

# Dean Breck

as recorded by Erik M. Jensen

MEMORANDUM

SIWASH SCHOOL OF LAW

To: Faculty Minus One  
FROM: Reginald Cuthbert, Cheesesticks Professor of Law  
RE: Tushingham's Antics  
DATE: April 2, 1994

The S.O.B. has written another story!

Several of us were horrified when a "colleague," Professor Tushingham, published a story – with footnotes yet! – that denigrated the legal-academic profession. He's done it again. A little criticism is all in good fun, but his last "story" is beyond the pail. (I put it behind the slop bucket in the barn.)

It's about a hiring dispute at a "fictional" law school. The school's goal is diversity – more minorities and women – although a few old geezers hold out for merit hiring, and a few others think diversity of views should matter. And then the school winds up hiring a white male anyway, apparently because he's lazy enough not to threaten anybody.

No one should think that the fictional – and stupidly named – "Sloth" law school is anything like our school. But Tushingham uses OUR names in his sophomoric work. Some people out there might not be able to distinguish between Tushingham's rantings and the true Siwash.

We have to do something.

cc: Staff and Students

*Editor's note:* Professor Cuthbert is presumably referring to *A Day in the Life of S. Breckinridge Tushingham*, 69 DENV. U. L. REV. 231 (1992) (as recorded by Erik M. Jensen).

This must refer to *Tough on Scholarship*, 39 WAYNE L. REV. 1285 (1993) (as recorded by Erik M. Jensen).

I'M THE PROFESSOR TUSHINGHAM mentioned in the memo, but let's not get hung up on formalities. To my Siwash friends (both of them), I'm Breck, short for Samuel Breckinridge Tushingham.

If you haven't heard of me, you haven't been

keeping up with the literature. I'm a rising star in the legal firmament, and, believe it or not, I'm really not a bad guy. But I knew my days at Siwash were numbered<sup>1</sup> when I received a pirated copy, marked with a black spot, of Cuthbert's memo.

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<sup>1</sup> And the numbers were all negative.

It's true, I *did* write a couple of footnoted stories about the legal academy,<sup>2</sup> but they were serious examinations of the academic workplace.<sup>3</sup> I wasn't ridiculing my steamed colleagues,<sup>4</sup> and I'm hardly the first person to poke fun at professorial non-work habits.<sup>5</sup> Why didn't Cuthbert condemn Kingsley Amis?<sup>6</sup>

I just get this urge to write "sheepdip handouts";<sup>7</sup> I can't help myself. I'm a writer, a "comma artist,"<sup>8</sup> and it's not as though my storytelling is making me rich.<sup>9</sup>

I have a right to write. I've lived in the U.S. all my life and, if Exxon is a "person," I certainly am. No one should violate "the right of a native person to tell [his] story in [his] own

way."<sup>10</sup>

But after the memo circulated, the faculty (minus one) decided to hold a public forum at which my heresy could be discussed in a properly academic way.

"I'd cut off his \*\*\*\*," Professor Gabriella (Gabby) Hayes told the audience that overflowed Siwash classroom A, "after providing full due process, and then make him into processed cheese." She had begun her speech by saying she would take the high road, but she obviously got off at Exit 1.<sup>11</sup>

"Tenure doesn't protect such nonsense," roared Katherine Kudzu, the Lawn Turf Professor of Law.<sup>12</sup> "What does this stuff have to do with scholarship? Scholarship is what my

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2 "Have you ever thought what slow work it must be getting even half a page of footnotes set up?" Kingsley Amis, *LUCKY JIM* 193 (Penguin Books 1961). And every law-review page has to be at least half footnotes; it's a rule.

3 And my other important work continues. Two volumes of *Tushingham on Roofs* have now been published, to positive reviews (except that one caustic critic said I spend too much time on gutter issues). By the time I've finished volume six, I should have covered everything; I've been so busy I haven't had time for a leak.

4 See P. J. O'Rourke, *EAT THE RICH* at xv (1998) ("[W]ho ever heard of humor with footnotes?").

5 The culture affects students as well. See Scott Turow, *THE LAWS OF OUR FATHERS* 173 (1996) (Hobie "chose law school ... because he'd heard the only required work was a single exam in each course").

6 See Paul Fussell, *THE ANTI-EGOTIST: KINGSLEY AMIS, MAN OF LETTERS* 53 (1994) (noting "the sort of thought and behavior not just found at but apparently encouraged at a university: laziness, vanity, cultural and intellectual affectation, self-absorption, and sycophancy").

7 *Id.* at 46 (quoting Amis: "Any proper writer ought to be able to write anything, from an Easter Day sermon to a sheepdip handout.>").

8 No, no, no, not a friend of Alger Hiss's. See Malcolm Bradbury, *WHO DO YOU THINK YOU ARE?* 129 (Penguin Books 1993) ("This kid is a comma artist. I know it doesn't sound much, with the world the way it is, ... but those are real good commas.>").

9 But I do get paid for this, don't I, editors? As Dr. Johnson said, "No man but a blockhead ever wrote, except for money." Quoted in *THE OXFORD BOOK OF MONEY* at xi (Kevin Jackson ed., 1995) [hereinafter *OXFORD BOOK*]. Oh, if it helps on the compensation issue, I could throw in the following: "I know chaps ... think an editor's job all beer and skittles; it's very far from being that, believe me." Amis, *supra* note 2, at 193.

10 Robin Wilson, *A Challenge to the Veracity of a Multicultural Icon*, *CHRON. HIGHER EDUC.*, Jan. 15, 1999, at A14, A15 (quoting common reaction to finding that Rigoberta Menchú made up her story).

11 Academic behavior is the result of evolution. "For the better part of a century, we have been selecting for certain kinds of alienation and aggression on campus." David Damrosch, *WE SCHOLARS: CHANGING THE CULTURE OF THE UNIVERSITY* 9 (1995); see also *id.* at 78 ("[T]he university is a home for perturbed souls ...").

12 See Amis, *supra* note 2, at 229 ("There could be no doubt about it; this article was either a close paraphrase or a translation of Dixon's own original article. ... So that was how people got chairs, was it?").

friend Vaclav Moot at Scoff Law School does<sup>13</sup> – richly nuanced studies of grazing law. He’s the top man in his field.”<sup>14</sup>

“Indeed. Tushingam wouldn’t be able to recognize a scholarly work if he made a wrong turn and accidentally wound up in the library,” said Professor Rupert (the Mind) Cadwalader. “My treatise, *Evidentiary Use of Fingernail Clippings*, is the model for cutting edge scholarship.”

“Nobody outside a madhouse ... could take seriously a single phrase of this conjectural, nugatory, deluded, tedious rubbish,”<sup>15</sup> concluded Dean Deluca for the prosecution, as he put his pompoms down.

I wasn’t sure that the dean’s comments were precisely on point; he didn’t deal with the reception of my articles *inside* the law school. But I didn’t get the chance to make my case. I had been allotted time to respond but, when I started speaking, the fire alarm rang and the room cleared out.

Anyway, with the handwriting on the wall – Fire the Bum! read one of the nicer postings in the faculty lounge – I had to get out of Siwash. When things aren’t going well, what better way out than becoming a dean?



I know that everyone doesn’t have a high opinion of deans,<sup>16</sup> but I do. Being a dean gives one the opportunity to shape legal education, to help mold the minds of the next generation of lawyers, to ... well, to get paid a lot more than anyone else in the building.

Besides, many schools are desperate to find a dean.<sup>17</sup> If you can demonstrate that you won’t barf on the shoes of major donors – at least not on a regular basis – you’ve got a shot at the job. And that’s a lot better than being shot on the job, which was nearly my situation at Siwash.

The dean search process is serious – I grew a beard to look suitably academic<sup>18</sup> – but it can also be fun. I met with quite a few search committees at the AALS convention in Key Biscayne in January. The Flyby U. people heard from the Upper Volta State folks that I was in the market, and they passed the word on to the Albuquerque Law committee. And so on. I wound up on everyone’s list, and endless pina colodas and intense academic discussions<sup>19</sup> are a nice mix.

If I wanted, I could be interviewing for deanships the rest of my life. Once your name gets into the pool of potential deans,<sup>20</sup> no life-guard could pull it out.

The deanship interviews themselves were predictable.

13 Not Ignatius Moot. A professor at an obscure midwestern law school has appropriated *my* characters and law school names in some of his works, and he’s butchered the names. See, e.g., Arthur Austin, *THE EMPIRE STRIKES BACK: OUTSIDERS AND THE STRUGGLE OVER LEGAL EDUCATION* 33 (1998). This guy obviously wants to piggyback on my reputation.

14 Grazing law provides something to chew on for a lot of specialists. See *id.* at 153 (“Grazing law people read grazing law articles.”).

15 Amis, *supra* note 2, at 226.

16 See Richard Russo, *STRAIGHT MAN* 242 (1997) (“There are lots of dull teachers. You can’t make them all deans.”); *id.* at 246 (“He’s been a reasonably well-intentioned, lazy, honorable, mildly incompetent dean, and that’s about the best you can hope for.”).

17 How often can you find yours?

18 “Exaggerated facial hair probably serves several adaptive functions. As a social organ it inflates apparent body size, thereby helping to establish and maintain the group dominance hierarchy.” Jerry N. McDonald, *NORTH AMERICAN BISON: THEIR CLASSIFICATION AND EVOLUTION*, caption to plate 28 (1981).

19 I also visited Clown College, where the academic discussions are always in tents.

20 By “potential deans,” I mean people who might want to become a dean. I therefore exclude from the definition those actually occupying a dean’s office today. By which I mean someone with the title of

"We want our dean to be outgoing," said the chair of just about every school's search committee.<sup>21</sup>

"We want to make a Quantum leap in reputation." (Quantum U. is the other law school in the state.)

"We want to be better-endowed."<sup>22</sup>

That's about it. Maybe a little talk about academic philosophy or something, but nobody takes that stuff seriously.

Colleagues at Siwash supported me in my search. For the last five years or so, Cuthbert had been recommending me every time he saw an announcement of a decanal opening. He could say, quite honestly, that "there's no one I'd rather see as dean of [fill in the school]."<sup>23</sup> And Kudzu told callers I'd be great at fundraising. In fact, she'd pay to see me go.

I got lots of callbacks, and I wound up covering more of the Great Plains in winter than the buffalo used to.<sup>24</sup> I visited so many schools that it's all a blur to me now (probably because of the whiteouts).

It could have been hard to narrow the choices down,<sup>25</sup> but Fate intervened and made

everything easy. In late March I met with President Fate of South Soybean State University. Soso State is a school at just the right level for me.<sup>26</sup>

The president and I were sitting on a leather couch in his office, "as close to the heart of civilization as you can get without going to a better school."<sup>27</sup> When the president asked if I wanted to assume the deanship, I thought he wanted to engage in a thought experiment. I'm willing to assume almost anything.

But, no, he offered me the Soso job, and I accepted on the spot.<sup>28</sup> The fit was nearly perfect, and I was sure I could make any necessary alterations.

Soso State Law School was now my baby,<sup>29</sup> waiting to be crafted in my image. Both of us needed a facelift, and a little belt-tightening wouldn't have hurt either.

When I arrived at Soso in June, there was much to be done. After having the blackboards cleaned – I wanted to start with a clean slate – I faced some serious issues. My first major policy decision was to take down the portraits of my predecessors that had been

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dean today, whether or not he or she is actually in the office today. By "today," I mean as I say this, regardless of when you read this. Gee, this is hard. I now understand why it's impossible to commit perjury. See Francis X. Clines, *The Testing of a President: The Deposition*, N.Y. TIMES, Sept. 22, 1998, at A1 (quoting POTUS: "It depends on what the meaning of the word 'is' means.").

21 Sure enough, many of the deans they hired were gone within a year. See Cynthia Cotts, *No Good Dean Goes Unpunished*, NAT'L L.J., May 11, 1998, at A1.

22 You know what they meant. Larry Flynt may now be our national ethicist, but get *your* mind out of the gutter. See *supra* note 3.

23 See Amis, *supra* note 2, at 228 ("He would finish what testimonials he could for any application Dixon might make for a new job, provided it were outside the city.").

24 And will again! See Doug Peacock, Preface in Douglas Gruenau, *BISON: DISTANT THUNDER* 8-9 (1995) (defending the proposition that "Buffalo have power").

25 See Fussell, *supra* note 6, at 55 (describing school where "nothing of interest takes place ..., ever took place, or ever could take place"). Try to get narrower than that.

26 "'So so' is good, very good, very excellent good: and yet it is not; it is but so so." William Shakespeare, *As YOU LIKE IT*, act V, sc. 1.

27 Russo, *supra* note 16, at 160.

28 I didn't want him to see that I'd spilled my drink on the couch.

29 See J.C. Gray, *Cases and Treatises*, 22 AM. L. REV. 756, 763 (1888) ("The greatest teacher the world has ever known was fond of comparing himself to a midwife. His task, he said, was to aid the scholar to bring forth his own ideas. He, to-day, will be the most successful teacher who can best exercise this obstetrical function.").

hanging in the law school halls. (The portraits were hanging, not my predecessors, although there's a lot to be said for stringing up the simpering bastards.) As far as I'm concerned, it's just as if old Dean Gradgrind had never been here.<sup>30</sup>

But of course a dean can't really change anything important, except light bulbs,<sup>31</sup> so what I had to do was make it look like I had.<sup>32</sup>

We had a faculty retreat so I could get to know my new colleagues better.<sup>33</sup> The level of discourse was high; we met on the fifteenth floor of the Soso administration building.

The faculty agreed that we needed to create a niche for the law school. (Actually, we couldn't agree at first on how to pronounce "niche," but after a morning's discussion we came to nearly unanimous agreement on that issue.)

We decided that we should build on our strengths and promote empirical legal research. I was sure I could find outside funding to create a Soso Center for the New Empirics,

and I hoped to raise enough to bring the Center indoors, at least on cold days. If necessary, I could divert money from other sources – for example, by chopping the budget for trivial studies, like those in taxation.<sup>34</sup>

The empirical work-product of my new colleagues was fantastic, and getting better every day. We prepared a brochure noting our accomplishments to send to all law professors in the western hemisphere. You'll have to imagine the bright-red, glossy paper, and the illustrations of English academic buildings, but here are some of the highlights of our works-in-progress:

- Professor Donner's empirical work on the ubiquity of Christmas tree needles<sup>35</sup>
- Professor Sanders' study of the danger that the spread of Chinese restaurants poses to the American chicken population<sup>36</sup>

30 See David King, *THE COMMISSAR VANISHES: THE FALSIFICATION OF PHOTOGRAPHS AND ART IN STALIN'S RUSSIA* (1997); cf. Auberon Waugh, *Way of the World*, *DAILY TELEGRAPH*, Jan. 2, 1999, at 25 (discussing University of Edinburgh's removal of bust of Arthur Koestler when female students "complained of 'feeling uneasy under its gaze,'" even though the bust had "been standing on the site for ten years without attacking or abusing anyone").

31 And if you've ever been to a faculty or student bar association meeting, you know that light bulbs are very important, at least for the two hours a week that students and faculty are actually in the building.

32 See Fussell, *supra* note 6, at 55 ("[B]ecause there isn't enough real intellect or curiosity to go around, obviously its presence must very often be faked.").

33 The faculty was enthusiastic. See Paul Fussell, *BAD: OR, THE DUMBING OF AMERICA* 99 (1991) ("[I]t's no wonder that the idea of conferences and learned group occasions flourishes [among academics]: what better way to prevent the hard work of solitary reading, thinking, and writing?").

34 The government doesn't need the money; "the Constitution was paid for long ago." George S. Kaufman & Moss Hart, *YOU CAN'T TAKE IT WITH YOU* (1936), quoted in *OXFORD BOOK*, *supra* note 9, at 94.

35 Where *do* those things come from months after a tree has been taken down? One of Donner's findings is that the presence of needles is correlated with the presence of mothers-in-law (MILs, to use the technical term), but random checks of visiting MILs showed that, in general, visiting MILs didn't bring the needles with them to drop at inopportune times. Donner therefore hypothesizes that spontaneous generation might be involved. If further research supports that hypothesis, colonies of MILs might be established in the Amazon basin to help recreate the rain forests.

36 This article will surely move us up the pecking order. An excerpt:

In 1988 Wong and Wong noted a concentration of four Chinese restaurants per square block in American metropolitan areas – a figure that represented a doubling in ten years. Perdue later concluded that in the main the two Wongs were right, but they had *underestimated* the

- Professor Clinton's seminal work<sup>37</sup> on law-review rejection letters, "I Hear America Dinging"
- Several colleagues' interdisciplinary research on the understudied effect of parrot couplings on American society<sup>38</sup>

It may not all be law, but it's not not law.



That was four years ago, and, if anything, we've been doing even better work as my dean-ship has unfolded.

Don't misunderstand; we aren't just ivory-tower empiricists. Some of this work has important policy implications. For example, Professor Clinton comes out strongly in favor of honest rejection letters, which would replace the mealy-mouthed forms now used by most law reviews. What a refreshing change: "Unfortunately we cannot publish all the fine manuscripts we receive. We also cannot publish yours."

Of course,<sup>39</sup> Soso faculty do the usual

"thought pieces," too. Professor Dior has written the definitive call for a national law school dress code (the Uniform Uniform Code, she calls it).<sup>40</sup> And Professor Walker's monumental article on comparative jaywalking law is the first step on a new path for the school. Walker hated my predecessor, whose name I've forgotten, because the dean criticized Walker's placement of the article in a pedestrian law review. But I didn't want Walker to take a hike; I gave him the green light to go ahead with further boundary-crossing work.

Whatever goes on at other schools, the suggestion that my faculty is made up of shirkers is offensive.<sup>41</sup> We convey knowledge. It's just that sometimes we do it in ways that are hard to find on Lexis or in libraries: "many of my colleagues have always refused to publish books, naturally preferring to transfer their thoughts by word of mouth to the two or three people who are fit to understand them."<sup>42</sup> And we're on the brink of a major discovery: Professor Zenger's work on his "encrypted" article will, I hope, come to fruition soon. It may even allow us to break several codes, and find twenty years' worth of hidden scholarship by several other faculty

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rate of restaurant spread. If the current rate continues, Ehrlich determined that the United States will have three Chinese restaurants per capita by 2010. One can foresee the day on which the last chicken lays down her life for moo goo gai pan.

<sup>37</sup> See *supra* note 22.

<sup>38</sup> See John Sparks & Tony Soper, *PARROTS: A NATURAL HISTORY* ch. 3 (1990) (entitled "Parrot Sex and Society"). You'll be amazed to learn what "Polly wants a cracker" really means. Chapter 9, "Parrots for Pleasure," has a disgusting ... Well, you don't want to know. Or do you?

<sup>39</sup> See Amis, *supra* note 2, at 223 ("In an effort to make his script sound spontaneous, he'd inserted an 'of course' here, a 'you see' there, an 'as you might call it' somewhere else ...").

<sup>40</sup> The jeans pool at Soso was overflowing, and "[t]here is something about the combination of denim and tenure that is inherently preposterous." Roger Kimball, *Whose Enlightenment is It?*, *NEW CRITERION*, Apr. 1996, at 4, 5.

<sup>41</sup> See, e.g., Austin, *supra* note 13, at 35 ("To Snopes, it's better not to do anything than to sink into the sewer of ignominious incrementalism."); *id.* at 58 ("[T]he illusion of hard work and grand scholarship is confirmed by not getting the article published.").

<sup>42</sup> Malcolm Bradbury, *CUTS* 54 (Penguin Books 1994); see also Turow, *supra* note 5, at 241 (noting name of gang leader, which, like some scholarship, "does not have a parallel existence in the world of letters – it's like some subatomic particle that exists only in physicists' calculations").

members.<sup>43</sup> Sure, there are a few problem children on the faculty, but I can take care of them. I'm a dean; I've got my rehabilitation projects going.<sup>44</sup>

I'm sure you're impressed by the strides we've taken in our scholarship, but let no one think that our emphasis on research comes at the expense of teaching. We play Mozart in all the classrooms, to maximize receptivity to learning, and the faculty is full of great pedagogues who have mastered the Socratic dialog.<sup>45</sup> (Or is it pedagogs and dialogue? Who can remember these things?) We keep our students focused on the important issues, rather than the tangential matters that can eat up time and intellectual energy.<sup>46</sup> Finally, fulfilling what is perhaps our most important pedagogical function, we serve as models for our students.<sup>47</sup>

As a law school of the 90s, soon to be a law school of the 00s (γ2κ Gods willing), we have also implemented the now-mandatory skills instruction, at the new Soso Center for the Performing Arts. Our trial practice students will never forget Professor Baryshnikov's most fundamental rule: "If you fall asleep at the counsel table, the first thing you say when you wake up is, 'I object!'"<sup>48</sup>

Students are as happy as clams, which is to

say as happy as the faculty, particularly after we jettisoned the grading system. We *listen* to our students (except during some of Mozart's more bombastic passages), and we responded to their reasonable complaint that grades are repressive. As Professor Scarlett noted, to student acclaim, "Take Hester Prynne. She got an A, and look what happened to her."<sup>49</sup>



So things are going well; Soso has entered an era of good feeling. We have become a close knit community, with a faculty Weaving Committee that is, as far as I know, unique to legal education. With it we are now able to tie up loose ends; I do so myself. I hope any day now – or at least before I retire – to meet Professors Geist and Caspar, valued members of our faculty, who have been out each time I've tried to see them over the last four years. Geist's secretary regularly tells me to "[c]ome back another day, when once more he's not here."<sup>50</sup> Reflecting the high value Soso places on truth, she's been right every time.

In sum, there is much to be done to prepare our students for the challenges of legal prac-

43 See *Secret Messages*, A.B.A. J., Jan. 1999, at 78 (noting effect of federal regulations governing export of encryption software on, among other things, ability to complete law review articles).

44 But see Austin, *supra* note 13, at 59 ("I know someone who has been rehabilitated three times.").

45 See *id.* at 28 ("He knows he can go to class cold and then put the burden on the students.").

46 See Amis, *supra* note 2, at 28-29 ("One of the things he knew, or seemed to, was what scholasticism was. Dixon read, heard, and even used the word a dozen times a day without knowing, though he seemed to. But he saw clearly that he wouldn't be able to go on seeming to know the meaning of this and a hundred such words while [earnest student] Michie was there questioning, discussing, and arguing about them.").

47 See Randall Jarrell, *PICTURES FROM AN INSTITUTION* 90 (1952) ("Miss Batterson was only of little value to the students she taught, and that mainly in the *go thou and do otherwise* way in which teachers most often are ...").


48 Jonathan Harr, *A CIVIL ACTION* 88 (1995). It works – sometimes. But see *id.* at 324-25.

49 Bradbury, *supra* note 8, at 135.

50 *Id.* at 143; see also Amis, *supra* note 2, at 92 ("Welch was known to be taking the whole day off, as distinct from days like yesterday ... when Welch merely took the early and late morning and the afternoon off.").

tice in the twenty-first century. We must . . .

Forgive me. I started to lapse into my stock alumni speech, and you don't need to hear that. Anyway, it will be published in an upcoming issue of the *Journal of Legal Education*, between two articles on Siberian feminist theory.<sup>51</sup> You can read it there.

You know, this deaning thing makes for a pretty good life. 

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<sup>51</sup> I know the *Green Bag's* rule is only 50 footnotes, but I have a couple more points to make. First,