On the Strange Making, Training, and Thinking of an American Law School Dean
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A candidate for a vacant deanship recently told a search committee that deans are like champignons. At first impression the comparison evokes associations which seem pleasant enough. Champignons, after all, are—and always have been—a rare delicacy. Indeed, these days in particular, law school deans have become rather uncommon. About once a week I am advised of a vacancy in a law school deanship. However, this is not what the candidate who made the comparison had in mind. He thought deans were like champignons because one keeps them in the dark until they are ready to be canned. As my faculty and students do their best to keep me in the dark, I am not well positioned to shed much light on the present problems of legal education. Under these circumstances, I thought it might be appropriate to speak in part, not about where we are going, but where I have come from.

Permit me one paragraph about life stations. I was born in Hamburg in 1937. I entered primary school as World War II ended. My law studies were undertaken at the universities of Hamburg and Freiburg. In 1961, I did graduate work in law at Yale Law School, returned to Freiburg afterwards for a Ph.D. in law in the European fashion. My dissertation was on the so-called “realist” movement in American jurisprudence. In 1964, I accepted an offer from the University of California at Berkeley, and in 1966 I came to Chicago. Degrees did, of course, not end my legal education. As those of you who practice law have learned much of your law after graduation from law school, I learned much of my law teaching (especially American constitutional law, which used to be my preoccupation until I became dean). All of this seems rather straightforward, not even unduly exotic. However, it understates my exposure to American law and legal practice.

My first encounter with practical aspects of American law took place in 1953, when I was fifteen years old. I had been selected to go to the United States as a delegate to what was known as the New York Herald Tribune Forum, a four-month program aimed at increasing international understanding. The New York Herald Tribune annually brought together about thirty students from as many countries (European countries, Israel, Arab states, old and new nations of Asia and Africa). At that time, visas for German citizens had to be approved in Washington. A week before my scheduled departure for the United States, I still did not have a visa. I went to the American Consulate General in Hamburg for help. A Vice-Consul said he was sorry, but there was nothing he could do about it as Washington was probably searching for my war records. When I pointed out that I had been all of seven years old when the Third Reich came to its end, the consul simply shrugged his shoulders. The authorities at the Hamburg Board of Education, to whom I turned next with a request for assistance, told me that they could not and would not intervene. By now, there were three days to go. At this point, I remembered that I had previously gotten to know the director of the American Information Center in Hamburg. I made an appointment and described my difficulties. He said, “No problem at all, Gerhard,” picked up the telephone, called the consulate, and spoke to some person in authority: “John, this is Bill. I have young Casper here who needs and should have a visa by tomorrow. Can you please make the arrangements?” The next day I had my visa and a lesson on the equal and broad sweep of administrative procedures

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on the one hand, and pragmatic approaches to the question of how to deal with snags on the other.

As we are on the subject of the Immigration and Naturalization Service, I am reminded of another lesson in bureaucracy, both charming and a bit disconcerting. When I became a citizen, I learned that part of the process is an examination by an officer of the Service into one's political and personal background, covering, to this date, such subjects as communism, adultery, and parking tickets. Traffic and parking violations took up at least five minutes of the interview. I trust you will be glad to learn that, to the best of my knowledge, I am the first dean of an American law school for whom the United States Government has certified that he knows how to read and write. To the dictation of the examining officer, I had to write the sentence: "I am a professor of law at the University of Chicago." I also had to read aloud, from a catechism for citizens, something to the effect that a good citizen always puts the welfare of his country first. All of that was easy. I encountered greater difficulties when I was tested on my knowledge of American constitutional law, my field of expertise. While I got high marks for my response to the demand that I enumerate the three branches of the federal government, the examiner and I did not quite agree on the meaning of the due process clause of the Fourteenth Amendment.

My first encounter with the United States in 1954 was bewildering, intriguing, and obviously sufficiently fascinating to bring me back. If a sixteen-year-old can survive living with six different host families in the New York metropolitan area, from Massapequa, Long Island, to the Bronx over a three-month period, he can survive almost any cross-cultural challenge. The first months of 1954, if you recall, were the crucial period in the fall of Senator Joe McCarthy. Watching the debate—indeed, being made part of it by that very American notion of hospitality which embraces the foreigner as a discussant—was a special kind of introduction to the first and fifth amendments and the complex interplay of public opinion and political processes.

Nothing ever quite matched those three months in my informal education, with the possible exception of a seven-week "legal" journey through the South and West, which I undertook with a Scots fellow student in 1962 after graduating from Yale. For instance, we came to a motel at the outskirts of Birmingham, Alabama, driving a friend's old car with a Connecticut license plate. The manager treated us with formality and reserve. We had not even reached our room when she came rushing after us with a huge bowl of ice cubes. "Oh, I apologize," she said. "I just read your registration card [on which we had innocently given our respective home addresses in Europe]. I thought you were Yankees, but now I see you are foreigners. Welcome to Alabama. I hope you will have a wonderful time."

During that Southern trip, my friend, Ranald McLean, and I earned our way—as I still do—with after-dinner speeches. We got to a small town in South Carolina. The president of the local Rotary Club took us around town and pointed out which was the white school and which was the black school. At law school, we had, of course, studied Brown v. Board of Education. Since this town had made no attempt to desegregate its schools, we were inclined to interpret the community's attitude as a violation of the Constitution. Our host told us that Yale had failed to teach us the fundamentals of Article III and federal jurisdiction. Supreme Court decisions interpreting the Constitution, he said, had no general effect or application. As long as there was no specific court order to desegregate these very schools, there was no legal obligation to do so. As Cooper v. Aaron remains controversial to this day, this was at least a debater's point. For better or for worse, our exchange also encapsulated a difference between European and American views of law and modes of legal education.

The typical European law school curriculum covers the most important areas of law from the civil code to criminal law, administrative and constitutional law. The predominant mode of instruction is the lecture method (you must keep in mind that law schools have thousands of students and a professorial staff not substantially larger than that of an average American law school). The subject matter is the positive law—conceptualized, systematized, occasionally even problematized, to be sure—but the emphasis is on somewhat abstract information about general rules and principles of law, supplemented by practice exercises in their application. Even those law professors who pride themselves on being "progressive" find their progressive solutions usually by vigorous, if not rigorous, deductive reasoning. For instance, in postwar Germany, law professors and courts have been busily engaged in turning the constitution into a coherent and comprehensive ideology which provides answers for the most difficult social and political questions.

We in the United States, on the other hand, remain preoccupied with cases and court decisions. This has led to a state of affairs where American
legal education has, for instance, substantially neglected the institutional arrangements of government, though uncertainties increasingly abound over the question of who governs in what respect and on the basis of what authority. Both the European and the American approaches may be wrong. While I have little patience for the European tendency to engage in excessively abstract and deductive reasoning, the exceedingly narrow-minded question—"But is there a court decision on the point?"—often leads American lawyers to ignore the systemic context and implications of legal institutions.

Unfortunately, the American lawyer's predilection for the specific has not protected us against highly speculative manipulation. In constitutional law, in particular, the combination of the case method with ad hoc ideological speculation has made us all but forget the admonition of Joseph Story, the two-hundredth anniversary of whose birth this year nobody seems to be celebrating: "Upon subjects of government it has always appeared to me that metaphysical refinements are out of place. A constitution of government is addressed to the common sense of the people; and never was designed for trials of logical skill, or visionary speculation." My colleague, Philip Kurland, may have had a point when he suggested the other day that we found "a Society for the Prevention of Cruelty to the Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made or which shall be made, under the authority of the United States."

In 1964, I returned to the United States, mostly because of my respect for American universities, which has since developed into an admiration, especially for the educational miracles performed by private universities with extremely scarce resources. Their autonomy is one of the most glorious aspects of America's contribution to higher education. To a very large extent, this autonomy has been made possible by the abiding devotion of outstanding lawyers such as your deceased President and our alumnus, Jerry Weiss, who applied his prodigious energies to the support of his alma mater. I am, nevertheless, worried about the future on two counts.

First, the cost of running great private law schools is growing faster than the income they can raise from traditional sources. My colleagues at Columbia, Harvard, Northwestern, Pennsylvania, Stanford, and Yale—to mention but a few—agree that this state of affairs has dangerous implications not just for the law schools but for the legal profession as well. Law schools serve the profession and the public not only through the education of future lawyers but also through the research and writing of faculty members who, in many instances, now find themselves with lower real incomes than they had ten years ago. More importantly, the level of law faculty salaries, by comparison with law practice, is extremely unfavorable to our ability to attract young teachers. In addition, we find it difficult to cope with extraordinary cost rises in such areas as library acquisitions. One of the unfortunate aspects of this situation, aggravated by some of the ideological trends I referred to earlier, is that law
schools may be losing their moorings in the profession. It has become apparent that substantially increased private support is essential if we are to continue to maintain institutions for high quality teaching and research.

Secondly, we are being regulated to death. Since becoming dean on January 1, 1979, I have been taken aback by the volume of regulations, proposed regulations, guidelines, and so on, issuing from the Section of Legal Education of the American Bar Association and similar bodies. The irony of these regulatory efforts is the fact that it is largely the private sector which does the regulating. Its volume does not lag behind governmental regulation. It is sad indeed that the American Bar Association, of all organizations, is beginning to pose a threat to academic freedom.

The ABA either tells us or would like to tell us how to govern our law schools, what students to admit, whom to give scholarships to, what to teach, how to teach, what resources we should allocate to our library, and so forth. The federal government concerns itself with whom we should hire as faculty. The Supreme Court of South Carolina recently attempted to prescribe the college curriculum to be followed by prospective lawyers including, among other things, courses in speech. When I was a child, I was told that the Prussian version of the story in Genesis about why Adam and Eve were driven out of Paradise was that the tree of knowledge from which Eve picked the apple stood in the center of a lawn which bore a sign “Do not walk on the lawn.” This story can soon be told about the United States with equal justification. In the course of the academic year 1978-79, the Section of Legal Education and Admission to the Bar issued about sixty memoranda (that is better than one a week), often lengthy, to deans of ABA-approved law schools.

I should like to provide one example which is quite trivial on the one hand and pernicious on the other. The Section of Legal Education has recently proposed an amendment to accreditation standard 201 which would require us to engage in periodic “self-study.” The fact that its parentage includes the U.S. Department of Health, Education, and Welfare and that a requirement of this nature is already part of the accreditation and reinspection processes offers little comfort. On the basis of my knowledge and experience, I think that I can safely assert that no country in Western Europe, where legal education is very tightly controlled by the state, would impose a requirement as intrusive of academic freedom and as wasteful as this one. Requirements of this type are open-ended invitations to indirect regulation.

The latter point is illustrated by Recommendation 13 in the recent report of the so-called Task Force on Lawyer Competency: The Role of the Law Schools, for which the Section of Legal Education is also responsible. Recommendation 13 proposes that the self-study requirement “should be expanded to include specific consideration of the responsibility of the school to ensure that its graduates meet adequate fundamental lawyer skills” which include “oral communication, interviewing, counseling, and negotiation.” One is surprised not to find as part of the list the recommendation proposed by the most immediate past president of the ABA that law schools should “encourage the teaching of law office management skills.” About this suggestion, Judge McGowan, in a talk at the University of Chicago Law School last year, commented, “Surely attendance at one law school faculty meeting, followed by a visit to a few law professors’ offices should be enough to demonstrate that this is a hollow dream at best.” If the American Bar Association continues to go down the road of forcing all of us into procrustean beds, I think it will become absolutely mandatory for the major law schools in this country to seriously consider making a concerted effort to change the regulatory system.

Increasingly, the organized bar seems to be asking the question: “What can we make law schools do to get us out of trouble with the Chief Justice, the President, and the public?” Obviously, the questions we ask determine the answers we get. I am reminded of one of my favorite stories, which I learned my first year of law school in Hamburg, when I availed myself of the opportunity to sit in on courses in other departments. One such course was in the Divinity School, and the instructor described a debate between a Jesuit and a Benedictine monk as to whether one is permitted to smoke while praying. The Jesuit thought it was permissible to smoke while praying. The Benedictine took the opposite position. They referred the matter to their respective superiors. When they got together again, each had been confirmed in his views. The Jesuit could not understand the stubbornness of the order of St. Benedict. What question did you ask, he interrogated his brother. “Are you permitted to smoke while praying?” “No wonder,” the Jesuit responded. “I asked whether you may pray while smoking.”

I sometimes wonder whether the greatest issues in American legal education today do not turn on the appropriateness of the questions we want the law and the law schools to answer.
To hear Earl B. Dickerson speak, one might be charmed into believing that his remarkable career was just a series of fortuitous coincidences. To follow his career, however, from the time of his graduation in 1920 as the first black to earn a J.D. degree from the University of Chicago Law School, soon leads one to the realization that he is an extraordinary man. A distinguished attorney, Mr. Dickerson was a former president of the Supreme Life Insurance Company of America; a founder of the American Legion; a former president of the National Lawyer’s Guild, the National Bar Association, and the Chicago Urban League; civil rights activist; and Franklin D. Roosevelt’s appointee to the first Fair Employment Practice Commission—to name but a few of his many accomplishments.

A conversation with Earl Dickerson, 88, is a history lesson told with wit and humor. Not only has he known such great public figures as Franklin Roosevelt, Martin Luther King, and Paul Robeson, but he fondly remembers former Law School professors, Ernst Freund, Harry Bigelow, Ernst Puttkamer, James Parker Hall, and Floyd Russell Mechem.

Dickerson has also participated in important historical events, particularly the civil rights movement. He says that he has always “quarreled with any vestige of inequality that makes distinctions on the basis of race,” and he chose to fight through the courts and through organizations such as the National Lawyers Guild, the NAACP, and the Democratic party in Chicago politics. His most celebrated legal case, argued before the U.S. Supreme Court and won in November, 1940, was *Hansberry v. Lee, et al.* This landmark case broke down the use of racial restrictive covenants in the Hyde Park-Kenwood community of Chicago, opening up twenty-six city blocks for occupancy by blacks and other minorities.

During the Depression, Mr. Dickerson was instrumental in saving the Supreme Life Insurance Company of America, the second largest black-owned insurance company in this country, from financial ruin. Dickerson has stated that, “When most of the life insurance companies in the State of Illinois were going into insolvency and declared so by the Director of Insurance, I prepared [as General Counsel to the company] a policy lien for execution by policy holders of the company. By this means, we were able to raise more than one-half million dollars in company assets. This lien was tested in the Supreme Court of Illinois and found valid.” The importance of this company to millions of people cannot be overstated, as blacks had been consistently denied insurance by white-owned companies.

A fighter, considered by some in the 1950’s to be “subversive,” Dickerson inherited this spirit from his family, who traditionally resented the indignity of racial discrimination. Born in Canton, Mississippi, in 1891, Dickerson left the South at the age of fifteen and came to Chicago via the Illinois Central Railroad. In Chicago, he was encouraged to attend the Evanston Academy, a former preparatory division of Northwestern University, and the University of Illinois.

Because blacks had not been allowed to practice law in the South when Dickerson was growing up, as a youth he never gave much thought to the legal profession. However, while in college, Dickerson was quick to see that through the law he might contribute to social change. Dickerson explained that he

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