

Remembering Richard H. Fallon, Jr. (Maine and Wadham College '75)

By Joel K. Goldstein (Missouri and Brasenose '75)

Dick Fallon was an absolutely brilliant, world-class legal scholar and an extraordinarily kind, humble, and giving human being. Such attributes appear rarely, especially together, but the superlatives all described Dick even though they failed fully to capture him. The synthesis of those qualities, the interaction of heart and head, of character and intellect, made Dick almost too good to be true.

Born in Augusta, Maine on January 4, 1952, Dick was the first of five children of Richard H. Fallon and Jean Murray Fallon. Dick's unusual intelligence manifested itself early on as his mother, a prominent Maine journalist who was an inspirational figure in his life, reportedly experienced near adult-like conversations with her one-year-old. Dick's fifth-grade teacher encouraged a substitute to yield the chalkboard to Dick if she felt unprepared to teach long-division. The Augusta Fallon family and Maine were important influences and life-long attachments as Dick regularly vacationed with his siblings at their Maine camps in addition to time at his vacation home in Bar Harbor.

Dick majored in history at Yale and was one of two co-leaders of the *Yale Daily News* as Managing Editor for Features. That experience, and Dick's Maine roots, led to a year as Press Secretary to first-term Representative (later Senator and Secretary of Defense) William Cohen (R. Me.) in 1974-75 while Cohen, on the House Committee on the Judiciary, supported two of three articles of impeachment it voted against President Richard M. Nixon in July 1974. The release of some of Nixon's Watergate tapes in response to the Supreme Court's unanimous decision in *United*

*States v. Nixon* led to Nixon's resignation in August 1974. Dick's close exposure to that moment of America's constitutional history promoted his interest in attending law school. A few months later the *New York Times* spotlighted Dick's experience as a congressional aide amidst Watergate in its late December, 1974 story announcing the 32 American Rhodes Scholars selected to begin at Oxford the following year.

Dick loved Oxford and it proved a formative experience for him in unanticipated ways. When applying for the Rhodes Scholarship, Dick thought politics or journalism his most likely career path and could not imagine himself a professor. But Oxford stimulated his interest in academic life as a vocation which would deploy his strengths and allow him to pursue passions while serving others. What an impact that Oxford epiphany had since Dick spent the last 43 of his 73 years on the Harvard Law School (HLS) faculty, becoming an iconic figure as a revered teacher of law students and undergraduates and an acclaimed scholar. Former law school dean and current Harvard Provost John Manning rated Dick "among the greats in Harvard Law School's history" and Randall L. Kennedy (Maryland/DC and Balliol '77), Dick's HLS faculty colleague of 40+ years, said Dick "represented the best of Harvard Law School."

Rather than continuing his undergraduate focus on history, Dick read Philosophy, Politics and Economics (PPE) at Oxford, receiving a first in 1977. Dick studied Aristotle and other classical and modern philosophers and political theorists, attended lectures of Oxford's charismatic jurisprudence professor, Ronald M. Dworkin (Rhode Island and Magdalen, 1953) and digested the work of Dworkin's legendary predecessor, H.L. A. Hart, whose ideas contributed to, and were refined by, Dick's thinking. Dick's engagement with moral and political philosophy at Oxford gave him a deep appreciation of, and aptitude in, that discipline and informed his thought, work and conduct. Dick's scholarly writing frequently cited philosophical works which also gave this

kind and decent soul new tools with which to test his heart's intuitions. His personal expressions often drew from philosophy; he invoked Aristotle eight times in a beautiful tribute to his dear friend and co-author, Daniel J. Meltzer. During Oxford skull sessions on jurisprudence or other topics with Rhodes classmates like Peter Carfagna, Russ Feingold, Scott Matheson, and Michael J. Sandel among others, Dick was an attentive listener but his contributions invariably produced some of the discussions' gems.

Dick also earned his Oxford Blue as a member of the university's strong basketball team. Dick had not played organized basketball after being sixth man on Cony High School's team his junior year and did not star on a powerful Oxford squad with a handful of former Division One players. Yet one half century later, others on Oxford's squad remembered him warmly as a dedicated and enthusiastic teammate who contributed to others' enjoyment at training sessions and in competition and as a particularly desired companion on long bus rides to or from away games for his engaging conversation, details of which were still recalled. Dick was club secretary for the 1976-77 season where his attention to detail allowed him to handle the myriad logistical aspects of team scheduling, transportation, lodging and so forth. The chore brought no glory and its inherent drudgery was aggravated in the pre-internet and cell phone era but Dick presumably assumed this necessary task to enhance his contributions since, as one team member put it, he was among those who often entered the game after the starters had made it safe. That would be consistent with Dick's lifetime ethic as an exemplary institutional citizen who always pulled more than his weight. Consistently, a mid-1970s picture from the Oxford Times showed Dick smiling as he prepared to set a screen for a teammate during a scrimmage. Dick's Rhodes class and Oxford basketball team pictures hung in his HLS office.

After two years at Oxford, Dick excelled at Yale Law School. Matheson, also Dick's Yale Law classmate and colleague on the *Yale Law Journal* (and later a judge on the United States Court of Appeals for the Tenth Circuit) thought Dick could have had any editorial position on the prestigious journal he sought, a belief Dick, with characteristic humility, dismissed. In any event, Dick opted to forego that path to focus on writing a law review article. His product, a 63-page discussion of merit in antidiscrimination law, appeared as the lead article in a foremost law journal shortly after Dick received his J.D. in 1980, a rare accomplishment for a law student.

Dick then returned to Washington for two prestigious judicial clerkships with quite different jurists, J. Skelley Wright of the United States District Court of Appeals for the D.C. Circuit and Justice Lewis Powell of the United States Supreme Court.

While in Washington, Dick reconnected with Jennifer E. Martin, a bright and vivacious Swarthmore graduate he had met earlier in New Haven. They began dating and married on July 17, 1982 in Branford, Ct., weeks before Dick began teaching at Harvard Law. Those two events of the summer of '82 anchored the next 43 years of Dick's extraordinarily happy and productive personal and professional life.

Dick and Jenny had two children, Elizabeth (Libby) and Doug (both of whom attended Harvard as undergraduates and its Law and Business schools respectively and later chose to settle with their families in the Boston area) and seven grandchildren. Family life became their focus the next four-plus decades notwithstanding the demands of Dick's academic life and Jenny's public service in their hometown of Belmont, MA. Dick was a deeply engaged father who coached both children in various sports but gave them space to make their own decisions. Over the years, Dick's contributions to his Rhodes class's annual letter said little of his professional accomplishments, instead depicting himself serving tea and cookies at Jenny's civic gatherings and noting that his

children excelled at piano where he didn't mentor them, not some sports where he did. Those submissions exemplified Dick—a person whose success never punctured his humility, whose wonderful sense of humor stung none but himself, and who loved and rejoiced in his family, sentiments its members reciprocated. In recent years, speaking or hearing the words “our seven grandchildren” turned his face into a beaming smile.

In fact, Dick was a towering, towering figure in America law, a generational talent who was preeminent in both constitutional law and federal courts. He was co-author of casebooks in both subjects, with his work on four editions of the monumental Hart & Wechsler federal courts casebook spanning about 30 years most noteworthy. Dick also wrote five books about constitutional law or the Supreme Court—*Implementing the Constitution* (Harvard, 2001), *The Dynamic Constitution* (Cambridge, 2004 and 2013), *Law and Legitimacy in the Supreme Court* (Harvard, 2018), *The Nature of Constitutional Rights* (Cambridge, 2019) and *The Changing Constitution: Constitutional Law in the Trump-Era Supreme Court* (Cambridge, 2025) as well as a satire on academic life, *Stubborn as a Mule*, (Strategic, 2009) and more than 80 scholarly articles and book chapters.

Even more impressive than the volume of Dick's scholarship was its absolutely stunning quality. He tackled the most difficult and important topics, such as “the rule of law,” how to choose a legal theory, and legal legitimacy, among many others, masterfully deploying insights and techniques from law, philosophy, history, political science and other disciplines, to produce many classic works. Dick took readers on unparalleled journeys to all boundaries of his topics, identifying, discussing, and resolving problems most others overlooked. Few, if any, so embraced the scholar's responsibility to confront and discuss honestly and comprehensively arguments against his positions as did Dick. Pursuing understanding and truth, not winning an argument, was

Dick's objective. Dick used philosophy to illuminate subjects but also found value in practice and experience as he tested ideals and behavior against each other to find the correct balance.

Witnessing Dick do constitutional law was like watching Roger Federer play tennis or hearing Yo-Yo Ma perform the cello or Ella Fitzgerald sing. It was to experience human accomplishment at unimagined levels. Dick's classic works on constitutional law and federal courts left an enduring legacy matched by few in any generation.

Dick was shy and humble, but those qualities did not prevent him from being an extraordinary teacher, in and out of the classroom. Justice Elena Kagan took Federal Courts from Dick in one of his first years teaching but judged him her best law school teacher. Manning's experience in Dick's class even earlier changed his career path from corporate law to becoming an academic, a leading federal courts scholar at that. Former Fallon research assistants like Kagan, Carol Steiker and Nikolas Bowie, all later Dick's HLS colleagues, among others spoke glowingly of working with him. HLS students twice voted Dick the coveted Sacks-Freund Award for Teaching Excellence.

Yet the value in having Dick in class was not just from his mastery of the subject but in the exposure to such a compelling professional and personal model whose exemplary human qualities fit together seamlessly to produce such kind, decent and generous behavior.

Dick treated others as he would have wanted to be treated, although his behavior improved the classic formulation to account for situations where another's circumstances called for consideration Dick wouldn't have claimed for himself. His kindness was celebrated; his death prompted accounts of Dick encouraging young strangers whose work he had heard or read or

finding time to help a colleague or old friend sort through a problem. Dick's kindness was habitual, not occasional or strategic.

Dick didn't personalize or take cheap shots but charitably understood others' words and behavior. His insistence on presenting and responding to others' positions in their strongest form won respect across ideological spectrums. Dick was a frequent critic of the theory of originalism in constitutional law yet its leading proponents, like Lawrence Solum and Randy Barnett, praised him and his work effusively. Dick's fairness, decency and civility, in academic and social engagements, provided a model for others to respond in kind, to lift their behavior, to present the best version of themselves. Dick fulfilled Rudyard Kipling's vision of the calm person who kept his head when others lost theirs. And Dick's integrity was all-encompassing and unimpeachable.

When Dick spoke, people listened and his counsel was often sought in university and law school matters or by colleagues, family or friends facing challenging issues. President Joe Biden named him as one of 36 members of a Bipartisan Commission on the Supreme Court to consider possible reforms. During the William J. Clinton impeachment deliberations, Feingold, then a United States senator, asked Dick to meet with him and Maine Senator Susan Collins, Dick's colleague on Cohen's staff a quarter century earlier, to educate them in what became a three hour discussion on the constitutional issues involved. Like *The Dynamic Constitution*, Dick's posthumously-published book, *The Changing Constitution*, was written for a general audience, reflecting Dick's belief that constitutional democracy depended on an educated citizenry.

Following a brief hospitalization, Dick learned in mid-June, 2025 that he had a hyper-aggressive form of terminal cancer which caused him to enter home hospice care. Dick emailed a few dozen friends to deliver the news and say goodbye and thank them for their role in his "heretofore exceedingly lucky life." In advising the co-editors of his Constitutional Law casebook

of this recent news which would prevent him from contributing to the annual supplement and related work, he apologized for having “to dump my problem even in part onto you,” waived related royalties, and thanked them for their association. Even under the sudden, tragic circumstances, Dick thought of others. He died July 13, 2025.

What a magnificent, beautiful person he was! Dick was loved and admired, he modeled how to think and to be and to treat others through his considered and considerate behavior. His loss is overwhelming, because his presence was such a glorious gift, to his family, friends, colleagues, students, and so many others who valued him and his incomparable insights and cherished relationships with him they regarded, along with the light of his enduring example, as among the very precious blessings of their lives.