

MY FRIEND AND DISTINGUISHED COLLEAGUE: MIKE HOFFHEIMER

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Mike Hoffheimer and I moved to Oxford on the same moving van. My wife and I were living in Chicago, and we did not have enough furniture to fill up a whole van. The driver who came to get our stuff explained that he had already loaded the belongings of a couple from Cincinnati onto half of the van. They, too, were moving to Oxford. Little did Claire and I know that this couple, Mike Hoffheimer and Luanne Buchanan, would end up being our dear friends, or that I would spend the better part of my career working alongside this exceptional gentleman whom I respect so deeply.

Mike and I were both tasked with teaching Criminal Law that first year, and it was a wonderful way to begin in academia.¹ Criminal law presents issues of intent and action, which raise all kinds of interesting questions, and I got to compare my notes with Mike. He often had better insights than I did. One, in particular, remains in my notes even today.

We were walking down the stairs in Lamar Hall and comparing notes on conspiracy law. Different courts and commentators apply different tests to finding a conspiracy. There is the “chain” theory,² the “hub and spoke” theory,³ some courts

¹ Probably all new professors worry about their grades more than anything else. When Mike and I started, there was no grading curve to assure similarity across the two sections of the first-year class. Mike went out of his way to make sure that there was a reasonable consistency between our classes, which was only fair.

² “In the taxonomy of conspiracy theories, a ‘chain conspiracy’ is one in which ‘each person is responsible for a distinct act within the overall plan,’ while a ‘wheel conspiracy’ involves a ‘single member or group (the ‘hub’), separately agreeing with two or more other members or groups (the ‘spokes’).” *United States ex rel. Anita Silingo v. WellPoint, Inc.*, 904 F.3d 667, 678 (9th Cir. 2018).

³ “In a ‘hub-and-spoke conspiracy,’ a central mastermind, or ‘hub,’ controls numerous ‘spokes,’ or secondary co-conspirators. These co-conspirators participate in independent transactions with the individual or group of individuals at the ‘hub’ that

draw a rim around the spokes,⁴ and the Racketeer Influenced and Corrupt Organizations Act (RICO) adds a whole new way of looking at conspiracy as an “enterprise.”⁵

Mike and I were discussing these approaches to the law of conspiracy, when he said, “all I know is that regardless of the theory, the defendants are guilty.” The observation is largely true, and I have taught that as the “Hoffheimer Rule” of conspiracy ever since.⁶

Usually, after introducing my class to the Hoffheimer Rule, I introduce them to Richard John Bingham, 7th Earl of Lucan, commonly known as Lord Lucan. On the evening of November 7, 1974, the nanny for Lucan’s children, Sandra Rivett, was bludgeoned to death in the Lucan home.⁷ Lady Lucan was also attacked, and she identified Lord Lucan as the assailant.⁸ That night he disappeared.⁹ The car he had driven was later found with its interior stained with blood and its trunk containing a piece of

collectively further a single, illegal enterprise.” *United States v. Newton*, 326 F.3d 253, 255 n.2 (1st Cir. 2003).

⁴ *Kotteakos v. United States*, 328 U.S. 750, 755 (1946) (“As the Government puts it, the pattern was ‘that of separate spokes meeting at a common center,’ though we may add, without the rim of the wheel to enclose the spokes.”). *See also* *Howard Hess Dental Labs. Inc. v. Dentsply Int’l, Inc.*, 602 F.3d 237, 255 (3d Cir. 2010).

⁵ In *Boyle v. United States*, 556 U.S. 938, 945-48 (2009), the Supreme Court resolved a split in the circuits regarding the issue of whether a RICO enterprise must have a hierarchical structure beyond what is necessary to perpetrate the predicate crimes. The Court held that such “ascertainable structure” was not a requirement, but rather an association-in-fact enterprise “must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s purpose.” *Id.* at 945-46. *See also* Barry Tarlow, *RICO: The New Darling of the Prosecutor’s Nursery*, 49 *FORDHAM L. REV.* 165 (1980).

⁶ Judge Learned Hand once called conspiracy the “darling of the modern prosecutor’s nursery.” *Harrison v. United States*, 7 F.2d 259, 263 (2d Cir. 1925). Conspiracy charges afford prosecutors several advantages. First of all, it gives them a legal means of stopping criminal behavior before it is fully realized. All it takes to file a conspiracy charge is an agreement and an overt act. In addition, conspiracy charges give prosecutors important procedural advantages. For example, joining a number of individuals together as co-conspirators and greater latitude in selecting a venue.

⁷ NORMAN LUCAS, *THE LUCAN MYSTERY* 9-10 (1975); *see also* JAMES RUDDICK, *LORD LUCAN: WHAT REALLY HAPPENED* (1994).

⁸ LUCAS, *supra* note 7, at 71.

⁹ *Id.*

bandaged lead pipe similar to one found at the crime scene.¹⁰ Lucan himself, however, was never seen again.¹¹

There was continuing interest in Lucan's fate, and his vanishing has been profiled in books and on television.¹² He was presumed dead in 1992 and declared legally dead in October 1999.¹³ Still his disappearance remains one of the great mysteries of recent British history.

The thing is that, at least in some of Lord Lucan's photos, he bears a striking resemblance to Mike. Originally, I took a "mysteries" book to class that had a large photo of Lucan.¹⁴ In more recent years, I put his photograph on a PowerPoint slide and showed that to the class. It always drew a good laugh.¹⁵

There is another conversation that I had with Mike as we were coming down the stairs in Lamar Hall. It must have been in our second or third year of teaching. In those early years, I taught Environmental Law. I had not taken the course in law school, but when offered the opportunity, it seemed new and exciting, so I readily agreed.

I was working very hard to stay ahead of my students, and one day I was complaining to Mike about changes that had been made in the law from the previous year and how that made it hard for me to stay a few steps in front of the class. Mike smiled and said, "Yes, well in Agency and Partnership, if I find a case decided in the past 200 years, it's probably still good law." The "new and exciting" area of law no longer seemed quite so attractive.

While Mike certainly was not Lord Lucan, he often played a criminal role in my classes. When I was a student, professors used names like "Andy Able," "Betty Buttons," and "Charlie Case" when

¹⁰ *Id.* at 73.

¹¹ *See id.* at 11-12.

¹² *See, e.g., Lucan* (ITV Studios 2013).

¹³ *See Lord Lucan Death Certificate Granted*, BBC NEWS (Feb. 3, 2016), <https://www.bbc.com/news/uk-england-35481376>.

¹⁴ Lucan's photo appears on the cover of BOOK SALES INC., *THE WORLD'S GREATEST UNSOLVED MYSTERIES: DISAPPEARANCES, DEATH, ASSASSINATION AND TRAGEDY . . . UNKNOWN, UNSOLVED* (2002).

¹⁵ I should note that it was in no way insulting to Mike. According to Wikipedia, "Lucan was considered for the role of James Bond in the cinematic adaptations of Ian Fleming's novels. He was known for his expensive tastes; he raced power boats and drove an Aston Martin." *John Bingham, 7th Earl of Lucan*, WIKIPEDIA (last visited Jan. 20, 2021), https://en.wikipedia.org/wiki/John_Bingham,_7th_Earl_of_Lucan.

offering up hypothetical situations in class or on exams. As a student, I worried about confusing these names that had no particular meaning to me. When I became a professor, I used the names of students in the class. I felt that gave them a picture to associate with the name and that would help them keep the characters straight.

Unfortunately, somewhere along the way, a student took great offense at seeing his name as a victim of a crime on the final exam. More senior professors encouraged me to continue with my practice, but I instead starting using names of professors in my hypotheticals.¹⁶ In that role, Mike became my drug kingpin in any appropriate hypothetical. I did this because it seemed so out-of-character for Mike that I found it funny, and I think the students appreciated it too.

In terms of Mike and Luanne's kind and quiet personality, I remain embarrassed more than thirty years after Claire and I invited them over for dinner. We were at that time living in Northgate Apartments, a university-owned apartment building on campus.¹⁷ One of the new and exciting things for us was that we now had cable television. It had been unavailable in our part of Chicago.¹⁸ We paid for HBO, and the whole building got it.

Claire and I had seen an HBO comedy special hosted by Rodney Dangerfield, and it was very funny.¹⁹ One of his guests was Jerry Seinfeld, who went on to great fame with the TV show *Seinfeld*. We invited Mike and Luanne over to see the new Dangerfield special, which we were excited to watch. The main thing I remember is the guest comedian Andrew "Dice" Clay, who is known for a vulgar brand of comedy, and he lived up to his reputation that night.²⁰

I did not know what to do. Should I jump up and turn off the television? Since it still bothers me all these years later, that is

¹⁶ This took place the summer before I was coming up for tenure. While it was a troubling issue to arise at that point in my career, the late Tom Mason was very comforting and supportive.

¹⁷ There were two apartment buildings, located where Ole Miss Residence Hall 1 is today.

¹⁸ My only partially joking explanation is that they had not yet decided whose brother-in-law would get the contract.

¹⁹ See *Rodney Dangerfield: It's Not Easy Bein' Me* (Paperclip 1986).

²⁰ See *Rodney Dangerfield: Nothin' Goes Right*, (Paperclip 1988).

probably what I should have done. Instead, we sat there awkwardly. Mike and Luanne, of course, were polite, but I always felt embarrassed about that.

The gentle kindness of Mike and Luanne is reflected in their actions around the birth of our first children. When we were expecting our first child, we decided to name a boy Joseph Antone and we decided to name a girl Lindsey Belle. Lindsey is Claire's maiden name, and Belle was my maternal grandmother's middle name. Claire and I made that decision even though Prof. Deborah Bell of the law school faculty had a daughter named Lindsay Bell.

Luanne was pregnant at about this same time. After he learned that we had named our son Joseph, Mike came by my office to talk. He said that they had been considering the name Joseph, but since we had taken it, they would find another name. I told him that was not necessary. I had not even thought to ask Prof. Bell about possibly using her daughter's first and last name. Apparently, that resonated. Mike and I both have sons named Joseph.

As the years went on, Mike and Luanne had a daughter named Jean. She was the same age as my daughter Susanna, and I had the pleasure of getting to know her well when I coached a basketball team on which they both played. Jean (I called her "Jean Jean" from the lyrics to Rod McKuen's song *Jean*) played hard and was always a good teammate. I was happy to have her on the team.

When Mike and I first started teaching Criminal Law, it was offered as a two-credit hour class. For comparison, Torts, Constitutional Law, Civil Procedure, and Contracts each had six hours of the first-year curriculum. Property had seven hours. Perhaps not surprisingly, the Mississippi Bar identified Criminal Law as a subject that seemed to create particular issues on the bar exam. Mike and I successfully lobbied to increase our workload by giving us an extra hour for our class, and Criminal Law ceased being a problem on the bar exam.

Mike played a huge role in changing the expectations for faculty members at the law school, and he deeply influenced my understanding of my role at the university. Back when he and I arrived, professors were expected to publish an article or two in order to get tenure, but there were not many publication expectations beyond that. Today, our faculty produces numerous

books, articles, and presentations at a national and even international level. The change is dramatic, and Mike did more than show the way, which he certainly did. He understood and explained to me why we should do more.

I wish I remembered the details better, but I remember the message. It came as Mike recounted to me a conversation that he had with someone else (I do not remember who). The conversation had been about the role of university faculty. Telling me about it, Mike said something to the effect of, “and so I told him that every society over the ages has employed a group of people to think about how the society functions.”

This was enlightening to me. We were not just teachers. We had, as part of our duty on the faculty, an obligation to think, to write, and to publish for the betterment of our society. Mike helped me see that I was part of a very privileged group who not only had the opportunity to write and express my ideas; I had that obligation. From then on, I viewed writing as a fundamental part of my job—one I have come to love—but I understand it much better than when I first joined the faculty. I have Mike Hoffheimer to thank for that.

As a new professor and new resident of Oxford, Mike did one of the coolest things ever. He went downtown and got a license to be a private detective. He hung it in his office. I came home and told Claire that I wanted one. We both agreed the this was “Mike’s thing,” and I could not copy him. I settled for hanging up a certificate that I received in fourth or fifth grade as a member of St. Margarete of Scotland’s baseball team that won the “high honor” of division champion. Not as cool as Mike’s PI license, but Mike was the only person who ever commented on it. He complimented me.

Mike has a good sense of humor, and he is very alert. These factors both came into play early one April. The university was in the middle of a push to ensure that faculty members were putting in a full week. There was some concern that too many Friday afternoons (and perhaps other days) were being spent on the golf course.

I had been to some kind of rummage sale and found a board that had been used by employees at a gymnasium. It was made so that employee names were on a plank that could be slid to the “in” or “out” side of the board. I bought the board for next to nothing and devised a plan.

I wrapped the board in plain brown paper. I then composed a cover memo that explained this board was to be hung near the law school door so that faculty members could indicate whether they were in or out of the building, and university officials could check up on them. I remember adding that only “minor sanctions” should be used if faculty members failed to use the board, “for now.”

A friend of mine who worked in the university maintenance department delivered the board to the associate dean’s office. Unfortunately, the associate dean was not in at the time, and I had to teach class before he arrived. By the time I got out of class, one of my colleagues had called the Lyceum, and the cover memo had been copied and distributed to the entire law school faculty, with a notation asking whether we wanted to have a meeting to discuss it (I so wish that I had seen all of this unfold!).

The Lyceum, of course, had no idea about the board or the memo. As my colleagues were discussing the matter with, I believe, some raised voices, Mike walked by the office where they were gathered. He calmly said, “Remember, today is April first.” Everyone fell into laughter, and they had identified me as the culprit by the time I got out of my class. I am rather proud of the gag, but I am also proud of Mike for seeing through it.

Mike is a baseball fan. He lived in Cincinnati during the time when the Reds were exceptional and known as the “Big Red Machine.”²¹ In our early days on the faculty, before Swayze Field was built, I remember taking in an afternoon game with him at the old baseball field. We sat on the bleachers and had a great time.²²

Mike also gave me a great baseball-related gift. It was an autographed picture of baseball’s all-time hit leader, Pete Rose.²³ Mike had obtained it when he was a boy. When he gave it to me, Pete was having lots of legal issues, some of which (tax evasion) resulted in him being sentenced to five months incarceration at the United States Penitentiary in Marion, Illinois.²⁴ Mike gave me the

²¹ See MIKE SHANNON, *RIVERFRONT STADIUM: HOME OF THE BIG RED MACHINE*, (2003).

²² I am pretty sure that we had a six pack of beer too.

²³ See Ronald J. Rychlak, *Pete Rose, Bart Giamatti, and the Dowd Report*, 68 *MISS. L.J.* 889 (1999).

²⁴ See Associated Press, *Pete Rose Sent to Prison: Sports Legend Gets 5-Month Term and \$50,000 Fine: 'It's All My Fault,' He Tells Judge*, *L.A. TIMES* (July 19, 1990, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1990-07-19-mn-564-story.html>.

photo with a very funny line. He said it combined two of my great loves—baseball and criminal law.

Actually, baseball plays a role in another story involving Mike and me. The law school was hosting Richard Epstein, a brilliant professor who was then teaching at the University of Chicago. I was invited to go to lunch with him, Mike, and Professor Richard Barnes (who was a Pittsburgh Pirates fan).²⁵ We had all just attended Epstein's lecture, on his recent book on eminent domain,²⁶ and I realized that I was going to be with these three brilliant men and might have a hard time keeping up with this difficult subject. So, I took my shot.

As we sat down, I asked Prof. Epstein how he thought the Cubs were going to be that year. That was all it took, and he was off to the races. I had recently moved from Chicago and knew the team pretty well, so I was able to play a big role in the conversation. It was perhaps not the academic experience it could have been, but it was a great baseball discussion.

Mike and I were thrust into a position that could have been difficult had he been a less considerate guy. I think it was 1989, and a fire damaged the fifth floor at Lamar Hall where the faculty offices were.

Law school administrators scrambled to find places for us to work. Mike and I ended up sharing a single office on the first floor in the law journal suite. From my perspective, it could not have gone better. I do not remember an argument or even a complaint from Mike. We each had our own desk, did our work, and had a great semester.²⁷ I could not have asked for a better officemate.

I spent thirteen years as Associate Dean of the law school. During that entire time, I was often the point of contact for

²⁵ Richard was a photographer. Knowing that I grew up in St. Louis, he gave me a photograph of the St. Louis Arch which still hangs in my office. I gave him a Pittsburgh Pirates Stein that he kept on his desk until his untimely death. Deborah Purnell, *Richard Barnes Remembered as 'Great Colleague,'* U. OF MISS. NEWS (Jan. 24, 2013), <https://news.olemiss.edu/richard-barnes-remembered-great-colleague/>.

²⁶ See RICHARD A. EPSTEIN, *TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN* (1985).

²⁷ For me, that semester's research was dedicated to developing stories, anecdotes, and jokes to enliven my Environmental Law class. Since I did not have many of those things prior to this semester, I used to do a magic trick each class. Some students wish I still did that.

complaints. Mike never created problems for me or the administration. He took some strong positions, but he advocated as the gentleman that he is and always has been. I greatly appreciated that.

When I heard that Mike was retiring, I told him that we had come in together, and I thought we would go out together, like Butch Cassidy and the Sundance Kid. Then, of course, Mike reminded me of how that movie ended, and I agreed that we did not want to go out that way.

I am happy for Mike. I see the nature and family photographs that he posts on social media, and I know that he is enjoying his time with Luanne. I miss seeing him on a daily basis, but we are both still here in town. Mainly I am grateful that I got to know and work alongside Mike Hoffheimer. He made me better at what I do, simply because he is so good at what he does.

