

## The Law School's Fair Image

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The Law School did not have an image problem when I matriculated in 1948. That is because it didn't have much of an image one way or the other. It had struggled through the war years with reduced enrollment and a very nice dean named Wilber Katz (pronounced "Kotz"). He taught Corporate Management and Finance, had a deep concern about the miasma of the then-existing Illinois criminal procedure (and did something about it), and was very happy to pass off the deanship to one of the Young Turks who had joined the faculty during and after the war.

It was quite a group of young bloods. Edward Levi, using two huge volumes of unindexed and home-grown materials, was teaching a course called "Elements of the Law." None of us quite understood it, but were fascinated with both the course and him. He was Jekyll and Hyde: In class, he was master of the universe, with a needling sense of humor, and particularly ready to take on anyone who thought he knew all the answers. (I use the male gender advisedly; there were only three women in our class, and Levi was too chivalrous to trick them into his bag). Outside of class, he was meek and self-effacing, giving no one any premonitions of where he planned to go in his career.

Walter Blum already was making a name for himself in the tax field. Harry Kalven, Jr., who had trouble getting his tenure piece written because he spent so much time with his students, and Bernard D. Meltzer, who had just come back from the Nuremberg War Crime Trials, rounded out the new kids on the faculty block. They had some peerless backstopping in the likes of Malcolm Sharp, who taught contracts and never heard a question or comment in class that wasn't "interesting" and worth pursuing; Charles O. Gregory who taught torts and labor law, and never seemed to have a bad day; William Winslow Crosskey, who taught constitutional law in a way that fascinated his students, but didn't square with what the Supreme Court was saying about the Constitution; Sheldon Tefft, who taught property and who some of us believed had clerked for the judge who wrote the Rule in Shelley's Case; and Max Rheinstein, who taught comparative law to those who could wade through his marvelously

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thick accent. William Robert Ming, Jr. broke the faculty color barrier, which existed at most law schools, and taught civil procedure. Although he had a great teaching style, the material was even more deadly dull than most procedure courses because Illinois was still a vigorous common law state. I have never had a chance to use my learning about the difference between writs *coram nobis* and *coram vobis*. Ming was much more exciting when he teamed up with Kalven to lead a seminar about the Bill of Rights to the Constitution. That learning I have used.

If the students had been asked to guess which insider would be selected as the new dean, I doubt that any faculty member would have been perceived as the frontrunner. Levi certainly would have brought up the rear. The idea of his raising money, hiring new hot shots to join the faculty, and changing the core curriculum to import and emphasize economics was inconceivable. We did not perceive those qualities of leadership in the Professor Levi we knew. We were wrong, as students frequently are about the real qualities of their professors.

Even before Levi became dean, there were some interesting things going on in the Law School, unbeknownst to outsiders. There was the comprehensive exam drill, where all of the first-year courses were meshed into one three-day exam, with one numerical grade. There were some practice exams given during the year (which didn't count), but for the final, the first-year professors would pool their questions and for three six-hour days the students would try to figure out the answers to uncategorized questions. (Sometimes the more energetic first-year professors would collaborate on a question involving more than one course). During the summer—usually late—the students would get post cards with “the” first-year numerical grade printed on it. It was theoretically impossible for the students to find out how they had done on individual questions and courses, although sometimes the professor would tell a particular student how he had fared on the professor's specific questions. It was quite the anxiety-driven year, summed up with a number on a post card for a whole year's work. (The number could not be less than 60, the “equitable zero” devised by Professor Sharp, and was never higher than the low 80s, since 80 was an A.)

Even before he became dean, Edward Levi brought economics into the serious law school mix. He and Aaron Director combined on an antitrust course that became one of the hot courses of the day. Professor Director also taught a course by himself on economics and the law that made all of us liberals conscious of the tradeoffs entailed in programs like rent control and work safety.

It was after he became dean that Levi really began to roll. His first project was to get some of the big names of the law onto the fac-

ulty. In terms of teaching results, his batting average may have been less than spectacular. The name guns that he procured had mostly shot their wad over many, many years of teaching. One of the names that came was more interested in the proximity of the Jackson Park golf course than in the new teaching experiences he could find at the University. Another had already said over the years pretty much all he had to say about the commercial law and insisted that the Law School find room for his wife on the faculty as well. And it came to pass that the all-male faculty precincts were breached by one Soia Mentschikoff, who was just beginning her dazzling career as an educator.

The old Law School building had great charm and was incapable of functioning in any of the ways that a law school should. The faculty offices were a joke, the library had a spectacularly high ceiling that made sure that as little light as possible was available for reading purposes. The teaching rooms consisted of two cavernous lecture halls with awful acoustics, and two smaller rooms where standing room was frequently the order of the day. A new building was one of Levi's top priorities, and somehow he persuaded the alumni to foot a large part of the bill.

In addition, he camped on Justice Sherman Minton's doorstep for a protracted period to persuade the Justice, (who was from the Midwest and had served as a judge for the Seventh Circuit Court of Appeals), to take a Chicago graduate as one of his clerks. (I was the lucky beneficiary of that Levi effort).

Suddenly, the Law School began to have an image. Because Levi had raised the visibility of the Law School considerably, and because most commentators—legal and otherwise—don't really understand what goes on at a law school, the image was formed by some of the more high-profile faculty members. Harry Kalven, Jr. was pushing an extensive First Amendment position that anticipated and helped shape the greater protection the Warren Court gave speech activities. Malcolm Sharp participated in the appeal of the Rosenberg death sentence—the famous spy case of the 1950s. Levi himself was involved in a project that was intended to be, and succeeded as, a scholarly project to study juries, but which achieved great notoriety as an attempt by the University of Chicago to engage in some of the social engineering that was attributed to its former President, Robert Maynard Hutchins. Congress passed a law prohibiting the kind of jury research that had been engaged in at the U of C after embarrassing Senate hearings, and after Attorney General Brownell pronounced “jury bugging” as one of the most serious problems confronting the justice system. The University of Chicago Law School was perceived to be a lefty school.

Times and the faculty changed. (Very few professors left Chicago, but it turned out that they were mortal.) Instead of Sharp and Kalven

to shape the image, the new shapers became Antonin Scalia, Richard Posner, and Richard Epstein. And Levi, who had been a card-carrying member of the ACLU, found himself moving from the head of the Law School, to the head of the University, to the head of the Department of Justice. It was around that time that the curriculum really began to change. The law and economics mesh that Levi had first put into the courses began to get a much greater emphasis. Again, it was the high profile of the faculty's new additions and their writings that changed the Law School's image. Chicago was *the* law and economics school, only faintly copied by the likes of George Mason and Pepperdine law schools. The prominence of the faculty attracted young disciples who wanted to share the Quadrangle Club table with the leaders of conservative legal thought.

Some of the luminaries of this tilt to the right went on to judicial careers. Scalia, Posner, and Easterbrook started using the federal courts as their forum of choice when advocating quantification of legal concepts. Some of the disciples of the law and economics approach joined the bench as well, including Douglas Ginsburg of the D.C. Circuit and Danny Boggs of the Sixth Circuit. Not all of the alumni who became circuit judges were disciples, however. Mary Schroeder, now Chief Judge of the Ninth Circuit, and David Tatel of the D.C. Circuit are examples. Many of the young disciples, having enjoyed the intellectual feast at the Quadrangle Club table, went elsewhere to preach their wares. Chicago has become a feeder school for other law schools that either feel the need to shore up their law and economics credentials or simply recognize good talent and are prepared to pay for it.

The interesting phenomenon of this metamorphosis from left to right has been that the student body has not reflected that shift. After the war, the Law School struggled to recoup its strength, as much in quantity as in quality. There were no aptitude exams and the admissions committee had considerable leeway in selecting the entering class. Many members of my class were admitted with only fair grade point averages and with little else in their records that could be used to predict legal aptitude. A goodly number of the students came directly from the University of Chicago College, and they, at least, were familiar with the Socratic method. I had to learn from scratch, and the process caused me much angst. But even as the image of the Law School became more marked, first as a liberal law school and then as a conservative law school, changes in the student body had more to do with intellectual quality than with political views. Obviously, some of the students were attracted by the profiles of the more active faculty members, but not in any way that paralleled the image of the Law School. The Federalist Society has had a large membership at the University of Chicago Law School ever since the Society was founded.

What amazes observers is that the American Constitution Society, the new liberal counterpart of the Federalists, has a membership of over 60 students, one of the largest chapters in the country (as measured by percentage of the student body).

For the last half century, alumni and others concerned about the path of the Law School feared that the school would fall off either the left or right edge of the earth. For unknown reasons having to do with the mysterious makeup of law students and their preferences, the Law School's occupants have managed to remain right in the middle—anchored just as firmly politically as it is geographically. University of Chicago law students may be brighter, and they may study harder, but they don't match the image of the Law School that suggests that every kind of human behavior, including sex and morality, can be quantified, graphed, and put in a progression. So much for images.

