The special committee of the General Faculty to prepare a memorial resolution for John F. Sutton, JR., professor emeritus, School of Law, has filed with the secretary of the General Faculty the following report.

Dean P. Neikirk, Secretary
General Faculty and Faculty Council

IN MEMORIAM
JOHN F. SUTTON, JR.

John Sutton had a lifetime of remarkable accomplishments. Perhaps the most dramatic occurred when he took the reins as dean of The University of Texas at Austin School of Law during a serious crisis and went on to lead it to still greater achievements. That success was his greatest contribution to his state and nation. A soft-spoken Texan as friendly and easy to know as any San Angelo rancher, his intellect and strong leadership will long be celebrated by his law school, by scholars in the field of professional responsibility, and by his generations of devoted students.

For more than forty-five years, John Sutton occupied a prominent role in teaching, and scholarship. Although he taught torts to thousands of first-year students, his primary field was professional responsibility. John was one of a dozen scholars and practitioners who have been referred to as the “grandfathers of modern legal ethics.” His roles at the national level as reporter and co-draftsman of the Model Code of Professional Responsibility had a significant influence on the way ethical rules regulate the practice of law. John’s efforts in Texas similarly shaped the development of the Texas Disciplinary Rules.

John Sutton was a 1941 graduate of The University of Texas at Austin School of Law. After his years of practice and his service in the FBI, Sutton joined the law school faculty in 1957. As a teacher of professional responsibility, evidence, and torts, he trained a large number of Texas graduates about the nuances of ethical dilemmas and the importance of facts in evidence and tort law. In 1961, he won the Law School’s Teaching Excellence Award, and over the years he was twice named the Law Week honoree by students.

In 1979, John Sutton was selected as dean of the Law School at a moment of crisis for the institution. Controversy about the direction of the school threatened to lead to the departure of leading faculty and dissent among alumni and friends. He immediately took control, renewed the confidence of the faculty in its future, and rebuilt the school’s relationship with its alumni and with the University. During Sutton’s five years as dean, he oversaw a significant strengthening of the faculty and the completion of the multimillion-dollar Tarlton Law Library. He was, in large measure, responsible for the strong and continuous effort to diversify the student body. During his tenure, the school moved to its current position as one of the country’s leading educators of Hispanic lawyers. Today, Sutton is universally regarded as a very successful dean during a politically difficult time. His service permitted Texas to continue and enhance its place in the top ranks of public law schools.

In 1964, Sutton was named the Reporter of the American Bar Association’s (ABA) Special Committee on Evaluation of Ethical Standards and co-draftsman of the ABA Code of Professional Responsibility. He served in these roles from 1965 to 1970, and his work with the ABA and the American Bar Foundation was influential in shaping the structure and content of the Model Code of Professional Responsibility. The details of his work can be found in the American Bar Foundation Program on Oral History, Transcript of Interview with John F. Sutton, Jr. (http://www.abf-sociolegal.org/OralHistory2002/Sutton2.shtml).
From 1970 to 1976, Sutton was a member of the ABA Standing Committee on Ethics & Professional Responsibility. From 1978 to 1983, he served as a consultant to the ABA Commission on the ABA Commission on Evaluation of Professional Standards (Kutak Commission). Sutton was a Life Fellow of the American Bar Foundation from 1983.

In 1972, the California Bar sought to develop a test for professional responsibility to be administered along with its Bar examination. John Sutton was one of five individuals who formed the committee that drafted the first multiple-choice examination on the subject of professional responsibility for the State of California. A few years after the first test was administered, the California Bar Association sold the concept to the National Conference of Bar Examiners. This original committee comprised of Sutton, John Gorffinckel (chair), Eugene Scoles, and others drafted the first national Multistate Professional Responsibility Examination. Sutton was chosen for this role because of his work on the Model Code of Professional Responsibility.

Ironically, when John Sutton joined the Texas law faculty in 1957 and Dean Page Keeton asked him to teach a class in professional responsibility, Sutton despised the course because it was confusing and inexact. In his own words, he stated that it was “a very frustrating course to teach, and the old canons were atrocious.” In the late 1950s, he was appointed to the Ethics Committee of the State Bar of Texas, where he continued to point out that the old canons were difficult to apply.

Throughout his academic career, Sutton argued that professional responsibility should be a distinct field of law worthy of study and development. Within the field of professional responsibility, he advocated development of different rules to be applied in various contexts. His position was that rules of discipline should not automatically be applied to inform the law of disqualification. Judges should develop different rules with different policies for regulating the conduct of lawyers who practice before them. For example, Sutton sought to limit the use of ethics rules as a basis for malpractice discipline. He further argued that the drafters of the rules should differentiate between minimum standards and aspirational rules for lawyers to follow. In short, he was a consistent advocate for rigor and realism.

Sutton’s work in the classroom and with the codes of ethics resulted in the publication of twenty articles on professional responsibility and two editions of a national casebook. He is also the co-author of A Guide to the Texas Disciplinary Rules of Professional Conduct (with Robert P. Schuwerk), a book that has long been considered the standard for interpreting the Texas ethics code.

From 1957 until his death, John Sutton served on numerous committees with the State Bar of Texas that were responsible for the administration of Texas professional responsibility law. Notably from 1983 to 1988, he served as a member and reporter of the Special Committee on the Model Rules of Professional Conduct in the State Bar of Texas. This committee was responsible for drafting the Texas Disciplinary Rules of Professional Conduct, the rules that currently govern the practice of law in Texas. For his contributions to the State Bar of Texas, Sutton was recognized with five prestigious state awards.

After receiving his law license in 1941, Sutton became an associate with San Antonio’s Brooks, Napier, Brown & Matthews (now Cox, Smith, Matthews). But after seven months of practicing law, Sutton took to heart the news about the Japanese bombing of Pearl Harbor. On March 2, 1942, he decided to make a change in career by joining the Federal Bureau of Investigations as a special agent. During World War II, one of his duties with the FBI was to investigate potential espionage or sabotage. This included an assignment in Butte, Montana, where Sutton investigated White Slave Traffic Act violations and other interstate transportation crimes. In Pennsylvania, he investigated suspected communist activities and explosions possibly involving sabotage by the enemies of the United States.

Sutton’s five-year term with the FBI demonstrated his commitment to public service and the defense of our country. In addition, this experience proved to be beneficial in shaping Sutton’s approach to the legal profession. When he returned to Texas from the FBI, Sutton built his civil trial practice as much on his new-found skills in marshalling facts and cajoling witnesses as on his ability to analyze and apply legal doctrine. Sutton’s attention to facts and details continued in his work as an academic and later, as a drafter of ethics codes.
In 2004, the Law School named one of its eight student societies after Sutton, and in 2005, the Dean John F. Sutton, Jr. Chair in Lawyering and the Legal Process was established. His impact on several generations of his students was captured by one of them:

To this day, whether I am serving clients as an advocate or trying to serve the profession as a writer and teacher, I continue to be guided by what I learned as one of John F. Sutton’s many students. In the classroom, he wasn’t the intellectually intimidating legal scholar whose name was on my textbook. He eschewed abstract theory, instead reminding us, above all else, to do what was right because our actions would impact real people. Thank you, Dean Sutton.

John Sutton’s career as a lawyer, FBI agent, scholar, teacher, law dean, and legal reformer meant a great deal to society and the legal profession.

Sutton is survived by his wife of seventy-two years, Nancy, as well as a son and daughter, four grandchildren, and seven great-grandchildren.

This memorial resolution was prepared by a special committee consisting of Professors John S. Dzienkowski (chair), David Anderson, and Jay Westbrook.

Distributed to the dean of the School of Law on October 22, 2014, and posted under “Memorials” at http://www.utexas.edu/faculty/council/.