

REMEMBERING A CROSS-COUNTRY JOURNEY TO LAW SCHOOL

By Sharon Driscoll

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ear Faye, We just arrived in

Iowa City and wanted to give you an update. • So began the summer of 1997 e-mail correspondence to Faye Deal, associate dean of admissions and financial aid, from four newly admitted members of the class of 2000 on a cross-country journey to Stanford Law School. They were four strangers with the same mission: to move themselves and their belongings to school. Packed tightly into a Jeep Cherokee and a 24-foot diesel truck, they took a chance and shared the ride. • It has been 10 years since their trip and time has marched on for the group. Brian Johnson now directs the California Water Project for Trout Unlimited; Mel Schwing is an attorney at O'Melveny & Myers LLP; Mike Strauss is an attorney with the International Monetary Fund; and Lisa Horwitz is a litigator with Manatt, Phelps & Phillips. Today they remember the trip fondly, agreeing that it was not only a great way to make friends before the start of studies but also a foreshadowing of the close-knit community that awaited them at Stanford. • It was a technological chance encounter that started it all. E-mail was still a new communications tool in 1997 and through a series of mishaps newly admitted students were given each other's e-mail addresses. Conversations ensued and the road trip group was formed. • "Mel, Brian, and I met once before the trip. We had been e-mailing about arrangements. I was going to D.C. anyway and they lived there, so we met. My goal was to make sure they weren't serial killers," recalls Lisa.

Day 1: *Our troubles began when Brian arrived to pick up the truck from Ryder. They did not have the truck we reserved and we were forced to accept a larger truck (about 16 square feet larger). So now we're driving around in a 24-foot monster truck.*

While friendships formed on the trip, not all the members of the group were an obvious match. "I was more conservative then, and Brian was liberal. And I wasn't cool, he was. But I remember him saying, "This is great because I would not have been friends with you were it not for this trip," recalls Mel.

"There wasn't a whole lot to do driving through Nebraska other than talk," muses Lisa, who remembers that the house Brian and Mike shared at Stanford Law became a frequent meeting place during school.

Day 2: *The plan seemed to be working. Brian was driving; Lisa was resting; and I (Mel) was chattering nonstop (or so I was told) to keep Brian awake. However, suddenly we ran into SEVERE fog just beyond Cleveland. We couldn't see the sides of the road and drove one reflector at a time.*

They drove all day, often into the night as they sped through the middle of the country on their westward trek. They ate at Denny's, filled up on coffee, and played road games to pass the time.

Days 3 & 4: *List of things we have seen: fog, construction workers (Is there any road not being fixed??), a billboard saying, "Are you the father? Dial 1-800-DNA-TEST to find out."*

They took time to do some sightseeing too. All agree that Utah had some of the most beautiful scenery.

Day 5: *Arrived in Utah. Bought burgers, brats, and avorted beverages and headed to one of the most spectacular sites on the planet: Arches National Park. Grooved to the sunset, cooked out, and contemplated the meaning of life under the grand backdrop of the Milky Way. It was way Shirley MacLaine.*

"We piled into my Jeep and went off-roading in Arches National Park. It really was spectacular. And we finally agreed to listen to one of Mel's music picks, the score from *Raiders of the Lost Ark*. It was the perfect piece to go with the scenery," recalls Mike. "Seeing how perfect a choice that was, we gave Mel carte blanche to choose the next part of our desert journey soundtrack, but he quickly lost all privileges when he whipped out the theme from *Ice Castles*."

Day 6: *Alas, all was not perfect. We soon discovered that Utah is as lousy for late-night fun as it is wonderful in the great outdoors. The bar kicked us out before midnight and the hot tub was closed when we returned to our hotel.*

They headed to Vegas for some fun. But Mel, the group's self-proclaimed worst driver, was at the wheel.

"There I am," says Mel, "driving down the strip in a 24-foot monster truck. And we didn't have a reservation, so we decided to check out Caesars Palace and

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then I drive up and hit one of the urns at the front of the hotel.”

Day 7: *There was no time to waste. Made the exit ramp on two wheels, stopped by the Church of Elvis (Get your drive-through weddings here!) and made a triumphant victory lap around the parking lot and sidewalks at Caesars Palace. . . . We put on the parking brake, gave Sheryl Crow a kiss, Frank Sinatra a high five, his “escort” a tip, and Siegfried (or was that Roy?) a fat lip. It was time to gamble.*

After Vegas, it was Stanford or bust. But first, the gang decided to take the truck for a spin up Highway 1.

“We should not have been driving a truck up Highway 1. You had to know not to ride the brakes—we did not let Mel drive—but it was amazing,” recalls Lisa.

They ended the journey with a celebratory ride up Palm Drive eight days after setting out for Stanford Law School; they were a bit weary but thankful for the adventure.

Day 8: *Finally the arrival—After narrowly escaping the gypsy moth inspector at the state line, we nomads toasted our new state with a rousing rendition of “Hotel California.” A few near death experiences later, Victory!!! Date: August 31. Time: 6:50 p.m. Place: Outside the Office of Admissions at Stanford Law School. We weary wanderers see ourselves celebrated on our fearless leader’s bulletin board, and we smile, and laugh, and completely love it. No word yet on whether we’ve recovered our sanity. Over and out, Lisa, Brian, Mel, & Mike.*

Ten-four, good buddies! SL

POINT OF VIEW

IP Rules

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products, a payday for which the boxer did not have to land, or suffer, a single blow.

Intellectual property, this most profitable of all business assets, is also the least stable. One reason is that—far more than any other business asset—patents, copyrights, trademarks, and trade secrets are constructed of legal rules. Equally important—and far more than other legal doctrines—the rules that define intellectual property are the subject of constant change. Intellectual property’s boundary lines are inherently uncertain and can shift from one judicial decision to the next. When in 2000 a federal court declared the patent on Prozac invalid, the value of Eli Lilly shares plummeted more than 30 percent. In 2002 a judge ruled that rival suppliers had not infringed Gemstar’s patents on an on-screen program guide, and the company’s stock dropped 39 percent in value. The stock of VISX, a leading vision-correction laser company, fell 41 percent after a similar ruling. Smart business practice

requires an understanding of the forces that produce uncertainty and change in intellectual property law and, if not always the insight to predict their outcomes then, at least, the ability to plan for them.

Why are intellectual property rules so much more mercurial than other property rules? (If real property rules were similarly unstable, the Empire State Building, fully rented one day, would be open to squatters the next.) The answer stems from the fact that intellectual assets—inventions, entertainment, brand names, collections of data, trade secrets—are information and, as such, are inexhaustible. Unlike the Empire State Building, information can be used by unlimited numbers of people without impairing the ability of still other unlimited numbers to use it too. Lawmakers recognize that without property rights to protect innovations from freeloading competitors, businesses will hesitate to invest in innovation—which is why they enact intellectual property laws. But lawmakers also understand that to impose intellectual property rights necessarily means turning away prospective users who are unable or unwilling to pay the price for access to the protected information, even though their use of the information will deprive no one else of it—which is why they impose limitations on intellectual property rights that would be unimaginable in the case of other forms of property rights.

Intellectual assets have long lives: Patents last for 20 years from the date of application, copyrights can last 95 years or longer, and trademarks and trade secrets are potentially perpetual, and there is no more important intellectual property management objective than to anticipate an intellectual asset’s legal futures over its lifetime. If intellectual property lawyers cannot precisely anticipate the specific legal changes that tip the judicial scales in favor of patent owners over the long course of a lawsuit, history shows that the forces producing change in intellectual property law themselves wax and wane and can offer a rough index for prediction.

The risks and rewards of intellectual assets are no less manageable than the risks and rewards of other business activities. However, the management tools differ, and the experience of the most successful intellectual asset companies reveals not only a healthy respect for the margins and mishaps that these assets can produce but also the need to merge legal and business perspectives in managing these assets. The central point is that every business decision involving intellectual assets is ultimately a legal decision and every legal decision is at bottom a business decision. If intellectual property is economically too important to be left to lawyers, it is also too legally charged to be left to managers. **SL**

This piece is an abridgment of the introduction to Goldstein’s soon-to-be-released book, Intellectual Property: The Tough New Realities That Could Make or Break Your Business, published by Penguin Portfolio.