

TEACHING LAW A CENTURY AGO

We recently happened to come across Samuel Williston's 1940 autobiography, *Life and Law*. Lawyers remember Williston as the author of the first great treatise on Contract law, and a great exponent of the classical view of contracts expressed in the first Restatement. His autobiography provides a charming view of what it was like to be a law teacher when he entered teaching in 1890 as an assistant professor at Harvard.

Before turning to his teaching career, however, we should spend a few moments on his years as a law student. He started law school in 1885 with fifty-two other entering students. There were then five professors on the Harvard faculty. Three years of law school were then considered something of a novelty. The number of students had previously been larger, but dropped precipitously when Langdell introduced the "newfangled" case method. Indeed, Williston tells us, Boston University's law school was founded by practitioners in a protest against this novel method of teaching.

Although the case method was well established at Harvard by the time Williston arrived, he was present for the birth of another innovation in American legal education: the student law review. The *Harvard Law Review* was founded during Williston's second year; he was on the first board of editors, though not one of the founders. Williston explains the origins of the *Review* as follows:

There were then in the third year class several brilliant men who afterwards attained distinction, including Joseph H. Beale, subsequently professor in the Harvard Law School and author of a great treatise on the conflict of laws and other books; Julian W. Mack, afterwards United States Circuit Judge, whose quick and accurate logical analysis of legal problems seemed marvelous to an underclassman; John H. Wigmore, subsequently Dean of Northwestern University Law School and author of a monumental work on the law of evidence. These young men with several of their classmates formed a little club for the writing of legal essays and reading them to each other at meetings of the club. One or two of the earlier essays seemed to them good enough to deserve publication, and from this thought the project took the shape of founding a law review.

Thus, as Williston notes later, the *Review*'s "chief original purpose was to furnish an outlet for essays by the students."

After law school, Williston became a legal secretary (we would now say "law clerk") to Justice Gray. He seems to have written the first draft of some opinions. He then went into practice. Previously, students who entered a good law office had been expected to

pay for the privilege. Even in Williston's time, only one of his classmates received a salary for his first year's work as a lawyer. (Contrast this with the \$65,000 starting salary now current among major New York firms.) Williston's career as a lawyer came to an end one day when President Eliot entered his office and offered him a position as an assistant professor at the generous salary of \$2,250.

Life on the Harvard faculty was rather different in those days. The professors did not have offices, and spent most of their time working in the library stack at a row of small tables. Besides not having offices, the faculty also made do without secretaries.

Williston undertook to write a casebook early in his career. The publication of casebooks, it seems, was mostly a matter of necessity. As Williston tells us:

In the early days of Langdell's deanship, extending into the time when I was a student in the School, many of the courses had been based on the study of cases which the students had to obtain by securing the original reports from the library. As the School grew in numbers reference year after year to a particular case tended to destroy the volume in which the case was to be found. That volume was generally one of a series of many reports, and a single volume of the series could often not be bought separately.

It was vital, therefore, for the preservation of the library that casebooks, which the students could buy, should be prepared for all the large courses. Professor Thayer not only invited me to make the casebook on the law of Sales for his use, but furnished me with a list of the cases that he had been using in previous years. With this aid it was not a great labor to prepare the casebook, and its sale brought me an addition to my income that was not negligible.

From this humble desire to save wear on library books would later arise such intellectual monuments as the Hart and Weschler casebook on federal jurisdiction.

Apart from his scholarly writings, Williston was also highly influential in the work of the American Law Institute. The ALI originated in a 1921 meeting of the Association of American Law Schools—perhaps the last time the AALS has ever undertaken any action of any consequence to the legal system. Williston was part of the planning committee establishing the project of a series of Restatements, which since have become familiar to every lawyer.

This summary hardly conveys the charm of Williston's memoirs. It makes for pleasant bedside reading—perhaps especially soothing if, like Williston, you suffer from severe insomnia.