

# LAW SCHOOL DEVELOPMENTS

*Once a year, this department will carry figures on law school registration. In addition it will provide a medium for the description of experiments in curriculum, teaching method, and administration. Like "comments," the typical law school development note will be characterized by brevity and informality; unlike them, it will be descriptive rather than argumentative and will deal primarily with devices which have been tested in actual operation.*

## LIGHTHOUSES, FOG, AND LAW: A SCHOOL FOR TEACHERS?

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Come gather and sing to the Schools of Law,  
whose twigs and nuts be we.  
Whether our fame is wagging jaw  
or casebooks, fiddle-dee-dee.  
The wood is good; the sap is strong  
that gave us Ames and Pound;  
And who can say we're right or wrong  
when students go aground?  
It calls for brain and it calls for will,  
but a law prof knows his mission:  
Fog is the oak of teaching skill,  
In the Harvard Law Tradition.  
Rowdy-dowdy-doodle-ee-O,  
The Harvard Law Tradition.  
Who whistles, flashes, rings, and blows?  
Who dares to play physician?  
Fog is the oak of teaching, still,  
In the Harvard Law Tradition.

These lines were adapted from a Llewellyn libretto and are sung to an old English air. The adaptation must date to the Thirties, or even earlier, because (as everyone knows) Harvard has changed. Besides, a brand-new curriculum is hot on the griddle, for next year.

The rowdy-dowdy Tradition seems at present to be nurtured best by the state universitarians. It is they who like to have a Harvard catalogue handy at their own curriculum meetings. They are Cantabrigian in spirit, if not in training. With respect to their forebears (particularly Langdell and Ames), they are scions under the throne. They are often Great Authorities, for they believe that being a professor of law means a life of writing about

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law. As Professor Bohlen once said, "They don't know how to teach";<sup>1</sup> but they are nevertheless Great Teachers. This is because they can use any method and still be good.<sup>2</sup>

Their strangest perquisite, perhaps, is sanctity of the classroom. This is a right of privacy to protect them from pedagogical peeping toms. Surprisingly enough, very few of the Great Teachers ever watch a colleague teach; and fewer still ever ask a colleague to watch them teach. When befogged, they turn to talk or treatise. They need no omnirange to guide them, since they are beckoned by beacons of the past.<sup>3</sup> Their strength, allegedly, is that ultimately they worked out all the answers for themselves.

### *What Made Willie Run?*

Most *young* law teachers are not steeped in the rowdy-dowdy Tradition. They do not carry in their knapsacks the baton of a Professor Williston or other Great Authority. Indeed, only a few even aspire to trace Willistonian footsteps. A sizable group (1) do not regard the law school as a place to hide, and (2) hope as law scholars to do more than conduct classes and write books. Books already written (Dr. Bradley's *No Place To Hide*,<sup>4</sup> for instance) suggest that some of us, at least, should not confine our tasks to the cloisters of the university. Professor Barton Leach has reminded us that during the war our graduates did significant work, well and imaginatively.<sup>5</sup> But a Supreme Court justice comments that "too many who responded so generously to the various phases of the war effort have already slipped back into blind vocational routine, not sufficiently aware that perhaps an even greater peril to our country lurks in the shadows of an indifferent peace effort."<sup>6</sup> And even Professor Leach's dean would rate lawyer service to the public as "*the central problem of modern legal education.*"<sup>7</sup>

Whatever are or ought to be their aims, most young law teachers are fog-bound. First of all their job is to teach, and this they want to do well. All but the lucky few, unfortunately, seem to need help. They are reasonably experienced in lawyering, but a law class is a new kind of client. They must again suffer apprenticeship; and the crucial question is whether they hang out professorial shingles (as ill-trained private practitioners) or, instead,

<sup>1</sup> Prosser, *Lighthouse No Good*, 1 J. LEGAL ED. 257, 264 (1948).

<sup>2</sup> See Rodell, *Legal Realists, Legal Fundamentalists, Lawyer Schools, and Policy Science—Or How Not To Teach Law*, 1 VAND.L.REV. 5, 7 (1947); *accord*, Prosser, *supra* note 1, at 266.

<sup>3</sup> Cf. *Omnirange to Guide Them*, TIME, Dec. 20, 1948, p. 57, indicating that our weathered friends now rely more on electronicist than on lighthouse keeper. And see the Associated Press dispatch from Long Beach, California, dated February 14, 1949: "Lighthousekeepers—like dodo birds—may some day become extinct, the victims of scientific evolution. . . ."

<sup>4</sup> Little, Brown & Co. (1948). Dean Roberts of the University of Pennsylvania Law School says that this "startling and amazing appraisal . . . should be read by every American." Cf. the symposium on Atomic Energy in 15 U. OF CHI.L. REV. 799 (1948).

<sup>5</sup> *Property Law Taught in Two Packages*, 1 J. LEGAL ED. 28, 29 (1948).

<sup>6</sup> Douglas, "Law in Eruption": *A Concept of Lawyers' Duty in a Time of Change*, 34 A.B.A.J. 674, 675 (1948).

<sup>7</sup> Griswold, *Report of the National Law Student Conference on Legal Education—Foreword*, 1 J. LEGAL ED. 64, 67 (1948). (Italics supplied.)

proceed with guidance—exploiting techniques of study, consultation, and review that have been proved of worth in the better law offices.

Some say that there are no formulas for teaching law, no rules; that there is no substitute for the man on the platform; that if he is good he can use any method; that otherwise he can do nothing to rise above his limitations.<sup>8</sup> If this is true it is bad news for the young teacher. It means that he battles alone through Bills and Notes, and Bankruptcy, and whatever else he regards as dog of the curriculum (but which is none the less his, for teaching). It means hours and weeks lost from other tasks he may regard as more rewarding. For if the tricks of teaching are trade secrets, that require repetitive invention, and if each of us must tread singly the labyrinth of routine chores, it is no wonder that we lose sight of "the central problem of modern legal education." If teaching skills are neither discoverable nor communicable, it is no wonder that the fog rolls in just the same.

### *FIDO*

"Fido" is a word of art—like "tort," "fee simple," and "renvoi." During the war, it meant Fog Investigation Dispersal Operation (a secret weapon used mostly in Britain to clear airfields for bombers). This is now a secondary meaning, and in current parlance the word connotes any device that dissipates fog. For law schools, "fido" describes a miscellany of teach-teaching projects that in recent years have threatened to overwhelm the crude past.

A few law review articles are fido; and so are occasional committee reports, in the *AALS Handbook*. Bull-sessions can be fido; also interviews with Near-great Authorities—the ones who still don't know that all they do know is law, and not how to teach law. Graduate courses are usually not fido; but the graduate students who plan to teach can usually get some fido on the sly, by auditing a Great Teacher's class and taking notes on what he does instead of what he says.

### *Teachers' Seminar*

The School of Jurisprudence at California has sponsored a fido project that may be of general interest—a seminar for law teachers. Five on the faculty participated in 1946-47; eight, in 1947-48. Each year there were Greats, Near-greats, and others. The participants as a group visited two successive classes taught by each man. The visits were followed by a seminar meeting where discussion dealt with the instructor's techniques, materials, objectives, and whatever else seemed pertinent to law teaching. In most instances the visitors were briefed, before the visit, by a memo describing intended coverage, the subjects already covered, and any collateral aims the instructor may have had in mind (*e.g.*, skills training).

All participants have agreed that the seminar has benefited the School. For one thing, we can now size up "how so-and-so teaches" with a good deal more assurance than when we relied on rumor, or a haphazard sampling of student opinion, or hazy recollections of our own student days. This information aids in choosing men to handle the introductory course, or the special purpose seminars, or courses in which the reading of statutes is to be stressed.

<sup>8</sup> See Prosser, *supra* note 1; accord, Rodell, *supra* note 2.

We can now appraise more accurately the famed ferociousness of a gentle luncheon companion. We know better who is drillmaster, who uses rapid-fire questions, who allows students to resolve their dilemmas themselves; and we can adjust our own techniques accordingly. By observing instructors, we learn that Trusts is a better second-year course for tight reading of cases than, say, Corporations or Administrative Law. Also, the tradition of visiting is established—so that several of us are part-time students in others' courses. And if the Contracts and Equity men want to collate "conditions" or the Statute of Frauds, or want to turn "equitable assignments" over to the Bankruptcy man, this decision means considering what happens in the classroom, and not just what appears in the teaching materials.

As might be expected, many of the seminar sessions erupted into talk of curriculum and law school objectives. We are probably wiser for this, though we still suffer the basic doubts so often stated in legal education literature. More important, we noted some problems we *can* solve. To illustrate, we found that "talking while on one's feet" is a part of lawyering we have left untaught. This can be remedied by agreement with one or two first-year instructors. We made discoveries as to what students do and do not do in class; and note-taking, for example, is a student concern we think demands experimentation—whatever we finally conclude as to its role in the fifteen-hour classweek.

We had no Marquis of Queensberry rules in the seminar sessions, and annoying mannerisms were usually noted. Some of us lectured too fast; others were inclined to monotonize. Some used case names, often abbreviated, without seeing that the students needed accompanying page references, or identifying facts. Blackboard techniques were faulty. One of us lost tempo by searching the roll before each recitation. Another assumed that students could jump around in casebook and supplement, for quotations, when the desks were too cramped for use of casebook, supplement, and notebook. We advised some to try problem-type assignments; others to stand, not sit. We helped evaluate new kinds of teaching materials. We discovered that writing projects are more easily managed when classmates edit drafts before papers reach the instructor.

The seminar has undoubtedly boosted student morale. Awareness that the profs were concerned with teaching, and not just law, came as a shock at first. Then we began to see a new interest in techniques, an improved critique of the courses, and a freedom from restraint in office conference (where comments on ways of learning law are almost as frequent as questions on what the law is). We have observed, over-all, a growing respect among the students for a faculty they know to be working toward a better use of class hours.

In summary, the classrooms at Boalt Hall have become laboratories for experiment. We cannot, of course, guarantee progress. The will for progress seems stronger, however, than the School has ever before witnessed.

### *Continuing Education?*

We have not scheduled any seminar sessions for 1948-49. In part this is due to lethargy; in part, to doubts that enough of us would turn out for the repeat performance. Few years for an annual reunion with some seg-

ment of Equity, or Code Pleading, or Corporate Finance, even when the time invested is only four or five hours. The hobbies and hates of individual teachers can be a bore, after too much restatement; and the sessions were sometimes redundant and dull. Further, when discussion dealt with curriculum and objectives, it often duplicated committee and faculty work that itself was sufficiently enervating.

If plans are made, for this year or future years, there will be changes. We are agreed that the man whose classes are visited must define in detail, and with care, the matters he wants watched. The meetings were loosely run, and the consensus is that we need a strict moderator—to enforce an agenda covering questions that (1) are of special concern to the respondent teacher, and (2) relate to the School's immediate needs. We would probably restrict the range of discussion, too: some arguing that our sole search is for better teaching techniques; others, that the quest should be the teachability of skills, or the practicability of policy training, or the distribution among faculty of teaching tasks that words like "skills," "craftsmanship," "ethics," "attitudes," and "policy" imply.

It may well be asked whether a faculty that has experienced this kind of seminar can justifiably refuse to make it a required course. We recognize that talents vary and that each man must stage his own show. We know that some will never storm from classroom, in terrible temper; that others cannot possibly proceed with Socratic patience; and that diversity of both performance and personality is to be encouraged. We have nevertheless found, in all performances so far attended, faults that suggest a need for renewed rehearsal. Adjustments are required *within* each man's frame of reference. And perhaps we need, too, a regular check on habits—to avoid the unsuspected "er's" and "ah's," or lecturing with hand on upper lip, or ending long sentences in a whisper, or proceeding for the sole benefit of the top 10 per cent, or the 10 per cent nearest the podium.

#### *For Whom the Schoolbell Tolls*

A psychologist on the California campus has demonstrated that in some fields, at least, students who are given facts to illustrate ideas are less able to handle fact problems than students who have studied the same ideas abstractly. Apparently the results have been confirmed at Chicago, where students working with "principles of inflation," unaided by examples, did better in applying the principles to wages, rents, bank accounts, and similar items than students who had been given the statistics on wages, rents, and bank accounts along with the principles. The inference is that too much illustration can fog up comprehension. We may possibly prove this inference unapt to law training, but should we ignore the experiments? Similarly, should we ignore the lessons learned in such projects as the Instructor Guidance Course at Fort Benjamin Harrison?

More than three years ago a law professor reported that he had acquired "a terrific admiration for . . . the skill of professional educators, the Doctors of Education."<sup>9</sup> His proposal that they be hired to do a vivisection

<sup>9</sup> HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 235, 236 (1945). And see Weihofen, *Education for Law Teachers*, 43 COL.L.REV. 423 (1943); Cf. Cheatham, *A Seminar in Legal Education*, 1 J.LEGAL ED. 439 (1949).

on us is not likely to be adopted.<sup>10</sup> But if we do reject their help, must we not undertake the job ourselves? Do we not tolerate in law teaching a naïveté and sloppiness which, as attorneys, we abhor in law practice? We proceed without training,<sup>3</sup> without study, without data, and without critique. We do not even have a *vocabulary* on how to teach law. We need experimentation, and we need report. Much of the huffing and puffing will be valueless, of course, and some fog will roll in just the same. There will also be useful ideas, however; and to that extent our beam may brighten.

<sup>10</sup> *Of.*, however, ESTHER LUCILLE BROWN, *LAWYERS, LAW SCHOOLS, AND THE PUBLIC SERVICE* (1948), reviewed in 1 J. LEGAL ED. 328 (1948).