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GEORGE C. COCHRAN: CONSTANT CONSTITUTIONALIST

Justice, like freedom, needs constant vigilance.

Earl Warren<sup>1</sup>

Professor George Colvin Cochran retired in 2015 after forty-three years of service on the faculty of the University of Mississippi School of Law. Although he remains a fixture at the school and still teaches, the occasion of his official retirement provides an opportunity to review a career that has deeply affected the history of the law school and helped propel the state and nation along the long arc of justice.

For me it is impossible to be objective about the man who played a role in bringing me to Mississippi decades ago; who provided warm support at every stage of my own career; who vocally, sometimes stridently, demanded high standards and equal opportunity in legal education; and who, in an era of ascendance of conservative values, steadfastly defended the civil libertarian legacy of the Warren Court. Professor Cochran did not view the Constitution as scripture, rulebook, or ideology. Rather he understood the Constitution as taking real form in an imperfect legal process implemented by imperfect people. For him it was a process that somehow worked by reinventing itself. And even while he accumulated decades of expertise, he retained an open mind and willingness to change opinions. In his openness to change, in his passion for the Constitution, and in his compassion \*966 for students seeking to understand constitutional process-- he was constant.

Over the years more former students have asked me about Professor Cochran than about any other member of the faculty. Their interest indicates the strong association of the law school with Professor Cochran. Their questions reflect genuine curiosity about the enthusiastic teacher's current passions--and express admiration for the man who was once the source of no little anxiety.

Professor Cochran has long inspired intense, conflicting responses. Some heard only his loud voice and often colorful language. Others saw only the haze of the Pall Malls (unfiltered) that he chain smoked for too many years. Perhaps no professor at the law school ever came closer to the old school Socratic pedagogue epitomized by the fictional character of Professor Kingsfield. No other professor at the University has provided a model for three fictional characters.<sup>2</sup> Real events became the stuff of legend. In the middle of one lecture, he threw his cigarette into a trashcan. The paper contents began to smolder. They began to burn. Students watched with amusement, with concern, and then with alarm. Without a pause in his presentation, Professor Cochran lifted the flaming trashcan, carried it into the hall, shut the door, and continued.

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\*967 George Cochran was born on December 1, 1936 in Maysville, Kentucky, the second child of children of prominent Kentucky families.<sup>3</sup> His grandfather, William Duffield Cochran (1868-1919), had graduated with honors from Michigan Law School (1891) and become a legal, political, and civic leader in Maysville. His grandfather's brother, Andrew McConnell January Cochran (1854-1934), had graduated from Harvard Law School and served as federal judge for the Eastern District of Kentucky from 1901 until his death. Professor Cochran's father (William D., Jr.) (1905-1953) attended Michigan Law School before returning to practice in Maysville. He was appointed state Circuit Court judge and ran unsuccessfully as a Republican candidate for Congress in 1952.

Professor Cochran's mother, Lovey Mary Colvin (1904-1953), named her second son in honor of her own father, George Colvin (1875-1928). Colvin had achieved success as teacher, school administrator, and politician.<sup>4</sup> After winning a statewide election to the position of state superintendent of public instruction as a Republican (1919), Colvin pressed for reforms including increases in teacher salaries, compulsory school attendance, and health education in public schools. In 1923 he campaigned for the Republican nomination for governor with a platform that included opposing legalized gambling at state racetracks.<sup>5</sup> After losing the \*968 election, he served as superintendent of the Louisville and Jefferson County Children's Home,<sup>6</sup> where he improved conditions, including tearing down fences that confined the children and that segregated them by sex.<sup>7</sup> His daughter (the professor's mother) Lovey Mary graduated from the University of Kentucky in 1927.<sup>8</sup>

In the last two years of his life, Colvin served as president of the University of Louisville (1926-28). His efforts to reduce small-enrollment classes and redirect resources to undergraduate education won support from the administration but proved unpopular with faculty.<sup>9</sup>

George Cochran's parents were both alcoholics.<sup>10</sup> Details are painful and not necessary.<sup>11</sup> Seven decades later, the child of alcoholics describes his early home environment as a "snake pit" and concludes that his family situation showed "what alcohol can \*969 do." There would be no happy ending.<sup>12</sup> His mother disappeared from his life. His father died, driving drunk, in a senseless car crash during George Cochran's sophomore year of high school.<sup>13</sup>

George Cochran was sent to military school in first grade. From second to sixth grade, he attended public elementary school in Maysville. From the seventh to twelfth grade he attended Cranbrook School in Bloomfield Hills, Michigan.

He then went to North Carolina State where he studied textile engineering. After clocking some time on the field as third-string quarterback, he graduated in 1958. At college he discovered an interest in and knack for student politics. He was elected president of the Tompkins Textile Student Council (student governing body of the Textile Engineering School), class president, and president of the North Carolina student legislature. The students enacted mock legislation abolishing the state prohibition against interracial marriage, prompting a U.S. Congressman, the guest speaker, to denounce the students for an act that "shocked the conscience of the people of North Carolina." Professor Cochran still possesses a scrapbook with hate mail he received at the time.

A member of ROTC in college, he was commissioned as second lieutenant in the U.S. army airborne infantry after graduating. He was stationed at Fort Benning for two years where he trained soldiers in how to engage in night patrols. He was also one of the first members of the Fort Benning Sport Parachute Club.

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After active duty, he returned to Maysville to work at the January and Wood, Inc., cotton mill.<sup>14</sup> Owned by members of the \*970 Cochran family, the mill had been established in 1834 and operated under the January and Wood name since 1851.<sup>15</sup> The factory produced durable twine for carpet, packing, and other uses.

When he entered the family business, George Cochran was concerned by the conditions of the workers. He gives as an example the fact that the only employee benefits were free turkeys at Christmas. Finding his views to be a “disruptive force,” he was fired after a short while.

Returning to North Carolina, he secured admission to North Carolina Law School with “one of the lowest” LSAT scores in his class.<sup>16</sup> That fact was even more foreboding, coming in an age when deans welcomed first-year students by proclaiming: “Look to your left. Look to your right. One of you will not be returning next semester.” True to the admonition, many students failed to graduate. Of the 139 that entered with George Cochran, only 100 graduated in 1964.<sup>17</sup>

Law school marked a new beginning. George Cochran graduated first in his class in 1964. In addition he became a member of the order of the Coif and served as editor-in-chief of the \*971 *North Carolina Law Review*,<sup>18</sup> What caused the metamorphosis? He shrugs his shoulders and explains, “I had to succeed.” What was his formula for success? He “lived in the law library,” including during all vacation breaks, except for a stint of active duty at Fort Bragg after his first year.<sup>19</sup>

A formative influence in law school was Professor Daniel H. Pollitt.<sup>20</sup> George Cochran enrolled in the legendary scholar-activist's Con Law and Labor Law classes. “Dan Pollitt,” he says, sitting in his office, “is the reason I am here today.” One guest speaker in Pollitt's labor law class made a lasting impression. The face of the organizer for the Textile Workers Union bore the scars of a beating he received while trying to organize the Cochran family mill.

During his third year, the star student wrote to Justice Stanley Reed. A Maysville lawyer, Reed had championed progressive politics in the Kentucky legislature before World War I<sup>21</sup> and gone on to achieve national prominence in the thirties when FDR appointed him as Solicitor General (1935) and then to the Supreme Court (1938). Although Justice Reed had retired in \*972 1957, he was authorized to employ one part-time law clerk who, in practice, also served as an additional clerk for Chief Justice Warren. Justice Reed read the 3L's letter, invited the applicant to interview in DC, liked what he saw, and hired him. George Cochran's arrival in DC coincided with the peak of activity of the President's Commission on the Assassination of President Kennedy. Chaired by Chief Justice Warren, the commission was feverishly working to complete its report, and George Cochran was pressed into service, working till three or four in the morning in order to complete the report by late September 1964.

From 1965 to 1968 he worked in the DC office of the preeminent law firm of Steptoe and Johnson. While engaging principally in corporate work, he got a taste for the frustrations of civil rights litigation against the government. He worked on a case brought by an African American government employee who had been brutally assaulted by a D.C. police officer with brass knuckles.<sup>22</sup> The D.C. chief of police retaliated by filing an ethics complaint accusing the young lawyer of intimidating witnesses. Charges were dismissed after a hearing at which the accused was represented by Steve Ailes, a Steptoe partner and former Secretary of the Army.

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From 1968 to 1972 he served as Director of the Duke Center on Law and Poverty. In addition to establishing legal services offices for Durham, he placed law students from Duke and the University of North Carolina in prisons, mental institutions, and poor people's homes throughout the state for two weeks in the summer.

In 1972 George Cochran joined the faculty at the University of Mississippi School of Law as associate professor of law. He still recalls what attracted him to the school. A *Time* magazine article had spotlighted the ongoing controversy caused first by Dean Farley and then by Dean Morse in supporting the *Brown* decision and by Dean Morse's activity in bringing faculty from Yale and other highly regarded law schools.<sup>23</sup> The article reported the \*973 departure of Dean Morse, summarized the troubled history of the school, and announced the appointment (over faculty disapproval) of Dean Bunkley who was expected to implement the policies of the state legislature. George Cochran's reaction? "This was the place where constitutional law was happening." He wanted to be present.

Professor Cochran joined the law faculty at a turning point. From early in his career he played an important role transforming the law school from a parochial institution controlled by the state legislature and a governing board hostile to change into a nationally respected institution. He recalls watching the school change from "one of the worst [academic] places in the world" to "one that produces lawyers competitive in the national marketplace." The career accomplishment he refers to most often is helping hire "professors capable of gaining national recognition."

For forty-three years Professor Cochran specialized in constitutional law and federal courts. In class he invited students to seat themselves with conservatives on the right and liberals on the left. Those who did not want to be called on were wise to sit in the center. As Professor Cochran recalls, "Coverage included a menu of over five hundred cases. Responses to issues raised were required to be justified by case law support. There was no room for those who wised to engage in an 'I think' conversation."

While the drama and trauma of his large-enrollment classes helped cement Professor Cochran's public image as a firebrand, perhaps his greatest educational innovations occurred in his seminars. His class on federal courts (or federal jurisdiction) regularly attracted a group of future elite litigators and those who rightly viewed it as essential training for a judicial clerkship.

His Supreme Court practice seminar, offered every spring, limited enrollment to eighteen. In it he would assign a pair of students to study each sitting Justice. For three weeks the class would learn Court practice and procedure.<sup>24</sup> Then the class would \*974 focus on a case docketed for argument, reading briefs and motions. The selection of the case was coordinated with the counsel of record, with Alan Morrison at Public Citizen, and, occasionally, with a similar program at Georgetown. The high point of the semester was the trip to D.C. where the class would participate in moot court exercises involving the lawyer scheduled to argue a case and then observe oral argument. Following a debriefing with counsel, most visits concluded with a talk by one of the Justices.

In the area of faculty scholarship, Professor Cochran led by example. In 1977 he published a comprehensive, carefully organized, and probing study, *Civil Rights Litigation in the Fifth Circuit: Part I*.<sup>25</sup> In 1980 with Judge William C. Keady, the revered Chief Judge of the United States District Court for the Northern District of Mississippi, he co-authored a voluminous study of the Voting Rights Act, calling for substantial amendments that would have enhanced the democratic electoral process by giving the Act national application.<sup>26</sup> At the request of Chief Judge Charles Clark, he became the founding editor of the *Fifth Circuit Reporter*.

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Growing national recognition of Professor **Cochran's** expertise led to an offer to teach constitutional law at Fordham Law School in the summer of 1987. Evidently a satisfied customer, Fordham invited him to return for the following nineteen years.

In 1976 Professor **Cochran** met Wilbur O. Colom. The African American lawyer had graduated from Antioch Law School and was in Oxford to teach in the Congress of Legal Educational Opportunity program at the law school. He needed a place to stay, and the professor had room. The two men, each recently divorced and each with a daughter, quickly bonded. Professor **Cochran** is quick to say that since the 1970s Wilbur Colom has been the closest friend he has had in his life.<sup>27</sup>

\*975 One example of their closeness was the purchase of the 36-foot challenger sloop *Misty*. Over a period of seven years, sometimes accompanied by their daughters and others, the two men sailed from New Rochelle, New York to Key Largo, Belize, Cuba, and Isla Mujeres, Mexico.

Another person who played an important role in his life was civil rights legend Morton Stavis. In 1982 Stavis called Professor **Cochran** to enlist his help in representing a black civil rights attorney facing disbarment proceedings in Selma, Alabama. From that experience came a friendship that ended only with Stavis's death in 1992.

From 1983 to 1993 Professor **Cochran** was an integral part of a national effort to oppose the expansion of litigation sanctions under Rule 11. The 1983 amendment to Rule 11 imposed mandatory sanctions, including attorneys fees, on lawyers bringing frivolous lawsuits. The amendment resulted in over 1,000 decisions in its first four years.<sup>28</sup> With the cooperation of Morton Stavis, Professor **Cochran** established a Rule 11 sanctions project at the Center for Constitutional Rights. Described as the “burn out years,” the professor became actively involved in cases before federal trial and appellate courts nationwide in which civil rights attorneys were targeted by the Rule. Along with participating in litigation, he published a series of articles decrying the adverse consequences of the rule.<sup>29</sup>

His concern with overzealous policing of attorney misconduct reflected his appreciation of the devastating effects of the policy on the lives of practicing lawyers. For example, he represented one \*976 California client who, in the face of ruinous sanctions, ultimately closed his office and fled to Canada. Professor **Cochran's** impact is acknowledged in the introduction to the authoritative treatise on Rule 11 where Professor Georgene Vairo wrote:

Finally, I would like to thank George **Cochran**, Professor of Law at the University of Mississippi. Rule 11 is about caselaw and judicial philosophy, but it is also about the people who practice law and the clients they serve. George continued to remind me of that simple fact. How Rule 11 affects lawyers and their clients throughout this country cannot be measured accurately but must not be ignored. George's passion about the impact of Rule 11 inspired me to continue to think about the rule and to finish this book.<sup>30</sup>

The 1993 amendment to Rule 11 responded to criticism of the Rule's abuse. It limited sanctions and required clear, early warning of alleged violations.<sup>31</sup> In his final article on the Rule, Professor **Cochran** concluded that “the new Rule has drastically curtailed satellite litigation and minimized risks to the adversary process without reducing the role of the Rule in insuring a certain level of professional competence by members of the bar.”<sup>32</sup> Although some possibility of abuse remained, he was content with the current form of the Rule, observing that “lawyers litigate today in an environment far removed from that in place under the 1983 version.”<sup>33</sup> Yet, ever the educator, he added a discussion of the abuse

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of the contempt power in 1826<sup>34</sup> and a description of the devastating impact of Rule 11 sanctions on one civil rights lawyer,<sup>35</sup> experiences that served to show the human toll of abuses of sanctions and that reminded readers of the need for vigilance.

No account of Professor Cochran would be complete without acknowledging the single most important person in his life--his daughter Reed. George met Reed's mother, Nancy Newbold, in law school, and married her during his first year in D.C. Born in 1968, Reed moved to Oxford with her parents in 1972.<sup>36</sup> She attended Oxford's public schools in the years following the merger of the segregated schools. A track star in high school (she ran 800 meters), she spent one summer traveling the southern United States with an all-black track team made up of students from the Charleston, Mississippi high school.

Reed says she inherited three things from her father: an appreciation that intelligence is a great gift; a Protestant work ethic; and a commitment to helping other people. After earning a B.A. from Brown, her career has earmarks of public service. She taught Spanish at the Aberdeen High School as part of the Mississippi Teachers Corps. She then did consulting work in California before earning a Masters in Public Policy from the Kennedy School at Harvard. Her next job was supposed to be a "short term" appointment to assist a failing nonprofit organization \*978 that provided transportation for the elderly. Nine years later she left a successful organization that she helped turn around and reinvent.

Professional honors include the George C. Cochran scholarship-in-law established at the University of Mississippi School of Law by an anonymous donor, awarded to incoming law students. In 2008 Professor Cochran received the Ben A. Hardy Faculty Excellence Award for outstanding teaching, service and scholarship. He was selected twice by the student body as the Outstanding Teacher of the Year (1985 and 2000). A concurrent resolution of the Mississippi House and Senate in 2006 commended the professor for "outstanding career accomplishment in the legal field and as a professor of law." It acknowledged his role in "expertly teaching law students" and identified him as an "exemplary Mississippian ... who dedicates his life to skillfully educating the lawyers of tomorrow and making a positive impact on the legal field as a whole ...."<sup>37</sup> Perhaps most fitting, in recognition of his leading role in establishing and sustaining the work of the Innocence Project, the law faculty voted unanimously in 2015 to name the Mississippi organization the George C. Cochran Innocence Project.<sup>38</sup>

It would be traditional to conclude a tribute with the foregoing recital of public acknowledgments of Professor Cochran's professional achievements. Yet I cannot help feeling that my colleague's life work is both more substantial and more profound than the record of his accomplishments. In a short tribute composed on the occasion of the death of Chief Justice Earl Warren, Professor Cochran praised the Chief Justice not for his intellectual brilliance but for his moral vision. Such moral conviction was light years removed from the formalism, originalism, and hostility to "subjectivity" that would later dominate some Justices' vision of justice. Looking back on the life of Chief Justice Warren, he wrote:

\*979 [The Chief Justice possessed] a unique ability to conceptualize the Constitution as existing within a framework of ethical principles which in every case imposed a duty on the Court to determine the "right" and "moral" thing to do. His concept of "rightness," when applied within the context of the principle "Equal Justice Under Law" emblazoned above the entrance of the Supreme Court building, forced American to look squarely at the contradictions between professed beliefs and actual behavior and attitudes. It required a resolution of those contradictions in favor of our democratic heritage.<sup>39</sup>

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In Professor Cochran this vision of the Constitution has found a worthy champion for over forty years. The words he wrote in 1972 about the past life of Chief Justice Warren proved to be a forecast of the professor's own future: "During an era of apathy and affluence he offered the country a source of compassion and individual rights. It was restoration for some, odd radicalism to others ...."<sup>40</sup>

Professor Cochran was--and is--a hard worker. On many an occasion he has been the only soul in the law school building--when it was Farley Hall, then Lamar Hall, and now the Khayat Law Center. Writing in the wake of the Watergate scandal, what he admired most about the Chief Justice was the judge's conscientious commitment to public service; he lauded the man who had avoided self-aggrandizement and who had limited his income to salaries from the state and federal governments for which he worked.

[I]t is for this virtue of conscience that I, personally, would want Earl Warren to be remembered. His concept of moral obligation must be instilled in every law student, carried by every lawyer, and fulfilled by those who enter public service if the now deep-seated resentments carried by a majority of Americans are to be ameliorated.<sup>41</sup>

It is Professor Cochran's constant, career-long labor--quixotic, Sisyphusean, herculean--to preserve this virtue of \*980 conscience and to transmit it to the next generation that ultimately defines his enduring contribution to the school, the state, the profession, and the country. It is a legacy of faith in law as a vehicle for justice. And hope. And, yes, love.

## APPENDIX

### Articles

Professor Cochran's interest in the practical consequence of legal doctrines and his abiding distrust of academic gobbledygook encouraged an attitude of bemused detachment from legal writing that Fred Rodell (with whom he has much in common) memorialized. Rodell, the famed constitutional law expert at Yale Law School posited that there were only two things wrong with legal writing: its style and its content.<sup>42</sup>

Nevertheless, Professor Cochran published a number of high quality academic works. His writings include the important critique of Rule 11 practice: *Rule 11: the Road to Amendment*,<sup>43</sup> This became a roadmap for reform work that culminated in *Bench-Bar Proposal to Revise Civil Procedure Rule 11*, which was supported by prominent judges and lawyers throughout the country. In reverse chronological order, his articles and chapters are:

*In Memoriam: Frank Ruff Parker*, 85 MISS. L.J. \_\_\_\_\_ (2016).

*The Political Takeover of a Law School: The Real Tragedy of the Bill Murphy Story*, 77 MISS. L.J. 931 (2008).

*Happy (?) Birthday Rule 11: The Reality of "A Last Victim" and Abuse of the Sanctioning Power*, 37 LOY. L.A. L. REV. 691 (2004).

*Why Are We Here, or How Did a State with Fewer Than Three Million People Become Lawsuit Central for the United States?*, 71 MISS. L.J. 347 (2001) (moderator).

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*A Law Professor's Views on the Career of Charles Clark*, 12 MISS. C. L. REV. 365 (1992).

A. Leon Higginbotham, Jr. et al., *Bench-Bar Proposal to Revise Civil Procedure Rule 11*, 137 F.R.D. 159 (1991).

\*981 *Rule 11: The Road to Amendment*, 61 MISS. L.J. 5 (1991).

With Georgene Vairo, *Rule 11: An Eventful Year*, in CIVIL RIGHTS LITIGATION AND ATTORNEY FEES ANNUAL HANDBOOK (Barbara M. Wolvowitz ed. 1988).

*Sanctions Under Rule 11*, 3 FIFTH CIR REP. 209-23 (1986).<sup>44</sup>

*Trouble on the Horizon: The Caseload Problem and the "Frivolous Appeal,"* 2 FIFTH CIR. REP. 249-61 (1985).

*Section 1988 Attorney Fee Awards in the Fifth Circuit*, 15 TEX. TECH L. REV. 1-38 (1984).

William Colbert Ready and George Colvin Cochran, *Section 5 of the Voting Rights Act: A Time for Revision*, 69 KY. L.J. 741-97 (1980-1981).

*Civil Rights Litigation in the Fifth Circuit: Part 1*, 48 MISS. L.J. 377-459 (1977).

*In Memoriam: Earl Warren*, 45 MISS. L.J. 819-20 (1974).

With A. Kenneth Pye, *Legal Aid-A Proposal*, 47 N.C. L. REV. 528-86 (1969) (bold proposal for expanding legal aid in underserved part of the South).

*Insane Persons--Involuntary Commitment Procedures--Due Process*, Comment, 41 N.C. L. REV. 141-47 (1963) (discussing North Carolina civil commitment procedures).

*Pleadings--Material and Immaterial Variance*, Note, 41 N.C. L. REV. 647-53 (1963) (note on *Hall v. Poteat*, 125 S.E.2d 924 (N.C. 1962) (finding material variance between plaintiffs allegations and proof)).

### Cases

Reported decisions in cases in which he played an active role are:

*Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982) (with Wilbur Colom) (successfully challenging single-sex college).

*Cook v. Hudson*, 424 U.S. 941 (1976) (granting certiorari in case challenging requirement that public school teacher's children \*982 must attend public school), *cert. dismissed as improvidently granted*, 429 U.S. 165 (1976) (per curiam).

*Allenberg Cotton Co. v. Pittman*, 419 U.S. 20 (1974) (challenging state requirement that Tennessee corporation must receive certificate to qualify to do business in Mississippi as prerequisite for suing to collect debt).

*Norelus v. Denny's, Inc.*, 628 F.3d 1270 (11th Cir. 2010) (challenging section 1927 sanctions).

[Amlong & Amlong, P.A. v. Denny's, Inc.](#), 500 F.3d 1230 (11th Cir. 2006) (challenging section 1927 sanctions), *amending and superseding* [457 F.3d 1180](#) (11th Cir. 2006).

[Khachaturian v. Federal Election Commission](#), 980 F.2d 330 (5th Cir. 1992) (with Prof. Rychlak, representing independent candidate for Congress's challenge to limits on contributions).

[In re Kunstler](#), 914 F.2d 505 (4th Cir. 1990) (challenging sanctions against civil rights attorneys).

[Blue v. U.S. Department of Army](#), 914 F.2d 525 (4th Cir. 1990) (challenging sanctions imposed on civil rights attorneys).

[Irving v. Owens-Corning Fiberglass Corp.](#), 864 F.2d 383 (5th Cir. 1989) (representing foreign corporation's challenge to personal jurisdiction).

[Thomas v. Capital Securities](#), 836 F.2d 866 (5th Cir. 1988) (en banc) (recalled by Professor **Cochran** as the major case offering “breathing space” with respect to mandatory sanctions in the period between 1983 and 1993).

[Spell v. McDaniel](#), 824 F.2d 1380 (4th Cir. 1987) (defending city and related parties in section 1983 action).

[Jackson v. Color Tile, Inc.](#), 803 F.2d 201 (5th Cir. 1986) (challenging attorney fees).

[Cobbs v. Grenada County](#), No. WC84-136-S-0, 1989 WL 251321 (N.D. Miss. Sept. 13, 1989) (defending county in voting rights litigation).

[Donnell v. United States](#), 682 F.2d 240 (D.C. Cir. 1982) (challenging attorneys fees).

[Robinson v. Stovall](#), 646 F.2d 1087 (5th Cir. 1981) (defending city in action brought alleging First Amendment violations).

[Finch v. Mississippi State Medical Association](#), 585 F.2d 765 (5th Cir. 1978) (challenging exclusion of black physicians from state board of health).

**\*983** [Schwartz v. Welch](#), 890 F. Supp. 565 (S.D. Miss. 1995) (with James L. Robertson and David C. Vladeck) (successfully challenging restrictions on lawyer advertising).

#### Footnotes

<sup>a1</sup> Professor of Law and Jamie L. Whitten Chair of Law and Government, University of Mississippi School of Law. Much of the factual information in this Article comes from a series of interviews with Professor **Cochran** and his daughter Reed **Cochran** in the spring of 2016. Quotations without citations are from these interviews. In a few cases, I rely on my own memory. Caveat emptor.

<sup>1</sup> *Law and the Future*, 52 FORTUNE 106, 226 (Nov. 1955).

<sup>2</sup> First, Professor **Cochran** appears pseudonymously in a column by Wilbur Colom, *see infra* note 11. Second, he confirms he is the inspiration for the title character in MARILYN FRENCH, MY SUMMER WITH GEORGE (1996). Third, many

readers believe he provides the model for the fictional Tulane con law professor Thomas Callahan in John Grisham's *Pelican Brief*. The description of the classroom scene conforms draws on characteristic aspects of Professor **Cochran's** pedagogy. See JOHN GRISHAM, PELICAN BRIEF 11-18 (1992).

Grisham himself was once asked directly: "I was wondering if you based any characters in your books on former law professors." He responded, "The answer is no, although I will tell you, there is a scene in *The Pelican Brief* where the law professor is blown up in a car. And it was a lot of fun to write." John Grisham, Abusing the Law for Fun and Profit, Matthews Lecture (University of Mississippi Education School Auditorium, Oct. 10, 1999) (responding to last question following lecture) (VHS recording [by John Sobotka] in University of Mississippi School of Law archives (uncataloged)). The publisher likewise avers, "All the characters in this book are fictitious, and any resemblance to actual persons, living or dead, is purely coincidental." *Id.* (copyright page). *But see* WILLIAM SHAKESPEARE, HAMLET act 3, sc. 2 line 254, at 151 (Folger Shakespeare Library, Barbara A. Mowat and Paul Werstine ed., 2012) (following second quarto 1604).

3 His older brother William D. **Cochran**, III (1931-1997) enrolled in Michigan but left to join the Army during the Korean War. He worked for several years as salesman for the family's **Cochran** Paint Company in Cleveland, Ohio before establishing a paint store in Marion, Ohio. He had two sons, John and Duff. The former is a successful entrepreneur in Winston Salem, North Carolina, the latter an attorney in Jacksonville, Florida.

4 Colvin graduated from Centre College in 1895, sharing valedictory honors at graduation. He returned to attend Centre College's new law school the following year, and he then also served as captain of the college's football team that defeated Ohio State by a score of 18-0. Kitty Conroy, *George Colvin: Kentucky Statesman and Educator*, 16 BULLETIN OF THE BUREAU OF SCHOOL SERVICE 3, 7-8 (1944). Upon graduation from law school, "Colvin found it difficult, with neither capital nor experience, to establish himself in the profession of law." *Id.* at 9. This led him to accept his first teaching position. He subsequently practiced law for three years (1900-1903) with the Louisville Title company, then joined a law firm. *Id.* at 10-11. In 1903 he became superintendent of schools in Springfield, Kentucky, a position he held for 16 years. Colvin married Mary McElroy in January 1904. His daughter Lovey Mary was born December 1904, *id.* at 12. (It is interesting to note how important it once was for the biographer to record the months of the marriage and birth.)

5 *Id.* at 31. He did not win the nomination. As superintendent he had also lobbied unsuccessfully to make the position of state superintendent statutory, to insulate it from partisan politics, *id.* at 18, and to distribute statewide funds equally to all districts, *id.* at 21.

6 The family moved from Frankfort to Anchorage and then to Louisville, judging from the residences listed for Lovey Mary in KENTUCKIAN yearbooks. *See infra* note 8.

7 Conroy, *supra* note 4, at 40.

8 THE KENTUCKIAN 1926, at 58 (Ted McDowell ed. 1926), [http://kdl.kyvl.org/catalog/xt769p2w4514\\_62?](http://kdl.kyvl.org/catalog/xt769p2w4514_62?) [https://perma.cc/2M26-ZM5N] (list of juniors); Minutes of the University of Kentucky Board of Trustees Sat. May 28, 1927, [http://exploreuk.uky.edu/catalog/xt7bzk55f93q\\_1?](http://exploreuk.uky.edu/catalog/xt7bzk55f93q_1?) [https://perma.cc/KC6M-B9K6] (approving candidates for graduation). See also the announcement of her engagement. THE KENTUCKY KERNEL, Apr. 20, 1928, at 2, [http://exploreuk.uky.edu/catalog/xt7d513ttz0r\\_2](http://exploreuk.uky.edu/catalog/xt7d513ttz0r_2) [https://perma.cc/8ES4-U989]. Her unusual name was no doubt inspired by the best selling novel that appeared the year before she was born. ALICE HEGAN RICE, LOVEY MARY (1903) (novel by Kentucky author set in Louisville). She entered college as a freshman in 1921, while the family still resided in Frankfort. *See* 13 BULLETIN OF THE UNIVERSITY OF KENTUCKY CATALOG 1920-1921, at 321 (May [1921]) (on line). Subsequent Yearbooks show her residence as Anchorage (1926) and Louisville (1927).

9 *See* Conroy, *supra* note 4, at 3-57. Colvin's biographer believes that stress and delays in seeking treatment due to conflicts at the university were responsible for his death from appendicitis in July 1928. *Id.*

10 George **Cochran** himself struggled with alcohol in adulthood. "I am an alcoholic," he says. His daughter Reed observes that many people will remember her father as a hard drinker, conforming to the stereotype of the law professor in the *Pelican Brief*. He stopped drinking when Reed was twenty and has been sober ever since.

- 11 For a moving, fictionalized account that contrasts Professor Cochran's privileged but abusive childhood with that of spiritually rich childhood with fewer material resources, see Wilbur Colom, *Remembering Daddy Milton*, COMMERCIAL DISPATCH (Columbus, Mississippi) (faxed article copy, received Apr. 7, 2000, on file with author).
- 12 One bright spot was the birth of a half sister after his father remarried. Francis January (Cissy Sanders) was born when he was in third grade. Cissy would later take charge of her life in adulthood in ways that lead her brother to remark, "She is one of the most amazing people I have ever met." Years later he remains close to her, her son Bill, and her daughter Ann.
- 13 For sad details, see the article in KENTUCKY NEW ERA, Mar. 23, 1953, at 4 (on line). His mother died about six months later.
- 14 Before returning to Maysville, he travelled to Miami. He had learned at Fort Benning that Cuban counterrevolutionaries were paying a lot of money for former military personnel to travel to Guatemala to train for and possibly participate in an invasion. In Miami he met with Manuel Antonio de Varona, former prime minister of Cuba and leader of Cuban exiles. See generally *Cuban Leader Manuel Antonio de Varona Dies*, WASH. POST (Nov. 1, 1992), <https://www.washingtonpost.com/archive/local/1992/11/01/cuban-leader-manuel-antonio-de-varona-dies/6c054b61-bd37-428a-a462-2847e84b6eb7/> [<https://perma.cc/ES4P-WL4H>] (summarizing career). George Cochran was once disappointed to learn that he was too late to join the counterrevolutionary force. Fifty years later he reflects, "Boy, am I glad."
- 15 January's daughter married Robert A. Cochran in 1877, and Robert became secretary and active manager of the mill in 1877. Marla Toncray, *A Look Back at January and Wood, Inc.-Maysville Cotton Mills*, THE LEDGER INDEP., (Jan. 3, 2008) [http://www.maysville-online.com/lifestyles/a-look-back-at-january-and-wood-inc--/article\\_1d55431a-6090-5e50-ab3b-f1eca4d4bb38.html](http://www.maysville-online.com/lifestyles/a-look-back-at-january-and-wood-inc--/article_1d55431a-6090-5e50-ab3b-f1eca4d4bb38.html) [<https://perma.cc/GQ4X-ZCS7>].
- 16 The law school was expanding. The fall 1962 enrollment was the largest in the school's history. See Dean Henry Brandis's report, *The Law School (From September 1961 to December 1962)*, 41 N.C. L. REV. 101, 101 (1962). There were 139 students in the 1962 entering class. The class composition was also changing. The school's 340 students included seven women, four of whom were entering as 1Ls. *Id.* When a senior faculty member retired in 1963, the law journal recorded without irony that for forty-one years he had closed every class with the phrase: "Thank you very much, Gentlemen, that will be all for today." Anonymous dedication entitled "*Thank You Very Much, Gentlemen, That Will Be All for Today*," 42 N.C. L. REV. 789, 789 (1964).
- 17 Dean Dickson Phillips's report, *The Law School (From September 1963 to December 1964)*, 43 N.C. L. REV. 110, 121 (1964). Ten graduates were in "miscellaneous positions" (a description used in previous reports for graduates who had failed the bar exam) and the employment status of seven was unknown. *Id.* The dean publicly solicited "all possible assistance" in placing the graduates. *Id.*
- 18 Dean Phillips's report for 1964 records that George Cochran ranked first; that he was elected to Order of the Coif; that he was the sole student to be awarded the LL.B. with High Honors; and that he received the Chief Justice Walter Clark Award made to the five students with the highest scholastic averages at the end of their fifth semester. *Id.* at 117. He published two comments in the law review during his second year. While he was editor-in-chief, the *North Carolina Law Review* published a symposium, *Civil Rights and the South: A Symposium*, 42 N.C. L. REV. 1 (1963). Contributors included U.S. Attorney General Robert F. Kennedy and U.S. Senator Sam J. Ervin, Jr. The dean acknowledged that the volume edited by George Cochran was the largest in the history of the journal and that sales of reprints of the symposium issue set a sales record. Phillips, *supra* note 17, at 121.
- 19 Professor Cochran likes to point out that he was following in the footsteps of renowned NAACP Legal Defense Fund leader Julius Chambers who had graduated first in his class and been editor-in-chief of the *North Carolina Law Review* in 1962.
- 20 See John Charles Boger, *Daniel H. Pollitt: In Memoriam*, 89 N.C. L. REV. 9-16 (2010).

- 21 As Democratic state representative from Maysville in the years before World War I, Reed had introduced legislation prohibiting child labor and creating workers compensation. See Finding Aid, Stanley Forman Reed Papers, 1926, UNIV. OF KY., <https://nyx.uky.edu/fa/findingaid/?id=xt700000032b#fa-heading-collection-overview> [<https://perma.cc/AL88-RVUP>]. In 1919 Reed joined the firm of Worthington, Brown and Reed in Maysville. This was, coincidentally, the successor firm to Worthington, Cochran and Browning that had been established by William Duffield Cochran. The firm's prominent clients included the C&O Railroad.
- 22 The appellate court held the district immune, *District of Columbia v. Carter*, 409 U.S. 418 (1973), a decision that required an amendment to 42 U.S.C. § 1983 (amended, adding language “or the District of Columbia”).
- 23 See *A New Dean at Ole Miss*, TIME, July 18, 1969, at 53, 55. Professor Cochran discusses some of the historical context in his article *The Political Takeover of a Law School: The Real Tragedy of the Bill Murphy Story*, 77 MISS. L.J. 931 (2008); see also Michael H. Hoffheimer, *John Robin Bradley: Biographia Literaria*, 82 MISS. L.J. 751, 759-60 (2013).
- 24 The text for the course was ROBERT L. STERN AND EUGENE GRESSMAN, SUPREME COURT PRACTICE (4th ed. 1969). For the significance of this “Bible” of Supreme Court practice, see John Charles Boger, *Eugene Gressman: In Memoriam*, 89 N.C. L. REV. 1, 2-3 (2010).
- 25 48 MISS. L.J. 377, 377-459 (1977).
- 26 William Colbert Keady and George Colvin Cochran, *Section 5 of the Voting Rights Act: A Time for Revision*, 69 KY. L.J. 741, 741-97 (1980-1981).
- 27 Colom deepened the academic lawyer's contact with practice and with the history of civil rights. Colom's father had been a leader in the NAACP. Colom himself served as lead counsel for the plaintiff, assisted by Professor Cochran, in *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), a historic decision in which the Supreme Court held that the Mississippi's single-sex higher educational program violated the Equal Protection Clause. Mr. Colom has gone on to a distinguished career in law and philanthropy--including serving on President Ronald Reagan's transition team.
- 28 See Gregory P. Joseph, *The Trouble with Rule 11: Uncertain Standards and Mandatory Sanctions*, A.B.A. J., Aug. 1, 1987, at 87, 88.
- 29 In his first article, he argued that attorney sanctions probably would not prevent unmeritorious appeals because clients would very likely appeal pro se in the absence of legal representation. George Cochran, *Trouble on the Horizon: The Caseload Problem and the “Frivolous Appeal,”* FIFTH CIR. REP. 249, 260 (Mar. 1985) (offprint on file in University of Mississippi School of Law rare book room). He also maintained that the harms of frivolous litigation were exaggerated. “The small amount of time spent on the case, either by staff personnel or by the judges themselves, is a meager price to pay for maintaining a dual system of courts ....” *Id.* at 261.
- 30 GEORGENE M. VAIRO, *RULE 11 SANCTIONS: CASE LAW PERSPECTIVES AND PREVENTIVE MEASURES* xxviii-xxxix (1990). Professor Vairo repeated her acknowledgment in subsequent editions. *Id.* (2d ed. 1992), (3d ed. 2003).
- 31 See *FED. R. CIV. P. 11(c)(2)* (requiring service on attorney of motion identifying specific grounds of violation and giving attorney twenty-one days to remedy the violation).
- 32 George Cochran, *Happy (?) Birthday Rule 11: The Reality of “A Last Victim” and Abuse of the Sanctioning Power*, 37 LOY. L.A. L. REV. 691, 725 (2004).
- 33 *Id.* at 726.
- 34 *Id.* at 696-98 (discussing Judge Peck's use of criminal contempt to punish publication of criticism).
- 35 *Id.* at 699-708 (describing the personal effect of sanctions imposed on Professor Nakell).

- 36 His marriage to Nancy Newbold ended in divorce, Reed pointed out that her mother was the love of her father's life, and the failure of their marriage was a source of lifelong sadness to him. After the family moved to Oxford, Nancy earned a Ph.D. in psychology at the University of Mississippi. She later died of cancer in Reed's childhood. Professor **Cochran** was also married to S. Allan Alexander. Although that marriage ended in divorce, he and Reed acknowledge the affirmative role of the young woman who came into their lives in the 1970s. They especially give her great credit for being a mentor at a difficult time in Reed's life. S. Allan Alexander herself experienced an extraordinary legal career. After serving as editor-in-chief of the **Mississippi Law Journal** and clerking for United States District Judge Ready, she entered practice in Oxford and became one of Mississippi's premier civil rights lawyers. In 1994 she was appointed U.S. Magistrate Judge for the Northern District of Mississippi. After a career as one of the most highly esteemed members of the bench, including active leadership as chair of the rules committee of the Federal Magistrate Judges Association, Judge Alexander announced her retirement in 2016. Judge Alexander has been a good friend indeed to the law school and a valued member of its adjunct faculty. Professor **Cochran** has no words of blame for his failed relationships. He observes, "From where I came from, I was geared not to get along with people."
- 37 H. Con. Res. 90, 2006 Reg. Sess. (Miss. 2006).
- 38 For the history of the Innocence Project at the University of Mississippi School of Law, see the project's homepage: <http://innocenceproject.olemiss.edu/about/> [<https://perma.cc/Y6N3-4MCM>].
- 39 George Colvin **Cochran**, *In Memoriam: Earl Warren*, 45 MISS. L.J. 819, 819 (1974).
- 40 *Id.*
- 41 *Id.* at 820.
- 42 Fred Rodell, *Good-Bye to Law Reviews*, 23 VA. L. REV. 38 (1936).
- 43 61 MISS. L.J. 5 (1991).
- 44 The article was based on a speech given to the Mississippi chapter of the Federal Bar Association, November 5, 1985. *Sanctions Under Rule 11*, 1986 FIFTH CIR REP. 209 n.\*.

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