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Jesse Dukeminier  
*University of Kentucky*

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# Tribute to W.L. Matthews

## A Sprig of Rose Geranium for W.L. Matthews

BY JESSE DUKEMINIER\*

It was in 1955, on an April evening freshened by a spring shower, when I first met W.L. Matthews. I had resigned at the University of Minnesota and was planning to return to the Wall Street firm I had left a couple of years before. Elvis Stahr, dean at Kentucky, had talked me into flying down to Lexington. "Give us a chance to change your mind," Stahr entreated. On account of the rains, the plane was late. A junior member of the faculty, Bill Lewers, whom I had known at Yale and who was leaving for Illinois (and, ultimately, the priesthood), met me at the airfield. A short time later, after a fast ride across town, he delivered me to the waiting group Dean Stahr had assembled in his home. In addition to the dean, those present included that great overgrown leprechaun, Paul Oberst, whose wit and wisdom later enlivened my years in Lexington, and the unforgettable Roy Moreland, who—paid in scrip by the university in the Great Depression—never thought a suit quite worn enough to throw away, but who was dressed to the nines for this occasion. I can remember the others too—the whole faculty was there. But my eye was drawn to a soft-spoken man whose mere presence in the room was centripetal.

William Lewis Matthews was not a tall man. He stood about 5 feet 8 inches high. He had a round face, with bright blue eyes, short curly honey-colored hair, a ruddy complexion, and a wonderful crooked mouth that seemed to fill with laughter when he would tell—as he often did—some story out of a recent human comedy he had witnessed. But in spite of his actual height, W.L. Matthews had the gait and countenance of a tall man. He had a long-legged stride (you could hear his father saying, as he

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\* Professor of Law, University of Kentucky, 1955-63. Professor of Law, University of California, Los Angeles, since 1963.

grew, "Step out, son."). Very little passed by that he did not see—and see through. A man of few vanities, he was amused by the pretensions of others. He was a shrewd judge of character and could swiftly assess a person, sensing at once weaknesses, strengths, habits of thought. But he liked, and enjoyed, people for all he saw in them. And so, though you were half aware that W.L. looked right into your quaking and fearful inner self, you also knew you could trust him. There was nothing devious in his makeup. It is easy to see why he would be a central figure in a room of wise men pursuing their own agendas. His role was to nurture them—and something in me sensed, on that evening so long ago in the Stahrs' elegant living room, that he was meant to nurture me too.

The next morning—as is usual in such interviews—I was driven around Lexington and taken to the law school. It was a glorious April day, the sun was out, the air, freshened from the spring rain, brisk and breezy. The ubiquitous redbud of the Kentucky woods, finding city thickets equally hospitable, heralded the ending of winter. Dogwoods were in bloom everywhere, with their sprays of white blossoms shooting low across lawns of well-kept houses. Weeping cherries, with their long sensuous branches of pink flowers, were only the most spectacular of the many varieties of flowering fruits. Daffodils grew in drifts in yards, as if planted by the wind. Overhead and everywhere was the feathery yellow-green—the chartreuse color—of trees just beginning to bud. And outside of town, radiating like spokes from the hub of Lexington, were country lanes lined with stone walls or white fences, leading to horse farms where grazing spindly-legged foals ventured not far from their mothers and the loudest sound was the murmur of rivulets of limestone water rushing into some branch of the Elkhorn. A sweeter earthly garden is hard to imagine. None of the many springs I have spent in New England and New York and California and in the South (and one in Minnesota!) has been comparable to April in the Bluegrass.

That night I was invited to the Matthews' home, a comfortable house newly built at the very edge of town on a spacious lot cut out of a former farm. Only one street light filtered out the houses from the soft perfumed darkness. Again a crowd of professors, and, this time, their wives, was assembled; the talk was spirited and not just from the bourbon, which flowed freely.

Ideas crackled; laughter resounded. The mistress of ceremonies was Carol Matthews, W.L.'s wife. She was bluff and hearty, masking a considerable intelligence behind a hail-fellow-well-met facade. She had a lively curiosity and an appetite for politics. She was "Madly for Adlai." I knew Carol Matthews was going to be my friend.

Elvis Stahr and company persuaded me not to return to New York, but to come to Lexington to teach. It was a fateful choice, and it was right.

The law school in those days was housed in Lafferty Hall, a vaguely art deco red brick building built by the WPA in the 1930s. It was a compact building, fitting the law faculty and students like a proper glove does the hand. Not an inch to spare, but enough room to flexibly accommodate every essential part. The law faculty was small: Roy (tragically struck and killed by lightning while playing golf), Burt Ham, Fred Whiteside, Dick Gilliam, Jim Richardson (McEwen's replacement), Tom Lewis (who replaced Elvis Stahr in 1957), and me. Each of us had a private office, as did Mary Dunne, an incredibly competent woman who served as secretary to the dean and the entire law faculty, typing manuscripts, letters, and exams while keeping everyone in line with a fine Irish temper. Dorothy Salmon singlehandedly ran the library. We had three classrooms, a first-year classroom downstairs holding about 90 students and two smaller ones upstairs, for second and third-year classes, holding around 30 or 40 each. The student body was small—about 120 in all—and if Al McEwen had his way, it would have been smaller still, for he believed in flunking automatically one-third of the first year class. (To control McEwen, the faculty, at Roy Moreland's prodding, adopted a "recommended average grade." It was not a "curve," but all grades in a class were supposed to average out at the recommended figure. McEwen was too smart to be hamstrung by this: he could still give one-third Fs, raise all the other grades, and come out with a recommended average grade of C+ or B- or whatever it was. When his grades in Civil Procedure continued to be posted with one-third Fs, Roy Moreland would storm up and down the hall, and out onto the front steps, where he "held court" with students.)

W.L. Matthews and I were the "property faculty." W.L. taught Property I and II, the former being personal property, the latter being estates in land. I taught Property III, convey-

ancing. I have always considered personal property the least interesting part of property and was delighted that W.L., who had seniority, chose to keep it. W.L. turned personal property into intellectual and conceptual fun and games for the beginning students. He began (where else?) with *Pierson v. Post*, and—with fox hunting being a favored pastime in Kentucky—immediately captured the students' interest. Besides its obvious worth as a case to introduce students to the concept of possession, *Pierson v. Post* is a contest between a rich sportsman chasing a fox and a poorer farmer who shot the fox under pursuit. The students could easily picture themselves on one side or the other. W.L. went on from there to work out the concept of possession until there was hardly anything left for a mouse to nibble at. In teaching gifts, he was famous for "giving away" his watch to the students, and then, when the students were really sure the watch was theirs, slipping out of the "gift" like Houdini escaping from chains.

In teaching estates, W.L. was rigorous, demanding the precise analysis the subject requires. I imagine Kentucky is now populated with lawyers who received their basic education in this subject from W.L. Matthews. And, if they are like me, they can never forget the magician who introduced them to the unbelievable world of the fee simple, the fee tail, and contingent remainders. W.L. loved to teach about the fee simple determinable and the possibility of reverter, those strange legacies of the English dead hand, and he grieved, I think, when I persuaded the Kentucky legislature to abolish these estates. I am sure, however, that the determinable fee, like the Rule in Shelley's Case, had, in the classroom, a long life after death.

We had students from almost every small town in the state of Kentucky, and students from Louisville and Lexington, too. We had students from the Pennyrile, from the Purchase, from the Kentucky suburbs of Cincinnati, from the Knobs, from up the creeks and hollers in the Kentucky mountains—students eager for learning and genuinely friendly, whose politeness bowled you over. Teaching was sheer pleasure. Many had superb minds—one student I remember as writing the most brilliant examination paper I have ever received. Now when I read that they have become judges, legislators, governors, successful lawyers, I think of how much they owe to W.L. Matthews—who not only intro-

duced them to the mysteries of property but also, as dean, held us all together as a family in Lafferty Hall.

We had wonderful times in Lafferty Hall. We had our skirmishes too—usually mock-battles between Roy Moreland and some member of the faculty who, like McEwen, showed too much independence. Moreland, the junior member of the law faculty during the 1930s and 1940s, had—due to the retirements or deaths of all the senior members of the faculty within a short period at the end of the 1940s—all of a sudden become the oldest member of the faculty. The vivacity of his passions joined to a persistent will to convert, prevented him from playing the role of elderly statesman dispensing grandfatherly advice. (In fact, that role fell prematurely to the young Paul Oberst, second senior member, who was wise beyond his years.) Moreland believed strongly that standards were falling all around him and that the economy was fast going to hell because of government spending (and this was in the Eisenhower administration!). But, in spite of busying himself in everybody's business, Moreland was a lovable Pooh-Bah, who genuinely liked those with whom he was fussing at the moment.

One of the last tussles with Moreland occurred when coffee houses came to Lexington, I think this was in the first year of President Kennedy's administration (although my memory may be playing tricks by associating the excitement generated by Kennedy with the novelty of the coffee houses). Beatnik poets—or what passed for same in Lexington—sat on stools or ladders and read their poetry, while customers, usually students, consumed various things. At the time, I was teaching Future Interests, a course W.L. Matthews had gladly surrendered to me when I first joined the faculty. It was not a course in which there was a great deal of natural student interest (though John Y. Brown, Jr., did take and pass it, which may account for his making millions in fried chicken). I had to work hard at enlivening this course in how the rich tie up wealth for future generations, and the coffee houses gave me an opportunity. Why not turn my class into a coffee house and have students compose and read poetry about future interests? After all, W. Barton Leach's students had, back in the 1930s, written some highly entertaining verses which Leach published under the title of Langdell Lyrics. So, one rainy winter afternoon, I did just this. The students produced some good and some very, very bad

poetry. The best of the lot I offer below. Whatever its merits as poetry, its contrasting versions of the worlds of remainders and science and the beatnik generation set my head spinning—which, after all, is what a beatnik poet is supposed to do.

The Prayer Wheel Is Making a Racket

(Without apologies to T.S.E. or any other source of inspiration.)

November is the craziest month, breeding Coffee houses out of bur-  
geoning slums,

Bugging the somnolence of Henry Clay's heirs—

Dead without issue, most of them—beat.

The Duke saying impossible things we must believe: A man can die  
twice, and women,

Long past the urge and the menopause,

Can have children.

HURRY UP MAN BEFORE YOU GET LOST.

CRAZY MAN CRAZY

Let us cut then, you and I,

From where John Chipman Gray hovers in the sky,

From things imagined that you can see,

To the mad world of science where things exist but cannot be.

For better or for worse,

Ours is no longer the one and only universe.

The maxim *ad coelum*, awarding us, the Master Race, from hell to  
heaven in fee,

Is bunk. What's more, this Milky Way you see

Is not bright *things* in one vast mass,

But only a few trivial molecules of gas.

As for this earth,

Which contains an infinite number of fees within its girth,

Far from being composed of land and sea, is, to give science its due,

Made of things you cannot view.

Livery of seisin has been made a lie by the Microcosm:

Blackacre, a twig, a clod, or a lady's bosom

(Pardon me this parity)

Are nothing but a mass of wildly moving particles rushing round and  
round without any apparent law or regularity.

So to a property lawyer the ways of science are mighty queer,

For instead of reifying concepts dear

To Coke and other purveyors of legality,

Science has gone and abstracted concepts from reality!

GO, MAN, GO

Science and seisin, it's all the same,

Materialism by another name.

So why not leave this thing-ridden world  
 And give the hippie life a whirl?  
 Yes, let's be off like Jimmy Dean  
 Fetch me my jacket, boots and jean  
 We'll leave Dean Matthews and go on the road  
 And pick up Dean Moriarty\* at the back of the shack on the wrong  
 side of the railroad track  
 And add two or three chicks, some grass and a toad.  
 It's no go your tried and true, it's no go tradition,  
 All we want is a helluva time, in or out of prison.  
 It's no go the Balanced Life; it's no go the R.A.P.;  
 All we want is a stripped-down Ford, gin and poetry.  
 Put the fox tail on the car, jazz those double exhausts.  
 Head for the nearest coffee house.

Lost Man, Man, get lost.

COME BACK, MAN, COME BACK

I am at the end of a semester looking down  
 Into a hell, not black, not brown  
 But dullish, dullest john c. gray.  
 Don't spin the prayer wheel so fast  
 We've got to make remainders last,  
 Until life tenants pass away.

CRAZY MAN SEE?

The disjointed rhythms of contemporary life, the lack of stability, the  
 screeching of brakes, the pitch and babble of televised fatuities  
 Simply won't accept the discipline of the Rule against Perpetuities  
 Any more than destructibility  
 Would fit into a nineteenth century melody  
 And was abolished, put aside,  
 In order for conditions precedent to abide.  
 And so to lawyers and clients lay:  
 Buy wait-and-see or cy pres.

No question about it, this session was a great deal more fun  
 than another hour on "death without issue."

When Moreland got wind of what I had done, he was  
 outraged—and said so to all who would listen. Duke's perform-  
 ance (he always called me "Duke") was evidence of how low  
 teaching standards had fallen: ladders, black turtle neck sweat-  
 ers, poetry yet! Where was the rigor of yesteryear, when students  
 were students and professors were Professors teaching The Law?

Where indeed? The world was changing faster than we knew.  
 Lexington, in those days, was one of the most interesting country  
 seats around. Founded in the late 18th century and named after

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\* Dean Moriarty was not a dean of another law school, but a character in Jack  
 Kerouac's novel, "On the Road."



the battle of Lexington in Massachusetts, Lexington (population c. 70,000) was an old, settled, satisfied community. Seventy-five miles to the north, by a choice of two equally tortuous, curving roads, lay the northern city of Cincinnati with its fine French and German restaurants, stores, and art museum, and beyond that the terra incognita of Ohio. To the west, also 75 miles away, was Louisville, a bustling metropolis with commercial ties to western Kentucky and Indiana. To the south was—well, the South, people we played basketball and football with the the locale of “the War” which was discussed *monthly* at the Civil War Roundtable, run by local history buffs and university professors. To the east were the magnificent Kentucky mountains, a land of quiet beauty with an indigenous folk culture and spellbinding patterns of speech. In the center of this part of the world was Lexington, a town of such self-esteem (or was it conceit?) that people spoke of going *down* to Louisville, *down* to Cincinnati, *down* to any place; Lexingtonians always travelled uphill going home.

Although contented, Lexington was not insular. It was the meeting ground of several social orders. I mention here only the three that dominated it. Two universities, the University of Kentucky and Transylvania (the oldest college west of the Alleghenies), were populated with people pursuing ideas, drama, music, and art. The horse farmers and storied old Lexington families staged horse races, horse shows, afternoons in the country, and elegant parties in rooms filled with overstuffed, comfortable furniture, Kentucky silver, and talk of the latest book or play in New York. (Although it is difficult to describe, there was an intellectual connection with New York that gave one the feeling sometimes that New York was closer than Louisville.) The local intelligentsia (who would have resented the term) took their laboratory to be Kentucky itself, and—over Kentucky ham biscuits or a serving of wild spring dandelion greens—they might be found discussing the Linnean classification of a newly discovered wild-flower or how the Kentucky dulcimer differed from the zither (popularized by “The Third Man,” a movie of the period). All together, these groups produced a spirited and literate cultural life not ordinarily found in provincial capitals. Lexington history was rich with stories of eccentric and strong-willed characters who defied convention; some of them were still around when I arrived in Lexington. My memory of gracious

old Lexington society is forever linked with the pungent, spicy smell of rose geranium leaves, which so often floated in the finger bowls after a splendid repast in one of the grand houses. I grow rose geranium in my garden in California today, from a plant I brought from Kentucky. Merely crushing a leaf will bring back memories of years spent in the Bluegrass.

But this pleasant, languid community, dominated by its agrarian upper class, was soon to change—drastically. New Circle Road, built on the north side of town in the early 1950s as a bypass, was a harbinger of things to come. It was no sooner built than it became the location of every sort of drive-in, with flashing signs advertising beds, burgers, and booze. For proper Lexingtonians who had never noticed what was happening elsewhere in America, and for environmentalists, New Circle Road was a horror. Progress had discovered Lexington, and the battle lines were drawn. On one side were those who wanted to keep Lexington the way it was, and, on the other, those who believed in jobs for the middle class, an expanding economy, more money flowing in the community, and a larger, more financially secure, university. This sort of battle has, of course, taken place hundreds of times and in hundreds of places across America—and elsewhere in the world. Almost always, as we know, progress wins out. W.L. Matthews understood this conflict and its likely outcome and how to shape the forces of progress for the betterment of the law school, and so, fortunately, it fell his lot to lead the College of Law at this time of enormous change.

Three years after I arrived in Kentucky, Elvis Stahr resigned as dean, going on to other things. W.L. had served as acting dean for a year, and then, his extraordinary decanal qualities apparent to all, the President of the University picked him as Stahr's successor. Not long after he assumed office, W.L. looked at the growth that was occurring in Lexington and in the state. He did what every good dean does in that situation: he began planning for a new building to house a law school more than three times its existing size. But W.L. did not just dream of a new building; he dreamed of building a *great* law school. The days of the small, tightly-knit school in Lafferty Hall, which had been serving a largely rural state and a bar made up of small town practitioners, were numbered. We had to move to a new, higher level of legal education, sacrificing those close relationships among faculty and students, possible only in a small

school for the advantages of size and a broader vision. Most important, the law school had to change because of the changing nature of law practice. No one replevied a cow anymore; lawyers were now expected to help put together complicated deals in a complex, industrial society. With fast new roads, the furthest reaches of the Kentucky mountains were hardly more than a two hour drive from Lexington. For this new world of lawyering, W.L. Matthews—who hid a fierce determination beneath his demeanor of becoming naturalness and modesty—dreamed of a new school with a distinguished faculty serving it. Of course, he shared this dream with the law faculty, and they helped paint it in—but it was Matthews' energy, his probity, his perseverance with the university administration, which would make it come true. No great school is built without a leader, and it was W.L. Matthews who built the modern law school at the University of Kentucky.

I did not stay to see it built, though the plans were on the drawing board when I left.

When, in December 1962, I decided to accept an offer from UCLA, I told my friend W.L. first of all. He wept, and I wept. Each of us had separate dreams. He realized his, while I'm still pursuing mine.