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Notes and Comments

Willis L.M. Reese*

What Makes A Law School Great?

Of course I have no idea what makes a law school great. I have never really thought about it. There is no reason why a fellow in my lowly position should think about it. You can't arrive at my age and still be reasonably healthy if you do think about it. So I don't know. Dean Ronald Macdonald said "why don't you say something about what makes a law school great?" My reaction was to shudder. I did think about it for about ten minutes on Saturday and I have come up with the most obvious thoughts, all of which I know you've heard before.

Clearly, you have to ask, "great from what point of view?" But I don't know if this lawyer's relativism solves anything. I suppose that if the ordinary janitor were walking down the street in search of a great institution, he would look at the building to see if it were just a huddle with outhouses, and things like that. If it were, I guess that he would have a low opinion of the place. I do think that the shell has some significance; and I think that the interior characteristics can be important; for example, how the building is arranged, whether there is carpeting on the floor, (which there certainly is not at Columbia); whether the halls, as at Yale and Columbia, are dark and remind you of a jail. Although these things are important, I am not suggesting that they are the most important factors. But I doubt that any law school without respectable facilities has been thought of as great. Well, what the hell else makes it great? I don't know, but I suppose that when you think of an order of importance, the building ranks lowest.

Now for the faculty. It's probably desirable to have a good faculty, but then of course, your next question is, "good for what?" That is a very real question. For example, at Columbia, and I think quite erroneously, you can't get tenure unless you write. Now is this a good thing? Should the faculty be good for scholarship or should it be good for teaching? What is the prime job of the faculty? Is it to

*Charles Evans Hughes, Professor of Law at Columbia University. This is the transcription of an informal talk to faculty and students at Dalhousie Law School on October 4, 1977.

teach? Is it to write? These two things, we all know, do not necessarily go hand in hand. You can be a brilliant scholar, or at least a reasonably good one, and a pretty dull teacher. We can all think of people who fit that category admirably. We can think of people who are indifferent scholars and terrible teachers. And we can think of people who are pretty damn good teachers and not scholars at all.

I remember that some time ago Columbia had a fellow who was a judge. We got him to teach evidence and without question he was the most popular teacher at the Columbia Law School. The students gave him a medal as the most successful teacher, the most popular teacher. No medal had ever been given before. It wasn't even a small medal, it was a plaque. And it was done, I'm sure, to annoy the dean and annoy the faculty. But this was a terrific teacher. He would give dramatic examples in evidence; he would have the class in stitches of laughter; and I guess he did teach a good course in evidence. Well, the question came up, "Should we invite him to join the faculty?" And the appointments committee, in its wisdom, said "No!, we should not ask him to join the faculty because this fellow has reached the advanced age of forty-five and he has never written. What makes us think that he will ever write? All he will do is tell funny stories and teach a hell of a good course in evidence." Maybe they were right. There it is. What is your job?

At one time the emphasis at Columbia was more or less on teaching. You could get tenure without having written anything in those days, in those benighted days; but not now. You have to write. Whether anybody reads what you write is irrelevant. But you have to write. If you don't write no one knows about you. In a sense, your fame carries the institution with it. The students come to the class and say, "gosh, there is a great man; nobody can understand what he writes, but undoubtedly there is a great man." People hear of Professor Zilch. They see his classroom and they see his office. "That's Professor Zilch's office!!" And of course, nobody can understand him in class, and he may have nobody take his course. But nevertheless, there he is, the great Professor Zilch who just went down the hall and into the faculty washroom. And I'm being quite serious. It's good to have some famous fellows, even though they're lousy teachers. Of course, if you have a famous fellow who is a good teacher and who writes too, that's even better. But students after the first few weeks lose their awe and become Philistines. They like to have good teachers. But, on the other hand,

even students are not without their contradictions and conceits, they feel happier with a law school if they can say, “gee, we have got some Great Men here.” So there you are.

Despite the desire of administration to simplify its life, you have to have a faculty. In an ideal world, a faculty would be composed of anybody who is both a hell of a good teacher and a hell of a good scholar. If you can’t put together a whole faculty like him, I suppose that what you shoot for is a mix. Although you do want good scholars, whether you should emphasize scholarship as much as we purport to do at Columbia is debatable. I don’t know. It depends on what you think to be the role of the faculty member. Is it to teach? Is it to write? Or what the hell is it? But I suppose that you must have some well-known fellows on the faculty, because that is good for the morale of the faculty — makes them stifle jealousy and things like that. More seriously, it adds to the excitement of the school. This mood enhances the reputation of the school and this in turn attracts good students.

Now I come to the students. And without question the most important thing that makes a law school great is the students. I remember, many, many years ago — all my recollections are from many, many years ago — when I was just out of the war, and by that I do not mean Korea or Vietnam. I mean World War II. I was at Columbia, had just gotten there and the dean was snarling at me. And I met Judge Augustus Hand on a street corner. We students referred to him as Gus Hand, but never to his face of course. In his presence he was always Judge Hand, a very nice man, and we met on a street corner. And when you met Judge Hand or Gus Hand you couldn’t get away very quickly because he would talk, and talk at some length. But we met on a street corner, and it was a very blowy March day, and I was getting colder and colder. We stood there for quite a while and he said that he had just had a law clerk from Yale and that he would never have another law clerk from Yale because this fellow was always telling him what the law should be and he didn’t want to know that; he knew that already. He wanted this fellow to look up cases, you see; but this fellow wouldn’t look up cases; he’d just tell Gus Hand what the law should be. Gus Hand said, “no, I’m not going to have another man from Yale, but then my brother judge disagrees. He says that the students at Yale are so damn good the education there can’t hurt them.” And there is a great deal of wisdom in that. If you want to know the most important quality of a law school, the quality that makes a law

school great, it is an excellent student body over a long period of time.

Certainly students can educate each other to an extraordinary degree. Being in the company of bright people is an exhilarating experience. If you also have reasonably good facilities, you will have good student morale, and more or less the hell with the teachers. That's overdoing it. But if the students come out with good morale, you will have an alumni body that looks back at law school with pleasure; and you will have, I take it, good support for the law school, which in turn leads to a great school, because it enables you to buy good faculty. Of course, if you have bright students you are likely to have alumni who do well in life, and that leads to a great law school. You can say, "Ho, ho, ho, granted, I was damn fool in college, and spent most of my time chasing footballs, but look at old Whizzer White. He is on the Supreme Court, as is Potter — and Gerry Ford didn't do too badly — he became President of the United States; and now we have Cyrus Vance making peace all over the place. We had quite a class at Yale Law School". Well, that does something for the morale of the student body. I mean, some of us have done well and law school could not have done us too much harm.

So I do think that, in the long run, the most important element that makes a law school great is the student body. I don't really think that the teachers can do too much. They can make the students think, but if the people are bright, they'll probably think anyway. I don't know that teachers can teach them too much; maybe they can help them think; but if the students are good and are good for a continuous, protracted period of time, I think that you have the ingredients of something pretty damn good, or so it seems to me. If every student in a law school were bright, really bright, he would learn no matter what you did to him. I mean you couldn't hurt them very much and they will go on, of course, to become a distinguished alumni body, and impress the general public. I don't know what support I can evoke. I teach students who are all brighter than I am. I couldn't get in a law school today, I don't think. And as we see the student's progress afterwards, I tell myself, "well at least I did them no harm". One would hope that a teacher could say a little bit more, but that's all I can say.

Now for a few other points. It's hard, I've said, to have a strong group of alumni. But that is the immediate product, isn't it, of having a good student body? There's something more than that. At

Columbia, maybe because of location or what have you, it was fashionable to say, "I hate the place." Now when you have students leaving the joint feeling that they don't like the place, that doesn't add to the enthusiasm of the alumni body; and so it is well to have good morale among the student body; and we at Columbia have been attempting to improve student morale. It's a little bit difficult in a city. There are other reasons — we do have corridors that look a bit like jail, or so I think, even though I've never been in jail, and they certainly do not enthuse students, who may have been. We have a lounge that for 900 students is about twice the size of this and is not finished very well; and that doesn't add to the enthusiasm of the student body. We do have a good library but how many students do you ever see in the library?

But anyway, I think the alumni body is going to be more gung ho if you have a few famous alumni, and if you can say, for example, that Zilch will be present at an alumni gathering and Zilch is a man of great renown. After all lawyers respect intellectual ability and fantasize of retirement to become an academic. A loyal alumni group, it seems to me, is terribly useful, not only for financial support, which means, to support us people, but for much more than that. Alumni build up public support; they get people speaking well of the institution; and, as I see it, the mood of the alumni basically depends on what happened to them in law school and what happens to them thereafter.

Lastly, and this follows from everything we've talked about, you must have time. I mean, you could have the grandest instruction in the world for three years; you could have your students coming out gung ho; but that wouldn't mean a thing because it would take considerable time for a year of merit to percolate, if you will, into the ears of the general public. By way of example, Harvard could give the worst instructions for three years and yet people would continue to think that it is the best law school in the country. Whether it is now or isn't, I don't know. But the point is that it's hard to get a good reputation, and once you've gotten it, it's awfully hard to lose it. And so I would say that here you have another essential ingredient of a great law school: good morale, both among faculty and students, which clearly leads to good alumni morale. And good facilities. Of course you have to have a library — it's desirable to have a place where students can read the materials and are not miserable looking up the problems.

Does the size of the school make a difference?

I don't know. Size cuts both ways with respect to student morale. How do you have enough dough to hire a faculty to teach enough subjects? There is some virtue in having enough faculty so the students can have some choice. Also I suppose it's desirable to have at least some classes that are relatively small in size. I understand there are three trust teachers at Dalhousie. We only have two trust teachers at Columbia and the class is probably twice as big as yours. Our smallest first year class, except in contracts, is 150. I take it that would shock you people and that you would say, "well, that ain't good". I, for one, think that you can teach a class of 150 about as well as you can teach a class of 50. I may be wrong but that's my hunch. But you don't get the individual contact that way and there is alienation, and that's destructive of student morale. One of the difficulties of a big law school is that when you see these nice, bright-eyed people scurrying around, you have no idea who the hell they are and that's not so good. I think a big law school suffers considerably from the fact that the faculty doesn't know who's who. At Columbia we have ten sections or so of the first year class in contracts. And you do the same, I understand, here. Outside of that, I don't know that size affects the quality of the education provided, that you have the facilities. You have to have room in your library for the students.

I think that if you had smaller classes, law school teaching wouldn't be as much fun. Well, I don't know about you — maybe you're a saint on earth — I don't know whether you are or not, but I mean most of us like to be on stage and act a ham; and I guess most of us like to be hissed by students on occasion; sometimes we even act so that we will be hissed. They wouldn't have the stories without the big classes. A lot of the amusing incidents wouldn't take place in a very small class. There is a wonderful story of Elliott Cheatham, a former Columbia teacher, who was a saint. This has got nothing to do with legal education, but it's funny. There was this fellow who would sit at the back of the room — it was a big class and he had this mellifluous southern voice which I can't imitate, but Cheatham would call on Mr. Zilch and the fellow would come back with great pride "Unprepared". Cheatham would call upon him again about two weeks later — always the same reply, "Unprepared". This went on throughout the year and this fellow was always unprepared. So one day in the spring, it had gotten to be

April, and it was rather warm, and Cheatham says — this fellow was sitting next to the window — Mr. So and So, you would kindly open the window — “Unprepared”. Now that wouldn’t happen in a small class. And in a way that’s what makes law school fun to look back at. Of course, size has disadvantages, very serious disadvantages. The people now think of themselves as cards in a cycle and the like. However, I think that legal education “ain’t too bad” but I have no question that if you had more individual attention, more individual work would be done and subjected to criticism. That’s one of the virtues, maybe the only virtue, of the law review and I suppose at Yale that was the best education I got — not from the teachers, but you would write this stuff and then a man a year ahead of you in the school would say rubbish. That was a mean criticism of a rather vehement sort. You can’t get that from the faculty unless the faculty has very few students and unfortunately it would be unrewarding from the faculty’s point of view. As I see it, one of the problems of a law school is to provide sufficient opportunity for doing work under individual criticism to attain a realistic end, which normally with us would be publication of something. We have four journals at Columbia — well there are varying degrees of excellence. But that is one of the challenges — to provide individual criticism; but it’s awfully hard to ask for that unless again there’s some tangible goal for doing it, other than discipline and learning as I see it. Now ideally you could do that by having a fellow work for a lawyer and after the lawyer asks him to write a brief to rewrite and rewrite and rewrite and rewrite it. But it’s hard to find a lawyer who would really do that — it would be much easier for the lawyer to say “Oh hell, I’ll do it myself” and call in his secretary and dictate it.

What about the graduate programme?

I guess we have about 100 graduate students flying around the law school in a variety of capacities. We have these foreigners, common law foreigners and non-common law foreigners. The civilians are treated somewhat differently, (although we wouldn’t necessarily admit it, I think we do). To begin with, they can’t really speak English, or frequently they can’t. Also they do have a few special programmes for them that wouldn’t be given to an ordinary common law lawyer. And then, of course, you have people who are common law from other countries or from the United States, and

they're treated just like everybody else. They can take what they will. They have to meet a certain average and that's it. Then we have a relatively few doctoral candidates. They have a rather specialized task. But I suppose that we do feel it's nice to have people of that level around. I suppose if you were to ask some of us we'd say that maybe the graduate programme is a service we should provide. And again I think it's good for the school if you can get a few people among them who become teachers and as they leave say, "Boy, Columbia is good!" Isn't that great? But I guess that's our thinking. We've spent a lot of time on it.

What about the case method?

It's about the most time consuming method you could devise. You cover far less by reason of the case method than if you had another method. I suppose that all of us have wondered whether one really needs three years of law school instruction. It's not at all clear that you couldn't do quite well in two. It would be difficult for us to change because of the bar requirements, which require three years. But of course it's true that students get bored with the socratic method and I will say this: it's obvious that there's no *one* socratic method. You have the exaggerated technique where the teacher does nothing but asks questions and really says nothing in the class; he just asks questions. Then you have the fellow who asks questions and talks half the time. And I guess there are teachers, I don't know if there are any here, there certainly are with us, and I'm sure there are at Harvard, who just lecture. He just plain lectures and I guess that's fine if that's the way he wants to do it, depending on how he does it of course. But it's awfully hard to think of what else to do instead of the case method.

I think we all think that the case method is useful for a while and that it teaches people a lot of things. One thing it does is teach people not to believe what they read, which is a very important fact to get across. I suppose that when they initially come to law school most students are not inclined to read an opinion very critically, at least initially; and it's very important to have the teacher say "Well, what does Judge Jones know about this anyway?", and the like. But I'm sure there comes a point in time when the case method is not of the same interest or value and the problem is, what else do you? The answer may vary with the material that is available. It may be that the thing to do, in the third year, is to have abbreviated courses

which would be lectures. You'd cover more material that way. Whether the students would carry more away with them, I don't know.

What about clinical education?

There has been a considerable movement into it in the U.S. The idea is to get the students into something at the beginning; to give them some notion of how you sort out the relevant and irrelevant facts and the grist, if you will, of a real live case. I think that most schools in the United States have clinical teaching but I would guess that most students do not get involved in it. It's not necessarily because they wanted to but couldn't. They just didn't.

The problem, as I see it, is that it is very expensive. You just can't hire enough faculty members to do it. There's a second problem, which may be almost insuperable: you're not going to find enough faculty members who want to do it. The reason for that is twofold. Many faculty members like to make fools of themselves before a class. I mean we are mostly all egotists and showmen or what have you, and we like to make a fool of ourselves before a group, which you can't do in clinical education. More important, I think, is that in clinical education you can't have enough students to become a figure in the law school. Most of us like to be as regular as Professor Zilch. We like at least a fair number of the students to have had us and know about us. If you're on the clinical education side of it, you're just not going to have the students. The programme is not in the mainstream of the law school, and that's likely to be the fate of a clinical education fellow. There's also the further point that a clinical education fellow is likely to write boring articles and make a name for himself you see. So you can see the problems here, namely, getting good people to do it; and the reason that it's hard to get good people to do it is because it's perceived inferior. I think that if you look through our law schools you'll find that the clinical teacher tends to be a bit below the other fellow. It's hard. But there it is. The clinic presents problems.

It may be that the best solution is a two-year law school.

Would the public think that lawyers were any good if they were in law school for only two years?

I would be inclined to say that you do not become a lawyer on graduation from law school. Your education has just begun. I mean,

you wouldn't want a lot of crummy advice from a fellow who had just graduated. It would be devastating. He has to go through the period of learning to act like a lawyer, which he hasn't learned in law school. We all admit to that. After all, how the hell does a doctor learn how to take out an appendix? I mean, he must experiment a bit or practice a bit before he gets good at it. I'm really terrified about how doctors learn. How does a surgeon learn to be a surgeon? (With rats, I hope.) Well, you know, he must start practicing on a living fellow at some stage of the game.

And of course there's another fact which may not be true here but it's certainly true with us: legal education is cheap education. Although the president of Columbia will deny it, I suspect we're the only school in the whole university that makes money for the university. The medical school looses it's shirt on every student, so I understand, and that's because there is far more individual attention in medical school, as there has to be. I mean, you can't teach a fellow how to diagnose a case from a book and you have to have somebody else diagnose it too to see that he's right. It's a far more individualistic training. I suppose that when you first start operating you have somebody bending over you and saying "Now take the scapel and cut in here, but don't cut in too deep because his heart is within two inches", and that sort of stuff. I guess. I don't know. I've never been around when this happens. I'd rather not think about it. But I assume it's done that way.

Would you conclude by commenting on what you feel the major purpose of a law school ought to be?

Of course, other departments in the university would say the law school is a technical school, that all you're doing is teaching the students to be technicians; but the people in the law school would say, "certainly not. We're teaching them broad principles"; we would say that the best way to become educated is to take legal training. I teach very little law, in my course, conflict of laws. All you can do is to alert the students to the existence of the problem and to ways of thinking about it. A lot of people take conflict of laws at Columbia. We have short courses in conflicts. But it's not required, and I think people take it largely from tradition. I suppose the most popular course at Columbia is constitutional law. It's not required, but practically everybody takes it, and I don't think that it has to be made mandatory. Students take it because they think,

“well, damn it, we’re American, we ought to know something about the constitution, the Supreme Court, and the like”. I don’t know, but certainly you’re not going to get a law teacher to say that law school is technical. No, we say we’re philosophers — halos around our heads, and that sort of thing. Wouldn’t you say that?

I would suppose — this is an article of faith — that if you’ve had good legal instruction, you’re pretty well equipped to do most anything. Maybe not from the point of being a mechanic. But I know, for example, that during the war, the U.S. intelligence service — you don’t have to be intelligent to be in intelligence incidentally — was nine-tenths lawyers, and we were dealing with Japanese secrets and Russian secrets. Of course none of us had any special training for that. A good training in law should equip you to do most anything intellectual. The good lawyer is a fellow who can face up to any problem and somehow think it through. He may not know the answer, but he knows how to think about it. That’s the sort of graduate a good law school should produce.