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SCHOLARSHIP AND TEACHING AFTER 175 YEARS

*Gordon A. Christenson**

A quarter century ago, I presided at the 150th anniversary celebration of the founding of the Cincinnati Law School. Newly appointed Justice Sandra Day O'Connor came to dedicate the radically refurbished Taft Hall in the spring of 1983 and to say good things about our long history. This year we begin to celebrate the College's 175th anniversary. For its dedicatory issue, the editor-in-chief of the *Law Review*, Matthew Singer, invited me to write an introduction as well as to reflect on those twenty-five years and the challenges and opportunities I see ahead for us. Especially as an emeritus dean and professor, I continue to speak of "our" heritage and "our" future in this unique and remarkable old law school.

First, let me thank the *Law Review*. From its founding in 1927 the *Review* has been a standard-bearer for scholarly publications and excellence. Student editors aspire to research and write about the law, either theoretically in editing articles from scholars or practically through student notes that judges and practitioners may use in researching and writing briefs, motions, and opinions. It publishes important lectures from leading legal scholars through the Marx and Taft Lecture series and conferences. It has published my own reflections on legal education, several of my scholarly pieces, and my memorials for the departed. I've been honored in having several issues dedicated to my work as dean and also professor. For all that, I am deeply grateful.

INTRODUCTION

The two reminiscences that follow epitomize a central strength of our urban law school. Each of these inspired teachers is grounded in the worlds of practical expertise and judging. They give us glimpses of the value of teachers who are experienced professionals in our urban setting.

Judge Nathaniel Jones litigated some of the most vital national civil rights cases as General Counsel of the NAACP before his appointment to the Sixth Circuit Court of Appeals in 1979, the same year I arrived. I met him and his wife Lillian at a Sixth Circuit Court Conference in Asheville, North Carolina, and he agreed to teach a course in litigating

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civil rights as an adjunct professor. Now retired from the federal court, he has returned to practice in the city and continues to teach here and elsewhere.

Professor and former judge Marianna Brown Bettman was also one of my earliest acquaintances in Cincinnati. When my wife and I met her and her late husband, Judge Gilbert Bettman, she was an independent practitioner. She then served on the Ohio Court of Appeals, the same court her husband had left to return to the common pleas court, which he preferred. At the end of her term, Dean Joseph Tomain invited her to teach full time in her areas of broad practical expertise as urban lawyer and judge. Her reminiscence reveals an affectionate interconnection between her law studies, which prepared her for her career as lawyer and judge, and her return with that experience to teach future lawyers and judges.

Our earliest teachers were great lawyers and judges from the community, and most had national reputations. What has crystallized within the faculty in recent years explains the strength of this urban law school in fusing theoretical and practical learning in law for the benefit of both students and the larger society. This integration emerged quite authentically from tensions between theory and practice over the last 175 years, and it is this evolution that I'd like to reflect upon. What was the view from our founders? How did the most distinguished lawyers and judges from within our city become the core of the faculty? When did full time scholars join the faculty? Why did the private Cincinnati Law School merge with the University of Cincinnati and what tensions resulted from that merger? How did this experience lead to the faculty we have today offering both theory and practice in what has become a premier small urban law school of today and tomorrow?

There is no need to list the most famous of our famous alumni—two United States Supreme Court justices, a president, a vice-president, federal and state judges, elected officials, speakers of the U.S. House of Representatives, Ohio governors, ambassadors, leading members of the bar who excel in creative lawyering. All of our alumni have helped build a first-rate law school whose human size and spirit suits the place of its birth. Its quality has grown within the culture and enterprises of an urban hub linked by regional, national, and global networks, sustained by a university long seen as a “success story in urban higher education.”¹

To accomplish all this in a contemporary urban law school with its

1. REGINALD C. MCGRANE, *THE UNIVERSITY OF CINCINNATI: A SUCCESS STORY IN URBAN HIGHER EDUCATION* (1963).

distractions of life in a mid-sized city is no easy feat. Far from an idyllic model campus life of earnest and quiet study, an urban law school offers the splendid but difficult challenge of integrating academic study of law for law students with that of analytic and applied skills “viewed from the inside” of tough human problems through the language and symbols of practice. Students are drawn inside through applied knowledge accepted as best practice by those practicing, judging, or teaching law professionally within the city and other networks.²

A VIEW FROM THE FOUNDERS

When the Cincinnati Law School began in 1833, it was immediately seen as an academic advance, for it shortened the time that an apprentice had to read law in law offices before entering the profession. The school was the creation of Timothy Walker,³ Edward King,⁴ and Judge John C. Wright,⁵ with Walker the first dean. In 1835, it merged with the private Cincinnati College, which merged with the public municipal University of Cincinnati toward the end of the nineteenth century.⁶ That much history is well known.⁷

Not as much is known about the nineteenth century rules governing student behavior in the Cincinnati Law School. In the academic year 1837–38, for example, published rules of conduct forbade dueling among students. And law students were permitted to enter a tavern only in the presence of one of their professors. Corporal punishment was prohibited as the means to stimulate study, but allowed in cases of continued willful disobedience with the discretionary use of the rod by the instructor. I found a complaint by Alphonso Taft who wrote that his son, William Howard Taft, during his time as a law student, had “too much time for leisure and the pursuit of wicked pleasure.”⁸

For over half-a-century the Cincinnati Law School faculty—made up

2. See H. L. A. HART, *THE CONCEPT OF LAW* 79–99 (2d ed. 1994).

3. A transplant from Massachusetts, having studied law at Harvard with Justice Joseph Story of the United States Supreme Court.

4. Son of Rufus King, the distinguished member of the Continental Congress and Constitutional Convention and presidential candidate in 1816; graduate of the Litchfield School of Law in Connecticut and Walker’s law partner in Cincinnati.

5. Member of the Ohio Supreme Court and former member of Congress.

6. In 1977, the University of Cincinnati became part of the State of Ohio university system.

7. See Irvin C. Rutter & Samuel S. Wilson, *The College of Law: An Overview 1833–1983*, 52 U. CIN. L. REV. 311 (1983); Roscoe L. Barrow, *Historical Note on the University of Cincinnati College of Law (Cincinnati Law School)*, in *THE LAW IN SOUTHWESTERN OHIO* 289 (George P. Stimson ed. 1972).

8. See H. PRINGLE, 1 *THE LIFE AND TIMES OF WILLIAM HOWARD TAFT* 50 (1939) (quoted in Rutter & Wilson, *supra* note 7, at 324).

of practitioners and judges—offered instruction from lectures, recitations and examinations on hypothetical cases and moots. They used Timothy Walker’s treatise, *Introduction to American Law* first published in 1837 and other texts. Though influenced by Blackstone, organized under Roman law concepts and inspired by Associate Justice Joseph Story, Walker’s book was uniquely American. It was one of the first comprehensive summaries of American law, its classical roots published solely for American law students, and it was used nationally.⁹ By 1874, the Board of Trustees of the parent Cincinnati College added also a faculty of philosophy consisting of two lectureships, one in philosophy and the other in Christian jurisprudence, to advance American philosophy, citing a need seen by Tocqueville, who said “Philosophy has touched America but little.”¹⁰

In 1886, University President Jacob Cox (also dean of the Cincinnati Law School) proposed consolidating the University with all educational institutions in the city. Some mergers succeeded; some failed. Attempts at merging with the Cincinnati Law School failed several times. The efforts were led by Professor Alfred B. Benedict, also a member of the Board of Directors of the University. One effort was helped along by a new state law. In litigation challenging the constitutionality of legislation forcing a private college to combine with a public university, the Ohio Supreme Court agreed and stopped the merger.¹¹ But a fresh strategy began in 1896, when the Board of Directors of the University of Cincinnati, decided to establish a new law department in the university. Six nationally prominent leaders of the legal profession from the city were appointed to this new faculty, which included then federal circuit judge William Howard Taft, who was named dean.¹² Its instant prominence offered serious competition to the Cincinnati Law School, the last remaining school of the Cincinnati College. There were now two different kinds of law schools in the city. “The two schools were in competition. The new School was handicapped by the lack of prestige. The old School was handicapped by the lack of a university

9. Walker became known as an “American Blackstone.” See M. Paul Holsinger, *Timothy Walker: Blackstone for the New Republic*, 84 OHIO HIST. 145 (1975). See also Gordon A. Christenson, *A Tale of Two Lawyers in Antebellum Cincinnati: Timothy Walker’s Last Conversation with Salmon P. Chase*, 71 U. CIN. L. REV. 479–80 (2002).

10. MCGRANE, *supra* note 1, at 124–25.

11. *State ex rel. White v. Neff*, 40 N.E. 720 (Ohio 1895).

12. The others were Judson Harmon (former Attorney General of the United States and future governor of Ohio); Lawrence Maxwell (former Solicitor General of the United States); Rufus B. Smith (judge of the Superior Court); Gustavus H. Wald (noted authority on contracts, whose treatise, *Wald’s Pollock on Contracts*, was taken over after his death by Professor Samuel Williston of Harvard Law School); and J. Doddridge Brannan — all prominent practicing lawyers and scholars. Barrow, *supra* note 7, at 294.

association.”¹³

Taft’s job was to merge the two, which he did by agreement in 1897 for a term of ten years initially, with considerable tension.¹⁴ The newly merged faculty at first consisted of the entire law faculty from the university plus only two members from the Cincinnati Law School. Old methods of lectures and recitations, even philosophy lectures, were displaced. The new faculty now adopted the “case” system, as it was pursued at Harvard (two faculty members had studied under this method at Harvard), moving to an academic program of three full years, up from the two offered in the Cincinnati College. This method of instruction was the “law as science” approach of Christopher Columbus Langdell, first dean of Harvard Law School in the 1870’s, and Professor James Barr Ames—master teacher of the case method.¹⁵ Taft later explained the method:

It thrusts the student into the atmosphere of the controversy which each case presents and enables him in a concrete way to trace from one case to another general principles, the distinctions in their application, their variations and the exceptions, and thus in a dramatic and effective course to possess himself of the judge-declared law. It promotes dissection and analysis. It develops in a most satisfactory study the critical faculty and fixes by the illustrative method a knowledge of principles that is retained. It trains students from the first in the mental processes they must exercise in the practice of their profession in the consideration of the actually decided cases where they must find the law.¹⁶

What this method assumed is that students would already have been grounded in history and context for the profession in a government under law. In 1908 at the 75th anniversary celebration of the Cincinnati Law School, Ames, who succeeded Langdell as dean, gave an address in which he said, “The training of students must always be the chief object of the law school, but this work should be supplemented by solid

13. MCGRANE, *supra* note 1, at 130.

14. A complete merger was not achieved until well into the twentieth century. *Id.* at 241–42.

15. NEIL DUXBURY, *PATTERNS OF AMERICAN JURISPRUDENCE* 13–19 (1995).

16. William Howard Taft, Alphonso Taft Hall Dedication Address 8 (Oct. 28, 1925). Taft also stated:

The profession of the law is dividing into practitioners and teachers. Its pursuit as a science to be imparted to others . . . is its practice. Certainly . . . the majority of the faculty of a properly equipped law school should be full time men. . . . Their actual contact with the application of the law in the courts will add to their usefulness in the class room. . . . [They should] abjure the hope of the golden profits of some practitioners and find their reward in the work they do in elevating the study of law as a science, and in the pleasures of a simple life.

Id. at 13.

contributions of their professors to the improvement of law.”¹⁷ Dean George W. Kirchwey of the Columbia School of Law also gave an address, saying that “our legal education is wholly insufficient to answer the high purposes to which the bar of this country is called.”¹⁸

Tensions resumed in 1911, when the Cincinnati College broke its connection with the University. It wanted to retain independence. After Professor Benedict (a principal sponsor of merger) became its law dean, a permanent merger finally took place in 1918. Even then, the private status of the Cincinnati College was preserved by agreement that guaranteed the highest standards of instruction with at least three full time faculty. The agreement retains in the University to this day the shell of the Cincinnati Law School in the Cincinnati College under a dual status of the University president, trustees and law dean.

There is much irony in the transformation Taft and others are credited with accomplishing with the merger. Dean Taft and the new faculty thought using practicing lawyers and judges to teach the Harvard case method was more scientific than the older method. From the beginning, however, the first dean Timothy Walker claimed his approach was a science of law. He described the law as it is, not as it ought to be. His science described law whole, from a distance, even as practitioner and judge might see it whole from Blackstone.¹⁹ But Walker was skeptical of Blackstone’s common law. He echoed Jeremy Bentham’s view (the common law is “nonsense on stilts”) and favored codification, which would eliminate the tendency of common law judges to decide cases according to subjective preferences.²⁰ On the other hand Taft, who had graduated from the Cincinnati Law School Walker helped found, loved the common law now as a judge and was dubious about legislative reforms. He preferred judge-made incremental advances that preserved the organic unity of law from within. He composed this tension by drawing in the best professionals as academics, which challenged the Cincinnati Law School’s more classically academic lectures from treatises and from rigorous examinations and moots. Shifting into the case method displaced this tradition.²¹

At the centennial anniversary celebration of the Cincinnati Law

17. Barrow, *supra* note 7, at 296.

18. *Id.*

19. TIMOTHY WALKER, INTRODUCTION TO AMERICAN LAW 19 (5th ed. 1869) (“A clear mind might determine at once what the law ought to be, but actual inspection alone can determine what the law is”).

20. *Id.* at 734 (“Judges who do not scruple to overrule precedents, would not think of questioning positive enactments”).

21. Taft’s most complete exposition of his philosophy of legal education was in his address dedicating the 1925 new law building named after his father, Alphonso Taft. See Taft, *supra* note 16.

School in 1933, Roscoe Pound, eminent legal philosopher and dean of the Harvard Law School, gave an impressive jurisprudential address. By that time the faculty was producing abundant scholarship that was nationally recognized. And in 1958, at the 125th anniversary, a commemoration of all our alumni coinciding with the centennial of the birth of William Howard Taft was highlighted by an address from the Chief Justice of the United States, Earl Warren. Detailed description of faculty scholarship and student activities during this period to the time of my arrival is beyond the scope of this brief reflection, but is documented in Roscoe Barrow's historical note.²²

Tensions between theory and practice, which had been developing for some time between university scholars and the highly skilled practitioners in law schools around the country, suggest that relying mainly upon urban professionals as the core of the full time academic faculty in a university law school was no longer adequate. During the era of "legal realists," law faculty members and deans began to draw closer to the scholarship model of academics in other disciplines of universities even while still teaching by the case method enriched by an explosion of legal scholarship.

Fortunately for law students, the deans and faculty of the College of Law over many years—and over the last twenty-five years in my personal observations—have averted this schism.

A VIEW AT THE THRESHOLD OF THE 150TH ANNIVERSARY CELEBRATION

When I took office as dean of the College of Law on April 1, 1979, my task was to move the college beyond its recent turbulence and financial problems while overseeing construction on a renovated building that Dean Sam Wilson had pushed through. After all, most of us in legal education knew of the college's origins and prominence as an old line urban law school. But I saw new kinds of tensions some eighty-two years after Dean Taft and his law faculty adopted the case method. While proud of its "teaching prowess," the law faculty for some time had also published well-recognized treatises or case-books on contract, tort, Ohio civil and criminal procedure, and commercial law and taught them as "real world" subjects for practicing lawyers and with a social conscience. This convergence of teaching and scholarship was the culmination of the fusion Taft engineered. Faculty members used Langdell's method both for teaching and for scholarship. They would synthesize discrete bodies of law from court decisions, rules of

22. See Barrow, *supra* note 7, at 300–14, 315 n.36.

procedure and statutes to write books with practical utility or law reform in mind. These works were quite valuable to practitioners and judges and were easily accessible to law students. In another law school in the 1950s, for example, my own contracts professor assigned *Cases and Materials on Contracts*, by Cincinnati law professor Herald Shepard, and he said it was the best casebook available.

Law students loved these professors. I heard one very popular teacher, who also wrote books, get laughs by telling his students, "This is the best little old law school in Southwestern Ohio!" Some faculty members were like that—unpretentious and locally authentic. This particular professor graduated from the College of Law and had a graduate law degree from New York University Law School. He was liberal and a good scholar, but had an intense dislike for "intellectual snobs who come here from the East Coast and try to change us." Students learned more tort law or civil procedure from him, alumni still tell me, than from the now prevailing law and economics theories. Still, in my view, today's students are better served by our current teachers who integrate law and economics theory with their torts stories.

In 1979, the student-body at Cincinnati did not have as many radicals as the one I experienced at American University, in Washington, D.C. from 1971 to 1977. Classes at both places shut down in the aftermath of the May 1970 Kent State shootings that killed students in protests over the war in Vietnam. As a young and inexperienced dean of the Washington College of Law, I was also devoted to challenging students by recruiting an intellectually diverse faculty capable of innovation in both theory and practice. At Cincinnati, many students were left of center, to be sure, but there were reservoirs of students who just wanted to learn the skills of practice not imbedded with ideology hidden in theory, as if that were possible. The faculty here tended mostly toward a moderately "liberal" viewpoint. There were ideologically conservative underpinnings, of course, from the free enterprise "rule of law" ideas of intellectuals such as Friedrich Hayek. The world of legal education, however, was changing through scholarship in both directions, a premonition of the so-called "culture wars" which began to influence law faculty appointments almost everywhere and soon reached even into some decisions of the Supreme Court.²³

23. See, for example, *Romer v. Evans*, 517 U.S. 620, (1996), which struck down a popular referendum denying legislative bodies the power to enact laws prohibiting discrimination against homosexuals. *Id.* In dissent, Justice Antonin Scalia remarked:

When the Court takes sides in the culture wars, it tends to be with the knights rather than the villeins—and more specifically with the Templars, reflecting the views and values of the lawyer class from which the Court's Members are drawn. How that class feels about

Faculty prestige drives law school reputations and attracts the best law students, but requires first-class scholarship, which elevates even more the reputations of law schools. In turn law deans keep an eye on whether their students successfully compete for the best law jobs upon graduation. This market tends to drive law schools to compete, perhaps artificially, to achieve rank in the top tier if not the top 20 law schools so that the best law firms and public interest employers will have confidence in program and new talent to want to hire their graduates. And the best students apply to these schools and are courted with scholarships. So deans—especially new deans—try to create ways to connect their own sense of excellence in attracting the best faculty and students with the realities of the law school marketplace on alert in the background, even if not foremost in mind. An old line urban law school maintaining a high quality small student-body should be able to thrive well in the proliferating supply of new law schools and new lawyers.

By our 150th anniversary celebration in 1983, we had advanced towards most of the goals I had outlined as a new dean to President Henry Winkler in 1979.

The first priority was faculty. I had promised the students that if they put up with the building construction (which enfolded the old columned 1925 Alphonso Taft Hall in new construction tripling its size while students still attended classrooms in the middle of it all), we'd ensure that the quality of their education would actually improve. Librarian Jorge Carro oversaw the construction to free up my time for academic priorities. We needed to adjust salaries to keep the present faculty while recruiting the best new faculty members we could attract. There was only one woman on the faculty at that time and she was untenured. There had been some full time black faculty members, but they had left. Our task could not have been done without Professor John Murphy, a superb teacher of contracts and labor law. He agreed to chair the appointments committee and for a number of years thereafter led the faculty effort in recruiting top professors and working on written standards for promotion and tenure. The building project was finished, the curriculum was redesigned by the faculty, the Urban Morgan Institute of Human Rights was established and Professor Bert Lockwood brought in to direct it on its way to international prominence. Existing faculty were rewarded for merit. New and lateral appointments of highly credentialed teachers and scholars improved the student-faculty

homosexuality will be evident to anyone who wishes to interview job applicants at virtually any of the Nation's law schools.

Id. at 652.

ratio to 15:1. Simultaneously, as the faculty increased, we consciously reduced the size of the student body from 470 (the renovated facilities were planned for 450) when I arrived to 390, something quite unheard of. The move immediately improved student quality, delighted the local bar, and maintained a competitive edge as the production of new lawyers increased nationally. At the end of my two terms as dean, we had made over twenty tenure-track appointments to the faculty, some with graduate degrees in other disciplines.

Since we valued academic scholarship equally with the priority traditionally given teaching, the faculty revised the standards for promotion and tenure to reflect the importance of the advancement of legal scholarship. This commitment continued and was strengthened through Tom Garety's short deanship (1986-1989), Joseph Tomain's long one (1989-2004), Donna Nagy's year as interim dean (2004-2005) and Dean Billionis's beginning years. Faculty appointments have been impressive throughout. And the new building Justice O'Connor dedicated twenty-five years ago to our delight now seems quite inadequate for even present needs as we head into the future with a celebration of our 175th anniversary.

I recall a few faculty members who did not perform to standards of teaching and scholarship. On my watch five were counseled to leave or denied tenure. It is tough to hold fast to high standards for promotion and tenure. It takes time. And a few faculty members did not at all like the direction we had taken. We awarded tenure to the first woman in the history of the school to receive it. We brought in additional part-time adjuncts to diversify the expertise from judges and lawyers. Seven women were appointed to the full time faculty in addition to several African-American professors by the end of my deanship and more diversity during the following decades. Faculty and student quality and performance began to be reflected in objective measurements. The bar passage rate for our graduates began to return to earlier levels, for example, and reached 100% more than once.

For fun, I supported the men's rugby and the women's touch football teams, which became symbols of law school pride when they played the medical school's teams in "malpractice bowls." Law students also had a newspaper, *The Restatement*. A regular column was "Canon Fodder"—students would collect and print quotes from classroom jokes, malapropisms, and slips of tongue, mostly from faculty, in honor of "Uncle Joe Canon" the former Speaker of the House of Representatives and alumnus, whose bust (still in the library) was often adorned with a cigar or paper hats with acerbic comments. Serious editorials regularly prodded the dean and faculty. This all seems so quaint to me now. And

I wince at the memory of my toasting with schnapps every graduate who showed up in Uncle Woody's bar. More seriously, in 1984 we gave the *Law Review* its first computer and student editors quickly learned to edit manuscripts on its word processor and send them directly to the printers without page proofs.

One of the strongest signals of dedication to faculty scholarship was the controversial decision to eliminate summer classes in favor of summer faculty research grants with funded student assistants. Some excellent teachers who taught summer classes for extra compensation were upset. But it gave the scholars good incentives to finish works in progress and begin new ones. We modernized the administration, aided by appointing our first woman assistant dean, Barbara Watts, an alumna of the school who since 1981 has overseen academic administration, now as associate dean. As part of our 150th year celebration, we persuaded the Association of American Law Schools to hold their annual convention in Cincinnati, and bussed faculty from all the schools in the country from the convention center to an open house at the new building. Our students conducted tours and gave a brief history of the school. And the American Bar Association and the Association of American Law Schools made their accreditation visit that year. In its report to President Winkler, the team told him that this law school was one of the premier small law schools in the country.

Leaving the deanship, I felt honored that an issue of the *Law Review* was dedicated to my work. The editor-in-chief thanked me on behalf of the students for personally offering my own "highly challenging courses based on practical problems rather than the case method of study."²⁴ It reflected my strong view that producing law students well prepared in worldly skills as well as intellectual ones would make very valuable new lawyers.²⁵ Moreover, they might also do good while doing well. I still wonder if I was right, but loved the compliment.

A BACKWARD GLANCE AT PROJECTS THAT WORKED OR FAILED

In an important but still under-appreciated innovation, Cincinnati at one point had led the nation's law schools in the development of "skills theory" through the collaboration of three iconoclastic professors, all legal realists—Irvine Rutter, Wilbur Lester and William Jeffrey. Rutter came from Columbia where the Legal Realist movement began and studied with some of the best of the realists during the late 1920's. He

24. James W. Wiggin, III, *Dedication to Issue No. 2*, 54 U. CIN. L. REV (1985).

25. See Gordon A. Christenson, *Studying Law as the Possibility of Principled Action*, 50 DENV. L.J. 413 (1974) (both worldly and intellectual perspectives required for possibility of principled action).

then practiced in New York. Legal realists challenged the very premises of “legal formalism” thought to be implicit in classical legal thought and Langdell’s method, which Taft had adopted.²⁶ After arriving in Cincinnati, Rutter developed a curriculum of “lawyers operational skills” beginning with a course called “facts” which he inherited from the brilliant practitioner-adjunct Judge Robert Marx, who earlier developed realistic methods in his “facts” seminars.

William Twining, the Oxford University professor who studied Karl Llewellyn and American legal realism wrote the following: “At the University of Cincinnati Professor Irvin C. Rutter in conjunction with a series of particular courses developed the best theoretical analysis of lawyers’ operations that has yet appeared in print.”²⁷

Rutter used realist analysis in constructing his curriculum.²⁸ To reach law students, he concentrated on materials which replicated the teaching of the skills lawyers use in their actual operational practices from the inside. This method caught the attention of the Association of American Law Schools in the 1960s; and in 1963 an entire plenary session of the Association’s annual meeting was devoted to Rutter’s skills of lawyers operations.²⁹ “Visualize,” I heard him tell students, “visualize the transaction you are putting together in real time with parties as people. Don’t think abstractly; think like a lawyer; visualize every step precisely, non-verbally.” His theorizing informed his method.

Sadly, these innovations were displaced by the “new” clinical methods, a tragedy for Rutter, who did not consider them intellectually rigorous. He thought legal clinics run from law schools did not then operate with an adequate theoretical grounding of discipline for teaching good lawyering skills. When I left the deanship for teaching and scholarship, truly the high point of my own career, I persuaded Rutter to let me circulate his 1977 essay, *Law, Language and Thinking Like a Lawyer*, long in preparation. This *Law Review* fittingly published it after his death, in 1993,³⁰ together with my essay on Rutter’s contributions as a pragmatist in the tradition of Charles Sanders Peirce

26. See DUXBURY, *supra* note 15, at 65–159. Duxbury writes, “American legal realism is one of the great paradoxes of modern jurisprudence. No other jurisprudential tendency of the twentieth century has exerted such a powerful influence on legal thinking while remaining so ambiguous, unsettled and undefined.” *Id.* at 65.

27. WILLIAM TWINING, KARL LLEWELLYN AND THE REALIST MOVEMENT 355 (1973).

28. Irvin C. Rutter, *A Jurisprudence of Lawyers’ Operations*, 13 J. LEGAL EDUC. 301 (1961); Irvin C. Rutter, *The Trial Judge and the Judicial Process*, 15 J. LEGAL EDUC. 245 (1963); Irvin C. Rutter, *Designing and Teaching the First-Year Curriculum*, 37 U. CIN. L. REV. 9 (1968).

29. Irvin C. Rutter, *Law Teaching and the Curriculum*, 1963 ASS’N AM. L. SCH. REP. 81.

30. Irvin C. Rutter, *Law, Language, and Thinking Like a Lawyer*, 61 U. CIN. L. REV. 1303 (1993).

and Holmes.³¹

In 2007, the Carnegie Foundation for the Advancement of Teaching issued its new report, *Educating Lawyers: Preparation for the Profession of Law*,³² which unfortunately does not cite Rutter's work. It does call for better cognitive theory for teaching skills, along the lines Rutter developed in theory and we had proposed in the Center for Applied Skills, which was disbanded after I left the deanship. I wish we hadn't failed in our attempt to build on his work. But the work was not in vain. Succeeding deans, especially Joseph Tomain in his fifteen-year deanship, obtained funds for institutes and centers³³ with specific missions using practical skills to achieve social reform through law.

A VIEW AT THE 175TH ANNIVERSARY CELEBRATION

As we enter the 175th anniversary year, I scarcely can believe the changes. After three decades of phenomenal growth, legal education here and everywhere else has become a far-reaching enterprise. Yet, its purpose at heart remains the same for us—teaching the new generation of lawyers and advancing scholarship in law. The enterprise now requires administrative professionals to manage specialized functions—academic affairs (both research and teaching), computerized registration and class schedules, the admissions process, financial aid, public relations, placement services, alumni relations, and a complex of business and technical management skills not to mention the revolution in information technology and library services, which have transformed the function for reference librarians helping faculty with research and assisting students in research methods.

The best legal scholars no longer write practical handbooks useful for practitioners or students in the categories of practice. They engage instead in theoretical, critical, analytical, empirical, or historical scholarship closer to the work done by their colleagues in the arts and sciences faculties and graduate schools. They use knowledge from other disciplines in ever more empirically grounded arguments and theories. Or they may engage intricate doctrinal problems and urge reform.

31. Gordon A. Christenson, *Thinking Things, Not Words: Irvin Rutter's Pragmatic Jurisprudence of Teaching*, 61 U. CIN. L. REV. 1281 (1993).

32. EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (prepared by William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, & Lee S. Shulman, for The Carnegie Foundation for the Advancement of Teaching, 2007).

33. These institutes and centers include, for example: The Center for Corporate Law, the Center for Practice in Negotiation and Problem Solving, the Glenn M. Weaver Institute of Law and Psychiatry, the Lois and Richard Rosenthal Institute for Justice/Ohio Innocence Project, and the Urban Morgan Institute for Human Rights.

National and global communities of the best scholars vie to shape this scholarship through workshops, blogs, exchanges, and conferences with critical commentary that might seem ever more remote from the day-to-day needs of practitioners and judges—and law students. We are told, for example, that judges don't read nor have time to read the law reviews as they used to do to keep up with advances.³⁴ Legal philosopher Ronald Dworkin believes that some of the best law scholarship is done from other disciplines grounded in moral, political, or economic theories.³⁵ Associate Dean and Professor Paul Caron and others write and distribute faculty blogs from many national and international sources to keep us well informed. The explosion of information—practical and theoretical in law—finds expression in many levels of sophistication, narrowing gaps between theory and practice.

In what I believe is one of the most interesting developments since the 150th anniversary celebration, the law faculty recently has crystallized into three distinct groups. You might see glimpses of each of these groups as they evolved from the tensions between theory and practice within our urban environment over the last 175 years. Recall the first eminent lawyers and judges from the city who insisted on the excellence that compelled a later move to full time teachers and scholars. Now, in a much more complex urban environment, the following three groups of faculties have evolved almost naturally to accommodate a need for integrating analytical and critical thinking with theory and applied skills.

The first faculty group is made up of the entire full-time core academic faculty with tenure (or on the tenure track). This is the traditional law faculty, which includes highly credentialed legal scholars with excellent teaching skills who also publish in the best national and international journals and write monographs. They vote on faculty appointments, promotion, and tenure decisions and are the core

34. Adam Liptak, *When Rendering Decisions, Judges Are Finding Law Reviews Irrelevant*, N.Y. TIMES, Mar. 19, 2007, at A8 (reporting on a conference of judges and law professors at Benjamin Cardozo Law School in New York):

“I haven't opened up a law review in years,” said Chief Judge Dennis G. Jacobs of the federal appeals court in New York. “No one speaks of them. No one relies on them.”

....

Even when courts do cite law review articles, Judge Robert D. Sack said at Cardozo, their motives are not always pure. “Judges use them like drunks use lampposts,” Judge Sack said, “more for support than for illumination.”

The assembled judges pleaded with the law professors to write about actual cases and doctrines, in quick, plain and accessible articles.

“If the academy does want to change the world,” Judge Reena Raggi said, “it does need to be part of the world.”

Id.

35. RONALD DWORIN, JUSTICE IN ROBES 33–34 (2006).

guardians of standards of excellence in teaching and scholarship.

The second group is the full-time applied skills professoriate with term appointments, also highly credentialed. They bring worlds of practical expertise and learning to bear full time in the courses and skills they teach, often by doing or simulated doing of lawyers operations, in itself a branch of applied learning theory. They spend a lot of time working with students and are not required to publish in scholarly journals or write books, though some do. While they have no vote on faculty personnel matters, they serve on committees with vote and attend and participate at faculty meetings and are active in school affairs.

The third group is the part-time faculty—adjunct professors—drawn from an abundance of specialties of distinguished professional practice from within the city to serve as expert mentors in their areas of expertise. They do not participate in the internal affairs of the College and maintain their expertise by operating in their worlds of practice, often on the cutting edge. We need them for teaching their know-how in these specialties.

Visiting scholars and faculty add their own experiences. And, of course, we emeriti faculty are always available for occasional teaching, counseling, or reminiscing about the good old days. My own jurisprudence seminars keep me on my toes. And I now have time for deeper inquiry and enjoy immensely my discussions with such talented and interesting students.

Another very important innovation is in the five institutes and centers, which tend to follow the model of the oldest and best known, the Urban Morgan Institute for Human Rights.³⁶ All these institutes and centers merge teaching, research and service devoted to specific purposes, we think best performed in an urban setting. Students work within each mission with faculty who run the programs. The integration of research with teaching and in turn with action in these specifically endowed institutes and centers focuses on change and improvement beyond the confines of classroom often involving other disciplines and multidisciplinary conferences. This diversity in the “college as enterprise” provides pluralistic methods, content, and intellectual challenges, which attract a wide range of student and faculty interests. It, too, fills the gap between theory and practice especially in an urban setting with global reach.

36. See *supra* note 33.

A PREMIER SMALL URBAN LAW SCHOOL OF THE PAST, FOR THE PRESENT,
INTO THE FUTURE

From all of the views that I have presented above in my personal observations, one perspective stands out clearly. Our reputation as one of the nation's premier small, public law schools has been earned over 175 years of hard work and struggle and achievement by succeeding generations of dedicated deans, faculty, students, professional staff, and alumni. Dean Louis Bilionis, who now guides this enterprise at its 175th anniversary, knows of its rich history and is committed to advancing public urban legal education. His greatest challenge is in attracting and retaining the best possible teachers and scholars who share this commitment as they prepare the next generation.

Lastly, we are authentically who we are from our past and present. Our future on the occasion of the 175th anniversary celebration seems on course, set true and right—for the faculty members who teach and advance learning and for the next generation of lawyers who we trust will guide civilized behavior and the rule of law as the world around us changes in ways we have not even imagined. It is fitting that the *Law Review* dedicates this issue to such a future, and I'm honored to continue to be part of such a strong heritage.