The special committee of the General Faculty to prepare a memorial resolution for Michael P. Rosenthal, professor, law, has filed with the Secretary of the General Faculty the following report.

John R. Durbin, Secretary
The General Faculty

IN MEMORIAM
MICHAEL P. ROSENTHAL

Professor Michael P. Rosenthal, Thomas S. Maxey Professor of Law at The University of Texas School of Law, died March 14, 1989. He joined the faculty of this school in 1968 as a professor after having served as a visiting associate professor during 1967-68. He died at his home in Austin at the age of 52 after a long and courageous battle with cancer. His untimely death interrupted a distinguished career as a scholar and deprived the school of a very special teacher and colleague. At the time of his death, he was survived by his wife, Mimi, and his daughter, Regina.

I. The Early Years

Mike Rosenthal was a New Yorker, born and bred. He was one of those precocious young men who emerged from the Bronx High School of Science, a nationally recognized intellectual nursery. Mike was one of that school's extraordinary alumni: smart, energetic, and committed to making the world a better place. After a Phi Beta Kappa performance in economics at Columbia, he attended Columbia Law School. When he graduated in 1959, following an outstanding law school career and service on the law review, he chose to postpone practice or a clerkship to serve a year as assistant director of the Legislative Drafting Research Fund at Columbia. From his work at the Fund, Mike developed the theoretical and practical skills that would make him an important figure in the drafting of federal and state legislation throughout his career.

Next, he obtained a coveted clerkship with the famous jurist Harold R. Medina of the United States Court of Appeals for the Second Circuit. After his clerkship, Mike practiced law for three years with two different New York City law firms, including the high-powered Kay, Scholer, Fierman, Hays & Handler. With these important experiences under his belt, he began his teaching career at Rutgers Law School, Camden, in 1965.

From the start, Mike committed himself to teaching and scholarship in the field of criminal law, with special attention to problems of drug abuse and juvenile justice. Within two years of joining the Rutgers faculty, he was named a consultant on narcotics and drug abuse to the President's Commission on Law Enforcement and the Administration of Justice and published a leading article on drug law reform, *A Plea for Amelioration of the Marihuana Laws*, in the *Texas Law Review*. He then served as a consultant on these matters to the National Commission on Reform of Federal Criminal Law. Dean Page Keeton, with his usual shrewd eye for young talent, invited Mike to visit at the Law School that same year, 1967. As Mimi Rosenthal told the story, she agreed to come to this strange and distant province on Mike's solemn promise that it was just a visit, absolutely nothing more. Since Mike was a man of his word, we have to conclude that it turned out to be the longest visit in the history of legal academia.

II. Scholar and Teacher

After Mike became a tenured professor at Texas in 1968, he increased his important and very visible work in the field of drug abuse. On the national and international levels, in addition to the positions mentioned above, he served as a consultant to the National Commission on Marijuana and Drug Abuse, to the National Academy of Sciences-National Research Council, as well as to the Canadian Federal Commission of Inquiry into the Non-

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Medical Use of Drugs (the Le Dain Commission), and was a member of the Committee on Drug Abuse of the American Bar Association’s Criminal Law Section. On the state level, he was a consultant to the Drug Education Division of the Texas Education Agency in 1971-72, and the reporter on drug offenses to the Texas State Bar's massive, multiyear project to rewrite the state's criminal laws from 1969-71. This project came to fruition in 1973 with the enactment of the state's first new penal code in 117 years. Mike's work on the Penal Code marked the beginning of many years of service he provided the legislature, bench, and bar of his adopted state. Yet he did not let all of these public service commitments interfere with a continuing stream of law review articles and books. Virtually all of his publications were inspired by the same impulse: the amelioration of the harshness of existing law through the application of rational thought to empirical data. This inspiration was certainly evident, for example, in his 1979 article, Partial Prohibition of Nonmedical Use of Mind-Altering Drugs: Proposals for Change. This piece, published in the Houston Law Review, was named the outstanding article of the year by that Review's alumni association, and it is one example of Mike's thoughtful approach to the terrible problem of drug abuse. At a time when drug abuse has once again become a focus of emotionally charged public concern, we should remember Mike's approach: steady and reasoned, balancing a search for needed solutions against a candid appreciation of the difficulties of the problem and of our ignorance about the effectiveness of proposed solutions. Mike actively assisted his students in doing their own research and writing. Using seminars and the Criminal Justice Project as curricular vehicles, Mike imparted his superb writing style and careful research methods to a generation of law students. He spent time on these tasks because he loved teaching and research, and working with students on their writing was the perfect blend. Proof of his work is the number of articles that his students published. For example, volume seven of the American Journal of Criminal Law, published in 1979, contains three articles on different aspects of juvenile justice written by students under Mike's supervision.

Mike was an excellent legislative draftsman. He was skilled in employing the cold and precise language required to deal with such subjects as the comprehensive regulation of drug manufacture, distribution, and use. His skill is reflected in the federal and Texas controlled substances acts. But he also looked beneath the surface of the law in an effort to understand its animating impulse. In his 1988 Dickinson Law Review article on minimum drinking ages, he made the following observation:

There was no significant quarrel with the twenty-one-year minimum drinking age until the early 1970's. At that time, a large number of states switched to minimum drinking ages below twenty-one and also lowered their ages of majority. While a number of factors were involved, the primary cause for this switch was the Vietnam War and the youth culture that developed largely as a result of the war. Young men under the age of twenty-one were drafted and killed in Vietnam, but they were legally minors and did not have the rights and privileges of adults. They could not vote; they could not drink; but they could serve and fall in battle.

In the same article, Mike concluded that largely because of the risks to life posed by teenage drinking and driving, a minimum drinking age of twenty-one was preferable, but he added in a footnote, “Principles of fair disclosure require me to state that I am the father of an eighteen-year-old daughter.”

Much of Mike's writing was concerned with making difficult policy choices among competing considerations. Mike recognized that often such choices must be made in the face of imperfect knowledge. One such difficult choice is illustrated by his American Journal of Criminal Law article on physical abuse of children:

Before discussing the final balance between the benefits and costs of criminalization of physical abuse of children there are some things which I think it important to reemphasize. First, the decision must be made under circumstances where there is much that we do not

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5 Id. at 652 (footnotes omitted).
6 Id. at 649 n.2.
know about both the benefits and costs of criminalization. We do not know how much abuse the criminal law prevents or can prevent, whether by general deterrence, by intimidation, rehabilitation, incapacitation, or in other ways. We do not know in many cases whether prosecution will prevent the defendant from committing further acts of abuse, have no impact, or actually reinforce abusive tendencies; we must make seat-of-the-pants judgments. And, while abuse tends to be a repetitive crime, our ability to predict reabuse in individual cases often is at the least questionable.\(^7\)

In the midst of all this scholarly activity, Mike found time to make one of his most important and long-lasting contributions to the Law School. He was instrumental in obtaining a large, eleven-year grant from the Ford Foundation to establish the Criminal Justice Project at The University of Texas. The project did innovative empirical research into the operation of the criminal justice system throughout the United States. Under the supervision of Mike and his colleagues, each year about two dozen students went through the three stages of the project: a spring research seminar in the legal doctrines and theory of criminal law and administration; a summer spent working as an intern with and doing supervised empirical research on criminal justice agencies throughout the country; and a fall writing seminar in which the students exchanged insights arising from their summer experiences and produced extensive papers integrating doctrine and theory with their empirical research. This program provided one of the best nontraditional educational experiences available to students at any American law school.

In the 1970s, Mike's specialized interests expanded to include the legal problems of juveniles. It was typical of Mike to be unsatisfied with mere book knowledge. He arranged to take a leave of absence from the Law School so that he could serve as a clinical intern with the Travis County Juvenile Court. He wanted to learn the roles both lawyers and nonlawyers play in the juvenile justice system. His aim was to take the knowledge thus gained and create a new clinical program. To fund this effort at innovation, he arranged for his leave to be jointly financed by the Council on Legal Education for Professional Responsibility and the Hogg Foundation. His work with the Juvenile Court led to his appointment as director of Community Programs for the Texas Youth Council, a position in which he served for the spring and summer of 1974. On the basis of these experiences and his continuing association with the Criminal Justice Project, in the spring of 1975 Mike created the Juvenile Justice Clinic at the Law School. Among the unusual features of the clinic was the fact that the students participated in a variety of roles within the juvenile justice system. Some served as prosecutors, some as defenders, others as probation officers, and some as guardians \textit{ad litem}. They came together in the academic component to share the varied insights these roles provided into the operation and problems of the juvenile justice system. Even today students in this clinic benefit from Mike's creative pedagogy.

Once again, as was true with his interest in the control of drug abuse, Mike's creative teaching dovetailed with his continuing scholarly productivity. In 1979, Mike wrote an important article for the \textit{American Journal of Criminal Law} on the then-emerging issue of child abuse,\(^8\) and his last article, published in the spring of 1988 in the \textit{Dickinson Law Review}, discussed the problem of teenage drinking and driving.\(^9\) At the time of his death he was finishing an article dealing with his groundbreaking empirical study of the actual workings of Texas laws designed to control spouse and child abuse.

During this period, Mike's involvement in drug abuse and other aspects of criminal law and administration grew. He was appointed to the Board of Editors of the \textit{Journal of Drug Issues} and worked with various state agencies to produce manuals and teaching materials concerning problems of alcohol and drug abuse. Mike was in demand as a speaker both in Texas and elsewhere on these subjects and on issues of mental health and retardation. Mental health and retardation had gained his attention through his ongoing relationship with the Hogg Foundation and led to his participation in the education of staff psychiatrists and allied personnel in the state mental health and mental retardation system.

\section*{III. Influence on Educational Policy}

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  \item \(7\) Rosenthal, Physical Abuse of Children by Parents: The Criminalization Decision, 7 AM. J. CRIM. L. 141, 167 (1979).
  \item \(8\) See id.
  \item \(9\) See Rosenthal, \textit{supra} note 4.
\end{itemize}
Mike's creativity and openness to pedagogical innovation led to his playing a leading role in the most significant study of the curriculum ever undertaken at the Law School. In 1980, Dean John F. Sutton appointed an Alumni Curriculum Advisory Committee. The work of the committee, which involved some of our most energetic, perspicacious, and sympathetic graduates, went on until 1985. During this period Mike served as chair of the Faculty Curriculum Committee and worked intimately with the alumni. The joint effort of faculty and alumni led to far-reaching changes in the structure of the first and second years of law school, a dramatic revamping of the legal research and writing program, and the creation of new types of courses—short courses, advanced specialty courses, and capstones. Mike's patience and good humor were indispensable to the success of this most sensitive of enterprises, involving, as it did, intrusions on ancient turf and slaughtering of sacred cows. We all remain indebted to him for this work.

Mike's impact on legal education was not limited to the school but extended to the continued education of the practicing bar and even to students in high school. His membership in task forces that focused on juvenile justice and domestic violence at both the state and county levels, was aimed at educating all those entrusted with the administration of these areas of the justice system. One such contribution was Drug Abuse, in OF COUNSEL TO CLASSROOMS: A RESOURCE GUIDE TO ASSIST ATTORNEYS AND TEACHERS IN LAW FOCUSED EDUCATION 97 (Texas Young Lawyers Association ed. 1984) (coauthored with C. Hampton). This was selected by the American Bar Association as the best project done by a young lawyers or bar association in the United States during 1983-84. Mike's contribution was recognized by an award given him by the Committee on Law-Focused Education of the Texas Young Lawyers' Association.

Mike's enormous contribution to clinical education at the Law School culminated in 1985, when he was the central figure in obtaining federal funding for the Elder Law Clinic. The clinic, which was created by a grant from the Legal Services Corporation, introduces students to the legal problems of the elderly and to the lawyering skills necessary for their resolution. Mike was essential to the design of the clinic's format and teaching methods. Like the Juvenile Justice Clinic, it continued to serve students and the community after Mike's death. These clinics are the continuing manifestations of his intellectual curiosity, pedagogical creativity, and practical skills as an administrator.

Mike's service to the academic community and to the government did not go unnoticed. He was named to his first endowed position, the Wright C. Morrow Professorship of Criminal Law, in 1970 and held that or another prestigious professorship until his death. But of greater importance to him was the obvious affection that his students felt for him. In the clinical programs in particular, he established a rapport with his students that was important to him and to them. A whole generation of Texas lawyers who specialize in criminal and juvenile law felt a loss that was personal as well as professional when he passed away.

IV. A Humane Teacher and Colleague

Although Mike had many academic and professional accomplishments, he will be missed most keenly as a uniquely sensitive and loving friend. Mike was one of those rare teachers to whom the students went when they needed the counsel of an elder brother to cope with the difficulties of being young in America. He was no less important to his colleagues, who knew that Mike would always be there to help in the midst of personal travail. A life-long friend captured Mike perfectly when he confessed that he had tried and failed to think of a single time, one solitary instance, when Mike had ever been mean or ungentle to anyone. Everyone who is a busy professional, whose life is filled with the urgency and pressure of seeking success in a chosen field, could learn something important, even precious, from Mike's life. Despite all of his professional activities and successes, Mike never forgot the lesson the ghost of Marley taught to Scrooge:

Mankind was my business. The common welfare was my business; charity, mercy, forbearance, and benevolence, were, all, my business. The dealings of my trade were but a drop of water in the comprehensive ocean of my business.

It is thus that all of us at The University of Texas School of Law will remember, and cherish, Professor Michael Rosenthal. Friends and colleagues have celebrated his contributions in perpetuity by the creation of an endowed presidential scholarship in his name.

10 C. DICKENS, A CHRISTMAS CAROL 28 (New York 1938).
This is an edited version of a memorial resolution written by Professor Jay Lawrence Westbrook and published in 68 TEX. L. REV., i. (Nov. 1989). The resolution was provided by the special committee consisting of Professors M. Michael Sharlot (chair), Robert O. Dawson, and Jay L. Westbrook.

Distributed to the Dean of the School of Law, the Executive Vice President and Provost, and the President on September 1, 2000. Copies are available on request from the Office of the General Faculty, FAC 22, F9500. This resolution is posted under “Memorials” at: http://www.utexas.edu/faculty/council/
Bibliography of Michael P. Rosenthal


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