

## **THE GOOD, THE BAD, AND THE UGLY**

### **Way more than anyone needs or wants to know about the making of a renowned ethicist**

#### **As a UCLA undergraduate (1960-1964):**

- **Breaking Away from the Pack.** As a UCLA undergrad, Michael found a way to have an impact despite being a “non-org,” the term used for commuter students with no organizational connections through a fraternity or dormitory. After unsuccessfully running for a campus-wide student office, he was appointed to various posts including the Student Leadership Assembly and Student Judicial Council. As a senior, he became chairman of the Student Board of Governors, a student group with nominal authority over the Student Union, including the student bookstore.
  
- **Book Discounts.** Michael surprised and annoyed administrators by taking the job seriously, conducting weekly inspections of the facilities and demanding that students receive discounts from the store. When administrators resisted, he launched a campaign, partnering with the *UCLA Daily Bruin*. By the end of his one-year term, UCLA became the first university in America to give discounts to students (in the form of scrip rebates). Current UCLA students still benefit from these reforms, and some form of rebate still exists.
  
- **Debate and Older Women.** As a junior and senior, Michael was one of the most successful orators and debaters on UCLA’s Debate Team. He caused a minor scandal by dating the debate coach’s graduate student assistant, who was six years older than him. In his senior year, he challenged the best team of juniors to a debate with unusual rules. They would pick the topic and not reveal it until the debate began. Michael could make up any arguments and evidence. It was a format he later used as a law professor at Loyola where he challenged any student to debate.

#### **As a UCLA law student (1964-1967):**

- **Bold Irreverence.** In 1965, Michael entered law school and quickly became known for his bold irreverence to authority. In his first year, he engineered several practical jokes on professors. One was designed to embarrass the Torts professor, William Cohen, whose friend from Stanford was coming in to do a guest lecture. Michael knew the Torts professor had just published an article in which he used the unusual phrase, “This is just an island of absolute liability on the sea of torts.” When the guest professor asked his first question, Michael volunteered and said, “This is just an example of an island of absolute liability on the sea of torts.” As he anticipated, the acerbic professor ridiculed his statement, saying it made no sense at all. The class chuckled heartily to the bewilderment of the professor and the embarrassment of Professor Cohen. At the end of the class, Professor Cohen warned Michael that he better be ready for the next class. Michael prepared diligently, anticipating a verbal duel. In a brilliant revenge strategy, however, Professor Cohen didn’t call on him at all. Instead, he grilled each student

sitting next to, in front of, and behind Michael, making it clear that any proximity to him from then on would be costly.

- **Missing Top Honors.** Michael wasn't a model student. He found the case method used by his law teachers (requiring students to extract the law from appellate opinions) too time-consuming and inefficient. It also interfered with his activities in student government and working as an in-home salesman for custom draperies and upholstery (his dad's company). As a result, he decided midway through his first year to stop reading the cases, and he began to regularly cut classes. This caused him to cobble together various study strategies including heavy use of frowned-upon secondary sources. Michael paid the price for his rebellion. His first-year class ranking was 34<sup>th</sup> out of more than 300, denying him an invitation to join the Law Review and causing him to miss the prestigious top 10% award called Order of the Coif.
- **Beat Josephson.** In his second year, Michael's refusal to read cases came to the attention of the faculty when his Evidence professor, a young wunderkind named Kenneth Graham, called on him to recite a case. Michael calmly said, "I don't believe in reading cases, but if you'll tell me the facts, I'll be glad to tell you the way it should have come out." The baffled professor told him if he adhered to that approach, he would likely not pass the class. Michael said, "Want to bet?" In front of 100 fellow students, a public wager was made. The professor said he would pay \$1 for every point Michael scored over 68 (the minimum passing grade was 70). The entire grade for the course rode on a single final exam. At the beginning of the exam, the professor wrote on the board, "Beat Josephson." Because there was an anonymous grading system whereby students only put only a number (not their name) on their exam booklet, several students wrote "I'm not Josephson." When the smoke cleared and the grades were posted, Michael had scored a 92, the highest grade in the class. The chagrined professor was required to award him the prestigious American Jurisprudence Prize in Evidence (not to mention \$24). The next year, the professor modified his teaching method, putting less emphasis on cases.
- **Beating Josephson.** Michael took his anti-casebook philosophy to the limit in a heavily case-oriented class on anti-trust law. Still, he thought he'd done well on the exam except for one question that mentioned a specific case name (which, of course, he didn't recognize). After grades were posted, the professor of the class, a young fellow named Jim Liebler, let the word out that he "beat Josephson." He summoned Michael to his office and proudly showed him that, without knowing whose paper it was, he'd lowered the grade of over 90 (an A) to an 87 (a B+) because the student (Michael) didn't seem to know the nuances of the case. Michael said he was happy with an 87.
- **Comeuppance.** There was some justice, however. By the second semester of his second year, Michael decided that attending classes was interfering with his extracurricular activities and a 20-hour-a-week job with a law firm. He concluded that class attendance was an inconvenience. After attending the first two classes of his Conflicts of Interest

course, he decided he could learn all he needed from secondary sources. He was more diligent in Federal Income Tax, a course he found so complex that he attended it more than half the time. He went into both exams confident. The material in the Conflicts course was “a piece of cake,” he told fellow students, and the Income Tax final was an open-book test – how could he go wrong there? He got a low B in the Conflicts course and a high C in Income Tax, but he claimed extenuating circumstances.

- **There Is Justice.** Michael went into the Conflicts exam assuming it was to be three hours long because that’s how long the other exams were (plus he’d skipped the last class during which the professor announced it would be a two-hour exam). Michael also didn’t read the instructions on the exam. As he finished the second essay question and started on the third, he recalls thinking, “I’m acing this exam, there’s really no justice.” A moment later, he heard the proctor yell “Time!” He was forced to hand in the exam with the last question unanswered. His immediate reaction wasn’t dread or woe; it was a sense of relief. He said to himself, “There *is* justice.” He got a low B because his first two answers were A answers, and the professor figured he’d just misallocated his time.
- **Whoops.** The Income Tax class was a different matter. Michael always believed that you didn’t have to know the law to do well on an exam because there were so many different ways to interpret laws. His technique was to look at the question and imagine what a court might say. Then he’d write “Some courts would hold...” and give what he thought would be the best response. Then he’d add, “However, other courts would hold...” and he describe as many rational variations as he could think of. He took the same approach to tax. The problem was, the professor expected his students to include specific citations from a book of formal regulations keyed to tax code. Another piece of cake, thought Michael. The regulations would tell him all he needed to know, and he the pressure of figuring it out on the spot. So, departing from his normal “don’t buy the book” rule, he bought the tax code and the regulations the day before the exam and entered the exam with both books still wrapped in cellophane. Having never looked at the regulations, though, he was stymied to discover they operated under a tricky numbering system that he didn’t understand, making it impossible for him to correlate regulations to specific code provisions. There was indeed justice. He earned just a C.
- **The “Eat It” Comment.** Based on his performance in first-year moot court presentations, Michael was elected to participate in the Honors Moot Court program, which gave students opportunities to argue appellate cases to a panel of a professor, a prominent attorney, and a sitting judge. The professor on his panel was the same William Cohen he pulled the prank on earlier. When a judge asked him question, Michael’s preplanned response was, “What the trial court did here, Your Honor, was to not only require the appellant to make the food but force him to (and here he shifted his attention to Professor Cohen, speaking with deliberate over-emphasis) eat it.” The professor got the point and called him “cheeky,” a nickname that lasted a month or so.

- **Defending the Warren Commission.** The anti-trust professor, Jim Liebeler, who'd had an important staff position on the Warren Commission that investigated President John F. Kennedy's assassination, hired Michael to help him prepare a public debate with author Mark Lane, whose book *Rush to Judgment* attacked the findings of the Commission. Michael developed not only the key debating points but other strategies including a surprise press conference before the debate that unsettled Lane. The debate was a clear-cut victory for Liebeler as Lane became desperate, even accusing President Johnson of being involved in a conspiracy for the first time.
- **The Downfall of Mort Sahl.** There was no tuition when Michael went to UCLA Law School. Students paid a fee for medical and sports tickets of less than \$200. Governor Ronald Reagan proposed tuition for the first time, and Michael led student opposition to it. He and another student were invited to explain their position on a TV show hosted by comedian and social critic Mort Sahl. Sahl, who'd become obsessed with the Warren Commission, went off point and began to rant. Finding Michael's insistence that they get back to the tuition issue offensive, Sahl cut the interview short and, in front of a national audience, ordered him to "Get out of here!" From back stage, Michael yelled back, "Tell it to your sycophants!" For the next week, Sahl, who also had a radio show, ranted about those "pimpily faced kids from UCLA" (neither had pimples). Demanding transcripts of the radio show, Michael and his buddy wrote a letter to its management threatening to sue for slander and libel. Other things must have been going on as well because within a few weeks Sahl was fired and his show was cancelled.
- **Copyright Award.** Michael studied under the nation's leading copyright professor Mel Nimmer and won the highest award in that class for proposing a new system of copyright notice.
- **Chief Justice of Moot Court.** After his successful performances in the Honors Moot Court program, Michael was selected by his peers to serve as Chief Justice, who administers the program for first- and second-year students. Believing the program wasn't given the recognition or budget it deserved, Michael acquired more office space, a large desk donated by a retired lawyer, and, to the chagrin of some faculty, got one of the only two night lines that went into the school.
- **Handbook of Appellate Advocacy.** Believing the Moot Court program, considered the little brother to the more prestigious Law Review, needed more budget and stature, Michael devised, co-authored, and published on behalf of the Moot Court program a booklet called the *Handbook of Appellate Advocacy* that was sold nationally and provided substantial revenues for the Moot Court program for more than a decade.
- **Senate Intern.** In the summer of 1966, Michael became an intern to Senator Ernest Gruening of Alaska, at that time one of only two Senators who vocally opposed the

Vietnam War. This increased dramatically his interest in politics and policy-making.

- **Teaching Classes.** In his senior year, Michael had gained some expertise in a few areas as a result of his Honors Moot Court work, and he was asked to conduct classes for first-year students as a guest lecturer in Criminal Law. This was the first time a student was allowed to conduct a regular class for fellow students and became the root of Michael's subsequent love of teaching.
- **Controversial Valedictory Address.** In 1967, UCLA held one commencement, filling Pauley Pavilion with all graduates and their guests. Two student speakers were selected to deliver Valedictory addresses, one representing undergraduates and one representing graduates. After a competitive audition, Michael was selected to represent those receiving post-graduate degrees. There was an expectation and tradition, but no formal requirement, that each speaker show his or her speeches to administrators beforehand and rehearse the speech. Michael declined. As a result, his highly provocative and controversial speech infuriated the Chancellor. After the speech, the university adopted a much stricter rule of reviewing remarks. The speech included uncomplimentary references to some of the leading politicians of the day including Sam Yorty, mayor of Los Angeles; George Murphy, who became a California Senator, and California Governor Ronald Reagan, who had introduced the first tuition to the University of California system. The speech also contained anti-Vietnam war rhetoric. The response to the speech elicited both cheers and boos, was reprinted in the Congressional Record, and was discussed in a front-page story in the *Los Angeles Times*. That was the last time, until Michael was informed he would receive the Alumnus of the Year Award, that a UCLA Chancellor has talked to him.

#### **As a law professor (1967-1987):**

- **University of Michigan.** Michael was offered a position by the Department of Justice Civil Rights Division with the understanding that he would be trying civil-rights cases in the Deep South, probably Alabama. He was excited about this. This was at the height of the draft for the Vietnam War, and he was notified by the Department of Justice that the previous draft deferment for lawyers was being eliminated. Many of his classmates chose to join the Judge Advocate General's Corps and become Army lawyers for up to four years. Michael's anti-war sentiments had strengthened during his Senate internship with Senator Earnest Gruening in 1966, which created a conflict. When he discovered that teachers were still being granted deferments, he applied for a legal instructor position at several law schools. He was given a one-year appointment as one of four Legal Research and Writing Instructors at the University of Michigan, considered one of the finest law schools in the country.
- **Moving Up in Academia.** As he began teaching first-year law students how to do research and write persuasive briefs and memos, Michael got permission to audit an advanced seminar in criminal procedure by Yale Kamisar, one of the nation's renowned authorities. After a few months, the professor asked Michael if he wanted to conduct a

few sessions of the seminar. He agreed, and Professor Kamisar was impressed with his knowledge, preparation, and ability to engage the class. Shortly thereafter, a professor who'd been teaching a class in Appellate Advocacy passed away. Because of Michael's experience and book on the subject while at UCLA, he was asked to co-teach the course with another professor named Doug Kahn. Shortly after that, the Dean of the law school, Frank Allen, who was scheduled to start teaching a second semester course in Criminal Law, decided the demands of the deanship were too heavy. Professors Kamisar and Kahn recommended that Michael teach the course. Michael was relieved of his legal writing assignments and given a few months to prepare to become the youngest person ever to teach a full course at the University of Michigan.

- **Overcoming Resentment.** Assigning an important first-year course to Michael wasn't met with enthusiasm by the students, who felt they'd been deprived of an eminent law professor and given a kid less than a year out of law school. Michael was dedicated to preparing a rigorous course that didn't allow students to skate as he had, so he gave regular intermittent exams (unheard of in law school) and demanded students actually know the law. Because the casebook was required, he tried to make the cases relevant. Nevertheless, it wasn't going well as resentments increased. Michael hatched a strategy to release the tension with one of the students he'd taught the first semester in legal writing. He planted Richard Grant in the class for three or four sessions so students would think he was regularly enrolled, then the pair's scripted dialogue took place. With five minutes left in the class, Michael called on Grant, who asked to "pass." Michael said he couldn't pass. He then offered him a dime so he could call his mother to pick him up since he was apparently not law school material (this was a well-known insult known in law teaching circles). The tension in the room mounted. Grant finally blurted out the prepared line: "I expected to take this course from Dean Allen, not some young punk fresh out of law school!" The class gasped. Michael instructed Grant to come to the podium. At least one student walked out of the back of the room, unable to handle the tension. When Grant was a few feet from the podium, Michael asked him to repeat what he said. He did. Michael reached under the podium, took out a pie tin full of whipped cream, and smashed it in Grant's face. Expecting the class to realize the pie in the face was a joke – why else would a professor have a pie under his podium – the pair were shocked to hear no laughter, just stunned silence. Panicked, Grant ran out of the room and Michael dismissed the class. After a follow-up session and discussion about the incident with the class, Michael became one of their favorite professors. When the faculty heard about the incident, most just shook their heads, but no one said anything. It seemed to be accepted that this fellow marched to a different drummer.
- **Wayne State.** Before the end of this tumultuous first year in teaching, Charles Joiner, the associate dean of the University of Michigan, accepted a position as Dean of Wayne State University Law School in Detroit. Knowing of Michael's interest in civil rights, Joiner offered Michael a teaching job there, promising him that he could teach whatever courses he wanted. Michael accepted and chose Criminal Law and Evidence.

- **Prosecutors Office and *Playboy*.** Michael spent the summer of 1968 in a special program at the Los Angeles County prosecutor's office where he engaged in police ride-alongs and conducted preliminary examinations and trials. During that summer, he met a Playboy Bunny named Pam who moved back to the Chicago Playboy Mansion so they could continue a weekend commuting relationship that lasted for nearly two years.
- **Getting Tenure at 28.** Michael's teaching and writings became the basis of an early consideration of tenure. Just three years out of law school, at age 28, he became the youngest person in the country to become a tenured full professor of law.
- **Michael the Hippie.** As a law teacher, Michael gained notoriety for his flamboyant dress (including long sideburns, bell bottom pants, jewelry, and a white Nehru suit), for driving an old 1960 Bentley he acquired in England, and for dating a Playboy Bunny.
- **Oral Exams.** Michael also continued to give intermittent exams and developed a comprehensive oral exam for his Evidence class requiring every student to state and defend evidentiary objections in a mock trial setting. As he had 120 students, the process took three full weeks.
- **Going Into Business.** Michael decided he wanted to incorporate Michigan law into his teaching since most students would be practicing in Michigan (most professors only taught national law). To acquaint himself with the state law, he acquired copies of outlines used in Michigan's only bar preparation course. He thought the materials were so shabby and badly organized that he created his own bar exam preparation course, the Josephson Bar Review Center (BRC). Although such outside activities were frowned upon, Michael induced many of the best law teachers from the University of Michigan and other law schools to prepare state-of-the-art law outlines and lectures that taught the law in the context of analyzing past and likely essay questions (historically, law lectures were pure lectures – verbal text with no application of the law to facts). The course was a success and eventually expanded to 14 states. The company also began to publish audiotapes of the best lecturers in the country (the first time that had been done) and specialized study materials for law school classes including flow charts called Josephson Issue Graphs. Michael also developed innovative exam-writing strategies including IRAC (students were to state the Issue, articulate the Rule, Apply the facts, and draw a Conclusion). In 1987, he sold this business for \$10 million dollars, allowing him to found the Joseph & Edna Josephson Institute of Ethics where he presently works for no salary.
- **Loyola Law School.** In 1974, Michael moved back to Los Angeles to teach at Loyola Law School. He continued to use his innovative teaching methods including intermittent and oral exams. He created a new course designed to teach real ethics (as opposed to just the Code of Professional Responsibility) in the context of real lawyering practices: counseling and negotiation. His course, Ethics, Counseling, and Negotiation became a

model used in other law schools.

- **The Fun Continues.** Loyola had a tradition called Libel and Slander Night, an evening devoted to student skits making fun of their professors and the law school. Michael created the annual “Josephson Challenge” to any law student to debate him on any issue of the law. Michael would not be told the topic of the debate until it was introduced before the live audience, but he was allowed to make up fictional evidence and authority. During these events, he often dressed up for his opponents. In one debate against a woman, he walked in dressed as Tootsie, announcing that “Since I don’t think my opponent is woman enough to handle this debate, I’ll also be a woman.” Against another opponent, he jogged in as Rocky to play up the fact that he was the underdog (whereupon he challenged his opponent to swallow raw eggs).
- **End of an Era.** In 1987, Michael resigned his professorship and sold his company to found the Joseph & Edna Josephson Institute of Ethics. His life thereafter is another story altogether.