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Coming, as I do, third in the line of those who have been asked to comment on the light-hearted wit and wisdom that Willis Reese let loose on this subject in his off-the-cuff remarks to a small group of teachers and students at Dalhousie Law School, I cannot add much to what has already been said. So, trying as hard as I can to avoid the pompous solemnity that almost inevitably goes along with any written pronouncement on topics as serious as those with which he dealt, I shall make three general comments on Willis Reese's main theme and two general comments on what Cohen says about Canadian law schools. I shall then give, in the Carter manner, my own brief answers to what to me are the most important questions raised in the dialogue.

I was not surprised that in evaluating the relative importance for a great, or even a good, school of the five components of any school — building, library, "curriculum", teachers and students — Reese ranked the building last and the library, apparently, next to last. The library should, of course, be adequate, Peter Carter — adequate for the few students who are likely to make any real use of it and adequate for those teachers who want to get at least a toehold at the beginning of their researches into whatever corner of their specialities interests them most. But need it, for the purposes of a law school, be more than that? Aren't you, Mr. Carter, giving aid and comfort to those who take seriously the mindless "number of books" test or yearn for a "complete Commonwealth collection" (down to the reports of the latest tiny dependency to put in print the lucubrations of its judiciary) or for a "complete collection of legal periodicals in English" (in which, as one of my students once said to me, "the leading article on the subject is by so-and-so, the later ones are just copying him or knocking minor spots off him").

I was a little surprised that Reese put a good student body — "an excellent student body over a long period of time" — first and gave to a good faculty, and then rather grudgingly, no more than second place. Cohen's answer to him was so effective that I have nothing to add to it. Except perhaps one thing. Who was it that produced

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among the "top ten" schools in the United States — and it was those top ten that Reese was talking about — the excellence in faculty and excellence in students which has made them admired throughout the common-law world? The faculty of course. It was the faculty alone which nurtured and kept alive that excellence — by ruthlessly imposing elitist standards on every new colleague and every incoming student, without regard for the "compassion" and "respect for human dignity" which has lately become so fashionable.

But I was more than a little surprised that neither Reese nor Cohen nor Carter said anything about the component that I have called "curriculum". What is studied under the name of "law" and how it is studied, is, after all, the very *raison d'être* of every law school, good, bad or indifferent. I have put the word curriculum in quotes because I am not here thinking of such details as the range of subjects studied or the methods of study; I am thinking of the spirit in which the whole learning experience is approached. What distinguishes the good, and of course the great, law school from those which are merely respectable is that, true to the purposes of a university law school, it "teaches law in the grand manner" and seeks "always to give to its students the vision of law as a great instrument for social ends and to stress the duty of studying law in all its human implications." That is what I personally got from my two years as a special student at the Harvard Law School at the beginning of the thirties and it is, I think, that kind of inspiration which Canadians are looking for when they go, as so many of them do, to one of the top ten to do their graduate work.

For, as Cohen points out and for the reasons he gives, there is no Canadian law school which is, or even claims to be, "great". We have no school as good as any of the United States' top ten and, it must also be said, no school as bad as some of their worst; our schools are uniformly "solid", with one or two just a bit better than solid and one or two no more than barely solid. But — and here are my two general comments on this part of Cohen's piece — our "*system*" of educating people for the practice of law is much better than theirs; and from time to time one or other of our schools has dreams of becoming a "great" or, in Canadian terms, a "national" law school. We do not, as they do in the United States, let loose on the unsuspecting public a man whose only qualification is that he has graduated from a law school and has passed his bar exams. Our system — under which three years of book-learning in law school is

followed by a shorter period of apprenticeship in a law office — goes a long way towards insuring that every young lawyer has at least the rudiments of professional know-how and some appreciation of professional ethics. It would, of course, be nice if we had, in addition to our socially useful system of legal education, at least one "national" law school. We must meanwhile be satisfied with the dreams and hope that one day one of them will become an actuality. The earliest of the dreamers, Dalhousie Law School, established in 1883 and drawing much of its inspiration from Harvard, "for more than half a century", a knowledgeable observer has written, "provided intellectual leadership in the critical study of the common law in Canada, but its remoteness from the centres of population of Canada, the continuing strength of the apprenticeship tradition and the handicap of a small full-time teaching staff softened its inpact elsewhere in Canada".[1] In more recent years two schools in what has always been the heartland of common-law Canada but was until 1957 the sole preserve of a school operated by the local law society, Ontario — the insurgent University of Toronto Law School in the early fifties and the "new" Osgoode Hall Law School in the late sixties — have made conscious efforts to become "the best in Canada" but neither has as yet quite made it.

Now for the questions — the first of which is "*What is the primary purpose of a law school*". Under our system of legal education where the law societies accept a degree from a university law school as satisfying all the academic, as opposed to the practical, requirements, for admission to their bars, this "crunch question" — to use Carter's expression — presents each individual Canadian law teacher with yet another question, a question that he has to face at every stage in his teaching. He would like á la Reese, to wear the philosopher's halo and dedicate himself to turning out fellows "who can face up to any problem and somehow think it through". He cannot, alas, content himself with that. He owes, he knows, a duty to the profession as well as to the university. He must, he knows, serve two masters, the "how we do it" of the profession and the "why we do it" and "should we do it" of the university. To which of these two masters, he has to ask himself, shall I give my primary service? In making up his syllabus on criminal law, for example, should he concentrate on such "fundamental" and "university" problems as the mental element

1. Bora Laskin, The British Tradition in Canadian Law (London: Stevens & Sons; 1969), p. 84.

in crime, the limits of the criminal sanction, etc., or on such "practical" and "professional" problems as how to quash an information for duplicity. What then do most of us Canadian law teachers in fact do? Being unable to answer the crunch question, we straddle, each in his own special degree.

Case Method? I agree with Carter when he says "To assert the absolute superiority of any teaching method would be palpably absurd. There are simply too many variables". And I must confess that I have never myself had the grasp, the skill or the endurance to persevere with the simon-pure socratic method of question and answer that case method originally was. In one form or another, however, case method has been the orthodox, or "respectable", method of instruction in Canadian common-law schools ever since it was brought from Harvard to Dalhousie by Sidney Smith in 1921 — and for good reason, judging by the interesting contrast that Cohen has noted at McGill between the civil law students who have not been exposed to it and the common law students who have. Why? Professor Max Rheinstein has, in a recent address to an international gathering of law teachers, answered that question so brilliantly that I here reproduce in full his concluding paragraph.

> "The American method of legal education is frequently called the case method. It has been repeatedly emphasized that the term is misleading. Perhaps at one time law teaching in America was done exclusively by the use of cases. That time has long been past. Our materials for legal education are varied. Of course we use cases, considerable numbers of them, but the cases are not necessarily the mainstay. We present the students with a lot of material which they are supposed to read and study. The materials may be statutes, legislative debates, discussions or reports. They may be discussions of bar associations, inquiries by psychologists or economists or sociologists, or they may be statitstics, or even poetry or fiction. We use all and every means; we also use lecturing and perhaps every one of the several thousand law teachers in American law schools may have his own method. But there is one feature which is common to all American legal education, and which ought to be emphasized. It is not the use of cases. The distinctive feature is self-study. Our system is not so much a system of legal education, as it is a system of legal study. We expect our students to study law from materials which we hand to them and which we expect them to read critically. We thus rely on self-study, which, of course, we stimulate and which we try to guide by classroom discussion to be carried on among the students or with the instructor; and we supplement it with such teaching devices as moot court, law

> review, or legal aid clinic. But the distinctive feature of American legal education is the reliance on the student's own efforts. The subject matter is not given to the student by the professor. No, he has to get it himself, with the aid and under the guidance of a professor. This feature of American legal education is transferable. It could well be tried outside the United States.''[2]

Should a law teacher be expected to write? Of course he should. Secure in the knowledge that he himself is a writer of distinction, Professor Reese can afford to be as irreverent on this question as, secure in the knowledge that he himself is a product of a great law school and now teaches at a great law school, he was on ''what makes a law school great''. We lesser mortals in Canada cannot. Our legal literature has until the last two or three years been sparse even on topics so distinctively Canadian as administrative, criminal and constitutional law. What is still our only book on Canadian administrative law, not a very satisfactory one, was written by a practising lawyer as a mere sideline in his busy professional life; one by an academic specializing in the field is, however, about to be published. Only in the last year or two have we acquired basic texts on Canadian criminal law and Canadian constitutional law — each written, as all basic texts should be, by an academic who has had the time and the grasp to think his subject through. Now that we law teachers in Canada no longer have the excuses that we could make in the past (see Cohen), we must buckle down — as the English and Americans have been doing for many years — to filling many glaring gaps. But this we shall never be able to do unless we deliberately develop in each of our law faculties a corps of people who make a habit — even establish for themselves a schedule — of ''scholarly writing''. Or, approaching the question from another angle, the only kind of man or woman worth having as a teacher in a law school is someone who wants to go to the bottom of things and a pretty good way of finding out whether he really does is to ask: ''do you want to put your ideas to the test of your peers by publishing them or will you be content to display them in the classroom, to the dazzlement (or puzzlement) of those who are still, compared with you, wet behind the ears?'' Or — I could go on and on — what is the law teacher who does not write for publication going to do with his time; sink into the easy-going indolence that so easily creeps up on those who live in the sheltered cloisters of academe; or

2. The Case Method of Legal Education, The First One-Hundred Years, The Law School Record, University of Chicago Law School, Winter 1975, p. 14.

moonlight for more money; or what? That I do not myself stand up too well under my own rigorous tests is beside the point. "I have sinned" is all I can say.

On the advantages and disadvantages of a large school I have nothing to add to what Reese and Carter have already said. As to "the two year law school" (long a dream of my own), a report made a few years ago in Ontario so effectively killed the idea as far as Canada is concerned that there is no point in my discussing it. The two remaining questions — graduate programs and clinical education — are so controversial that I cannot entirely disregard them but they are so peripheral to the on-going life of any Canadian school that they do not deserve any more than the briefest of brief comment.

Graduate programs. What we in Canada really need is a graduate program offered by a Canadian school to which a Canadian who is going to teach law in Canada can resort to do his graduate work. Grateful as we are for this "public service" (see Reese) that has so long been rendered to them by American schools, our embryo law teachers who go there find themselves immersed in ways of thinking about law that are quite alien to the Canadian system which they will be expounding to their Canadian students — e.g. judge worship, the belief that law and the lawyers have the answers to all social problems, an addiction to rigid rules (as opposed to a vague sense of fair play) as a guarantee of "due process", etc., etc. So that when they come back to Canada too many of them feel — and communicate that feeling to their students — that,for lack of such characteristics as those, the Canadian system ought to be remade to jibe with the American; which God forbid.

One or two Canadian schools may have dreamed of establishing, and (which is much more difficult) getting accepted by others, the kind of program I have in mind, but that is as far as they have got. The graduate programs we do have are no doubt filling other needs, but some day somehow we shall have to get around to filling what I regard as the real need.

Clinical education. Here is another example of an American idea that has been imported, inappropriately, into Canada. Despite practical (see Reese) and educational (see Carter) objections, to give to a third-year student in a law school academic credit for handling under supervision some of the real-life legal problems of the poor in a "store-front" law office makes at least some educational sense in the United States, where he does not have to undergo practical

training in an office before he can be admitted to the Bar. It makes much less sense in Canada where every student has to add to his academic training in law school the practical training he will receive in his period of service under articles. I was tempted to say "makes no educational sense", but "Clinical Law" courses do have in Canada an indirect educational value. They give encouragement to that pretty rare bird, the idealist who wants to help others, and they provide a partial escape for those (there are quite a lot of them) who by the third-year are bored to death by things academic. They contribute in other words to something whose prime importance in making a "great" — or even, I know he would add, a merely solid — law school Professor Reese repeatedly emphasized: student morale.