from Richmond Co, and Superior Court Judge John McConnell, from Southern Pines in Moore Co. One of the four, I don't remember which of the 4 District Court judges was holding court that first Monday when I went with Bob Clark to calendar call, which, BTW, is when the Assistant District Attorney (the DA had been called the Solicitor before 1968) calls out the name of every person, alphabetically, who has gotten a ticket requiring him to appear in court that day, or been served with a warrant requiring his appearance, and the person or his lawyer pleads not guilty, guilty, or, though not officially sanctioned, "guilty with an explanation", which means the defendant wants to tell the

judge the questionable circumstances in which he was “caught”, because of which he thinks the judge should cut him some slack! Good luck, buddy!

In the old courthouse, the court personnel and lawyers went up the stairs on the west end of the building, passing the DA's office, the judges' chambers and another small office or two where a defense lawyer could consult with his client, and then enter the door into the courtroom. The lawyers would take a seat in chairs which backed up to a heavy oak railing that ran all the way across the courtroom, separating the audience from the lawyers, the DA's table and the defense table, the judge's bench and the witness box. There were two aisles through the audience, each leading to a swing gate in the oak railing so that members of the audience could enter the working area of the courtroom. The jury box was to the judges left, outfitted with 12 very uncomfortable looking chairs.

That morning, the courtroom was packed, even the balcony, at least half of the congregation being Black. Bob took a chair beside an older lawyer named Byron Williams, who he introduced me to as I took a seat beside Bob. “Bob”, piped up Mr. Williams in a loud, high pitched voice, “have you been down to see the Goddamned Atlanta Braves play? I went down to see ‘em a few weeks ago. Half the starting team was a bunch of Goddamned Niggers! A few innings later, they took out a white guy and put another Goddamned Nigger in!” His voice could be heard throughout most of the courtroom. I was expecting a race riot, but nothing happened.

I learned that Mr. Williams was very smart, often quoting Shakespeare or other notables in court, and had been quite a lawyer until his partner, Jim Beam took control. Before 1968, each county seat had a City Records' Court and County Recorder's Court and a lawyer sat as a part-time judge. Mr. Williams was one. They said that often he would be feeling little pain on the bench. Once he was so lit up that when he came down off the bench, the Sheriff arrested him for public drunkenness and threw him in the slammer with all the other drunks that he had just sentenced to jail.

Bob and I didn't stick around long enough to see who Mr. Williams was representing, what he was charged with, or what happened to him. I probably did, but if so, don't remember ever seeing him again. I wasn't but 25, so my guess as to his age may be way off, but I would say he was in his 70's. I don't remember his passing. Someone should have written a memoir about him. I would love to read one.

It's now 6:15 PM on Monday, May 8, and I've written a little during the day, when the muse and mood struck. I remember saying earlier that I don't like scrolling up. I don't remember what I said at the beginning about why or what inspired me to start writing this story. I guess that I'd always had it in the back of my mind, but a few weeks ago I was out at my son, Tim's and was telling him about one of my cases. He texted me later and said that I should write about some of them, and that was my immediate inspiration. And that's what I'm fixing to do, but first, another anecdote or two.

Leroy Rushing was one of Griffin & Clark's good clients. He was a self-made man, starting out as an electrician's helper and climbing the ladder to own an electrical company and residential construction company. Federal Judge James B. McMillian (his son, Jimmy was my fraternity brother in college and he and his girlfriend, a freshman at UNC-G, introduced me to her suitemate, Janet Tweed, on a blind date near the end of my sophomore and her freshman year, and a year later we were married), in *Swann v Board of Education*, was the first judge in the US to order bussing to desegregate the schools in Charlotte-Mecklenburg. He rendered his decision around 1969 and the US Supreme Court upheld it, leading many families with school age kids to move from Meck Co, down Monroe Rd and US 74 into Stallings and Indian Trail, just across the line in Union Co, and into the hundreds of small brick houses built by Rushing Construction Company, each sale closed by Griffin & Clark.

It was probably just a couple of months after I started practicing law with G & C that Bob Clark got up a fishing trip to the Shackleford Banks on, or just off the NC coast, with Leroy and some of his employees, driving pickups onto the beach to fish, and sleeping in their beds. It seemed out of character for him, but Frank Griffin went along. Not long after the fishing trip, the Union Co Bar held a dinner meeting and District Court Judge Amy Webb, who had held court in Monroe that day, attended, and was asked to say a few words. Judge Webb was a dried up little guy from a fairly prominent family in Rockingham and a little older than Frank. He said that he had heard about the fishing trip and that Frank Griffin was probably the only guy on the beach in wing-tip shoes and double-knit britches. He brought the house down and my eyes are watering with laughter as I type this.

Judge Ed Crutchfield from Albemarle was a very affable man and usually rendered fair decisions, but only after he bumblingly tried to explain and justify them. He was a chain smoker. If you had talked the DA into a more than fair resolution of your client's speeding, reckless, or just over the limit driving under the influence charge, and wanted court approval without fanfare and too many ears listening in, you would ask the DA to hold your case open until late afternoon and go before Judge Crutchfield to get the agreed sentence approved. If it was late enough, you could see smoke rising up from under the judge's bench, below which Judge Crutchfield would occasionally duck his head. Frank defended a wreck case in civil court before him and lost, due, Frank thought, to the mangled instructions the judge gave the jury. Frank said that after the jury returned its verdict against him, he went up to the bench and chewed out Judge Crutchfield up one side and down the other, stopping just short of calling him a moron. Frank said the judge should have held him in contempt. He appealed and the Court of Appeals agreed with Frank's analysis of Judge Crutchfield's charge, sent the case back for retrial and Frank finally settled it.

Sometime later, a lawyer in Albemarle improperly got Judge Crutchfield to sign a limited driving permit for his client who had been convicted of DUI, outside of court, in a restaurant, I think. Someone discovered it and the Judge was hauled before the Supreme Court for misconduct. Frank was one of the lawyers Judge Crutchfield asked to serve as a character witness, which he did. The Judge was slapped on the wrist and told to go and sin no more. Ed Crutchfield, Jr played football at Davidson, graduating several years before I began, and worked his way up to

the presidency of First Union National Bank, which at one time, employed more Davidson graduates than any other organization in America.

Jim Griffin, Frank's cousin (see my story FRANK and JIM) and the best criminal defense lawyer in Union Co said that Judge Walt Lampley was the fairest judge of the 4 District Court judges. He said little, just listened to the evidence and rendered his decision, with no fanfare or explanation. Fetzer Mills was a dud. Though a lawyer in Anson Co, I think his main source of revenue was a peach farm which I think had been in his family for several generations. I don't remember whether it was before or after John McConnell retired that Fetzer was elevated to Superior Court. He was a dud there, too. I filed a lawsuit for the County for a zoning violation, and I think it was Chief Justice, Frank's nickname for Charlie Humphries, so nicknamed because he spoke in loud pontifications, who filed an answer for the defendant. We both filed motions for summary judgment because the facts were not in dispute. The case lingered on the calendar until Charlie and I both pressed Judge Mills to rule on our motions. He denied both, which made no sense and would have resulted in a trial, a nonsensical trial because a jury's job is to determine the facts in controversy, of which there were none. We resolved the case somehow.

Fetzer's son, Thomas, had a lot more sense than his father. In 2015 or 16, I thought about running for Congress against the incumbent, Robert Pittenger. Somehow I learned of and got in touch with Thomas, a Democratic political consultant living in Chapel Hill. He thought I had a good chance to beat Republican Pittenger because our Congressional district had been gerrymandered, connecting a small part of eastern Mecklenburg Co with Union, Anson, Richmond and maybe Scotland, home to many yellow-dog Democrats, so named because the saying was that they would vote for a yellow dog before they would vote for a Republican. But he said I would have to do two things: 1) clear my calendar for the next year of anything except running, and, 2) raise \$3-400K on my own, after which I would begin to get some financial assistance from the Democratic party. I was in the starting blocks, ready to run, when Janet, who thought that I'd lost my mind, called in brothers Bill and Harry for an intervention. Some heated words were exchanged. What changed my mind was the realization that a Congressman has to spend a lot, maybe even a majority of his time dialing for dollars and cozying up to potential donors in his never ending quest for campaigning money. As I look back, one of the scariest things is that I might have won. I can't imagine having to see, much less deal with Kevin McCarthy, Marjorie Taylor Greene, Lauren Boebert and Jim Jordan every day! GEEZ!

OK, OK, now to my legal career. I spent at least half of my first year with Griffin & Clark checking real estate titles. Med school may teach new docs to sew stitches, but law school teaches absolutely nothing practical, such as how to check titles to real estate, that is, to verify the ownership of fee simple (you can't get away from the English common law) title to a piece of ground. It's not hard, once you've learned the basics, but it is laborious, and boring. But, it's the best way to learn how to practice real estate law, reading hundreds, thousands of legal documents. You learned that George (Buck) Ayscue was a master in describing the boundaries of property by metes and bounds, but terrible in drafting a right of way agreement, and how John Milliken was excellent in preparing an easement but that his partner Walt Love could draw



some ambiguous wills. A good real estate lawyer is a good plagiarizer. In fact, I could make a good argument that being a good copier is one of the main skills a good lawyer must develop (just noticed that I used "good" 3 times in that sentence—glad all my English teachers are gone on to their reward [one of Frank's sayings]). The most important set of books for a lawyer to own, arguably second only to the General Statutes, is Douglas Formbooks. Without them, I would have been floundering in the dark. But more important to my practical legal education was Kathryn Rape, who had been one of Frank's secretaries probably since he started practicing in the early '50's. I'd never heard of a deed of release, but she said that I would have to prepare a deed of release in order for the mortgage holder to release a piece of property from a deed of trust so that the owner could convey unencumbered title to the property so released, and she showed me how to prepare one. Kathryn died relatively young with ovarian cancer, one of the few times that I saw Frank Griffin shed a tear. I shed a few, too.

Bob Clark closed a lot of Leroy Rushing's house sales. The first closing I sat in on, Leroy, Kate McAuliffe, the realtor, and the buyers all sat down around a table with Bob at the head, armed with a legal pad and a hand cranked calculator. He asked what the purchase price was and wrote it down, say \$25,000 at the top of the pad. Then he asked if there had been an earnest money deposit, and if so, wrote it down and deducted it from the purchase price. He then turned to the loan package which had been delivered by Peoples Savings & Loan, consisting of a page of instructions which gave the financial details, such as the amount of the loan, the loan fee, appraisal fee, etc, a Promissory Note, on which one of our secretaries had typed in the blanks the requisite info, such as the loan amount, interest rate and amount of the monthly payment, the Deed of Trust which the secretary completed by inserting the buyer/borrowers name, Robert Clark's name as Trustee, the amount of the loan being secured thereby and the legal description of the land on which the house was sitting, and, of course, a check made payable to Griffin & Clark for the loan amount.

Bob then added the fees associated with the loan, computed the interim interest, i.e., the interest which would accrue before the first scheduled payment was due, and added it, asked if the buyers had bought and brought a homeowners' insurance policy and added the amount of the first year's premium, added it all up, then subtracted the loan amount, pulled the crank and the ancient adding machine advanced a tape showing how much the buyers would have to put in the pot to close their purchase. They then wrote a personal check to the law firm, signed the bottom of the "closing statement", as did Leroy. Bob then buzzed the secretary to come in and she took all of the papers out with her, and a few minutes later came back in with a copy of all the loan documents that she had made for the buys, 3 copies of the one page from a legal pad closing statement and handed one to the buyers, one to Kate McAuliffe along with a check for her commission, and one to Leroy, along with a check to Rushing Construction Co for the sales price. Of course, if Leroy had a construction loan on the lot to build the house, the amount thereof had been deducted

I got my real estate salesman's license when I was in law school to try to make a few bucks, and a few is how many I made. One of the law firms in Chapel Hill had devised a closing statement, with the sellers' credits and debits on one side and the buyers' on the other, and a reconciliation

and cash to and from space, and I had kept a copy of their form, which I quickly introduced to G & C and we used it until HUD developed the HUD-1, which was almost identical to the Chapel Hill form. Of course a secretary had to put the printed form in her/his, though we never had a him, typewriter and type the numbers on the form. A lot of white-out was used to make changes or correct errors on those closing statements, but it didn't show on photocopies. Needless to say, computers have changed the world, and I expect no one was more grateful for them than legal secretaries!

I stopped typing early yesterday afternoon, and now it's 12:15 PM on Wednesday, May 10, '23, of course, and as usual, I don't remember what I wrote yesterday, much less before yesterday. I think I was telling you about son, Tim, after listening to me prattle on about a case that I tried, suggesting that I write about some of them. First, let me say a few words about my litigation experience. I argued with an Assistant DA over some traffic citations before a District Court judge early on. Frank Griffin was G & C's primary litigator, primarily representing the insured and paid by the insured's insurance carrier in automobile accident cases. I tagged along with him in a number of trials. I'll mention a few:

-The siren case: There was an accident between a volunteer fire department truck going to a fire and a car. The car driver claimed he didn't hear a siren. It happened in front of a service station and Frank called one of its employees who was outside pumping gas and saw the accident and said that he heard the siren. On the stand, Frank asked him how it sounded, anticipating that he would say that it was very loud. Instead, he said "WRRR, WRRR", or however a siren sounds. The jury laughed. The judge asked the court reporter to read the witness's answer back for the jury to hear, which got a bigger laugh. I think Frank won.

-The syphilis case: Frank's cousin Jim was representing a G.I. who was in a wreck on US 74 on his way back to Ft. Bragg and received some back injuries. Frank was representing the driver of the other car in the wreck. Frank, as is usual, had obtained and had a copy of not only the plaintiff's medical records for the injuries he claimed that he received in the accident, but all of his previous medical records. On cross-examination, Frank asked, "Private 'so and so', I see here on your medical records that you've had syphilis." The jury decided the case for Frank, and after the verdict, Pvt 'so and so' walked over to Frank. I thought he might slug him, that is Pvt 'so and so' slug Frank. But instead, Pvt 'so and so' asked Frank what his having had syphilis had to do with his back injury. Before Frank could say anything, the judge, still on the bench and over hearing Pvt 'so and so's question, said, "Yeah, Mr. Griffin, I was wondering the same thing!" I don't remember what Frank said.

-Deputy McCarver: Mac McCarver, a retired deputy sheriff, bald as a cue ball and probably 250 #'s, often served as bailiff. I was sitting with Frank when the judge announced a recess. As usual, Mac was sitting in a chair leaning against the wall leading to behind the courtroom where the judge's chambers and restrooms for the lawyers were located, and also, as usual, sound asleep. When Frank walked by, with me right behind, Mac suddenly awoke and asked Frank what was happening. Frank told him that the judge had to dismiss court when Mac cut that loud fart! I thought old Mac was going to either have a heart attack or shit in his britches!

The pitch of the roof case (I wasn't involved in it but it's too good a story to be left untold): Frank didn't handle any domestic relations cases, but his good friend and maybe his classmate from Duke Law School, Lloyd Caudle, who practiced in Charlotte and who also didn't usually do divorces, got pulled into one in Union County, representing the husband, and he associated Frank, I guess because Frank knew, but Lloyd didn't know the judge. One of the wife's complaints was that her husband was always wanting to have sex and she testified that he requested and she, under duress, consented to sex on the roof, which they were on together to patch a leak. On x-exam, Lloyd asked her, "Now what was the pitch on that roof?"

Mitchell Griffin: On the Friday after Thanksgiving, Lane and Shirley Griffin came in to see Frank about a wreck their 18 or so year old son, Mitchell had been in. Lane had several brothers who were all involved in textiles, and I think his brother, Hudson sent him in to see Frank. One Sunday night, Mitchell was driving toward town, Monroe on, it seems like either Sikes or Love Mill Road. A Holly Farms truck with a long straight steel bed loaded with chicken coops was headed on said road in the opposite direction and turned into the driveway of a chicken farm to load broilers in the coops to take to the Holly Farms processing plant in Camp Sutton. Apparently it's easier to catch doomed chickens at night. The truck had to pulled over the centerline in order to make a right hand turn into the driveway and the left rear corner of its steel bed was a foot or more over the centerline just as Mitchell came along, taking out the front corner post of his car and a portion of the left side of his skull. The neurosurgeon in the ER told Lane and Shirley that Mitchell and they would have been better off if Mitchell had been killed. John Golding, a brilliant, tall, deep voiced (he sang bass in the Charlotte Oratorio Singers) defense lawyer, certainly the best in Charlotte and one of, if not the best in the state, represented Holly Farms, actually its insurance carrier. I don't remember the amounts that were offered in settlement, but we got ready for trial, probably a year after the accident. I remember Frank, Lane and I riding around Lancaster Co, SC on Saturday before the trial was to start on Monday, to find and be sure that our main witness had received our subpoena and would be in court on Monday. Whew, we found him. I don't remember whether it was before, during or after voir dire, that is, picking the jury that we settled the case for \$500,000, a huge sum then. Mitchell lived for quite a few years and functioned pretty well. Shirley and Lane worried to death about what would happen to him when they were gone. I don't remember in what order father, mother and son died. Though most law offices and some stores closed on the Friday after Thanksgiving, at least in the afternoon for the Christmas parade, we stayed open as long as C. Frank Griffin was in charge!

Nikki Dawn Harris: Frank referred a medical malpractice case against Union Memorial Hospital and a local doctor to Ernest "Bud" Morton who practiced in Albemarle. If I remember correctly, the trial lasted several weeks and Bud lost. Nevertheless, he referred a malpractice case against the Stanly Co hospital and a doctor in the Army at Fort Bragg who was moonlighting on weekends in the ER in Albemarle. Nikki Dawn Harris was 9 months old when her parents, poor blacks, brought her to the ER on a Saturday afternoon running a fever. They gave her some baby aspirin and sent them home. Her temp kept rising and her parents brought her back to the ER that night, and Army doc gave her, if I remember correctly, 5 times the recommended adult

dosage of Aminophylline (for some reason, I've always remembered the drug's name), and it fried the child's brain. Horrible! In handling the case, we hired a specialist in long term care for disabled children from over near Statesville to develop a plan of care for her, which would be for the rest of her life, and to provide estimates of the cost. I don't remember who, it may have been John Golding, that defended the hospital and doctor. The only real question was how much a jury, mostly white, in conservative Stanly Co would give for the life of a black child living in poverty in public housing. We settled it for \$500,000. I've often wondered what happened to Nikki.

Perfect Fit Industries, or PFI: I guess Efram Bloch, pronounced Block, either brought PFI down from Philadelphia or brought the idea of making ironing board and mattress covers to non-labor union and thus cheap labor Union Co and formed PFI in Monroe in the 60's. He sent his brother-in-law Manny Fisher down to open and run the plant. Manny lived in a subdivision, whose name I can't remember, off Rama Rd, where I grew up, on Rama Rd, that is, not in said subdivision. His son Lewis graduated from East Mecklenburg High, from which I graduated in 1964, 4 or 5 years after me, went to UNC law and came to practice with Clark, Huffman and Griffin (Richard Clark, Bob Huffman and Bobby Griffin) in Monroe, which is the first that I knew of him.

PFI decided to take advantage of tax breaks and other incentives offered by the state of Kentucky to build and open a tufting plant in its eastern hills, coal mining country. Tufting is a procedure for making rugs, and maybe other "tufted" products using specialized equipment made just for tufting. They bought the equipment from THE Singer Sewing Machine Company and tried to teach those KY hillbillies to operate it. Problems with the machinery began on day 1 and Singer came and fixed them, but on day 2, metaphorically, it broke down again. Singer, pursuant to its, I'm not sure which, express or implied warranty kept coming to repair the equipment until it reached the point that they said that it wasn't the equipment that was at fault, it was the coal miners who were trying to operate it. Singer began billing PFI for the service and repair calls. Effie, as Frank called Mr. Bloch, I'm sure at Manny Fisher's suggestion called Frank Griffin.

Singer's bill got up to \$25,000 and Frank's advice was to let them sue to collect it in Union Co and PFI would counter-sue for breach of warranty, that is, for making and selling shitty equipment. Singer hired Jim Cobb, about Frank's age, and Ham Wade, 6-8 years younger, both Davidson grads. Ham and his year or two older brother, Jake, sons of the sports editor of the Charlotte News, then, but long since gone, the Queen City's evening newspaper both played football at Davidson and both joined fairly large, for those days, law firms in Charlotte. (Jake became a legendary Little League Baseball coach, coaching for probably 50+ years. Now deceased, as are Ham and Jim Cobb, I think there's a statue of Jake at the Little League fields complex on Randolph Rd in Charlotte, not far from where my brother Bill and his wife Sylvia live. Bill was in cardiac rehab with Ham until he, Ham, that is (Bill recently turned 81) checked out, of life, that is, as well, of course, of cardiac rehab!

PFI's counterclaim for breaches of warranty presented some interesting legal issues, the laws governing which were part of the Uniform Commercial Code ("UCC"), adopted by NC in 1968. I took a 4 hour course on part of it my 2nd year in law school, called "Sales and Secured Transactions", but even by the 70's, there was very little case law interpreting the Code in NC. I was doing all of the legal research involved in the case and talked Frank into buying a set of books called the UCC Reporter, reporting mainly cases decided in other states, but which the NC appellate courts would likely rely on in deciding cases in NC. I learned more about express and implied warranties on the sale of goods and the limits thereon than I ever learned in law school.

The tufting capital of the world was in Dalton, GA, halfway between Atlanta and Chattanooga. We, Frank and I and Jim and Ham, went down there twice to take depositions of people who had worked for PFI in KY, flying into Atlanta once and Ch...ga once. Effie Bloch was present on at least one of the sets of depositions, maybe both. He always wore a gray suit, blue shirt, and the same tie. He said he had a closet full of the same gray suit. He didn't mention how many blue shirts he had. We all stayed in the same hotel and Frank and I usually had breakfast with Effie. I remember Frank and I having dinner with Jim and Ham in the hotel's very nice restaurant, the first time I had ever seen Heart of Palm salad on a menu or seen it, the HofP, not the menu(HA), eaten, I think by Jim.

I learned more about tenner (sp?) frames and such than I ever wanted to know from the witnesses, one of whom was a pretty good looking gal who PFI had hired from the Dalton area and sent to KY to try to teach those coal miners to run tufting equipment. Ham took her deposition. Her language was a little salty and very colorful, and in her answers to Ham's questions, she began calling him "Sugar". Her most memorable answers were: "Do you wanna know what was wrong with that plant? It was constipated! Material going in the front door and nothing coming out the back!"

Knowing it would be a long trial, Frank got the Administrative Office of the Courts to give us a special one week term of civil superior court just for Singer v PFI and I think requested Bob Collier from Statesville to be the judge. I think we could and did prove breach of warranty, but our problem, and I don't know why Frank, as experienced a trial lawyer as he was, though, in his defense, mainly as an insurance defense lawyer, was proving damages. I still remember Jim Cobb's response when Judge Collier on Monday morning asked if the plaintiff was ready for trial: "Yes, your honor, we're here to listen and object!"

When you use a deposition as evidence, usually the lawyer who asked the questions in the deposition reads the questions from the deposition at trial and his partner, or someone that he has requested sits in the witness chair and reads the response that the witness gave in the deposition. Jim Cobb read the questions that Ham had asked the "constipation" lady in her deposition and Ham played her part on the witness stand. When she called him Sugar, Ham turned to Judge Collier and asked if he cold omit that. The Judge: "Read every word, Mr. Wade!"

The only way we had to try to prove damages were generalized statements about anticipated sales and resulting profits. We had no actual orders or cost and sales figures and thus no lost

revenue projections to offer. Frank's plan was for Manny Fisher to give as much detail as he could of that. We, Frank, with me listening rehearsed and rehearsed Manny before trial on his testimony. At trial he was a disaster! I think his son Lew was in the audience to witness the debacle. Frank would ask him a question, and Manny would grimace, close his eyes, lean his head back as though the answers would come to him like manna from heaven, and then give some meaningless answer, including "I don't recall". I'd never seen Frank so frustrated. I think that eventually he whispered to me if I had any suggestions, which, of course, I didn't. We were dead in the water.

Bob Collier twisted Jim and Ham's arms and we settled the case by Singer dropping its claim for \$25K and paying PFI \$25K before the case went to the jury. Fortunately, Frank was smart enough not to take the case on a pure contingency. If I recall, we were paid something less than our normal hourly rates, plus expenses, together with a less than customary contingency fee. When I would see Jim Cobb over the years, he would ask how the "Bull Moose", his moniker for Frank was. I'm FB friends with Marvin Bethune, a Davidson grad a year or two behind me and one of Jim's partners. He said Jim would occasionally call Ham Sugar, but he'd never heard the story behind it until I told him. I asked how Jim was and he said he thought that he was as good as his age permitted, that he and his wife had recently moved into a retirement facility in Charlotte. Ironically and unfortunately, he emailed me either later that day or the next morning to tell me that Jim had just died. One last thing: when Jim and Frank were picking the jury, Judge Collier, who Frank was probably in the state legislature with and therefore knew him to be something of a ladies' man, asked them to approach the bench, and I tagged along. He put his hand over his mic and said, "This looks like it's going to be a long trial and I need something to look at. Could y'all agree to keep juror # 4, Ms. (So-and-So, a very pretty lady-the words in parenthesis are mine) on the jury?" I think that this was my first time appearing in a trial in Superior Court, and I'm thinking, "so this is what jurisprudence is all about!"

I assisted Frank in other cases, including several will contest cases that come to mind. Richard Clark represented the propounder, the party trying to get a will probated, and Frank represented the caveator, the party challenging the validity of a will. They were trying the case before Judge Tom Seay, from over around Salisbury, a real you know what (I'll tell an anecdote about him later if I think about it,,,maybe I'd better tell it now! I was busy as a bee and Ovella [Cartner, our long time receptionist, one of the most active Democratic Women, a widow of many years now living in assisted living, where Denise Beaver, my long time secretary, now retired, and I went by and paid Ovella a surprise visit on her 90th birthday several months ago when I just happened to be in Monroe] buzzed to tell me that Judge Seay wanted me in court. I'm thinking, it's a criminal term, what in the world does he want me for. When I opened the door of the courthouse, it was like stepping into a hot house. The AC wasn't working. I walked up the stairway to the 2nd floor, walked down the stifling hall where Assistant County Manager Larry McGinnis and building maintenance head John Tarleton were carrying fans and extension cords into the back of the courtroom. I entered the courtroom through the lawyers entrance and walked up to the bench where Judge Seay was disposing of guilty pleas. He told me to have a seat and I sat down on the front row with the lawyers who were there to plead for leniency for their guilty pleading clients. It was HOT! I sat there for probably 25-30 minutes until the Judge

took a break and asked me to step up to the bench. “Pretty hot in here, isn’t it, Caldwell?” “Yessir, it is pretty warm.” “Well, what’re you going to do about it? They tell me that the county manager, all the county commissioners and Frank Griffin are on a boondoggle to Washington. You’re the next in line! I want the air conditioning on before court in the morning!” “Yessir.” I told Larry and John to pull out all the stops to get the AC fixed and they did by morning. Like most modern buildings, the windows in the entire 9 story county office building, including the windows in the two courtrooms on the 2nd floor were fixed glass. I guess the architects didn’t anticipate the AC breaking down.)

Well, back to the will case. It is incumbent on the propounder to prove the will, that is, that it was properly executed and witnessed and that the testator was competent. Richard put the executor named in the will on the stand and asked him to identify “the will”. Frank: “Objection!” Judge Seay: “Sustained”. Richard was perplexed. “Mr. ‘So and So’, can you identify this as the last will and testament of ‘John Doe’ in which you are named as Executor?” Frank: “Objection!” Judge Seay: “Sustained.” Richard was a step or two beyond perplexed. He may have finally asked the Judge why he was not allowing the witness to identify the will. It was nearing lunchtime and the Judge recessed for lunch and I think, but I may be wrong, that he told Richard that maybe he could figure it out over lunch. Apparently Bobby Griffin figured out the problem. He came to court with Richard after lunch, put the Executor back on the stand and asked him if he could identify “the paper writing” which he was holding in his hand. No objection and the caveat proceeding continued. Bobby either knew before or through research during the lunch break that legally, a will is not a will until the jury says that it is. I don’t remember how the case turned out.

In another will case, Jim Griffin and Larry Harrington represented folks who came forward with an “after discovered will”, that is another will than the one which had been probated and pursuant to which the testator’s estate had been administered and his assets distributed. I think it was Judge Bob Collier that heard our (It was Frank’s case; as usual, I was 2nd chair) motion for Summary Judgment. I made the argument, but I don’t remember exactly what it was. I remember saying something like “Jim Griffin and Larry Harrington, two of the best lawyers in Union Co, particularly in will cases, know that” whatever the argument was, maybe, that to present an after discovered will, one has to show that it was virtually undiscoverable until actually discovered, when they had alleged that it was “found” among the testator’s papers, where the original, probated will had been found. The Judge granted our motion.

Larry Harrington, may he RIP, was a legend in his own mind, and maybe rightfully so because he was a good lawyer. Tall and lanky, sometimes sporting whiskers, Frank called him Abraham, as in Lincoln, not him of Genesis fame. Frank’s neighbor in Stewart Park was Dr. Bill Phifer, who, if I’m not mistaken, got into a little trouble regarding issuing prescriptions for narcotic drugs when he shouldn’t have. He had 4 or 5 children. His wife died and he remarried. When he died, the kids thought that the new, younger wife had unduly influenced him to virtually cut them out of what she purported was his last will and testament, signed, if I recall correctly, in his hospital bed in Charlotte shortly before he died. Frank represented the Phifer children and Larry the widow. For some reason, Larry associated Henry “Buck” Kitchin, about Larry’s age, who

practiced in Rockingham. Buck was a great guy, tall, nice looking, mannerly and articulate. His father had practiced law in Wadesboro and served in Congress until they gerry, really gerrymandered his district so as to include in it the county, maybe Cleveland where Republican stalwart Charles Raper Jonas had carried the Republican flag for years, until his district was gerrymandered to almost assure that a Democrat was going to send him back to Cleveland Co from Washington. So, the new district voted to keep Jonas in DC and to send Mr. Kitchin home to Wadesboro.

Frank and I and Larry and Buck went to what used to be called Mercy Hospital in Charlotte to take depositions of the doctor and a nurse and maybe some others who attend Doc Phifer before he died. I don't remember whether all 4 of us rode together but we all stopped and had dinner at Meadowview Steakhouse in Matthews. I don't remember any of the conversation except that for some reason, Larry started bustin', as my sons would say, on me. Again, I don't remember exactly what he said, or kept saying, but finally, I turned to him, sitting beside me, and said something like, "Larry, if you say one more word, I'm going to wrap your GD necktie around your scrawny GD neck and strangle you, you son of a bitch", or words to that effect. I also don't remember one word of the conversation after that! We settled the case. Buck retired, moved into what I understand was one of the stately old houses just across the street from the inlet in Southport, had a stroke and died some years ago. His brother, Bo, whose real first name I can't recall, practiced family medicine in Monroe for many years. He's, I guess he's still living, a great guy and let the guys, including my two sons, fish in the large pond he built in front of the stately house he built on, all of a sudden, I can't think of the name of the road, which I've driven on hundreds of times, but it will come to me when I'm not trying so hard to think of it and I'll pass it along. It just came to me; Medlin Rd.

OK, OK, now to some cases of my own;

THE JACOBS FAMILY: Herb and Bella Jacobs owned and Herb operated a small cut and sew operation in Sutton Park in Monroe. Like many of my clients, they were handed off to me by Frank. They had two children, Sonya and Alan, who after Vietnam and the Army joined Herb in running the business.

...Writer and Editor's Note. I'm using the Jacobs' families real names because they are a matter of public record in lawsuits, other court filings, and a made-for-TV documentary. My protocol from here on is to use real names where they have been made public in court filings, but not otherwise...

Sonya had been married and had 2 kids but was divorced, and apparently never was a good judge of the character of the men she got involved with. Early one Sunday morning, Sonya, her son, 4 or 5, and her daughter, less than 3, were sleeping in the back seat of a car parked at a rest stop on an Interstate in Florida. The driver was her convict boyfriend, recently out on parole, and his convict buddy was riding shotgun. A State Highway Patrolman pulled in to check on the car. A law enforcement guy from Canada, down on vacation, was riding with him. When they got out of the patrol car, Sonya's convict boyfriend came out of his car with guns blazing, killing both cops. It wasn't long before they were caught. Herb and Bella (can you imagine what they were



going through?) drove down to Fla and picked up their grandchildren and brought them back to Charlotte. Despite their efforts and money, Sonya ended up on death row.

Herb and Bella liked to gamble and sometime later, left Sonya's two kids with Alan and his wife, Marisa, and their kids, heading for a few days in Las Vegas. Either landing in or taking off in New Orleans in a storm, the plane crashed from a severe wind gust and everyone on board was killed. After learning about the crash, Alan was watching the late news only a day or so afterwards and saw where Melvin Belli, the "King of Torts", with offices in San Francisco had already filed suit against the airline on behalf of a good number of the families of the crash victims. Alan called the office and got someone on the phone and discussed the crash with him. He gave them his name and his parents name, but stopped there, absolutely not hiring them. Of course, I was hoping that he would hire me, but my having no experience in air crash litigation, I understand why he didn't. He hired Kriendler & Kriendler in NY, NY, air crash specialists. They filed suit, only to be told that Belli had already filed suit for the Jacobs family. I don't know what kind of hoops they had to go through, but if I remember correctly, they had to put some real pressure on Belli to dismiss the suit he'd filed. Eventually, Kriendler settled their case. I don't remember if I ever knew for how much since wrongful death proceeds go straight to the heirs, not through the probate estate, which I handled.

I had drawn Herb and Bella's wills, which left half to Alan and half in trust for Sonya's children, naming Herb's friend since childhood, Mickey Weinstein, a lawyer and CPA who lived on Long Island, as Executor and Trustee. The estate wasn't terribly large, consisting mainly of their house, the textile business in Monroe and the building it was in, EXCEPT! Herb had bought their plane tickets on a credit card which had a provision which paid \$500,000 to the estate of the ticket purchasers if the plane crashed and they died in the crash, AND, he had bought life insurance at a kiosk in the airport which paid either \$500,000 or a \$1 Million. I almost said "what luck", but, of course, what awful luck since they lost their lives to get it!

Mickey was a real character, a dried up little Jewish guy that reminded me a little of George Burns. He came down to qualify as Executor of the estate and he and I flew down once, or maybe twice to Ft. Lauderdale, rented a car and drove 30-40 miles out into the boondocks to visit with Sonya at the Florida womans' prison, flying back the same day. I don't remember much of anything about her. Herb and Bella spent a fortune in legal fees and got her off death row before they died. I guess Alan helped with her legal fees and several years later, she got out of the penitentiary completely. Her boyfriend was executed and his buddy got life when he turned state's evidence and testified that his buddy did all the shooting. After Sonya got out, a documentary on the whole affair was made for and shown on national television.

The law allows for executors' and trustees' commissions and a statute sets out how they are computed. I filed a petition with the Mecklenburg County Clerk of Court's office for approval of Mickey's fees, which I computed pursuant to the statute. The fees were approved by the lady who had headed the Clerk's estates division for many years, an older lady who walked with a severe limp. It seems like her first name was Ruth but I don't remember her last. She signed an order approving Mickey's fees which I had prepared and submitted with the petition. Not long

thereafter the proverbial dung hit the proverbial fan. I don't remember how it started. I guess Sonya hired a lawyer to review the estate file, and all of a sudden, guardian ad litem (such guardians are appointed by the court to represent the interest of minors and incompetents in legal proceedings) were being appointed and bringing proceedings to challenge the approved fees which Mickey had paid himself from the estate. A lawyer, several from some of the top firms in Charlotte, was appointed as guardian for each of Sonya's minor children and I guess one for Sonya as well since she was incarcerated. I initially sent Mickey to a lawyer that I knew well, who shall remain unnamed, with a big firm, but his representation didn't work out too well, so we canned him. Someone recommended George Somebody (I can't believe I don't remember his last name, probably 10 years older than me, who died relatively young a number of years ago. George was a darn good lawyer and loved to mix it up with the "uptown" big boys.

I apparently had misconstrued the statute on executor and trustees commissions and those guardians pounced, and George would swat them away. Hearings went on for months. I should have gotten a motel in Charlotte. If I remember correctly, they quit pouncing quite so hard while George held them at bay, and they realized that they would have to go after Mickey for return of some of the improper fees in NY. Mickey died many years ago, feisty to the end. As for me, thank goodness the statute of limitations has run. In my defense, I can only say that the statute on commissions is, or was then ambiguous and confusing and that I clearly set out the facts in the petition for approval that I filed with the Clerk and relied on Ms. Ruth to verify that I had calculated the fees correctly, which she did.

But there's more to the Jacobs' saga. A Jewish custom is "sitting shiva" to mourn the loss of the dearly departed, consisting of sitting (I guess talking, and wailing is allowed) with the shades pulled (that would make me sleepy, but I'm not a Jew). Alan followed the custom for Herb and Bella. Friends and relatives were flying in to Charlotte to sit in Alan's house and he had arranged with Yellow Cab Co to bring them to his house and to put the fare on his tab and he would pay the entire bill after they stood up (that is, from sitting-a little funeral humor there). One cabbie asked to be paid by his passengers when he dropped them off at Alan's. They told him of Alan's arrangement with the cab company but he wanted his money then and there. He followed them to the door and Alan again explained the deal to him, but he was adamant in wanting to be paid. After getting nowhere with his explanation, Alan closed his front door in the cabbie's face. A few hours later, the cops are at Alan's door to serve a warrant on him for defrauding a cab driver. I don't remember whether they took him downtown (to "book him, Danno", a little arrest after shiva humor), but Alan was rightfully furious.

At Alan's insistence and over my reluctance, I sued Yellow Cab in Charlotte, thus beginning an attorney then client relationship which lasted for several years, beginning with John Walker, who represented the cab company, and later expanded to include his brother, Frank. Chronologically, John appears next, Frank later in my career and in this telling of it. If I remember correctly, the jury gave us \$7,500, many times that cabbie's fare! At long last, I leave the Jacobs family, who left Union and, I think Mecklenburg Counties. Alan sold the textile business and building, he and Marisa split up and I think they all fled the jurisdiction (just my attempt to be humorous, since as far as I know, the law wasn't after any of them).

SMITH v CHILDS: Nick and Joe Smith owned and operated Brothers Foreign Cars in Indian Trail. They along with 3 siblings inherited their parents' old mom and pop motel and some 8-10 acres, maybe less, maybe more which it sat on on NC Hwy 29 and/or 49, they run together before splitting northeast of Charlotte. The parents were gone and the motel had been closed for years. I don't remember exactly when this was, but probably in the early to mid '80's, because the economy was roaring then and real estate was hotter than hot cakes in the Charlotte area. Some high flyers out of Texas approached the Smiths about buying the motel property. None of them were experienced in real estate transactions, so they sought legal help. Stuart Childs had been an ace in WWII, then a test pilot, and eventually graduated from UNC law. He was a graduate of the University of the South, Sewanee, an Episcopal college located on the Cumberland Plateau between Nashville and Chattanooga, then and maybe still all male. (As an aside, I received the Sewanee Award on awards day in the spring of my junior year at East Mecklenburg High, given to "the outstanding male member of the junior class" at, I suppose, every high school in the southeast, the college's attempt, I'm sure, to lure students to nowheresville, which is where it's located. I was sent a bunch of literature about the school, and it didn't take me long to rule it out as a potential college choice after I read that students were required to wear coats and ties to class and that seniors of a certain academic standing wore robes over their jackets. [Parents paid to send their sons there? And the sons agreed to go? I couldn't believe such a school existed!]) I don't know whether Stuart went to Sewanee before or after the war, probably before, since he became a pilot.

I think Childs drove a Mercedes and had it tended (one "tends" a Benz, much like a garden, rather than just turning wrenches on such automotive royalty [I think Joe and Nick had tended them at the MB dealership in Charlotte before opening their own garden...oops, garage]) by the Smiths. I have no idea what kind of legal work Stuart did in his solo practice in Charlotte, but Joe and Nick told him about the interest of the Texans in the motel property and he agreed to represent the Smith family in negotiating a sale and in closing the deal.

Now, a little legal and tax background for the deal that was struck. In those days, if a seller took less than 30% down and financed the balance of the purchase price of land, called an "installment sale" for federal and state income tax purposes, then any profit from the sale would be spread over the tax years in which the money for the purchase price was received, thus spreading the income tax on the profit over those years, and thus potentially lowering the total tax bite by keeping the seller in a lower tax bracket each year, all as opposed to the seller taking all of the purchase price, or even more than 30% down, then the entire profit would be taxed in the year of sale, most likely putting the seller in a higher tax bracket and resulting in his paying more tax. Clear as mud? So, an installment sale was beneficial tax-wise to a seller, and often to the buyer as well, since otherwise, he would have to obtain financing from a bank or some other 3rd party, resulting in loan fees, appraisals and other costs associated with borrowing money on real estate.

The deal was thus structured as follows, using the actual or close to the actual numbers. The sales price was \$700,000. The buyer, a corporation from Texas, hereinafter "Buyer", paid the

Smiths \$100,000 at closing and signed a promissory note for \$600,000 for the balance of the purchase price and a deed of trust on the property to secure payment of the note and the Smiths signed and delivered a deed to Buyer for the property. The deed of trust was a "purchase money" deed of trust, which caused the legal problem. North Carolina, like many states has an "anti-deficiency" statute, which means that if the deferred purchase price for land is secured by a deed of trust on said land and the buyer defaults, that is, doesn't make the payments as set forth in the promissory note evidencing the debt for the balance of the purchase price, then the seller, and thus holder of the promissory note and deed of trust's sole remedy is to foreclose the deed of trust, at which the property is sold at public auction. Normally, the seller bids the amount that he's owed and if no one outbids him, he gets his land back. If he's outbid, then he receives the amount of the bid necessary, after expenses of the foreclosure, to pay the remainder of the debt, which represents the balance of the purchase price for which he sold the land, and the bidder gets the property. Suppose, however, that real estate prices are depressed and the land isn't worth what's owed on it, then if the seller bids less than the debt and gets the land back, he cannot sue the buyer for the deficiency, all because of the anti-deficiency statute. To further complicate things, if the buyer had borrowed the money to buy the property from the bank, or any 3rd party, and given the bank a deed of trust on the property to secure payment of the loan, and the buyer/borrower defaults and the bank forecloses in a depressed market and bids less than it's owed, then it can sue the buyer/borrower for the deficiency. The anti-deficiency statute applies only when the seller takes a purchase money mortgage (didn't I explain earlier that the word "mortgage" and "deed of trust" are used interchangeably in NC?).

Any real estate lawyer in NC who's worth his salt is familiar with the anti-deficiency statute and its ramifications, and consequently structures, or at least bargains to structure installment sales, or did then (the tax laws have since changed on installment sales), to protect his client. And most good real estate lawyers know that the NC appellate courts have liberally construed the anti-deficiency statute in favor of the buyer. For example, the court has held that the seller can't sue a guarantor of a purchase money note for any deficiency after a foreclosure.

I don't think that Stuart Childs even knew what the anti-deficiency statute ("A-DS") was or that it existed in NC; in fact, I'm not sure that he knew of or understood the consequences of the A-DS when I cross-examined and questioned him about it at trial. If he had understood it while negotiating the contract to sell their inheritance on behalf of the Smiths, he would never have allowed them to sign the contract as the Buyer and its slick lawyers negotiated it. In a nutshell, the Smiths agreed to subordinate their mortgage, which means to take a position behind, i.e., a second mortgage behind a mortgage which the Buyer could give a bank or other 3rd party to secure a loan made by such bank or third party, with no limit on the amount of the loan which Buyer could obtain, or without requiring that said loan be used to make improvements on the property, which, of course, would have increased its value. The only condition to the Smiths so subordinating their purchase money deed of trust was that Buyer, a corporation, tender to the Smiths guarantees of the payment of their purchase money note by individuals with net worths, as certified by a CPA, of some percentage, maybe 150 or 200% of what the Smiths were owed. Guarantees meeting the contractual criteria were delivered and the Smiths subordinated to a

deed of trust to a bank in Texas for, it seems like, \$1.5-2 Million. Those Guarantees weren't worth the paper they were written on.

If I recall, the first installment due the Smiths was a year from the closing and after they had subordinated to the bank loan. The Buyer didn't pay the installment. As I think about it, the Buyer may have made the first payment and I guess it was before they were asked to subordinate. And then another year went by, with the Smiths' promissory note continuing to accumulate interest, and before Buyer paid the second annual installment, they were presented the Guarantees and asked to and did subordinate their deed of trust to the bank loan, which if I recall correctly, they were told that Buyer needed to pay the installment from. Again, now that I think about it, I think the installment due the Smiths was past due, and they asked Child's for advice, again, if I remember correctly, he told them that they were contractually bound to subordinate, which they did, and were then paid the past due installment. And so, another year must have gone by, with interest, of course continuing to accrue on the balance of the purchase price owed the Smiths and not only did the Buyer fail to pay the Smiths, they had no communications at all from the Buyer or its counsel, and not long thereafter, the Smiths received notice that the Texas bank was starting foreclosure on its 1st deed of trust.

We had bought a used Mercedes and I started taking it to Nick and Joe for service and got to know them and they got to know that I was a lawyer. They told me the story and gave me all the documents related to the deal to review. I couldn't believe it! I think I went with one of them to Charlotte for the foreclosure sale, where if I remember correctly, the bank bid less than their debt. Ken Helms, our firm's then associate and I took a closer look at the documents. I don't remember if I contacted Childs, but if I did, he didn't have much to say. There was some question about when his legal malpractice ended, but the running of the statute of limitations ("SL") wasn't far off, so we quickly drafted a complaint. Long about then, John Walker entered the picture. He had represented one of Joe and Nick's sisters in her divorce and she called him about this situation. Suddenly, rather than representing 5 Smiths, we were representing 3, John the other 2, if you can call his participation "representation". John may have looked over the complaint, but not for long because we filed it soon thereafter because of the SL.

Childs had \$1M of malpractice insurance from Lawyers Mutual ("LM") a lawyers' owned company formed by lawyers in NC when premiums from traditional malpractice carriers began to skyrocket.

...Writer/Editor's Note: not only are words like "heretofore", "hereinafter" and "foregoing" and many others, of which these are examples, used for brevity, so are putting initials or other shorthand notations in quotation marks within parentheses after the word or words to be brevified (that of course, is not a real word, nor is its, if it was a real word, present tense, which would be brevify, but they both could and should be), a perfect example, as if anything is perfect, being LM for Lawyers Mutual in the immediately preceding sentence...

LM gave their insureds the right to choose the lawyer to represent them, with LM having veto power I would suspect, and Childs chose Jim Hewson, who I think had been his classmate or at least in school with him at Sewanee. He made an excellent choice. Jim Hewson deserves a

story of his own, but let me just say a few words about him. He was a lawyer's lawyer, one of the best trial lawyers in Charlotte, if not all of NC. He graduated from Harvard law school. During the week-long trial that ensued, I ran out of suits on Thursday and had to wear Monday's suit on Friday. Jim wore the same tan slacks, brown sport coat and brown shoes every day. He was notorious for being a bit eccentric, driving a Checker cab car, because he said it was the safest car built, with a 2x10, or maybe 2, bolted onto the front and rear bumpers.

Jim, representing Childs but being paid by LM, didn't offer us a nickel, even at the required pretrial conference, before trial. At the trial in Superior Court in Charlotte, presided over by Judge Dexter Brooks, a Lumbee Indian from Lumberton, Jim was assisted by a brilliant young lawyer in his small firm who was a Davidson graduate. I don't remember his name and remember nothing of any conversations with him, but his briefs on various legal points during the trial and the brief I'm sure he must have written on the later appeal spoke for themselves. Speaking of conversations, Mr. Hewson, which I always called him, was not big on small talk. He was all business. When it came his time at voir dire, that is, picking the jury, he stood and made some introductory remarks before questioning individual jurors. I was shuffling through some papers, not paying much attention to what he was saying, something about some people not believing in the jury system, and all of a sudden, he either slapped the table or pounded his fist in his hand and thundered, "I SAY DAMN THEM". I liked to have crapped in my pants!

It took the first two or more days of trial to put our evidence on. Our "expert" to explain what a purchase money mortgage was and its effects on an installment sale because of the AD-S was Henry B. Smith, Jr., an attorney from Monroe, who I think was in law school with Stuart Childs at UNC, Smith being younger but Childs being delayed because of his military service. I think that I called Stuart Childs to the stand but I may have waited and cross-examined him after Hewson called him to testify. I grilled him pretty hard. I remember prefacing a question by saying that quite a lot had been said about "subordination" but I asked him to explain the legal concept of "subrogation". Actually, I may have read him its definition from Black's Law Dictionary, 3-4" thick, which I brought with me and when I was satisfied that the jury knew that subrogation meant that the party of the 1st part, having paid a legal obligation of the party of the 2nd part, steps into the shoes of the party of the 2nd part in order to be able to legally pursue a 3rd party who may have had an obligation to pay the party of the 2nd part's debt. I knows that's a lot of parties partying, but in the instant case, I asked Mr. Childs that if the jury should make him pay the Smiths because of his malpractice, wouldn't he have the right to sue the Texas Buyer for what was owed on the promissory note and the guarantors thereof. He admitted that he would.

When I had finished (neither John Walker or Ken had said a word to that point) putting on the plaintiff Smith's evidence and rested, Mr. Hewson made a motion for a directed verdict on the grounds that the statute of limitations had run before we filed the suit against Childs, which, if granted, meant that the case was over and we lost and wouldn't get a nickel. After Jim's argument, I told the judge that my associate, Ken Helms would argue our position. Ken liked to have crapped in his britches! He and I should have been prepared and discussed who would argue because we knew it was coming. To this day, Ken hasn't forgiven me for tossing him in

the lion's den, but the truth is, he knew the S/L arguments better than I did. He must have done a good job because Judge Dexter Brooks denied their motion and we were still alive.

Let me say here that there is never a more stressful time in a trial lawyer's career, even more stressful than the moment before a verdict is read, than when the opposition moves for a directed verdict. Your legal life flashes in front of your eyes! Nothing is worse than trying to explain to your client what just happened to him and his case if a directed motion is granted. A jury verdict against him he'll understand, because you've explained that possibility to him and it's not hard for a layman to understand; he's seen it on TV and in the movies. But having his case tossed out without even letting the jury decide, that's a heck of a lot harder for him to understand, even if you've explained that possibility to him. Fortunately, we didn't have to try to explain it to the Smiths.

We argued to the jury after lunch on Thursday. If I made a mistake in the trial, it was asking John Walker if he wanted to argue. He, who hadn't opened his mouth thus far, said that he did. When I told the judge that we wanted two arguments, I think he said that we could have the first and last, with Mr. Hewson in between. John went first. I'm cringing now, as I'm typing this. The following isn't verbatim, of course, but this is pretty darn close to what he said:

"The Smiths were like the farmer who took his cow to the market to sell. All he came back with was his walking stick."

And he sat down! I'd give \$1,000 for a video of John's jury speech. It wouldn't be long. But I'd like the video to have scanned the faces in the courtroom when he sat down, starting with mine, then Jim Hewson's, then the jury's and the judges. I'm sure my mouth was hanging open and I expect others were, too. DAMN!!!

I argued last. I remember walking up to the podium that the bailiff had brought out and placed before the jury box, carrying several books and a legal pad with notes. The podium top sloped so I sat the books on the railing in front of the jury and I began (I actually remember saying this), "It's been a long week and I'm tired and I'm sure that you must be, too, particularly hearing all of these legal terms, such as purchase money mortgage, anti-deficiency statute, subordination, subrogation thrown at you...". Ken Helms has said on several occasions and to several different hearers that it was the best jury speech he ever heard. I probably talked for 30, maybe 45 minutes and don't remember ever looking down at my notes. And the jury was listening.

I remember saying that I had never sued a lawyer before and hoped that I would never have to again, but that lawyers are responsible for their negligent mistakes, just like the manufacturer of a car is responsible for a defect in a car that it has built which causes an accident and harms someone. I talked about Mr. Hewson and about what a great lawyer he was, maybe saying that I was sure that they could tell how good he was. I pointed out that we had brought Henry Smith from Monroe to testify about the legal issues and I said that there were hundreds of lawyers within walking distance of the courthouse who were very familiar with purchase money mortgages and the anti-deficiency statute who Mr. Hewson could have called to refute Henry B, which is what he was called to distinguish him from his father, Henry, who I called Mr. Henry.

(An aside, Frank and Mr. Henry were partners for years. Henry B., who told me that he didn't think he passed the bar so had arranged for a job as an insurance adjuster in Hawaii, joined them when he surprised himself, and probably others, by passing. Frank couldn't stand Henry B., saying that he would wait till the last minute to do something and then tie up all the secretaries to meet his deadline. Frank said that he told Mr. Henry, "Henry, I'll practice law with you as long as you practice, but I won't practice another day with your boy!" Frank said Mr. Henry said that he understood. Smith & Griffin broke up, Smith & Smith was formed and Bob Clark joined Frank to form Griffin & Clark. Once Frank said that someone was told about a certain Baptist church splitting apart and a listener said that they weren't fighting, they were just breeding. I guess lawyers breed, too!)

The judge was hoping to finish the case Thursday afternoon, so after my argument, he charged the jury and gave them a verdict sheet with two questions on it: 1) Was Stuart Childs negligent in his representation of the Smiths?, and 2) How much, if any, should he pay them for his negligence. Blank spaces were provided for them to fill in their answers. I don't remember how long the jury was out, but not terribly long, I don't think. Their verdict: 1) "YES"; 2) "\$600,000, plus all expenses, including attorneys' fees". The judge asked us to approach the bench and, as it was after 5:00, he said that we would have to come back the next morning, Friday, for him to tell the jury that their answer on damages had to be just one figure. The next morning, he so charged them and they answered, "\$650,000". WHOOPEE MANURE!!! I think Mr. Hewson gave notice of appeal then and there.

BTW, I called Ken yesterday afternoon (as is my practice to keep my potential readers informed as to my writing progress, it's now 8:15 AM on Wednesday, May 17 and I just got a call from HB Brady, 88, who lives in my condo complex asking if I wanted to join he and his buddies in a golf scramble at Seneca Golf Course this morning, which I declined because it poured down rain yesterday and I don't like to play on a soggy course, but primarily because I'm having a ball writing MAY IT PLEASE THE COURT and hoping that you will enjoy reading it. Son Tim warned me about too long parenthetical asides, but apparently I didn't listen, cause this one is a doozy) to see if I remembered John Walker's jury argument accurately. He remembered that Walkman (a Walkman would have been more of a benefit in the trial than a Walker) talked a little about subordination and subrogation, getting them confused, and that I leaned over and whispered, "what the hell is he talking about?" (I'm having trouble typing this cause I'm laughing so hard!)

I guess the bright young Davidson grad associate of Jim Hewson's wrote their brilliant appeal brief. Ken and I wrote ours, Walker not a word, though we must have let him sign it. The appeal was submitted just on the briefs, that is, we weren't asked to argue the case in person before a three judge panel of the NC Court of Appeals. Years before I had argued a case before them on an issue involving a guaranty given to American Bank & Trust in Monroe, which may have been the only time in my 37 year career as a lawyer saying the words, "May it please the court". Frank had an appeal to the Court of Appeals that I probably had written he brief for and I went to Raleigh with him for the in person argument, which he made, and I guess he used those words, one of the few times Frank said that he cared whether his words pleased anyone or not. I won my guaranty case and Frank his, in which he was representing Eunice Griffin, the younger than



he and I think second wife of large landowner, Otha Griffin in a will contest case. Eunice's younger sister, Beulah Baucom, a secretary of Walt Love and John Milliken, was the power behind her sister's throne, but she hired Frank because John Milliken had drawn Mr. Otha's will.

Normally the Court of Appeals rendered decisions within 6-8 months. Close to a year went by and we hadn't heard a word. Lawyers Mutual had hired one of the best appellate firms in Raleigh to handle the appeal. I got a call from one of their lawyers asking if we shouldn't settle the case. I told him that I'd been trying to settle it for going on three years and they hadn't offered me a nickel. We settled it within a day or two for around \$600,000. A few days later, we received the Court's opinion, upholding the jury's verdict. No one will ever convince me that those highly esteemed, big time Raleigh lawyers didn't know what the opinion was going to be before they called me. I agree with most of the public: you can't trust lawyers, at least some of them. Walking stick Walker got 40% of the fee. GEEZ! Oh, one other thing: I guess it was when we were writing our brief to the Ct of Appeals, we couldn't find a piece of paper in our files. I don't remember whether we happened to be in Charlotte for something else or whether we made a special trip to John's office in the Cameron-Brown Bldg in Charlotte to see if he had a copy of the piece of paper in his files. We must have been in Charlotte anyway because we didn't call him in advance of showing up at his office, or if we did call him, he hadn't pulled his file until we got there. He met us in his reception area and led us into his office. He stood up on the chair behind his desk and reached up and slid a ceiling tile over and pulled down his file. Ken and I stood there with our mouths agape! I don't remember whether he had the piece of paper in his file or not. Who would, after what we had just witnessed! John and brother Frank will appear later, dadgummit!

JUNIOR LOCKLEAR: I don't remember how Junior Locklear, a Lumbee Indian from near Lumberton found me. Junior had moved to Hemby Bridge many years before and started in the garbage business in Charlotte, I suppose driving a garbage truck and/or emptying the trash cans into one. He worked hard and was a good businessman and eventually started his own garbage collection company. I couldn't remember its name so texted Ken, who couldn't either, but thought maybe D&L, so from hereon, Junior's company is "D&L". I didn't represent Junior until later, as you'll see, so I don't remember how large his mainly residential garbage collection business how grown, but it grew large enough and he had grown tired enough that he decided to sell it, and he did, to a company located in Hickory, owned as part of a huge national trash business conglomerate, Waste Management ("WM"), owned by the owner of the Miami Dolphins, among other enterprises, Wayne Huizenga. I don't remember the exact terms of the deal, but it seems like the total sales price was maybe \$1.5-2M, and Junior was paid maybe \$.5M and took a promissory note for the balance, payable over some years. In addition, he owned the building D&L operated out of and he was to be paid market or above rent on it for the term of the note. He also agreed to continue running the company for maybe a year and agreed to not compete for some time, probably until the note was paid off.

Everything went smoothly for a year or more and then the garbage hit the fan. WM stopped paying the note, the rent and Junior's salary, claiming that he had violated the non-competition provision by loaning his son, Michael the money to start a competing company, All-Points Waste

("APW"), whose name Ken did remember. My recollection is that Junior didn't have a lawyer to represent him in the sale of D&L to WM, that Jim Gaither from Hickory, WM's attorney prepared all the paperwork and closed the transaction. When the payments stopped, Junior found me somehow. Ken should be writing this because I'm sure that he remembers the details better than I do. I remember that we talked to some folks who knew some important facts, prepared affidavits for them to sign regarding said facts, and drove to and met one in Charlotte and another in Belmont, or over that way. It seems like there was some salaciousness involved, but I'm not going there.

I drafted a hellacious complaint to start a lawsuit against WM, alleging, among others things, violations of the federal RICO (Racketeer Influenced and Corrupt Organizations Act) laws. Jim Gaither represented WM (he's lucky he didn't get his family jewels squeezed in a vise because of his, in effect, dual representation of WM and D&L in handling the deal) and associated James, McElroy and Diehl (remember him), probably hoping to get Diehl but instead getting John Arrowood, later appointed to fill a vacancy on the NC Ct of Appeals, but losing when election time came (Not that it matters one whit, but according to Wikipedia, John was, and may still be the only openly gay to ever serve as a judge in NC). We took some depositions and engaged in more discovery and the case was set for mediation. I requested and we got then retired Superior Court Judge Bob Collier as mediator. Mediation was held in Arrowood's office. Ken and David Lee went with me. We demanded and received virtually everything that Junior was to have received in the original deal, including prepayment of the entire balance owed, including accrued interest on the promissory note. Ken continued to represent Michael Locklear and APW, but said yesterday that he hasn't heard from him in quite a while.

I haven't heretofore mention our compensation in any of the above matters, but we were well compensated in all of them, except, that is, for the 40% we had to give Walking Stick Walker in the Smith v Childs case, thus reducing our share of the recovery to roughly \$140K (I think we charged 40% because of the appeal), our receiving from Junior over \$300K, and \$75K in the Jacobs estate and related matters.

TWO CASES TRIED IN ANSON CO, one against Larry Harrington, the other against Pat Taylor and Avery Hightower.

1) Two tractor trailers were pulling out early one morning from a coal-fired power plant after delivering their loads of coal, up near Roxboro, and wrecked after the first collided with a car driven by an 18 year old on the way to work at the plant. Both trucks and their trailers were damaged pretty badly. Larry Harrington, representing a company in Lilesville, located in Anson Co, which owned the 1st truck, filed suit against the 18 year old in Wadesboro, claiming that he crossed the centerline of the two-lane road, forcing the truck to pull off the road, resulting in its turning over. A lawyer from Charlotte, who's name I don't remember, represented the 2nd truck, and also filed suit in Anson Co, claiming that he ran into the back of the 1st truck when it suddenly slowed down after being hit by the car. The cases were consolidated for trial. Frank represented the insurance carrier for the car the 18 year old was driving, and, as a matter of course, filed a defensive counterclaim, alleging that the accident was caused when the 1st truck crossed the centerline and hit the car

I guess Frank was sick when the cases came on for trial, so I went down to Wadesboro and tried them. I had talked to the Highway Patrolman who had investigated the wreck and subpoenaed him because his testimony, which included photos and measurements, supported our version of how the accident occurred. The jury not only found that my 18 year old wasn't negligent, it found that the truck drivers were, and awarded damages to our client for the damage to his car on our counterclaim. Some smart-ass lawyer about my age, who practiced with his father in Charlotte, represented one of the trucks to defend against our counterclaim. I don't remember him saying a word at trial. Some years later, Mr. Smart-ass, then mayor of Matthews, made me wait until almost 11:00 PM to urge the Town Council to waive the requirement that Pat McAteer be required to build a sidewalk in front of the old convenience store, The Dew Drop Inn, which his family had owned for years. SHEESH!

2) A dude from up north had become a Myrtle or, maybe a little further north, Beacher and was on his way back there when he was in an accident on US 74 in Wadesboro. Pat Taylor, the former Lt Governor (Pat married into and represented most of the money in Anson Co, and at retirement age, sold his practice and became Of Counsel to Fleming, Robinson and Bradshaw, which represented a substantial part of the money in Charlotte, they, of course, wanting to represent the money in Anson Co. When asked what being Of Counsel meant, he said that it was kind of like being a greeter at WalMart) and gravelly voiced Avery Hightower represented Mr. Beachcomber, who claimed severe neck and back injuries, all soft-tissue, i.e., not evidenced by x-rays or MRI's. It seems like there were two vehicles involved in the collision with Beachman, a tractor trailer represented by Frank and a car represented by Erwin Spainhour from Concord, who graduated from Davidson a year or so before I started. Both were sued by Hurt Backman and both had the same insurance carrier. If they were both negligent, Frank's tractor trailer was probably more so.

I knew Erwin, but not well. He practiced in a firm with Fletcher Hartsell, a year behind me at Davidson, later a state senator who was charged with, convicted of and served time for using campaign contributions improperly. Again, Frank wasn't available for some reason and I tried the case, handling the laboring oar because of our clients heightened potential culpability. Spainhour told me on Monday that the trial needed to be over by Thursday because he was going to the beach Friday morning. On x-examination, I had Mr. Pain surf and pier fishing every day, pulling in some whoppers despite his injured back. During a trial, defense lawyers stay in touch with their insurance client's claims manager to keep him abreast of how the trial is going. I don't remember who the carrier was, which, as I said, insured both our truck and Spainhour's car. I did little insurance defense work and had never dealt with our claims guy but I called him a time or two and told him that I thought things were looking good for us. Thursday morning, before court, as I was dialing to give my report that I thought that we had them on the run, Erwin, who did a lot of insurance defense work and knew our claims guy, grabbed the phone, saying let me talk to him and proceeded to report that he thought that it looked like we could get hit really hard. He asked for authority to settle, opened negotiations with Pat and Avery and paid Fishing Guy \$50,000 in settlement. Spainhour left shortly to drive back to Concord and pack his swimming trunks.

I don't remember who the judge was but I asked him what he thought the jury would do, that I thought that if they gave Mr. Rod and Reel anything, it wouldn't be much. He said that he tended to agree, but that you never knew what a jury would do. I talked to a couple of jurors. One said that he thought Mr Yankee was trying to get us to buy him a boat, and a couple of others agreed. Several years later, Erwin Spainhour was appointed as a Superior Court judge, serving for a number of terms with distinction. I thought that I remembered that the judge had gone on to his reward and just googled and found that he was admitted to the Bar in the sky, or somewhere, in 2020. "All hail! O Davidson, Our dear old Alma Mater...". GEEZ, Louise!

EDDIE KNOX: If I recall correctly, a large truck owned by a large company and driven by its employee ran a stop sign north of Monroe, maybe on NC Highway 200, aka Morgan Mill Rd, causing an accident in which an occupant of one car was killed and a lady in another was rendered a quadriplegic. Travelers insured the truck and called our office to represent them. They must have asked for Frank, who must not have been available, and so talked with me. Larry Harrington represented the person who was killed, or rather his/her estate. Lisa Caddell, who practiced with Eddie Knox, former mayor of Charlotte and candidate for governor, now 86 and retired from practicing law, spending much of his time at Verdict Ridge, a golf course that he developed and I guess still owns near Denver, NC, where he arranged for three fraternity brothers and me to play golf on June 2 when we're in Davidson for our 55th college reunion (bless your heart, Eddie) represented the lady who lost the use of her legs. I defended her case in Monroe, which Eddie tried with Lisa occupying 2nd chair. The jury gave her less than we had offered before trial. Eddie was POed. I don't remember who the judge was but he was from out of town and staying at the Hilltop Motel, owned by Frank Griffin and 4 or 5 others. They also owned Hilltop Restaurant where Frank ate breakfast at the counter Monday-Friday. He ate beside the judge one morning and told me that the judge had told him that I was doing a good job trying the case. Larry settled the death case soon after the verdict in Lisa and Eddie's case for considerably less than he had been demanding.

PEG and the POLACK: While I'm talking about Larry Harrington, I'll tell about an interesting will contest case in which I represented the propounder and Larry and a cadre of others, the caveators. The only name that I remember is Peg, my client, and I don't even remember her last name. The testator was a retired Polish cop, a widower, or maybe a divorcee from Philadelphia who died in Union Co, NC where his nephew lived and brought him not long before he died. I'll call the deceased testator Pol, short for Polack. Peg, a divorced or widowed Catholic lady was the main beneficiary of Pol's will and took it to her lawyer in Philly, who told her that it would have to be probated in Union Co since that's where he was residing when he died. She presented the will to the Union Co Clerk of Court and was attempting to probate it. Pol didn't have children but had a young niece that he was very close to and the Clerk sent her notice of the will, in which she was named as a beneficiary. Nephew hired Larry who filed a caveat. I was contacted by Peg's Philly lawyer to help her propound the will.

Larry got young Monroe lawyer Dale Ann Whitman (I'm not sure if that's her correct last name), who had recently started with Ligon Bundy's firm (Ligon told somebody who told me that Dale

Ann didn't know a thing about probate law but this would be a good way for her to learn) to serve as guardian ad litem for the niece, Sam McGee, son of Wingate College, oops, University president Jerry McGee, a newly minted lawyer to represent some other named beneficiary, and Shawna (sp?) Collins, another young member of the Union Co Bar to represent someone, probably Pol's heirs, who would inherit if the will got tossed out. Larry relished being the mentor of these young lawyers, displaying to them his Lincolnesque lawyering, most notably his insightful (?) quips. Peg lived in Philadelphia as did the witnesses to Pol's will, so Janet and I drove up to Philly to take depositions; Larry and his entourage took the train.

The will was obviously prepared by a non-lawyer, or if possibly by one, then a not very skilled one. It was type-written on plain paper. It left the majority of Pol's assets to Peg, a relatively small amount, say \$10,000 to the close niece and, and I could easily be wrong about this, a small percentage to a charity or two, such as the FOP ("Fraternal Order of Police"). The will was witnessed by either a fireman or policeman, a friend of Pol, and a nurse who was his neighbor. Larry had arranged for us to take depositions, they of Peg and me of the witnesses, at a downtown law firm, the closest I've ever been to a real Philadelphia lawyer! During a break, we stepped out into the hall and Peg was showing me something on her back, possibly where she'd had surgery that was going to keep her from traveling for a while, and in doing so, she pulled her blouse out of her skirt and raised it up in the back, as high as her bra strap, and just at that time, Larry stepped out into the hall, saw Peg's exposed back and guffawed uproariously.

While Larry, et als, rode the rails south, Janet and I explored Philly the next day, visited Valley Forge, Gettysburg and Amish country on the drive home.

Peg and her fairly new husband drove down from their home in New Jersey for the trial. Janet and I took them to dinner on Sunday night to a new place in Waxhaw. Annika, our fairly new associate, whose last name I don't remember until after she married Russ Brock, who attended First Baptist Church in Monroe with his family and where I was his Scoutmaster and Sunday School teacher, assisted me in the trial. I think we made opening statements, in which I said that Peg, a Philadelphia Catholic who lived with Pol out of wedlock for a number of years and who enjoyed the sex (she had said so in her deposition, so I was trying to preempt what I knew Larry would somehow high-lite) wasn't your typical southern belle or Union Co wife and mother, but that I knew that they, the jury, would give her, because though it was a will caveat case, Peg was really the one being tried, a fair trial.

Larry Ford, from up around Winston Salem was the judge. I didn't find out until later that he and Harrington had been in law school at Wake Forest together, were good friends, and that he, before going on the bench, had associated Larry in a will case up his way. Judge Ford kept mispronouncing or just calling me the wrong name, Cadwell...Cladwell...Codfish (well, no, not really that far off). I stood to ask him something during the trial, and he said "Yes, Mr. Cawdill", or some such, and I replied, "Well Judge Chevrolet". There was a slight pause and then he laughed and the jury laughed and I got along fine with Judge Ford after that, not just in that trial but in another matter that he heard later on.

I tried the heck out of that case. The caveators' lawyers argued to the jury first, using several blowups of the will and some other documents, and maybe even some photos. We took a recess before I argued. When Annika and I came back into the courtroom, all of the blowups had been taken down. I complained to the judge and he made them put them all back up. If I do say so myself, I made a good jury argument. I said that for them to reject the will, they would have to determine that the policeman, or fireman, whichever the witness was, lied under oath, something that he could lose his job for, as could the nurse. I also remember saying "and who was it that visited Pol in the hospital every day and brought him home and tended to him till he recovered; was it (and I pointed to and called the nephew's name)? No, it was Peg (so and so)" and I turned and pointed to her. "And who was it that went out and bought the groceries and cooked the meals and cleaned the house?", "was it (and again I pointed to and called the nephew's name and maybe even the niece who was named in the will [I don't remember how old she was or even if she was at the trial]? No, it was this lady" and I turned again and pointed to Peg. "And who was it that gave Pol a bath and dressed him when he couldn't do it for himself, and again, the "No" and "It was Peg" routine. Apparently Annika had helped David Lee (sorry, but here on Friday, May 17, I can't remember whether I've mentioned David Lee, who left Koy Dawkins to join our firm, became a good trial lawyer under Frank's tutelage, later becoming a Superior Court Judge and who, sadly, passed away with a rare form of liver, I think it was, cancer over a year ago) with some cases and heard him argue to the jury. When I sat down, she leaned over and whispered, and I don't remember her exact words, but something like "David Lee has never made a jury speech like that".

Janet, having met Peg, et ux (I know it's Latin for "and wife", hopefully also for "and husband") watched a little of the trial and intended to hear but arrived too late for my jury speech. I had spent most of the week, before trial, at lunch, after trial with Peg and her husband and had gotten to know him reasonably well. He liked and we talked sports, and as I'm apt to do if I talk enough sports with someone, anyone, I had told him about trying out with the Cowboys as a punter. After the judge charged and sent the jury out and we had some time to talk, Mr. Husband said, about my jury speech, "You kicked that one out of the endzone!"

Good speech or not, the jury decided against us. Peg et ux took it ok and thanked me for my efforts and invited Janet and me to visit them on the Jersey shore. In a will case, the judge decides who gets paid out of the estate assets. It seems like Judge Ford was back in town holding another term of court and held a hearing on attorneys' fees in the will case. I was sick so Annika attended. She must have made a good argument herself, because we got paid reasonably well from the estate. Clerk of Court Nola McCollum appointed her husband Joe as administrator cta or dbn, or one of those Latin abbreviations, to administer the estate and in due time, he wrote us a check from the estate. I don't remember how much but it was reasonable. Poor Peg didn't get a nickel. BTW, I think Larry's son, Jay, had just started practicing law with him and attended the whole trial, as did his brother, Larry's youngest, Will. At the end of the trial, they both told me that I had done a good job. It's nice to be appreciated!

GENE STEELE'S WILL: (Rainy Saturday morning, May 23 @ 7:00 AM, just so you'll know!) While I'm on wills, I'll tell you about Gene Steele's. Gene and his wife, whose name I can't

recall, lived frugally up Charlotte Highway and were members of Central Methodist Church in Monroe, as were Frank Griffin and his wife, Betsy. Also members were Frank and Anna Howey. The Steeles didn't have children. I don't know what Gene did for a living. He was from Lancaster Co, SC and had inherited several tracts of land there, one on Hwy 200, north of the town of Lancaster and the other on Hwy 521, west of town. Mrs. Steele died first. Frank had drawn their wills, each leaving everything to the last to die and after his or her death, a certain amount of money to two of Gene's sisters, \$50,000 @, if I recall correctly, and all of the rest to Central Methodist Church.

Gene ended up in an assisted living facility, though his mind was good to his end. Frank Howey died. The Howeys and Steeles had been good friends for many years, traveling and vacationing together occasionally. Widow Anna began taking a special interest in Gene, gaining specialness after he moved into assisted living. Gene got someone to bring him to our office where he asked Frank if he had to marry Anna Howey. I think Frank told him only if he'd gotten her pregnant, and I'm sure they both had a good laugh. But Gene was serious because Anna was pressuring him to marry her. Anna was a big woman, a Ponder from Buncombe Co, and Gene was a little guy. I could see how she could exert psychological as well as physical pressure on little Mr. Steele. Frank, of course, told him that of course he didn't have to marry her.

Gene went into the hospital for a week or so and Anna, rather than taking him back to assisted living, took him home with her, where he died. As Executrix, she probated his will, not the one that Frank had prepared, but a new one which left the same money, actually, I think that it was less, to his sisters and all of the rest, remainder and residue not to Central Methodist Church, but to Anna Howey. I think the Church did get \$10,000. Gene's sisters came to see Frank, who by then was easing into retirement, so the matter was handed off to me. I discovered that Richard Hutaff, a local lawyer and CPA, who had practiced with our firm for several years (my idea to hire him from Potter & Company, CPA's; before long, Frank couldn't stand Richard and didn't trust his legal advice after he gave Frank's brother, Ebb what Frank considered to be legally borderline estate planning advice) and who represented the Howeys, particularly the new patriarch, Frank, Jr, not only prepared Gene's new will but took it out to Anna's to get it signed, where it was witnessed, if I recall, by an insurance guy and it seems like a farm machinery salesman who Jr. had lured out to his mother's on the pretext of talking business with her.

Again, if I recall correctly, I contacted Central Methodist Church and told them about Gene's earlier and his last will and that, though I'm sure I didn't say this, the first had become the last. John Burns, a lawyer maybe 6-8, or more years younger than I, originally from Wadesboro, but who had practiced in Monroe for 12-15 years, was a member of the Church and they pulled him in. Representing the sisters, I filed a caveat to Gene's will. Jr, who was calling the shots hired a lawyer from a small firm in Charlotte, whose name I can't recall (I seem to be using that or similar phrases more and more frequently), the lawyer's that is. I remember that he was in Ken Essex's firm. Ken, a senior my freshman year at Davidson, was head cheerleader. It seems like I learned that he died recently. (An aside, for now, as I may come back to the fact that another lawyer in that firm represented a former pro wrestler who claimed he had a lease to sell firewood on a corner of Mr. Leon Ray's property which Mr. Rea, whose daughter, Mary was married to my

cousin, Frankie Kiser, both of their 2nd marriages, had contracted to sell for big bucks, Gorgeous George's, not the former world pro fake wrestling star, but I'm calling this faker that name for excitation purposes and because I can't remember [there I go again] his real name) claim was holding up the sale.)

The Howey's lawyer, who I'll call Barry Blackacre (a name, Blackacre, not Barry, often used in real property hornbooks, general treatises on a legal subject, as opposed to casebooks, which present real opinions of appellate courts on said subject and which we were taught from in law school) was assisted by a sharp young associate in the firm, whose name I also don't remember and shall therefore remain nameless. We had engaged in some discovery, including depositions of the witnesses to the will and the notary to their signatures, as it was a self-proving will, and maybe even Hutaff's and I agreed with Barry that I wouldn't push to get the case in the court calendar before a certain date, 6 or more months away, maybe because of some travel that Barry or Jr or somebody material to the case had scheduled. But, after the depositions of the witnesses, who if I recall, only remembered signing their names on a blank sheet after seeing old man Gene Steele appear to scribble his name on another piece of paper, their not being told or knowing that it was a will, I thought we had a good argument that the will, oops, at this point, remember, "paper writing" was not validly witnessed and therefore wasn't a valid will. I filed a motion for summary judgment.

There was a term of court coming up and I wanted to get the motion filed at least 10 days before it started, the minimum time allowed for notice of a summary judgment motion. I hadn't told Barry that I was filing it. Time was running short. I had prepared the motion for my signature as attorney for the sisters and John Burns as attorney for the church. I needed to file it before 5:00, on, say a Thursday, in order for it to be heard in the term of court a couple of weeks from then. I called Burn's office. They didn't know where he was. Motion in hand, I went down to the Register of Deeds and the Clerk's office looking for him. I finally found him hanging out in the lawyers' lounge outside the District Courtroom. I'm sure that my aggravation was apparent. He knew that I was filing a motion for summary judgment and that it needed to be filed forthwith. I chewed on him pretty good. Finally he said to just take his name off the motion and I could represent the church, which I hurried back to the office and did and filed it before 5:00.

I don't remember whether I called Barry or he learned of my motion when he got it in the mail, but he was livid. He said I broke our agreement not to put it on the court calendar till that certain date, but I responded that I agreed not to calendar it for trial, that this wasn't for trial, it was simply for summary judgment. I think that I explained in the Stuart Child's case what a motion for a directed verdict was, that at trial, the plaintiff hasn't put on sufficient evidence from which the jury could reasonably decide in his favor. Summary judgment is similar, but pretrial, the moving party saying that from discovery, facts have been elicited which, as a matter of law, prove that the plaintiff, or in this case, the propounder could not prevail. Judge Sanford Steelman (haven't I mentioned Sanford before?) heard our motion and denied it.

Not long thereafter, we settled the case, with the sisters getting the amount they were to have received under the will that Frank prepared, the Church getting the tract of land, over 100 acres



if I recall correctly, on Hwy 200 and Anna the rest. The Church had appointed a committee, or maybe it was some elected body that I dealt with which approved the settlement. I agreed that our fee would be 10% of what the land sold for. It sold for roughly \$1M within 6 months. John Hendley was on the committee or board and tried to beat me down on my fee but I hung tough and got every cent. I'm reminded of a brilliant lawyer named George Daly from Charlotte who took on unpopular causes, doing a lot of work for the ACLU. A Bible thumping preacher who led a church on US 601 South wanted to build a cemetery beside the church which would be hard up against several homes, the owners of which strongly opposed it. The planning board rejected the church's request and it appealed to the board of adjustment. Daly represented the church at the hearing and Frank, the County attorney, represented the Board. Frank asked George if the preacher had promised him salvation for his fee, and George said that he, the preacher, had, but that he, the lawyer, preferred \$150 per hour.

MICHELIN TIRE: Michelin Tire bought a tire making facility in Stanly County from Goodyear or Goodrich or some other big tire company and it terminated a guy who, as an independent contractor, did the maintenance work for the plant. Maintenance guy ("MG") hired Buck Kitchin, who sued Michelin for breaching his alleged contract with Goodtire, or whoever. Michelin hired Frank and he and Ken undertook its defense. I don't remember whether Frank got sick or had surgery or what, but I got pulled into the case. Ken was still wet behind his ears. The three of us drove down to Greenville, SC to Michelin's modern office building on what is now Business I-85 to meet with their house counsel, a very sharp black female. If I remember correctly (there I go again), discovery to that point had consisted of interrogatories and production of documents. MG had beat around the bush in his answers to interrogatories about his claims.

I took MG's deposition in a room on the second floor of the Anson Co courthouse in Wadesboro. Frank and maybe Ken were there as, of course, was MG's lawyer, Buck. I asked him some questions about the damages that he claimed he suffered from the alleged breach of contract, and he kept beating around the same bush that he had in answering our interrogatories. I told him that his case was coming up for trial in just a couple of weeks and that he would have to tell the jury about his damages, so why couldn't he tell us then. He answered that two weeks was plenty of time for him to discuss his answers with his lawyer. MG v Michelin was the first case on the Superior Court calendar two weeks later. If I'm not mistaken, the attractive, black lady in house counsel was in court. Before the trial started, at the judge's urging and twisting of arms, we settled the case for a whole lot less than MG and Buck had been claiming two weeks earlier. My father-in-law, USMC Colonel Mac Tweed always bought Michelins. I've always bought the best deal, price-wise!

THE WALKERS, AGAIN: I loved the movie, "A River Runs Through It". This case, actually the title of this story could have been "The Walkers Run Through It", it being my career. A car wreck happened early one cold winter morning when a truck merging onto one of Charlotte's thoroughfares, collided with a car which was already thoroughfaring, severely injuring the driver of the car. The driver, or someone on his behalf, found John and Frank, who realized that they needed a witness.

...Writer/editor's Note: This is semi-related to John, so I don't feel that it's too inappropriate to insert it here, rather than scrolling back up to SMITH v CHILDS. I just remembered the best part of my jury speech, at the very end. I said something like this: "You've heard a lot of legal terms discussed, but don't let all that confuse the issue. You heard what happened. The Smiths lost their land because of Mr. Child's negligence. You go back in that jury room and do what you think is fair, and whatever you decide, the Smiths will be satisfied."...

So, those enterprising Walker brothers made a large cardboard sign asking if anyone witnessed a wreck on such-and-such at date at such-and-such o'clock and stood out in the cold at the wreck location at such-and-such o'clock. I don't know how many days one of them stood there with the sign, but someone who had seen the accident stopped and said it was clearly the truck's fault. They thus had a case and filed suit. I don't remember why, but they were fired by their client or he may have died and his widow fired them and hired an ambulance chaser named Bob Carney, who settled the case for arguably less than it was worth. Guess who defended it? Jim Hewson! I talked with him about the case and, again, if I remember correctly, he thought Carney left some money on the table.

The Walkers asked Carney for their share of the fee and he asked for their time records. They, like every, or at least most every lawyer handling a case on a contingency fee didn't keep a record of the time they spent on the case. Carney refused to pay them anything, and my phone rang. It was either John or Frank, wanting me to represent them against Carney. You know, I'm just now wondering why they didn't represent themselves? Who knows? Maybe they actually knew that they were, if ball players, playing in the single A minors and that I was a major leaguer. After all, I whupped John in the Yellow Cab case and made them a very nice fee for doing nothing in the Childs' case. Compared to them, maybe I did seem like a double or triple A player!

They drafted and filed the complaint against Carney, who hired a guy whose name I don't remember. He was a good lawyer, about my age who, it seems like, had practiced up north, maybe in NY or Chicago and then joined a good-sized Charlotte firm as a litigator, but (here I go again) it seems like he had gone out on his own. I liked him. I think that I took Carney's deposition. We agreed to try the case in front of a judge, both I guess feeling that a jury would not look kindly on either the Walkers or Carney, lawyers fighting over a fee. We tried the case to Superior Court Shirley Fulton, a black woman who may have started practicing with Julius Chambers's firm and I think had been an assistant DA.

The case law said that fees in such cases should be determined by quantum meruit, according to Wikipedia, "a Latin phrase meaning 'what one has earned'. In the context of contract law, it means something along the lines of 'reasonable value for services.'" Our argument was that the Walkers were entitled to a substantial part of the fee because of their creativity and doggedness in finding the witness to the accident, without which there would have been no fee. Carney was an arrogant prick. On cross, I asked him how he was able to settle the case so quickly for what he asserted was a good settlement. His answer: "Because I'm a damn good lawyer!"

When the trial was over, Judge Fulton said that she wanted to think about it for a day or two and would let us know her verdict. A week or so went by, and no word. The Walkers called me and thought that I should call the Judge, which I reluctantly did, leaving her either a voice-mail or speaking with her clerk. I distinctly remember Ken and I walking down the hall toward the garage, going to lunch, and someone says that Judge Fulton's on the phone for me. She said that she was thinking of awarding the Walkers \$30,000 and WANTED TO KNOW WHAT I THOUGHT! My goodness gracious! I was stunned but had the presence of mind to not shout for joy, but said, "Well Judge, I was thinking more like \$40,000". She gave the Walkers \$35-40,000, making her one of my favorite judges. I think that I heard that she had cancer and stepped down from the bench some years ago. Judge, I hope this finds you well!

AN AUSTRALIAN v THE CYRIL BATH COMPANY: My telling my son Tim about this case 3-4 weeks ago is what prompted him to say that I should write about some of my exploits and what inspired me to do so. I'll start by saying that Jim Davis from Kannapolis is/was (I don't know whether he's living or has gone to a low, as he wouldn't be behind an elevated bench, in the sky) the sorriest judge I ever appeared before and also my least favorite. He is (I'll assume that he's still sucking on a cigarette, though I can't criticize him too much for that since I smoked 2 packs of Winstons a day, or at least on workdays, for 25 years [can't believe I'm still alive]) the most sanctimonious and hypocritical judge that I know. He used to open court with prayer until the NC Supreme Court put a stop to that, so he substituted something like "May all that we do in this court be fair to all parties involved", and then it seems like he asked for a moment or two of silence. If you were in his chambers, he enjoyed hearing and telling ribald stories as much as anyone. After a term of court was over, he would clear the courtroom except for those still left in the jury pool and he would "run for reelection" with them, pure politics. I know because I stepped in the courtroom while he was on the stump and he shooed me out.

The Cyril Bath Co had a plant in the industrial park near the Monroe Airport where it make machines which stretched metal such as aluminum to be used on the exterior of commercial airliners. Bob McFarland was president. Like most of my clients, I expect that Frank originally represented them (Frank represented Union Co, which issued industrial revenue bonds to be sold and the revenue used to lure industry to the county. A NY securities law firm did all the legal work, but Frank always had his finger in it, for which we were well paid, and which introduced him to the muckity-mucks in said industries being lured, one such being Cyril Bath ["CB"])

CB had sold some machinery in Australia or at least an Australian ("the Aussie") broker was involved in the sale. A dispute arose concerning the commission that he claimed that he was owed, so Aussie hired Koy Dawkins to sue CB in Union Co. We took the plaintiff's and some others' depositions over the telephone, they in Australia, we in attorney Bob Huffman's office since he had a speaker phone. It was 1:30 or 2:00 AM in Monroe, 9:00 AM down under when the witnesses were sworn in by someone who could have been an Aborigine, Crocodile Dundee or Barry Gibbs as far as I knew. Jim Davis was the judge. I don't know whether it was before, during or after the trial that I learned that Jim Davis had been in law school and was buddies with Koy. Hard to beat home cooking!

Koy's first witness was the Aussie, via deposition, who's direct examination by Koy took us up to the morning recess. Davis may have asked us to come back to his chambers, but there or from the bench after the jury had gone out to take a leak (or should it be "to take leaks"?) he tells me that he didn't like the way my client, CB, had treated Koy's client, the Aussie. GEEZ! I was flabbergasted! I responded that all that he had heard so far was the Aussie's direct examination. He hadn't even heard my cross! He said that be that as it may, he still didn't like it. Throughout the trial, Judge Davis, as all judges do, tried to get us to settle the case, leaning hardest on me.

I think it was during the lunch recess on Wednesday that I had a stroke of genius, if I do say, and obviously I am saying so myself. I got back to court before the recess was over and went into the judge's chamber and told Davis that I had told my clients what he thought of them and that they were distressed over it. I said that CB would like to settle the case, but they were afraid if they did, that he would still have this bad impression of them, that they were a good corporate citizen and certainly didn't want to leave him with the negative impression that he had of them. It was like throwing a switch! Just like that, he said that he was sorry if he had given the impression that he was biased against CB in any way. Thereafter, he started twisting Koy's arm and we finally settled for less than CB was willing to pay! I still say it was genius, knowing when and how much smoke to blow up a judge's arse is a trial technique not taught in law school. I guess it comes from having the smoke blow back in one's face more than a couple of times!

Well, I can't think of any more relatively interesting cases that I was involved in, though I will mention a couple of times I ventured into domestic relations court early in my career. In one, I represented the husband/father in a child custody case and showed the wife/mother to be as sorry as they come, but following the custom of the time, the judge awarded custody to her. I vowed to never again try a custody case. The other was when I was contacted by the brother of Walt Laney's wife, whose first name I can't remember, though her maiden name was Deal and whose Deal brother, who contacted me, was a lawyer in Boone. He talked me into representing her in her split up from Walt, a real SOB, whose main reason for asking for custody of their kids was to avoid paying child support. Larry Harrington represented Walt, a junior. Senior owned Laney oil company. I remember Senior and his wife, whose name I can't believe I can't come up with, being in court. The judge gave my client custody and stuck Junior with pretty steep child support. The reason that I can't believe that I don't remember Mrs. Laney's name...it just came to me, Corrine, is that 15-18 years later we bought a house on Forest Hills Dr, right across the street from Corrine, who we became good friends with. Senior had died. She never mentioned Junior or the divorce case to me. Thanks, Corrine! May you RIP! When I was president of the Chamber of Commerce, Laney Oil Company resigned its membership and Junior told Nat Greene, the executive director, that he would join back after I left office. I guess I cost the Chamber a few shekels!

OK, I've told you about most of the cases I was in...oh, one more. I was defending a wreck case in Wadesboro and Frank suggested that David Lee go with me. I had no idea why. On the first or second day of the trial, the judge took an early lunch recess and said that court wouldn't reconvene until 2:30. He didn't say why. David said that he needed to attend the annual meeting

of the Monroe-Union Co Chamber and gave some plausible reason why. I realized why when I saw Tommy duck into the restroom as we came in the front door. At the end of the meeting, it was announced that Lane Drew and I had been selected as the Woman and Man of the Year. With respect to the Man of the Year, the bar was set very low! When I went up front to thank the members for the honor, I said that David and I had to hurry back to Anson Co to continue a trial we were in. The Judge, of course, was in on the surprise.

And now, finally, no more trials. I made a lot more money representing sellers of real estate than I did in the courtroom. My first cousin, Joe Ross (I may have mentioned his mother Ann, one of my dad's sisters, earlier [by now you know how I hate to scroll back up]) was the only child of Uncle Dick and Aunt Ann. Uncle Dick farmed a hundred or so acres which I guess he had inherited, on a tractor to the pedals of which he had bolted a block of 2 or 4x4 so he could reach them. Joe told me recently that he bolted them onto the pedals of his truck and, I guess to those on the car his sister Edna later bought. They lived in an old 2-story farmhouse and when we visited or when we attended the Caldwell annual family reunion held there a couple of times, I thought the Rosses were my poorest relatives. The access to the farm was up a dirt driveway off Community House Rd, in the Pineville community. I doubt that they had a deeded right of way for the drive.

Joe went to NC State and became an engineer, mechanical, I think and worked for a firm in Mauldin, SC, near Greenville for quite a while. His wife Erskine Ardrey, a couple of years younger, grew up on a nearby farm. After a reunion at Providence Presbyterian Church, the 2nd oldest church in Mecklenburg Co, the church my dad and Aunt Ann and their 10 siblings attended growing up, and where Aunt Ann and Uncle Dick attended with Joe when he was growing up, and where Aunt Ann, Uncle Dick, Grandpa and Grandma Caldwell, Uncle Irb, Aunt Vernon and Uncle Dwight Alexander, and other Caldwells are buried in its historic cemetery (I visited there and photographed some tombstones last fall when I was down that way, also visiting Sharon Memorial Park where Dad and Mom, Uncle Frank and Aunt Margaret, Uncle Jack and Aunt Virginia, and Uncle Don, and just a few months ago, Aunt Jo was buried.), Joe showed me some maps provided by the John Crosland Co showing a proposed road across the rear of the Ross Farm. Aunt Ann and Uncle Dick had passed away and Crosland wanted Joe to donate a 100' right of way for a road to be built along the entire border of the Ross farm. Joe thought Crosland should pay him for the right-of-way. I don't remember whether they did or not, but Joe gave the 100' RW to the city or state and Crosland acquired the rest of the RW's and donated them and Ardrey-Kell Rd was built from Providence Rd to, is it US or NC 521, from Charlotte to Lancaster, thus substantially increasing the value of the Ross farm and the Ardrey farm, and also, of course, the 4 quadrants of the intersection of Ardrey-Kell and Rea Rd, all owned by Crosland.

Joe decided to sell his farm and told me what he wanted for it, but to my dismay, said that he had told a broker who was originally from Alabama (Joe & Erskine by then were living in Birmingham), who had been pestering Joe to let him sell the property for years that he would pay him a 6% commission to sell it. I asked Joe if he minded if I cut in on the pesky ("Pesky") former Alabaman's commission and he said that would be fine with him, that he was paying 6%

of X, the price that he wanted and he didn't care who got the 6%. My partner, Jake Helder and I had lunch with Pesky in Matthews and I told him that Cousin Joe had said I could co-broker with him. He was two or three degrees beyond livid, maybe volcanic? He said that he had known and been talking to Joe for a year or more about his handling the sale. I told him that I'd known Joe all my life and had advised him to cooperate in getting Ardrey-Kell Rd built. I don't remember how the negotiations went, grudgingly on his part, but we ended up with 40% of the 6% commission. I'm sure we didn't pay for his lunch, and I doubt that he did ours!

Pesky said he had an inside track with Pulte Homes and went to them first. I don't remember exactly how things proceeded, but a Charlotte-Mecklenburg Schools' rule came into play, which required, and I don't know all its particulars, that before a tract of land of a certain size be sold, the school system had a right of first refusal to purchase said land for a period of time. The rule was invoked and I, not Pesky, was the one who negotiated with a sharp young lawyer with one of Charlotte's major law firms who represented the schools, resulting in Ardrey-Kell High School being built on half of the Ross farm. I wonder how many Audrey-Kell grads walked to school from their homes in the Pulte subdivision developed on the other half of Joe's property.

Thank-you Cousin Joe for allowing me to earn a very nice fee!

I called my former law partner, Jake Helder, 366 days older than me (oops, that should be "I", shouldn't it, you English majors?), who lives in Hobe Sound, Fla, late yesterday afternoon to see if he remembered our lunch with Pesky. He didn't, but he did remember that he went to the closing with Joe and Erskine because I was sick. He said that they rode with him in his big pickup which he had trouble negotiating around and parking in the multi-story parking deck to go to the big Charlotte law firm that handled the closing. They were all so focused on Joe and Erskine signing a few pieces of paper in exchange for a few, actually, many shekels that they forgot where they had parked. Jake said it took them 30 minutes to find his truck!

Joe and Erskine bought a few acres joining the Community House, for which the road is named, and moved the old Ross farmhouse there and magnificently restored it. We've held at least one Caldwell reunion there. J & E now live at Litchfield Beach, SC, 30 minutes from daughter Layne and her husband Mike. One of their, that is, Layne and Mike's, sons recently moved from Columbia, where he worked for a TV station, to Texas, and their other is a student at Wofford. Joseph, J & E's oldest, is director of parks and recreation in Clover or York, SC, and their youngest, Matthew, is the financial guru at one of the hospital systems in Birmingham. I met him, his wife, their junior high daughter, and their son, who will start Auburn this fall, when they were visiting J & E a few months ago and I was down at our one bedroom, actually just a hotel room, condo at the Litchfield Inn.

When Joe and Erskine and I were all in Charlotte last fall, I spent the night with them in the old, now new Ross farmhouse. Two last things about it: 1) Joe was contacted by the architect/contractor who helped them move and renovate the farmhouse. He botched some things toward the end. I got involved when they terminated him, with his owing them approximately \$15K. I had forgotten that I had prepared a second mortgage on his house to secure his repayment of same. Several months ago he was refinancing his house and the

mortgage, actually, deed of trust, which documents I discussed much earlier (today is May 25) had never been canceled in the Register of Deeds. Joe had him contact me and I told him how to go about getting it canceled. 2) Several months ago the hot water heater in the attic of the farmhouse developed a leak and water dripped all the way to the ground under the house. Joe is unflappable, except when it comes to politics (he, like Uncle Dick, and Erskine, like me, are staunch Democrats), and unflappably has gotten the water damage repaired. I hope we Caldwells can reunite (Is that a word? If not, it should be!) there again. BTW, all my relatives aren't Democrats, or if so, not yellow dogs like Joe and I. (Though not germane to this story, and not that any readers hereof may care, I'm probably the most liberal politically of the Caldwells. I doubt that any of my relatives voted for Bernie Sanders for president as I did in 2016 & 20. Maybe less germane, I'm probably also the most liberal religiously and philosophically, my being a very contented agnostic and a secular humanist. If interested in more of my views on similar subjects, see my story, Thoughts On Religion on my website [have I mentioned it previously? If not, it's simple: [tomcaldwell.org](http://tomcaldwell.org)].

...Writer and Editors note: I ran all this by Joe and Erskine and got their approval before publishing...

When Grandpa and Grandma Caldwell's land was divided among their 12 children around 1960, a year or so after she died in 1958 (Grandpa, many years older than she, died in 1942), Dad got approximately 50 acres on Matthews-Weddington Rd (for more about that, see my story. DOWN IN THE COUNTRY, WITH A FEW DETOURS on my website. Uncle Jack got 60 acres or so at the end of Walker Rd and Uncle Don around 75, beside Jack's, Don's landlocked except through his brother, Jack's. The county decided to build what was later named Col Francis Beatty Park, simply because his heirs owned a couple of hundred acres that were incorporated into it. Col Beatty lived over toward Gastonia. I don't know how he happened to own this landlocked farm. The park should more appropriately have been named Simpson park, for JP, who owned and lived on approximately 100 acres that fronted on Matthews-Weddington Rd and from whom the county acquired 50 acres behind his house, or Matthews park, for Quince, some of whose property was taken for the entrance road, or Caldwell park, because of Uncles Jack's and Don's property and because Grandpa Caldwell had owned more land in the vicinity than any other landowner (when he died in April, 1942, Grandpa had acquired approximately 1,000 acres in Mecklenburg and Union Counties.

I represented my two uncles in selling their land to the county, negotiating at least twice, maybe more than what the county originally offered. I then advised them that since the land was taken by condemnation, they had a year to invest the proceeds in other land and thus avoid paying capital gains tax on their profit, which would have been substantial since their basis, for tax purposes, would have gone back to its value in 1958. I helped Uncle Jack buy a tract of maybe 50 to 75 acres in northern Union Co so his son Johnny, who had recently gone into landscaping could plant trees thereon to be used therein. Don bought a car wash on Albemarle Rd. I think Jack and Don got approximately \$1M from the county. I talked with Dad about what to charge them. He knew how much I got them above the county's initial offer. I told them that a real estate broker would have charged 10% for selling their raw land and he thought that it was reasonable that I charged them that much. So, thank-you, Uncles Jack and Don, posthumously, though I'm

sure I thanked them when they were living, for allowing me to earn a \$100K fee. (An aside: when son Tim was playing basketball at Davidson and we still had our Ford conversion van, I took Uncle Don, his wife Jo, his twin sister Dot and her husband Bill Black to see a Saturday afternoon game at Davidson. Uncle Jack wanted to go so badly, but he had been sick and Aunt Virginia made him stay home. I had met the game goers at Jack and Virginia's and I can still see the grimace on Uncle Jack's face as we drove off. We ate at a fish camp in Huntersville after the game.)

I also represented salt-of-the-earth James Pierson ("JP") Simpson and his sweet wife, Eulene in their sale to the county. I don't remember how much I got them but it was over \$1M. Their sons, Jimmy and Bobby, helped their dad and mom reinvest in a couple of tracts of land in Union County, and a tract on the Rocky River in either Stanly or Anson Counties. Bobby was and I guess still is (Ken Helms represented him when a brake spring [he was a mechanic at maybe Freightliner] sprung out and hit him in the eye, maybe even putting his eye out) a coon hunter and what he wanted was some good coon hunting land, while Jim was more focused on appreciation potential. I think I charged JP \$100K as well, supplemented by some of the best cantaloupes I've ever eaten that he grew in his loamy, a little on the sandy side soil in his garden down by the road, probably 100 yds from where their frame house set under some ancient oaks up on a hill. Before they reinvested their money in land, I lined them up with Jan Glover with Potter and Co, CPA's in Monroe. Either she or their neighbor Dick Matthews, Quince's son, set them up an investment account. JP said that once a month he'd walk down to his mailbox and get the envelope(s) from Edward Jones, or whoever, and put them, probably unopened, in a box in the kitchen. He called them "dust catchers!" I don't think that I've ever known a person who was more unassuming, content to be who he was, happy to have a wife, two sons, a roof over their heads and a garden to hoe than James Pierson Simpson. My eyes are getting a little misty just thinking about JP and Eulene. The world would be a much better place with more like them, maybe not as rich, but certainly a much happier place.

...Writer/Editor's Note: I called Bobby Simpson late yesterday (I'm typing this at 8:30 AM on Friday, May 26) afternoon and read him what I'd just written about his folks. He said that his dad didn't care about money as long as he had enough to get by. JP and his brother, Bill bought their land during the Depression, and lived together in a shack that was on the place before they got married. JP was cultivating cotton with a mule and a fellow drove up to the shack and told Bill that he was going to buy their land for the taxes (apparently the Simpson brothers were behind on paying the taxes and NC law permits(ed) someone to "buy the taxes", i.e. pay the taxes owed the county and then be able to foreclose on the land to recoup their money. JP unhitched his mule and walked up to the shack to see who their visitor was. Bill told the guy that he'd better get in his car and take off before JP learned what he was there for. JP got to Bill, who told him the story before Mr. Tax Forecloser got to his car. Bill tackled JP just as he pulled the claw hammer he always carried in the loop on his overalls and saved the Tax Dude's life, who ran to his car and raised dust flying off Simpson Hill. JP went to Edward Funderburk, president of the Bank of Matthews correctly and told him of his financial plight. Mr. Funderburk arranged for JP, Bill and one other guy to cut wood off the Simpson property to sell to the railroad. Bobby said



they chopped wood with axes, hauled it to Matthews (4-5 miles) on a mule(s) pulled wagon, and stacked it beside the train station for 50 cents a cord! Can you even imagine that? I can't!...

WT and his brother, Maurice Broadway owned several hundred acres on Rocky River Rd where they grew millions of strawberries for many years. The public could pick their own or buy Broadway picked delicious berries. (I talked with WT's daughter, Julie Broadway Griffin yesterday in Ken Helms office, where she works.) Developers started buzzing around, hoping to start growing houses rather than strawberries on Broadway Farms. I represented them in negotiating and selling to Centex, a national homebuilder. The deal drug on forever because Union Co was running out of sewer capacity and basically had stopped approving subdivisions. A girl from a small to medium size law firm in Charlotte represented Centex and the Broadways gave them extension after extension on the closing date. Then Centex made a brilliant move. It hired Richard Vinroot, a year older and fellow high hurdler with my brother, Bill at McClintock Jr High and East Mecklenburg High School in Charlotte. Richard, at 6'7-8" was also a star basketball player, president of the student body, Morehead Scholar, bench warmer on the Carolina basketball team, Vietnam vet, graduate of UNC law, former mayor of Charlotte and, I think, candidate for governor, and a partner in the prestigious Charlotte firm of Robinson, Bradshaw and Hinson, and a big-time Republican. By then, political power had shifted 180 degrees in Union Co, and all the county commissioners were Republicans. In no time, Centex's proposed subdivision was approved, the sale closed, the Broadways pocketed millions and I (When I say I, I mean my law firm, as all fees went in the pot. Each of us drew a salary and divided any profits at year end according to our %age ownership, if there were any profits. I remember years when there was zilch to divide at year end!) pocketed a very good fee for my several years of work on the deal for the Broadways.

WT, who died several years ago and Maurice, still punching cows and farming a little on some acreage that he bought and built a house on in the northern part of the county, owned the bulk of the land sold to Centex, but their several siblings owned a few acres of the land that their father, Thomas Broadway had left them (they all wanted \$ rather than land and sold most of the land to WT and Maurice. I handled that for all of them), and a couple had built houses on their couple of acres. As part of my compensation, I also agreed to handle their purchase of new homes without charge. If I remember correctly, one of the boys I almost took on to raise! He had federal tax liens against him which were liens on the house he was selling and, again, if I remember correctly, the sales proceeds weren't enough to pay Uncle Sam off. I think that I negotiated a settlement between him and Uncle.

Frank handled the estates of a couple who owned land at, I guess it is the NE quadrant of the intersection of NC Hwy 16 (Providence Rd) and Newtown Rd in the rapidly developing southern part of the county. The money that rolled out Providence Rd from Charlotte didn't stop but kept rolling across the line into Union Co, rapidly making Weddington and Marvin bedroom communities of Charlotte and rapidly moving toward Waxhaw. Here I go again, not remembering the details, but if I recall, Frank had represented the two children in negotiating a contract to sell their 5-6 acres to a shopping center developer. The hangup was getting sewer up Providence Rd from Waxhaw. Union Co didn't have sewer in the area at that time. The owners' real estate

broker, who had negotiated the deal, was Lat Purser and Associates. I had dealt with Lat, Sr. in negotiating Bruce Simpson's (I'd almost forgotten about Bruce. I may end this story with him.) purchase of land on South Blvd in Charlotte on which Bruce built the first of his, then Food Town, anchored three strip shopping centers.

I guess Frank had retired, or semi-retired (he and Betsy sold their house in Lakeview Estates in Monroe and bought into The Cypress, one of, if not the most exclusive retirement facility in Charlotte. Frank drove to the office in Monroe every workday for at least a year, probably several, eventually cutting back to 2 or 3, and then only for several hours on 1 or 2, eventually hiring a driver, before hanging up his spurs completely) by then, and I inherited this deal. It would have cost big bucks to have extended Waxhaw sewer lines to Newtown Rd and though the contract was still alive, it was barely so, almost on life support. I was now dealing with Lat, Jr. Again, I don't remember the details, but somehow I bullied him into taking over the contract and buying the land himself, which he did, paying sister and brother over a million bucks each. I don't remember what I charged them, but it was a pretty substantial amount. They seemed satisfied. The last time I drove past that intersection, which was several years ago, nothing had been built on that corner! Thanks, Lat, Jr.!

Frank had another client, or clients, whose names I can't remember, so I'll call them John and Jane Doe, husband and wife, with no kids. I think he had done their income tax returns back in the early '50's (he said that was his primary source of legal fees his first year or so), before they moved near Kannapolis to work at Cannon Mills. John and Jane bought a tract of land, maybe 25-30 acres on a road leading to K-town and built a small house on it. By the time I met them, they had moved back to Union Co and were being bombarded by real estate brokers wanting to sell their property in Cabarrus Co, which had suddenly become valuable. Their land had frontage on I-85 as well as the secondary road which crossed 85, but an interchange had just been built and Kannapolis was turning the 2-lane road into the Gateway to downtown. The Does, with limited education, came to Frank for guidance in selling the property, and that became a major project for him.

There was a persistent realtor involved named Bob something or other. Frank spent hours drafting and redrafting a proposed contract that he planned to use when it came time. He brought me in to meet the Does. I sat in on a number of his meetings with them. I said they had limited education but they completely trusted Frank and a niece who came along to some of the meetings. Frank had a very methodical mind. He mentioned tax-free exchanges, installment sales, capital gains, all going straight over John and Jane's heads. You could see in their eyes that they had no idea what he was talking about. I'm not sure that the niece did either when she came. I heard his speech at least a half dozen times. I think that in Frank's mind, he was covering his bases, saying all the things that a lawyer should tell his clients under those circumstances, oblivious as to whether they understood a word he was saying. Several times I tried to explain things in simpler terms to them.

I made a trip or two to Kannapolis to meet with the town planners about the property. I don't remember how many potential buyers Realtor Bob had sniffing around the property, but the

sniffing continued for quite some time, maybe even over a year. Interested parties were dragging their feet because work on the interchange was taking time and they didn't want to close and sit on the property very long before they could start interesting tenants in the shopping center they planned to build. Frank was slowing down, coming to Monroe less frequently, and I took over the laboring oar. John Doe and Realtor Bob began calling me rather than Frank. Once, some question arose about where a corner of the property was and I drove John and some other geezer up there to meet Realtor Bob and/or a surveyor. We drove all over the property, up and down hill and dale, or is it vale. I think I was driving a Ford Windstar van and I remember the unnamed geezer warning me that if I ran over where an old tree had lived and died, that my tire could sink into the decayed tree stump and we'd be SOL! A shopping center developer finally bought the property for, it seems like, \$3M and I charged John and Jane \$300K. Frank had retired from the firm. I called and told him about the sale and asked if he would be happy with \$100K, and he was.

That reminds me of a sale I helped Frank with much earlier. I hope you won't mind my inserting it here rather than my having to scroll back and put it in its chronological place; after all, though chronology has its place, so does convenience. Colonel Owen Carpenter lived in Charlotte and his brother, Gus lived in Monroe, and I guess it was through Gus that Frank knew Owen. While I'm guessing, I also guess Col Carpenter was a real colonel, probably having earned his rank as a pilot in WWII, and I'm further guessing that because the Carpenters owned Carpenter airport out near where Carowinds was built. Owen ended up with it as, I assume (I guess I could have said "I guess") his part of his parent's estate. The Colonel had never married and lived in a large, not well maintained, 2-story house on or just off Queens Rd in Charlotte. He occasionally drove to Monroe to see Frank, who usually took him to lunch. He certainly liked Frank and Frank liked, maybe more accurately, humored him, and he should have, because he gave Frank's two daughters \$25K @, if I remember the amount correctly.

A Japanese firm offered Owen a large sum, I would say over \$2M for the Carpenter Airport, a sum he was happy with. I would say that this was in the late 70's when installment sales, which I have explained earlier, were in vogue for both sellers and buyers of real estate. Joe Alala, known to be one of the best tax lawyers in the area, having practiced with the IRS, and who Frank, Bruce Simpson and Ed Gaskins (have I mentioned Ed?) hired when the IRS said that they were real estate dealers rather than casual investors and denied their claim for capital gains treatment on property they were selling, who practiced in Gastonia, represented the Japs.

Frank and I left early for Alala's office in Gastonia to negotiate the deal, early enough to have breakfast with the Colonel at the Townhouse Restaurant at the corner of Queens and Providence Rds in Charlotte. Owen made it very clear that he was happy with the price and wanted the deal to go through. Frank said he understood but that an installment sale, which was in Owens best interest tax-wise, was tricky, because the Nips were going to want to develop the property and would want releases from the purchase money mortgage (I wonder if pilot Carpenter knew pilot Stuart Childs? Regardless, it's fortunate that Childs didn't pilot Carpenter's sale of his airport!), and Frank was adamant that certain terms must be met. Owen continued to be clear that he wanted the deal to go through.

Frank started negotiating the terms of the purchase money mortgage with Joe, hammering away that it has to include this and so. Joe hammered back, stroke for stroke, saying that Frank's demands would tie his clients hands too tight for them to be able to develop the property. Their duel went on most of the morning, getting nowhere, but leading to frustration on both sides. I hadn't said a word. Mid-morning, I suggested to Frank that we talk. I reminded him that Owen wanted a deal, which Frank didn't much want to hear. The issue was how to allow the Japs to have property released from the mortgage so they could sell or develop it without thereby significantly reducing the ratio of the value of the remaining collateral to the remaining debt. I suggested a plan. I'm not sure exactly what my scheme was but I think that basically it was that any request for a release (to obtain a release to sell some of the collateral, the sales price, or at least a significant part of it would normally be paid against the debt) be accompanied by a development plan for the entire property, showing how the released property would fit into and further the development plan, and maybe be accompanied by an appraisal that the remaining collateral/debt ratio would not be lessened, and that if the Colonel wasn't satisfied with the appraisal, that the determination would be made by a defined arbitration mechanism.

I don't remember Frank's reaction to my suggestion. I think he was worn out and that he couldn't think or see past what was in his mind from the beginning. I probably reminded him again how clear Owen was about making a deal. We got back together with Joe, I presented my plan, and within a relatively short period we had a deal. I don't recall for sure, but I think Joe called in a secretary and dictated the terms of the contract and we went to lunch and afterwards, took the finalized contract by to Owen and may have had dinner with him. The deal closed, the release system worked as intended, and the Colonel got every cent that he was owed for his airport! I have no idea what Frank charged him. Owen left Frank a substantial sum in his will.

...Writer/Editor's note: I realize that hereinabove I have used some rather derogatory nicknames for the Japanese, which I wouldn't have but for two things: 1) My nephew, David, my brother, Harry's son, taught English in Korea for several years. When Harry and his wife Kate visited, they learned that the South Koreans both hate and fear the Japs, afraid that if we remove our troops, Japan will invade them. 2) Harry also learned that even today, the Japs contend and teach their kids in school that we were the aggressors in WWII, showing no or little remorse for Pearl Harbor, and refusing, unlike Germany, to acknowledge or accept responsibility for their part in the war and the heinous atrocities they committed. (A friend of mine's father was in the Navy in the Philippines and was captured in the spring of 1942 and held as a Japanese POW until the end of the war. Carl says that his earliest memories of his father Felix was Felix sitting in his bed and crying uncontrollably. Felix typed 544 unbelievable and extremely hard to read pages about his captivity and the horror of the cruelties the Japs committed, toward the POW's and the Filipino civilians. I'm trying to help Carl get his father's pages published.)...

Back to chronological sequence. I'm getting close to the end of my legal journey, and it ends with a bang, not a whimper.

Two words, a name: BILL NOLAN, big Bill, bigger than life Bill, big in most every way, most visibly his 300 lbs, followed by his big appetite, not only for food but for land deals, and his big ideas, and most audibly, his big laugh, which made his big belly shake like a bowl full of jelly! (with apologies to Clement Clarke Moore!)

Bill was my age or close thereto. I think his father was a Baptist preacher. I don't know where he went to college but he went to Wake Forest Law School with my partner, Jake Helder. Bill worked one summer as a cop at Virginia Beach, which hired law students to help with the summer crowds. The story was that Bill got into a quick-draw contest with real guns holding real bullets with another summer cop, and was not only fired, but was kept from taking the Bar exam by the NC State Bar. He got into real estate.

My 2nd or so cousin, Shannon ("Shank") Forbis owned a 100 or so acre farm on Matthews-Weddington and Semfield Church Rds and the frame house located thereon where my Grandma Caldwell and I were born (actually, I was born in Presbyterian Hospital in Charlotte, as were my two brothers) and where I lived from 1946 until we moved to another old frame house on Sharon Amity Rd in Charlotte in 1948 or 9. Shank wanted to sell the farm and move to Mt. Crogan, SC where his wife, LaMarr Garland Forbis and he, and her brother John acquired almost 700 acres in a tax-free exchange, which I helped them with, when they sold the Garland homestead in Matthews. (If I remember to, I'll tell you about another Shank and LaMarr land purchase.) Nolan heard that Shank was looking for a buyer, so I met him at Shank's house (this may have been after he and LaMarr had moved to Jefferson, SC). I got into his, Bill's, that is, not Shank's, right new red Cadillac and we drove around to Pleasant Plains Church Rd and turned down a bumpy, dirt farm road leading into the back of Shank's farm. Nolan was bouncing down said road at about 40, briars and tree branches scraping along his Caddy, him apparently, oblivious or not giving a hoot, most likely, the latter.

Bill didn't buy the Forbis land but he found a gold mine in Marvin, just passed Weddington and SE, I guess it is from NC Hwy 16, Providence Rd, mounting what must have been a Clydesdale and riding it out of the starting gate and into Providence Downs, where all of the streets had horse racing connected names. I think Big Bill owned some grading equipment and started putting the roads in himself, selling lots like hot cakes from his Cadillac parked all day Saturday and Sunday at the intersection of Providence Rd and the Weddington-Marvin Rd, with billboard size ads taped to his car, front, sides and back. I don't know what the square footage house restrictions were on his first lots, but the houses kept getting bigger and bigger, the larger Providence Downs grew.

Jake Helder, the only child of a dairy farmer, owned a couple hundred acres of well cow manure fertilized pasture land on Crane Rd, just off Marvin-Weddington, or is it Weddington-Marvin, I guess it depends on which way you're going, Rd and sold it to Nolan for the highest price per acre for any land sold to that date in that vicinity. Either Jake sold it all as an installment sale, thus financing it on a purchase money mortgage, or he sold a portion and gave Nolan an option on the rest, maybe several options to be exercised on different sections at later times. I don't remember the details, but Jake almost got his, you know what body part it would have been if

he'd been a woman, caught in the wringer when Bill was late on a payment or in exercising an option, and Jake deemed him in default and terminated the deal. Those cow patties leaped from the pasture and into the fan, blowing manure everywhere, including on Jake and potentially on our law firm. Why? 1st, it's always potentially dangerous doing business with a friend, and even worse with a client. 2nd, Jake let Nolan run beyond the times involved without ever notifying him that he needed to look at his calendar. 3rd, Big Bill's mouth could take a huge bite out of anything, including Jake's and potentially our behinds. Jake and Bill made up, though I don't think they kissed, and the deal was reinstated. It probably cost Big Bill more money.

Well, having just said that it's dangerous to do business with a client, our firm got involved with Bill, but we weren't representing him at the time. Come to think of it, I'm not sure we ever represented him. Bill developed Lake Providence before Providence Downs. Jake, David Lee, Ken Helms and I formed a house building company with Ken's dad, Ray, a great builder who had built some of the most expensive houses in Charlotte, but had slowed down. (The last house Ray built was for Janet and me on our 60+ acres on Lake Monroe, a terrific house where I would have turned my toes up if our two sons hadn't moved to Kentucky and married Bluegrass girls.) We had built a couple of houses in Lake Providence and found out that there was a tract of land on its backside that was going to be sold by the trust department of some bank handling an estate, so we contacted them and got an option on the property. Nolan contacted them too and found out we had gotten an option. We weren't property developers, at least not then, and it was our intention all along to peddle the option to Bill.

We sold Big Bill the option for \$20K, I think it was. When it came time to transfer the option to him and get paid, Bill called and asked if he could wait another week or so because he had to go to Atlanta. We told him that it wouldn't take five minutes for us to convey the option to him and for him to give us a check. He finally sheepishly told us that he needed to go to Atlanta to pick up a Jaguar that he'd just bought and that he needed the \$20K to finish paying for it. We told him that he'd better get his fanny down to our office with the money that day if he wanted the option. He was down within the hour, grinning from ear to ear. I think we bought a lot from Bill in the optioned property and built and sold a house on it. If I recall, the lot wouldn't perc for a septic tank and Bill gave us an easement on a joining lot to put a tank on, so the owners of the house thereon have taken you know what from their neighbors for over 30 years!

The most expensive lots in Lake Providence were the ones on the lake, which Bill promised to build promptly. He always worked from his cash flow and he hadn't made enough profit yet to build the pond, no, actually, it's now a pretty good size lake. A psychiatrist had built a nice home on his waterless lakefront lot and got tired of waiting to put a hook in the water, so he sued Bill. The judge put Bill in jail during the week, letting him out on Fridays and weekends to sell property, until he built the lake. One Friday I caught up with Bill walking up the steps of the courthouse in Monroe and asked him how the Mecklenburg Co jail was treating him. He said that it wasn't too bad, that the food was pretty good, but wished they would give him another piece of cornbread for supper! Even jail couldn't keep Big Bill down, but it lit a fire under him. He finished building the lake in short order!

The Ezzell family had lived in Sandy Ridge and Jackson Townships for generations. The first one that I knew was Franklin, Jr ("Buddy") who was married to Margaret Howie, whose father Robert was a leader in Waxhaw, where he ran a printing company where Buddy worked. I never knew Houston, the older brother of Mr. Robert, which I called him, who had passed away. I don't remember if they had siblings but I do know that they had inherited a substantial amount of acreage around Waxhaw and a number of buildings and lots in town. Mr. Robert was another of Frank's clients who got handed down to me. I can see and hear him now, shorter than medium height, balding on top of his round head, an unlit stogie in the corner of his mouth, and most always gregarious, though he could be tough when he needed to be.

Buddy's Uncle Frank owned around 100 acres on, I think it's the Marvin-Waxhaw Rd at or near its intersection with Newtown Rd, virtually in downtown (a euphemism) Marvin. The developers were barking up Frank Ezzell and his wife's tree, hot on the trail. Both of them worked at Springs' Mill in Fort Mill. They had/have two daughters, it seems like both living in VA, one, maybe both, teachers, married with families, and two younger sons. One was/is married, neither he nor his wife Einsteins, both delivering newspapers and living in a house that dad and mom owned. The youngest son was/is mentally handicapped, still then living with his parents. Buddy sent them to me.

If I recall (there I go again, on Sunday morning, May 28, the day before Memorial Day, still trying to remember stuff), the highest price that had been paid for land in close proximity to the Ezzell property was \$20K/acre. Nolan and others were salivating over the Ezzell Ponderosa! I set up an upset bid procedure in which each potential buyer would submit a bid, the high bid would be disclosed to all, and each would have a day and time certain, not long, to submit new bids, and the procedure would continue till there was just the highest bidder left. Well, the system worked well...\$25, \$30, \$35, \$40, until Nolan got tired of the game and jumped clear over the rim, \$60K/acre! SHAZAM! It's yours, Big Bill! Then the craziness began.

I prepared the contract for Bill to buy the Ezzell land. He had a fairly long time, maybe 6 months, to close, which would give him time to get subdivision approval by the Town of Marvin. Being small, Marvin had few employees. It contracted out its land planning and administration to the Centralina Council of Governments ("COG"), and the lady assigned to Marvin disliked Big Bill intensely, definitely in his capacity as a land developer (she had dealt with him numerous times before) and probably in his capacity as a human being as well, in his latter capacity maybe more intensely than in his former. Marvin was exploding land development-wise. It couldn't adequately manage the growth, couldn't install water and sewer lines fast enough. It contracted with Union County to furnish both water and sewer, which was treated at its plant just a few miles away. The plant was at or near, maybe even beyond its capacity.

I got a call early one afternoon from the broker who Bill was paying to represent him in his purchase of the Ezzell property telling me that the rumor was that Marvin, at its town council meeting that night was going to pass a moratorium on issuing residential building permits for at least a year. I didn't even know who was on its town council but found out there was one local guy, most of the rest were Yankee imports, who worked for Duke Power who would know the

Ezzells and might be sympathetic to their plight. Somehow I got his number and called him. It was getting close to 5:00. The meeting was at 7:00. He did know the Ezzells and confirmed that a moratorium was on the agenda and was likely to pass, and, yes, he seemed to be sympathetic to Mr & Mrs Ezzell. I called and told them about the situation and asked them to bring their younger son and to meet me at town hall at a quarter to 7. I asked them if I could mention their son's condition at the meeting and they said "yes".

The moratorium was the main thing on the agenda and was discussed in depth by the council and cussed and discussed by the public. They took a recess. Nolan wasn't there but his broker told me that Bob Davis (there were two civil engineers in Indian Trail named Bob Davis, one good, who we called "Good Bob", and one not so good, who we call "Bad Bob"), Good Bob, had filed a preliminary subdivision plat in the town office that very afternoon. Good old Bob was there and verified that with me. I spoke with the potentially sympathetic council member and told him about the plat being filed. When the meeting resumed, I addressed the council, introducing the Ezzells to the ones who didn't know them. I told about the Ezzells being residents and good citizens of Marvin, their family having been residents for generations. I told how the Ezzells had watched their neighbors sell their land for residential development and that they had decided that it was time to sell, that they weren't getting any younger and that they were trying to make provisions for their son, who I introduced and whose condition I subtly described. I then told them that the Ezzells had contracted to sell their property to a developer, who had filed a preliminary subdivision plat with the town that afternoon and that their proposed moratorium would kill the deal. I suggested that if they passed the moratorium, that they exempt any property for which a preliminary plat had theretofore been filed. Mr Sympathetic councilman made the motion and it passed. Another SHAZAM! We were home free, or so we thought.

WRONG. Good Bob filed a revised preliminary plot, which the COG gal rejected, saying 1) that Bob's check for the filing fee, which he put through the town hall front door mail slot since the door was locked and the town literally was closed the afternoon he went down to file the plat, was for too little, maybe for \$100 while the fee was \$200, and 2) that the plat showed 110 (I don't remember the actual number, but that's close) lots instead of the 108 shown on the original preliminary plat. Our response: 1) Bob called town hall to get the filing fee, but got no answer to his call since it was closed. He looked up their website and wrote the check for the filing fee stated thereon, and 2) 2 more lots out of 110 was an insubstantial change. COG woman's response: 1) the filing fee had been raised, regardless of what the website said, and 2) the change was substantial because she said that it was!

Bill hired a terrific land use lawyer in Chapel Hill to represent him and I represented the Ezzells in the suit we filed against the Town of Marvin, which was represented by a lawyer in the big Charlotte firm of ParkerPoe. We filed a motion for a preliminary injunction and temporary restraining order to prevent the town from employing its moratorium against the Ezzell property and for a permanent injunction forcing the Town to approve the subdivision. Guess who heard it? Judge Larry "Chevrolet" Ford. He granted our injunction and restraining order in pretty clear contravention of the applicable law. Thank-you Judge Whichever Car You Really Are! Mr. ParkerPoe was apoplectic! Mr. Chapel Hill and I were ecstatic!



The Town of Marvin finally agreed to approve Big Bill's new phase of Providence Downs and we closed the deal, the Ezzells receiving over \$6M for their pastureland, house and garden. I charged them \$500,000, again, less than a realtor would have, and think about what I did for them, light years beyond what a realtor would have done, but also think about the lucky breaks we got: my hearing, in the late afternoon of the meeting, about the town council meeting and my finding out about and getting the # of and calling who turned out to be a sympathetic councilman; Good Bob filing the preliminary plat just under the wire; my finding out about the plat during the meeting recess; my having the time to talk to and convince Mr. Sympathetic Councilman to make the motion which excluded the Ezzell property; the council approving it; getting Judge Ford to hear our motions. But for any of those breaks, the Ezzells would have been out of much moola and so would I/we, i.e., my firm. Of course, a year later their property could have been worth more, but in fact what happened was just the opposite.

I don't remember when Nolan closed on the Ezzell property, but I don't think it was long before the bottom fell out and I retired in 2008. David Lee had "Rich Uncle" Marvin Little who married David's mother's sister and lived between Unionville in Union Co and Atlanta, where he made a fortune, a big fortune in the wrecked car parts business. He loaned us (David, Jake, Ken, Henry B., Richard Hutaff and me) money to develop several residential subdivisions with my client, Dean Herrell, as Sandy Ridge Developers, in which I made around \$1M, another \$1/2M when Jake, David, Dean and I partnered with Carroll Edwards, probably the richest guy in Union Co when he died with cancer 10+ years ago, his starting out with one small dump truck hauling sand from Pageland and building Edward Wood Products into a humongous pallet making and general wood products business, to buy, hold until just before the bottom fell out and flip several hundred acres near Pleasant Grove Campground near Mineral Springs in Union Co. We sold it to Chris Matheson, to whom brothers Bill, Harry and I, some time before Mom died in 2006, sold the 40 or so acres on Matthews-Weddington Rd, which we inherited from Dad, the rear part being in Union Co and the front in Mecklenburg, just across the road from the Col Francis Beatty Park.

We were as lucky as lucky can be in the land development business. Fortunately, we had sold out of everything when Wall Street collapsed because of its and its clients' greed in 2008. It wasn't that we were smart! We were actively looking for more land to borrow money on to buy and develop, but LUCKY, LUCKY, LUCKY us hadn't found any, us being all but Dean and Jake, who stayed in the game too long and lost a bundle.

As I said, Uncle Marvin loaned us the money for our land activities and, through David, got to loaning Big Bill big money. I think Marvin charged us the prime rate of interest with no loan fees, but I think Bill payed Marvin prime ++, + loan fees. I'm thinking that Marvin loaned Bill the money to buy the Ezzell land, in where of all places, MARVIN! Everyone was happily making money till Lehman Bros went broke, and the real estate market collapsed. I think that eventually Uncle Marvin foreclosed on Bill, but before doing so, David, who I guess by then was Superior Court Judge Lee, got his buddy, Lou Fisher to check the title on all the Nolan property that Marvin had a mortgage on. Richard Hutaff, who, I may have mentioned, practiced in our firm for

several years, had left and joined Walt Love and was representing Bill and had closed the loans Marvin made him and, I suppose, got Marvin a mortgagee title insurance policy on the land securing each loan. I think that there was a title defect uninsured against that showed up and so Lou was coming behind Richard's title work.

I think that Marvin ended up buying in a good bit of the land when he foreclosed the mortgages he took when he lent Bill money. Marvin has been dead for many years. Sadly, (have I mentioned this?) David died of a rare form of cancer several years ago. I have no idea whether the Little family got all of its money back. As best I remember, Bill Nolan never came back. He died, probably of a heart attack several years ago, but I can't leave Big Bill without several stories:

LOUISE: I only remember meeting Bill's first wife at a nice brick house they were living in on Pleasant Plains Church Rd where I'd gone to get something signed. I don't remember anything about her. She died of cancer. Bill met Louise, a very sweet and attractive widow or divorcee. I asked Bill how he met Louise. I'm going to quote him, not verbatim, of course, but you'll get the idea. Bill: "Where do you find nice women? In church, that's where. I went to singles Sunday School classes. I could tell if there were any good ones just by looking around the room. If there weren't, I'd go to another church. I could hit 3 in one morning!" Bill found Louise in Sunday School.

THE WEDDING: Bill would do anything for Louise and she adored him. We got invited to Louise's daughter's wedding at First Methodist Church on N Tryon in Charlotte. The sanctuary was packed. Bill spared no expense. There was a string quartet. Someone who should know said the flowers must have cost at least \$25K.

THE RECEPTION: The wedding reception was a sit-down dinner in the ballroom of one of the new uptown hotels. There were at least 200 people, probably more for dinner. Janet and I sat at a round table that sat 8 or 10. There were name cards on the table and a fancy placemat with a description of the several courses of the meal. I think the entree was prime rib. Before that was South African lobster tails. I was sitting beside Richard Hutaff and Bill moseyed over. Richard asked him what was the difference in South African and New England lobster tails, and without a second of hesitation, Bill said "about five thousand dollars!" Best quip I've ever heard, well maybe on par with one other. We were having a luncheon bar meeting at the Brown Derby in Monroe and a waitress came out with several plates in her hands and said to Lou Fisher: "Large Greek?" Also without a second's hesitation, Jake Helder says, "No, little Jew!" (My chromebook is shaking because I'm laughing so hard!)

Well, enough about Bill Nolan. May you RIP, BIG BILL! Earlier didn't I say that I would end with a Shannon ("Shank") Forbis story? After he and LaMarr and her brother John had bought the 600+ acre tract at Mt Croghan, SC, Shank was looking for a buyer for his land on Matthews-Weddington Rd and, in anticipation of acquiring more land in SC, he optioned a several hundred acre tract below Jefferson, in the Angelus community from George Gregory, a hard nosed, hard trading geezer who lived in a nice 2-story brick house on Hwy 151, the Main St through Jefferson and owned half of Chesterfield County. I think I drew the option, which expired at the end of the year, which, to exercise, Shank had to give notice by December 1. Shank gave timely notice but Gregory said he wasn't going to go through with the deal because

he didn't think Shank was going to exercise his option, so he sold some other land and to sell to Shank was going to put him in a higher tax bracket. He refused to sell Shank the land.

I think I got Jimmy Spruill in Cheraw to sue George for specific performance, that is, to make him honor the option and sell the property to Shank. I say "think" because I represented Bruce Simpson when someone in Chesterfield County backed up on him and I think that's the case that I got the firm in Darlington that Jay James, who graduated in my class at Davidson and his brother, Albert, who graduated 2 or 3 years ahead of us practiced in with their father. As I think about it further, I feel sure the James firm handled Bruce's case, suing in federal court based on diversity of citizenship, which means Jimmy Spruill must have handled Shank's case. (As a semi-aside, Jim Griffin told me that Gregory had served time as a young man for killing a black guy. He also told me about the time George flew with race car driver Curtis Turner to VA where Turner showed George a tract of land and sold it to him. After closing, George drove up to get a groundhog view of his land, only to discover that the land he'd been shown from the air wasn't the land that he had a deed for, which was some cutover land nearby. When George got home, he called Curtis and asked him to fly down to the airport, wherever it was in Chesterfield County so George could get in on some more land deals. When Turner landed, the sheriff took custody of his plane. Gregory got his money back!)

George had two lawyer sons, one in Cheraw and one in Walterboro, and after some haranguing, George agreed to sell the optioned land to Shank. George didn't come, but his two sons came to my office with a deed signed by their dad and mom. (I think that I've written about this before, but in the words of a crooner of yore, "but I can't remember where, or when", so I'll repeat it; it's one of my best stories!) The two Gregory lawyers, Shank and LaMarr and a guy from the Federal Land Bank (Shank was borrowing some money on the property in order to buy it) and I were in our conference room to close the sale. Shank signed the mortgage to the Land Bank and slid it over to LaMarr to sign, and both Gregory boys jumped up and virtually shouted "No" or "Stop" or some such imperative. We non-shouters were incredulous! What the (you add an appropriate expletive)? The shouters explained that under SC law, a wife could not legally sign a deed or mortgage in her husband's presence, obviously to prevent coercion, but the husband had to leave the room, in the archaic words of that archaic law, he had to be "across the threshold of the door". They asked Shank to step out in the hall while LaMarr signed. That just about halted the transaction in its tracks. I don't remember Shank's words, but he could be a pretty excitable guy under the right (or wrong?) circumstances and to say that he got excited would be an understatement. He finally calmed down enough that I could usher him across the threshold of the door and out into the hall. Shank and LaMarr had four sons but now have three after Tommy died some years ago. Ronnie, who farmed with Shank until he, Shank, that is, died, inherited the Mt Croghan farm and sold it several years ago. As far as I know, Jimmy and Kelley still own the Gregory farm.

I'm just about to the end of the road. Aren't you glad? Do I hear clapping? I'm going to end with my friend and client, Bruce Simpson. Lightnin', as he called himself when he would come in our office to see Frank Griffin, Lawyer Calhoun, loved Amos & Andy and the Beverly Hillbillies. He called American Bank president Ed Gaskins Mr. Drysdale. Bruce was maybe 5-6 years older

than Frank and had known him all his life, both growing up on farms in Unionville. Short in stature but tall in brain power and get up and go, Bruce started the industrial chicken business in Union Co, the first to contract with farmers to build large chicken houses and raise broilers, which were processed in a small plant he built and operated as Simpson Poultry. Shank Forbis and my dad's brother, Irvin, were two of Bruce's growers. He sold out to Holly Farms, which sold to Tyson, which is now one of the largest employers in Union County. If you could dig back into the center of Tyson's huge processing plant in old Camp Sutton, you would find the small plant that Bruce built.

I became Calhoun, Jr when Frank handed Lightnin' off to me. Lightnin' Bruce didn't just strike during storms, he flashed all the time, starting Simco Construction, initially building houses, which then led him to and built three Food Town, later, Lion anchored strip shopping centers, the first on S Blvd in Charlotte, the next in Durham and the last in Gaffney, SC. He also built and operated 2 Bojangles Restaurants. Of course, I was a novice at shopping center development and the leasing arrangements. In order to get a loan from a life insurance company, which financed all 3 of Bruce's centers, he first had to have a signed lease with Food Town, and then, when the lease was submitted to the lender for review and approval, invariably it wanted some, usually minor changes made to the lease. So, we had to amend the lease.

Food Town was started by Ralph Kettner in Salisbury. He made a lot of folks millionaires. His office was a nondescript hole in the wall in the huge warehouse west of downtown. It had a single light bulb protruding from the wall above his office door. One Friday morning, I drove to Salisbury to get a lease amendment signed by Mr. Ketner, who personally signed all Food Town leases, as well as their amendments, in order to close the construction loan on one of Bruce's shopping centers on Monday. I dealt with Larry Raley, FT's real estate guy, who told me to come to his office, just a door or two from Mr. Kettner's. We stood in the hall, staring at that light bulb, which was either on or (duh!) off, I don't remember which, signaling that the big guy was on the phone. When the light went off, or on, Larry dashed in his door and was out in just a few minutes with the Ketner signature on the amendment.

I don't know where Larry lived when he was working for Food Lion, but when he went to work for CVS's predecessor, (what's its name?) he moved to Matthews, where he attended Matthews Baptist Church and knew Dad and Mom. After we'd done the 3 shopping center deals, I was sitting in Bruce's office and he asked if I remembered years before when Larry told us that we should buy Food Town stock (it seems like it was a certain issue or something other than its common stock, and I said yes. Lightin' said "do you know how much it would be worth now if we'd bought a million dollars worth?" I don't remember the number, but it was astronomical, at least 10+ million. I don't remember if I said it, but I was certainly thinking, "I don't have a million dollars", and I STILL DON'T!

Members of the Court, I hope that my little story will PLEASE THE COURT!

THE END

PS (doesn't that stand for "I should have said this earlier, but didn't, so I'm adding it here"?).  
Two more stories that I'd like to add:

TOM PARKS CASE: Tom was a wild man; he flew an ultralight, piloted a large (40 ft +) ocean going capable fishing boat (he once took me, my brothers and our sons out from Southport and we caught more king mackerel than we knew what to do with, charging us only for the fuel), and eventually got his land surveying license under the tutelage of an excellent surveyor and engineer, Donnie Lawrence, a few years old than I, who tragically died from Covid a couple years ago. Tom was a bright guy. His son sang on or off Broadway. His mother and her sister owned Polk Mtn, I suppose the highest point in Union Co, up in its northern realm, near New Salem.

Tom went out on his own after working for Donnie and opened an office in an old building in Marshville, near the Wagon Wheel Restaurant and the railroad tracks. A train came through Charlotte, Matthews, Stallings, Indian Trail, Bakers, Monroe, and Wingate, and apparently a wheel bearing on one of its cars overheated and caught fire, catching the attention of observers for 10-15 miles but not the attention of the engineer or the railroad, came through Marshville, wheel ablazing, setting fire to Tom's office and destroying all of his files. The railroad refused to pay Tom what he thought was the value of his lost files. He talked me into suing the RR, which I did in state court and which Cansler, Lockhart and Eller, the RR's long-time attorneys in Charlotte got moved to federal court. I said "talked me into" because I think the RR had offered him \$25K. I had my doubts about whether his files were worth even that, but I felt sorry for him and agreed to take it on a contingency, but dumb me agreed to charge him only on what we got above the \$25K.

The RR was represented by John Burtis with CL&E. Jake Helder had known John in the Army. They denied negligence and therefore liability. I had to take depositions of the train folks and of the fire observing witnesses. We had trouble finding an expert to testify about the value of Tom's files. I traveled to Greensboro and talked to the potentate of the NC Surveyors trade association and received no help. We tried the case before "Maximum Bob" Potter, the resident federal district court judge for the Western District of NC in Charlotte. Donnie Lawrence testified as our expert witness. At some point, maybe when we rested, Burtis offered a little more, maybe \$30K. Maximum Bob twisted my arm almost out of its socket to take it, saying that he didn't think there was any way the jury would give us more than that. Tom refused it. The jury gave us \$100K. I was as surprised as anyone, though Tom was disappointed with the amount. I think Burtis called Jake or vice versa after the trial and told him that his wife attended the trial, and that she thought that he had presented a stronger case but that she would have given Tom at least what the jury had after she heard my jury speech. Several years later, Tom, living in a double-wide on the farm road into Polk Mtn, blew his brains out. I don't guess we ever really know one another!

THE GRIFFINS. My partner, Frank Griffin, 20 years my senior, was the oldest of the four children of Charles Griffin, a large cotton farmer and his wife, Mary, all of whom grew up and worked on the farm near Unionville. Frank's full name was Charles Franklin Griffin (he signed "C Frank"). I don't remember ever thinking about it until now, but I guess he was a Jr. The other 3

were sister Kathryn, who married a big-time farmer up near Mocksville; Elbert, who went by Ebb, an NC State grad who took over the family farm and made a fortune in supplying equipment such as feeders, waterers, feed bins, etc to the poultry industry; and Joe, a Duke under and law school grad, my favorite Griffin.

This story is going to be about Joe, but first a couple of anecdotes involving the others. Ebb and his wife Mary, an Air Force general's daughter (the reason I remember that is because he sent a plane to pick up a small tractor which Ebb had gotten him) split up and Ebb came in the office to talk it over with Frank, who, wearing his tough-guy lawyer hat was telling Ebb how to keep Mary from getting her fair share, which would have been quite a bit. Ebb said "Frank, she's entitled to half. There's plenty to go around." I'm sure Frank about choked. Ebb told me that story. Kathryn had a nephew who was a hot-shot estate planning lawyer with a big firm in Charlotte. I think he was also a CPA and/or a LLM (masters in tax law). He prepared an elaborate estate plan for which he charged Ebb \$10K. Ebb never signed it, instead relying on the will and related documents for which Frank probably didn't charge him.

I may have mentioned before that Frank was Mr. Democrat in Union Co when I came to practice with him in August, 1971. He had been in the NC State House and Senate, as had his former Partner, Henry Smith. Governor Jim Hunt appointed him to the State Banking Commission where he may have served during all of Hunt's first 2 terms as governor. In later years, Frank, Ebb and Joe ate dinner at Meadowview Steakhouse in Matthews once a month. Joe told me about the time that they had just walked in and were standing in the lobby when Jim Hunt, with an entourage walked in, came over to Frank and slapped him on the back and said that he was going to run for governor again (he had been out of office for at least one term, as the law required) and knew that he could count on Frank's support. According to Joe, Frank said "Dammit, Jim, you had 8 years. That's enough! Give somebody else a chance!" Another scene I would give a hundred bucks for a video, or even an audio of! I wish I had asked Joe how Jim Hunt responded. FRANK was appropriately named!

Now, to Joe, the youngest, but the tallest, by a little, and probably the smartest, thought there was plenty of brainpower sitting around their table at Meadowview, and by far the wittiest. He had a slight, very slight lisp which made his voice distinctive. He always had a twinkle in his eye. To save money on long distance, which a call to or from Charlotte was, we paid for a "Charlotte" line. More than once, Ovella, our receptionist would buzz to tell me that Joe was on the Charlotte line, and more than once, I was up to my knees in alligators, saying to myself, "what in the world does HE want". More than once, when I picked up, Joe would say, "Tom, did you hear the one about...?" My eyes are misting up with joy as I type this!

My dad's older sister, Vernon was married to Dwight Alexander, whose father was an MD in Pineville. Dr. Alexander's wife died and he remarried. He had children with both wives. Uncle Dwight was part of the older set. (Not relevant to the story, but an interesting detour is that I sat beside Larry Caldwell in mandatory chapel, three days a week for four years at Davidson College. He was from Michigan. I later learned that Larry's dad was later president of Ford Motor Company. I might have asked him, Larry, that is, not his father, though I might have asked

him, too, if I'd had the chance, for a loan if I had known that he had such a good paying job! At a college reunion, years after graduation, I met Larry's wife, from Spartanburg or Greenville, whose mother was one of Uncle Dwight's half-siblings. Small world!). Doc A owned quite a bit of land on Providence Rd West, beside where Uncle Dwight and Aunt Vernon and some other Alexanders had built houses.

Cousin David, Uncle Dwight and Aunt Vernon's oldest of 4 children called and wanted to bring his Uncle Fred Teal, married to Frances, Uncle Dwight's sister, who, BTW, was one of the sweetest persons that I've ever known and was at one time the oldest living alum of Winthrop College, down to talk with me about the Alexanders selling their around 200 acres for residential development, as a pack of developers were barking up their tree. Fred, a soft-spoken, true Southern gentleman, originally from Hoffman, a wide place in the road north of Rockington on US #1 and had graduated from, I think, UNC and gotten his law degree I guess from there as well, but he had never practiced law, rather had retired from some federal agency in DC. Fred and Frances knew Dad and Mom from many years before. David and Fred told me what they wanted for the land, around \$20K/acre, if I remember correctly and they would like to sell it as an installment sale so they could reap the tax benefits. They told me the developers who were barking loudest, one of which was Harrington-Dowd.

Shortly thereafter, Joe called me on the Charlotte line, this time not to say "Did you hear the one about...", but rather to say, "Tom, Ken Dowd is going to buy the Alexander property." I replied that if he was willing to pay the price and meet their terms then I was sure he could buy it. He said again, "Tom, you must not have heard me. Ken Dowd is going to buy the Alexander property." I replied that he must not have heard me when I said it could be his for the right price and on the right terms. Joe said, "Tom, you're not listening. Ken Dowd is going to buy the Alexander property!" That time I was listening and I heard him loud and clear. What he was letting me know was that when the dust settled, Ken Dowd would be the one meeting the price and all the terms. Wow! That takes a lot of pressure off.

David, Fred, Joe and Ken Dowd all got to our office fairly early one morning and the negotiations began in earnest. The price had been agreed to but since it was to be an installment sale, with less than 30% down, (remember your tax law?) the tough part was structuring the purchase money mortgage so as to give Dowd the flexibility it needed to develop the property and the Alexanders the protection of the value of their unreleased collateral in case they had to take the undeveloped part back. We negotiated most of the day, drafted the contract, and before it was signed, Joe asked me to step out in the hall. He closed the door to the conference room and said, "Tom, I'm going to ask you the same thing that Lou Parham and I ask each other after we negotiate a deal and before the contract is signed, what did I miss?" I said, "Joe, I don't think you missed a thing. What did I miss?". Again, my eyes are misting up, not from laughter but just remembering Joe Griffin, as good a lawyer and human being as I've ever known. A good note to end on!