

Our Better Angel: Christopher Fairman¹

ALAN C. MICHAELS*

Christopher Fairman² was a part of our community at The Ohio State University Michael E. Moritz College of Law for fifteen years. Professor, teacher, scholar, mentor, colleague, Dean, coach, friend—Chris was many things to us—but more than this, Chris Fairman was our better angel.

I should start by reciting some of Chris's background and accomplishments. Chris came to us from a major international law firm, where he had handled appeals for the firm's Dallas office. I well remember the recommendation from a partner at the firm who described Chris as their one-man brain trust—the lawyer looked to for resolving the most difficult legal questions the office encountered.

He came with an even more glowing recommendation from Professor Charles Alan Wright, his mentor at the University of Texas and for many years the nation's leading authority on federal procedure.³ In addition, Chris was strongly endorsed by the two judges—one federal, one state—for whom he had clerked.⁴

His was a sterling résumé, but one that had an unusual twist: prior to law school, Professor Fairman had spent a number of years as Mr. Fairman, a history teacher at McCallum High School in Austin. When we interviewed him at the faculty recruitment conference, he was front and center about his passion for teaching and his thoughts on techniques for advancing student learning. So, we knew we had a winner, but did not yet fully understand how special this individual would be to our community.

After joining our faculty, Chris's immediate success in the classroom was matched by success in research and scholarship—the part of the professor job that was new for him. Through a series of articles and books, Chris's research was deeply influential in two areas: heightened pleading⁵ and taboo language.⁶

¹ The Moritz College of Law and the Student Bar Association have combined to create a student award in Chris's honor. The Christopher M. Fairman Humanitarian Award will be presented annually to a student who best exemplifies Professor Fairman's acceptance of individual difference and support of free expression as an essential part of a strong and inclusive community. Donations to this fund can be made online at <http://moritzlaw.osu.edu/alumni/giving/wavs-to-give/>.

* Dean and Edwin M. Cooperman Chair in Law, The Ohio State University Moritz College of Law.

² In his official roles at the Moritz College of Law, Chris Fairman was the Associate Dean for Faculty and C. William O'Neill Professor in Law and Judicial Administration.

³ See generally William H. Rehnquist, In Memoriam, *A Tribute to Charles Alan Wright*, 79 TEX. L. REV. 1 (2000).

⁴ Justice J. Woodfin Jones of the Texas Court of Appeals for the Third District and Judge Fortunato P. Benavides of the U.S. Court of Appeals for the Fifth Circuit.

⁵ See, e.g., Christopher M. Fairman, *An Invitation to the Rulemakers—Strike Rule 9(b)*, 38 U.C. DAVIS L. REV. 281 (2004); Christopher M. Fairman, *The Myth of Notice Pleading*, 45 ARIZ. L. REV. 987 (2003); Christopher M. Fairman, *Heightened Pleading*, 81 TEX. L. REV. 551 (2002) [hereinafter Fairman, *Heightened Pleading*].

Now before I say a bit more about that, I want to note that part of Chris's professional success came from his habit—not a strong enough word—from his compulsion, from the core of his very nature—to put himself fully into his work. He did not seem capable of doing otherwise. To experience Chris's work was to learn Chris's essence. So, for example, Chris's teaching *was* Chris. We have many great teachers here at the College. Chris had many colleagues who can go toe-to-toe with anyone in teaching the thinking and skills of lawyering, in teaching legal doctrine, and in offering critical perspective. And they can do it with such verve, energy, and creativity that it is a treat to learn from them. Chris was surely in that number. But, as they have and will attest, every one of Chris's students understood that Chris cared deeply and passionately about *them*. For Chris, the success of his students *was* his success. It was about them, not about him. As your teacher, Chris was not just a skilled instructor purveying information—he was your guide, your mentor, your advocate, sometimes even your surrogate parent. Chris was the professor who saw your success as the whole point. By his example, he was our better angel.

Returning to his scholarship, Chris's essence suffused that work as well. Heightened pleading sounds boring to most people. Indeed, it is hard even to read a sentence that you know is going to be about heightened pleading. But fairness, justice, standing up for the right to be heard—this is what Professor Fairman's scholarship was about, and I know those who knew him will recognize Chris in that description. In 1938 the rules for starting a lawsuit in federal court were made simpler and easier for people seeking to vindicate their rights. The goal of the reform was to ensure that “litigants . . . have their day in court” and “to encourage determination on the *merits*.”⁷ Chris's research documented a powerful but stealthy countermovement in the federal courts, in which judicial rulings were putting up barriers where the Federal Rules had been designed to tear them down.⁸ Chris was among the first to systematically document and raise the alarm about this counterrevolution.

Chris's research on word taboo was similarly tied to his core being. He saw the common thread of humanity in everyone. As a result he was the strongest supporter of individual difference and the freedom for each of us to fully embrace our true selves, because that is a part of our personhood. Words, Chris believed deeply, are a means of expression, and we should not be afraid of them or, worse, regulate the speech of others. His book, and article of the same title, *Fuck*, made this point so that you could not miss it.

So teacher and scholar, yes, Chris was great in these roles. But that is not why I asked him to serve as Associate Dean. That is not why the announcement of Chris as Associate Dean brought universal applause and

⁶See, e.g., CHRISTOPHER M. FAIRMAN, *FUCK: WORD TABOO AND PROTECTING OUR FIRST AMENDMENT LIBERTIES* (2009); Christopher M. Fairman, *Fuck*, 28 CARDOZO L. REV. 1711 (2007).

⁷Fairman, *Heightened Pleading*, *supra* note 5, at 557.

⁸*Id.* at 554.

approbation. That is not why Chris's memorial page is stuffed with grateful, heartfelt memories from those he touched.⁹ That is not why Chris's premature loss is so painful to our community or why his influence will persist as long as the memories of those who knew him.

No. Each of these things flow from Chris's essence. As I have sat in my office in the time since Chris's passing, I have often asked myself, "What would Chris do?" or "What would Chris say?" And I can always find the answer. What would Chris do? Chris would do the right thing. What would Chris say? Chris would say, "Do what is right." And always with courage and honesty. Expedience, self-interest or self-promotion, fear of criticism, shackles of convention—these were totally alien to Chris. Everyone he encountered knew without doubt his motivation was for our collective good—learning and opportunity for students, research excellence for our faculty. Selfish motives and Chris Fairman, well, "like oil and water" does not go far enough. I cannot describe it adequately. Simply put, Chris was our better angel. I take comfort in the knowledge that our community of faculty, staff, students, alumni, and friends that knew Chris know exactly what I mean.

Chris Fairman was one of a kind. Chris, thank you for everything. We miss you more than I can say, but you stay with us in our heads and in our hearts.

⁹ See *College Mourns Loss of Associate Dean Fairman*, OHIO ST. U. MORITZ C.L.: BRIEFING ROOM (July 22, 2015), <http://moritzlaw.osu.edu/briefing-room/faculty/college-mourns-loss-of-professor-associate-dean-fairman/> [<https://perma.cc/2X27-CSKM>] (collecting comments after announcing Dean Fairman's passing).

