ANECDOTAGE:
Reminiscences and Ruminations about the Law School

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And so it is right to begin with some of the school’s birth pangs. President Harper, the first U of C president, had arranged that the Harvard Law School would lend us our first dean, Professor Joseph Beale. But that arrangement almost collapsed because Harvard had heard of the heresies circulating here. The chief heretic had been Ernst Freund, of our political science department. As President Harper’s main advisor, he had suggested that a legal education should include such exotics as economics, accounting, administrative law, jurisprudence, and political theory. Professor Freund, whom Felix Frankfurter described as the father of our law school, had introduced Administrative Law into the American law schools’ curricula. Harvard had also been worried because Professor Mechem, who was expected to join our original faculty, had indicated that an unrelieved diet of the case method was too much of a good thing. Consequently, Dean Ames of the Harvard Law School wrote Harper that Harvard Law School’s success had resulted from the solidity of its faculty and its teaching the law “pure and simple.” Chicago gave ground and borrowed its first Dean. In the longer run, however, Chicago’s heresies became the faith of all major law schools, including Harvard.

In 1934, 32 years after the creation of our law school, the class of 1937—my class—enrolled. It was not a happy time, given the Great Depression and the rising power of Nazism. For many of us the Law School was, however, so absorbing as to keep those troubles in the background. Our teachers were generally formidable masters of both their subjects and the predominant case method. We learned a lot of law. But more important, we learned about intellectual integrity; the capacity to take and give criticism; the importance, stress, and pleasure of honest craftsmanship; and the difference between law, ideology and power, however blurred the lines might sometimes seem. In short, we learned to respect the law.

Our fellow students were a friendly lot even though, or perhaps because, we were all running scared. It was relatively easy to get into the Law School but not so easy to get out with a degree. About a third of the first year students did not make it to the second year. For those who did make it to graduation, jobs were quite scarce. Life, as you have heard tell, was hard but not overwhelming.

I appreciate, Mr. Chairman, your generous introduction. It’s really nice that grade inflation has been extended to the faculty.

I want straight away to let you in on the rules, or rather the norms, of my engagement tonight. I won’t make any descriptive or normative claims or academic claims of any kind. That approach is wholly consistent with the free-wheeling nature of anecdote, not to speak of your post-prandial preferences. I’ll be telling you some stories that are very old, in part because of the impairment of short term memory that supposedly is a trade off for the wisdom that supposedly increases with age. But that factor is only a make-weight. The decisive consideration comes from a lunch I just had with one of our current students. She revealed a shocking historical deficit. She thought that the old law building meant Saarinen’s magnificent creation before it was recently squared by our annex. I worry that such errors are widespread among our recent alums, and I aim to begin remedial action here and now.
Another Bigelow story exemplifies how the Law School has—more than once—occupied with aberrational student lapses into minor criminal activity without drawing on the coercive power of the state. Our smoking room had become a gambling den. There has been a seismic cultural change. At that time, gambling was considered, at least by the state, worse than smoking. Anyhow, an irate alumnus had telephoned Mr. Bigelow and demanded that he call the police the next time the gambling was in swing. Bigelow showed his characteristic responsiveness to alumni. He told Miss Muir that he had to get a book from the Library and asked her to remind him to call the police as soon as he returned. She duly reminded him, but somehow by that time all the gamblers had melted away. Bigelow embraced the rehabilitative ideal and put a ping pong table in the smoking room. We even had a ping pong tournament, but there was no point-shaving at this institution.

Ping pong was soon replaced by high tea, served by the imperious Mrs. Hufnagel, an English woman from Newcastle, with a German name. This transformation of a den of iniquity into a cosmopolitan tea room reflects the progressive lightening of our global consciousness.

Tea was, however, not enough for Jo Lucas. I'm fast forwarding here. As Dean of Students, well after my student days, he arranged for a law wine mess in Beecher dormitory. Such a good idea was, of course, followed by a fuss about who got it first. Jo, whose great-grandfather had been Governor of Kentucky, was quite content to say: "Just call me the Bourbon Pretender."

Beginning with my student days I heard a lot about the Law School's first faculty. Reverent alums sounded the names of that legendary faculty, usually in combinations of three. Mechem, Hall, and Freund was a favorite combination. The combinations differed but had a common thread: the names were spoken with the proud resonance fit for a unique Golden Age. I continued to hear such mantras after I joined the faculty in 1946. They were designed to remind us of our great tradition and perhaps to keep our humility in order.

My early classes had, of course, lots of GIs, helped by the GI Bill of Rights. They were older than pre-war students, matured by their military service, eager to make up for lost time. They were as committed and as interesting a group as I have had the privilege of teaching and learning from. As I think of those classes, I am reminded of an old point: In the country of the blind, a one-eyed man is king.

The giants who had been my teachers were warm and welcoming when I came aboard. They included my friend, the precocious Edward Levi, who had also been my Washington housemate. Edward and Kate introduced me to Kate's sister Jean, whom I wisely married. The faculty truly looked after newcomers.

The newcomers included my friends and fellow alums, Harry Kalven and Walter Blum, who would play pivotal roles in the Law School's post-war renaissance.

We newcomers quickly saw the results of the incumbent faculty's continuing work on the curriculum and on the missions of academic legal research. I will mention two of those results even though many of you remember them: the Bigelow writing program and Levi's and Director's collaborative efforts to inform antitrust law with the insights of economics. Similar programs subsequently were adopted by most of the leading schools and expanded here. Indeed, law and economics has developed into a significant force in the U.S. and Europe.

In 1950 Edward Levi became Dean. Like Wilber Katz, his predecessor, he asked searching questions about the agenda of legal education, and especially, about how collaboration with other disciplines might deepen our understanding of both the actual operation of legal institutions and the capacity and limits of law.
One of those collaborative ventures was the study of the jury system by a team of lawyers and social scientists. This study led in time to Kalven and Zeisel’s landmark, *The American Jury*, among other enlightening studies.

But a certain difficulty intervened before those works were finished. With the help of colleagues, at the outset of the project I had written an article describing it and mentioning our inability to hear jury deliberations. The late Paul Kitch, an alum in Wichita, Kansas, volunteered to take care of that difficulty, and he did. He secured permission from a federal district judge, as well as the Chief Judge of the 10th Circuit, to record a few jury deliberations in federal civil cases, provided that counsel agreed and that the identity of the jurors, the name of the case, and the locale of the trial court were masked. In order to avoid affecting the jurors’ behavior, they were not to be told about the taping.

In 1955, the judges decided that it would be nice to play an edited recodertion during the July meeting of the Judicial Council of the 10th Circuit. Ed Levi strongly opposed that idea and explicitly sought to disavow any Law School connection with it.

Edward could not hold back the judicial tide, and on July 7, 1955, the tapes were played in Estes Park, Colorado. Soon, all hell broke loose. Senator Eastland, Chairman of the Senate Sub-Committee on Internal Security, held hearings, which had a whiff of the McCarthyism of those ugly times. Edward Levi, Harry Kalven, Fred Strodbeck, the project’s social scientist, and Ab Mikva, a young member of the project’s staff, presented a strong defense, explaining the scientific justification for, and the safeguards of, the controversial recordings. Nonetheless, the subcommittee’s report urged that the potential chilling of jury deliberations by recording was controlling. Accordingly, the subcommittee recommended that such taping in a federal court be made a federal crime. Congress did so. Once again, the Law School had helped make law. And once again we were reminded of the risks when science impinges on a strong democratic symbol.

My time is nearly up, and I have scarcely mentioned the 1960 new law building. We owe it to the vision and persuasiveness of Edward Levi and the generosity of our alums. We needed, Edward emphasized, more space for a larger faculty, the new legal aid clinic, student activities, research projects, and offices for emeriti professors. Bless Edward’s heart.

I will have to skip all the wonderful happenings in the new building and its additions under the great Deans who succeeded Edward. But I have just one more point, as Harry Kalven used to say after the bell had rung: Douglas’ report tonight on the stellar additions to our already incredibly talented faculty has made it clear that our Law School, my fellow-alums, will continue to reinforce the tradition of excellence evoked by “Mechem, Hall, and Freund” and by the newer mantras that you have fashioned. So, maybe there is at least a peppercorn of substance connected with this exercise in anecdote, after all. ♦

This is a transcript of the speech, ‘Anecdote: Reminiscences & Ruminations about the Law School’, given by Bernard D. Meltzer during the Annual Dinner on May 7, 1998.