
In Memoriam: Philip Frickey

The Editors of *Ecology Law Quarterly* dedicate this issue to late Boalt Hall law professor Philip Frickey. Professor Frickey was the life of Boalt Hall. He represented the heart of the academic community, he energized the student body, and he animated and humanized the otherwise dead letter of the law. His spirit will continue to do so.

Boalt was blessed when Professor Frickey left his beloved Midwest and came to California. He accepted a position at Berkeley in 2000 after teaching at the University of Kansas and the University of Minnesota. Fortunately, he brought a little of the Midwest with him. He wove into his work his persistent optimism, thoughtful and non-judgmental sense of right and wrong, quiet ability to persuade, and prairie-inspired anecdotes.

Professor Frickey had faith in the law's ability to be a force for good in the world, but it was a critical faith. In his classes on legislation and on federal Indian law, he emphasized that the legislature did not always have a clear intent and Supreme Court Justices certainly were not simply "calling balls and strikes." Whether discussing the curious case of the tiny snail darter¹ or analyzing the history and fate of the monumental Black Hills,² Professor Frickey encouraged all of us to recognize what legal pedagogy so often ignores—law's complications, its difficulties, its tensions. Rather than propound a single correct methodology or announce one right answer, Professor Frickey chuckled generously at the notion that the solution to a legal problem could be consistently divined from the text or rooted out like a truffle from the legislative mulch. He worried at the tendency to strive for austerity in the law, the temptation to iron out doctrinal wrinkles by artificially simplifying the complicated.³

As he taught and wrote, it is the complications that move the law. His brand of legal realism was pragmatic. Throughout his class on federal Indian law, Professor Frickey emphasized that lamenting bad precedents was not as productive as reframing them. In Legislation, he taught us to

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1. See *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978).

2. See *United States v. Sioux Nation*, 448 U.S. 371 (1980).

3. Professor Frickey particularly lamented this trend in the arena of federal Indian law, a field that defies the "seduction of coherence," much to the chagrin of the current Court. (*Native American Exceptionalism in Federal Public Law*, 119 HARV. L. REV. 431 (2005) (quoting Vicki C. Jackson, *Seductions of Coherence, State Sovereign Immunity, and the Denationalization of Federal Law*, 31 RUTGERS L.J. 691, 698 (2000)).

use the tools of the legislative process not simply as blunt instruments but to refine arguments for statutory interpretation. His goal, as he said, was to equip his students for the legal profession. Particularly in the areas of public law and federal Indian law, he strove to prepare lawyers to press effectively for progressive change.

His approach to mentoring paralleled his approach to teaching. As the director of the Faculty Hiring Committee at Boalt, Professor Frickey helped change the face of the Boalt faculty, hiring a diverse array of young professors who have helped propel the school to leadership in areas ranging from environmental law to family law. As the new faculty members *sang* at a tribute to Professor Frickey, his “wit” and “grit” made him a teacher and scholar to emulate.⁴

Most important to us, his students in Indian law and members of the Native American Law Students Association (NALSA), was Professor Frickey’s role in fostering interest in Indian law and supporting Native students. It could have been discouraging for us to specialize in law that many students never hear of and that the Supreme Court sometimes seems ready to eliminate. But Professor Frickey never let us indulge in despair or rage. Instead, he exemplified how effective advocates engage their opponents with respect rather than vitriol. Likewise, although his intellect regularly dazzled us in class, for Professor Frickey tribal sovereignty was not an abstract legal puzzle, but a fact of life for hundreds of communities and millions of people.

Whether guiding a new faculty member through the literal and figurative maze of Boalt Hall, helping a student buy a car, leading a class on the intricacies of the dispute over the Klamath Basin, or advising an ELQ editor on an article touching on the intersection of Indian and environmental law, Professor Frickey always conveyed infectious enthusiasm for the law and its underlying human relationships, concerns too often forgotten in law school. More than anyone else, Professor Frickey epitomized what legal education and scholarship ought to be about. We at Boalt Hall, in ELQ, and in NALSA are all the better for his guidance, and hope to follow the trail he blazed through the law.

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4. *A Celebration of Philip Frickey Dinner*, BERKELEY LAW (Apr. 24, 2009), <http://www.law.berkeley.edu/8907.htm> (beginning at 28:35).