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THE LAWYER SCRIBE: THE LITCHFIELD LAW SCHOOL, LAPTOPS, AND THE METAPHYSICS OF SOUL-SEARCHING

Louise Harmon*

PROLOGUE: METAPHYSICAL POSSIBILITY NUMBER ONE— THE TIME TRAVELER LAWYER SCRIBE

In 1976, I entered law school. No one in my universe had ever heard of a word processor or a laptop computer.¹ The only time I dragged my typewriter out of the closet during law school was when I needed to write a paper. Otherwise, I wrote everything down by hand—multiple times.

There was method to my madness. During the semester, like a stenographer, I took down every single word that was uttered in class, by my professor and my colleagues alike. Then I would go home, and reformulate my messy notes, spreading my books out like a fan above my notebooks to help me fill in the gaps. This took me several hours every night.

The members of my study group made merciless fun of me, but I'd say to them, "It helps me to go back over what we just did, and to write it down. That way I can figure out what I understood and what I didn't. It's just my way of processing things." My reformulated notes, by the way, could have financed my legal education, so sought-after were they at the end of the semester. (I lent them freely to those less diligent on the theory of acquiring good karma.)

As the semester came to an end, I went into what I called "monk mode." I donned a certain favorite pair of grey sweat pants and T shirt, pulled my hair back in an ungracious pony tail, and started to outline

* I am grateful for the invaluable and creative research assistance of Debra J. Cohn.

¹ My tenure in law school happened to coincide with the introduction of the first true personal computer, or PC, one that was meant for an individual user. *See generally*, Josepha Sherman, *THE HISTORY OF THE PERSONAL COMPUTER* (New York: Franklin Watts, 2003). In 1975, the magazine *Popular Electronics* featured an article about the MITS Altair 8800 microcomputer that could be built from a kit. *Id.* 31. In 1977, Radio Shack came out with its TRS-80, and in 1977, Apple released its first personal computer, the Apple II, but the Commodore 64, introduced in 1982, quickly became the best-selling PC. *Id.* at 32-33. The first portable PC was the Osborne I, invented in 1982; it was relatively cheap (\$1795) but weighed 30 pounds. *Id.* at 36. While the Osborne Company went bankrupt, "other computer companies were inspired to start designing smaller and more portable computers." *Id.*

my courses. For eight hours a day, I sat at my desk, drinking gallons of coffee, smoking way too many cigarettes, and making outlines.

This time the process was different. My class notes moved to the periphery, while the outline that was being crafted took over the center of the desk. I organized each course, according to the syllabus, the table of contents—whatever scheme made the most sense. All the rules, the exceptions, the standards, the tests, the elements, the procedures, the key cases—the whatevers—were included. The outline was not written in script, but was laboriously printed with a fountain pen.² Again, I was derided for my hand-printed outlines—and to make things worse, they were color-coded, with red boxes around the definitions, blue lines beneath the rules, yellow asterisks for procedural ramifications. “You’re nuts to waste your time making your outline look like that. It’s not a piece of art, you know.” I shrugged my shoulders and mumbled, once again, “It’s just my way of processing things.”

And it was. Sitting alone at my desk, in the dark except for a pool of light from my intensifier lamp, I engaged in a form of calligraphy that slowed my mind down, and allowed me to meditate on what I was writing.³ Intent on making my hand and my arm obey, the restless chatter inside my head ceased. All I could think about was the expanse

² The earliest example of the Roman Alphabet that we use today dates from the third century B.C.E. Gaynor Goffe & Anna Ravenscroft, *CALLIGRAPHY SCHOOL* 8 (Pleasantville, New York: Readers Digest Association, 1994). After the decline of the Roman Empire, the main scripts to be developed were uncials and half uncials; the half uncials are found in the English Lindesfarne Gospels and the Irish Book of Kells. *Id.* at 9. The next source of major development in scripts was at the court of Charlemagne; in an effort to standardize the scripts in his domain, he decreed in 789 C.E. that the round bookhand known as Carolingian minuscule be used. *Id.* While in the later medieval period various Gothic scripts evolved, during the Renaissance there was a revival of Roman capitals and Carolingian minuscules. The italic script was also developed during the Renaissance; with its slanting, compressed letters, long ascenders and descenders, it both lent itself to “decorative flourishing, while its speed made it practical as a chancery script too.” *Id.* at 10.

In law school, I took notes in class in cursive, a term meaning writing that is “joined and flowing and can refer to any script with few or no pen lifts.” *Id.* at 104. I wrote my outlines in the basic script which is “written slowly with many pen lifts and few push strokes, giving a characteristic formality and elegance.” *Id.* at 53.

³ Calligraphy is often defined as “beautiful writing.” Diane Wolff, *CHINESE WRITING: AN INTRODUCTION* 21 (New York: Holt, Rinehart & Winston, 1975)[hereinafter Wolff]. However, calligraphy is more than beautiful writing, and “results from an interaction of several essential elements: the attitude of society to writing; the importance and function of the text; definite, often mathematically based, rules about the correct interaction between lines and space and their relationship to each other; and mastery and understanding of the script, the writing material and the tools for writing.” Albertine Gaur, *A HISTORY OF CALLIGRAPHY* 19 (New York: Cross River Press, 1994)(1984) [hereinafter Gaur]. See also, note 242, *infra*.

of porous white paper, and the steady flow of wet, black ink.⁴ This meditation created a quiet, empty space for the words that I was writing down to enter my mind.⁵

I would never have seen the poetry in the law if I had not written it down. Sometimes I wondered where a word came from, and would delve like an archaeologist into the dictionary. Sometimes I would say a word over and over to myself, *replevin*, *replevin*, *replevin*, until I wanted to rename my two cats *Replevin* and *Trover*, or to become the mother of twins, a girl and a boy, my darlings, *Ingress* and *Egress*. And when I came to take the exam, I could see the words on the page just as I had written them down, with the red boxes around the definitions, the blue lines beneath the rules, the asterisks like little yellow suns setting and rising on how things got done. That was how I made the law my own. By writing it down, it seeped through the cracks of my bones and mixed with my marrow. Someday they will burn my bones, and all that law will sputter in the flames and go up in smoke, but until that day, it's mine.

I had always assumed that my learning style was just a little odd, until I made my first visit to the museum of Tapping Reeve's Litchfield Law School in northwest Connecticut—the first law school in the United States. There beneath a glass case I saw for the first time several leather-bound books that Reeve's students from the late eighteenth and early nineteenth centuries had hand-written to take back to their law offices. Those books looked familiar, and for the first time, I considered a distinct metaphysical possibility: I may have gotten stuck in the wrong century, a time traveler who has lost her way.

⁴ For centuries, in the minds of cultivated Chinese, painting, poetry, and calligraphy have been intimately connected, being known as the Three Perfections. Michael Sullivan, *THE THREE PERFECTIONS: CHINESE PAINTING, POETRY AND CALLIGRAPHY* 7 (New York: George Braziller, 1980). "In a Chinese painting space is simply—space, the matrix out of which forms emerge, the medium in which they are related, like the water in the goldfish bowl in which the fishes swim about." *Id.*

⁵ In Islamic culture, to write the Quran is "an act of religious devotion and merit," and the Arabic language is viewed as a "vehicle for the revelation . . . Arabic writing itself was believed to have something of a sacred nature." *Music for the Eyes: An Introduction to Islamic and Ottoman Calligraphy* 1, a brochure published in conjunction with the exhibition, "Letters in Gold: Calligraphy from the Sakip Sabanci Collection," organized by the Los Angeles Country Museum of Art and the Metropolitan Museum of Art (1998). One calligrapher described the art in this way: "The pen is the ambassador of intelligence, the messenger of thought, and the interpreter of the mind." *Id.* at 2. There is an intimate connection between the meaning of the words and the artistry of the calligraphy: "Words are the raw material of calligraphy, which is never divorced from meaning. But like music, true calligraphy also works on a wordless level, the level on which all great art functions. Together, the semantic cooperates with the aesthetic to enhance meaning; or, as another classical aphorism put it, 'Calligraphy gives to truth more clarity.'" *Id.*

I wasn't quite sure how it had happened. Perhaps I'd found a way to travel to the future from the time of Tapping Reeve, and like many things that require physical skill, wasn't very good at it. I had figured out how to go forward, but couldn't master reverse. Aiming for the middle of the 20th century, I had come and stayed for awhile, and then couldn't find a way to get back. Or I had aimed for some time much further in the future, the 23rd century perhaps, had a nice visit, and then when I endeavored to return home to the early years of the Republic, I missed the mark by a couple of centuries. If time travel were anything like parallel parking, it must be possible to do it badly.

But those leather-bound books beneath the glass case made my fingers twitchy for my quill pen and my copy-book. Then, as soon as I entered the one-room school building and sat down on a wooden bench, I knew that I belonged more to the Litchfield Law School of two hundred years ago than I did to the law school I had attended, or to the law school where I now teach. I don't know why I hadn't suspected it all along. Even in the 1970s, when I was younger, I knew I didn't belong to the 20th century or to my generation. Now that I am older and forced to live in the 21st century, I am even more of a lost soul in my own time.

I wish I understood it all. How did I end up in this female body? How do time travelers deal with gender and the cohesion of identity? Does the fact that you are a she, and not a he, always travel with you? What about your name? Your face? What exactly is essential? If I am a time traveler, then who is this woman who claims to be me?

PART I: IN WHICH WE TELL THE STORY OF TAPPING REEVE AND THE LITCHFIELD LAW SCHOOL

In the late eighteenth and early nineteenth centuries, the town of Litchfield was a busy hub of commercial, industrial, and social activity located in the rolling hills and rugged glacial moraine of northwest Connecticut.⁶ Now a sleepy little town, with its stately First Congregational Church, gracious public green, broad elm-lined streets flanked with elegantly restored historical homes, toney shops, cafes, and the faint whiff of wealth and fame—it is difficult to conjure up the Litchfield of the early years of the Republic.⁷

⁶ Marian C. McKenna, TAPPING REEVE AND THE LITCHFIELD LAW SCHOOL 67 (New York: Oceana Publications, 1986) [hereinafter McKenna]. Litchfield was also a center of military activity during the Revolution. *Id.*

⁷ By 1920, Litchfield had become a summer resort, "when we no longer give out an influence important far beyond the County, but instead receive and welcome those from outside our borders, and give them a measure of recreation and health, to do which we

Litchfield was one of the most important towns in Connecticut in terms of wealth; in population, it ranked fourth in the state in 1810, outnumbered only by New Haven, Hartford, and Middletown.⁸ Sitting on a small flat table of land on the summit of a large hill, its streets hummed with commercial activity, boasting of two hatters, two carriage makers, one cabinet maker, five saddlers, and a number of house carpenters, joiners, and other mechanics.⁹ The white water rivers and streams of the region provided power for a myriad of industries. Factories and mills punctuated the hillsides: four iron forges; one slitting mill; one nail factory; six fulling mills; five grain mills; eighteen sawmills; five large tanneries; and a mix of miscellaneous cotton, oil and paper mills.¹⁰ Commerce and industry flourished, and so did Litchfield.¹¹

seem particularly adapted.” Alain C. White, *THE HISTORY OF THE TOWN OF LITCHFIELD, CONNECTICUT, 1720-1920* 204 (Litchfield, Connecticut: Enquirer Print, 1920) [hereinafter White]. Tourism also became very important in Litchfield for its “well-preserved eighteenth century homes.” David M. Roth, *CONNECTICUT: A BICENTENNIAL HISTORY* 206 (New York: W.W. Norton & Co., 1979).

⁸ White, *supra* note 7, at 206. In 1820, the tides turned, and within a century’s time, the township of Litchfield had fallen from 4th to 64th place. (The population in Litchfield in 1820 was 4,610; in 1910, the population was 3,953, but the population relative to that of the state fell from two per cent to one-quarter per cent.) In 1810, when Litchfield was the fourth largest town in the state, the largest was New Haven, with a population of only 6,967. *Id.* Litchfield dropped behind in population for a number of reasons, its brutal winters not the least of them: “Even in the day of carriages and sleighs, the winters’ drifts of Litchfield were dreaded. Gradually the winters have contributed more than would at first seem credible to the change of life in many of our residents. The call to the cities has been, in a small measure at least, accelerated by the desire to avoid the cold and the discomfort.” *Id.* at 209. But other factors were present to change the demographics of the state. Not only were workers drawn to the great manufacturing towns in the state, but the railroads left “Litchfield high and dry, as they have many another hill town.” *Id.* The stage coaches that linked up traffic between Litchfield and Boston, Hartford, New Haven, Albany, and New York stopped rolling in 1840. *Id.*

⁹ McKenna, *supra* note 6, at 67-69.

¹⁰ *Id.* Tapping Reeve himself owned an interest in one of the eighteen sawmills. *Id.* at 67.

¹¹ One might be tempted to ask a more fundamental question: why would the first American law school have been in the state of Connecticut when there were more obvious locations, such as New York where there were over 25,000 residents, or Philadelphia with over 45,000 residents? Christopher Collier, *Why the First Law School in the United States was Established in Connecticut*, 31 Int. J. Legal Info. 205 (2003). One reason Collier posits is that Connecticut had rejected reception of the English common law, and was the “first state to begin systematic publication of reports of cases” in 1789, developing the “first complete system of common law in America” with a reliance on written judgments and published reports. *Id.* at 210. In addition, Connecticut “had one of the most literate populations in the eighteenth-century world: virtually all adults could read, the men and most women could write The high level of literacy and an ancient heritage of litigiousness made the legal profession attractive to energetic and ambitious young men.

In the early 1800s, Litchfield was in its heyday.¹² All roads led at least through, if not to, Litchfield. It was a coaching station on the main highways between Hartford and Albany, New York and Boston.¹³ “Great

Indeed, during the course of the second half of the eighteenth century—especially during the war years—as an attractive career choice, the law had supplanted the ministry which had lost much of the prestige it had enjoyed during the century and a half-long colonial era. Thus there was a very pronounced shift to the law.” *Id.* at 206.

¹² The first pioneer of Litchfield, John Marsh, was sent out from Hartford in 1715 to explore the western lands then called, “Bantam.” Payne Kenyon Kilbourne, *SKETCHES AND CHRONICLES OF THE TOWN OF LITCHFIELD, CONNECTICUT* 24 (Hartford, Connecticut: Case, Lockwood & Co., 1859)[hereinafter Kilbourne]. The town was settled by emigrants from Hartford, Windsor, Wethersfield, Farmington, and Lebanon, and was incorporated in 1751. *Id.* at iii. It was named after Lichfield in Staffordshire, England, the “*t*” being added, probably by the legislative clerk, and has ever since been retained.” *Id.* at 25. All of the land in the township had been purchased from the “natives.” *Id.* at 21. In an 1845 history of Litchfield, it was posited that, “For aught that appears, it was fairly purchased, and we have no evidence that the natives became dissatisfied with it, or expressed any unwillingness to surrender the possession. They subsequently gave the settlers little trouble.” George C. Woodruff, *HISTORY OF THE TOWN OF LITCHFIELD, CONNECTICUT* 13 (Litchfield, Connecticut: Charles Adams, 1845)[hereinafter Woodruff]. On the other hand, Zebulon Gibbs who died in Litchfield in 1803 describes encounters with the Indians in the early 1720s in which two settlers were killed; one was scalped. Kilbourne, *supra*, at 253. Kilbourne also disagreed with the earlier historian, Woodruff, and found that “in consequence of the frequent alarms on account of the Indians, the settlement of the town was greatly retarded.” *Id.* at 68. Even in 1845, the importance of the Litchfield Law School was recognized. Woodruff opined of the Law School in Litchfield, “Without doing injustice, it may be safe to remark, that the science of Law has been more systematically taught in this School, than in any other of the kind in the United States.” Woodruff, *supra*, at 52.

¹³ McKenna, *supra* note 6, at 67. Interstate and intrastate travel in the late eighteenth and early nineteenth centuries was arduous. For a flavor of the difficulties, see Max Farrand (ed.), *A JOURNEY TO OHIO IN 1810: AS RECORDED IN THE JOURNAL OF MARGARET VAN HORN DWIGHT* (New Haven: Yale University Press, 1912). From her journal about the rough wagon trip from New Haven to Warren, Ohio, she writes: “We left Mr. Rees’ yesterday ten o’clock & after waiting some time at the ferry house, cross’d the Susquehanna with considerable difficulty—The river is a mile wide & so shallow that the boat would scrape across the large stones so as to prevent it from proceeding. We only came 8 miles—the riding was awful & the weather so cold that I thought I should perish riding 4 miles—This will do well for us, 8 miles in 3 days.” *Id.* at 26. Often lodgings were woefully inadequate: “Last night Susan & I went to bed early, as we slept ill the night before—we expected to get good beds & were never so disappointed. We were put in an old garret that had holes in the roof big enough to crawl through—Our bed was on the floor, harder it appear’d to me, than boards could be & dirty as possible—a dirty feathered bed our only covering—After lying an hour or two, we complain’d to Mrs. Wolcott who applied to the landlady for a bedstead, but could only obtain leave for us to sleep on one bed with another over us—I slept wretchedly & feel very little like climbing a mountain.” *Id.* at 31.

Students traveling to the Litchfield Law School from inland New England and New York often came on horseback or wagon to connect with the stage coaches; the trip between Albany and Litchfield cost \$3.25. Display from the Tapping Reeve House & Law School,

red, four-horse coaches with whips cracking and horns blowing came and went at a great pace all day long through the town—from New York to Albany by way of Danbury and Poughkeepsie, from New York to Boston via Danbury and Hartford, and in many other directions.”¹⁴ After the Revolution, a number of wealthy lawyers, merchants and important political families had settled in Litchfield.¹⁵ Hiring the best architects,¹⁶ these families had built imposing Federal-style homes along the two intersecting main streets of town; many were surrounded by ambitious, formal flower gardens.¹⁷ There was money in Litchfield, and the side streets housed a wide array of shops, importers, book publishers, goldsmiths, and inns.¹⁸ With its wealth, its industrial and commercial activities, Litchfield was booming and continued to attract settlers. By the 1820s, Litchfield had become one of Connecticut’s largest towns.¹⁹

Litchfield’s hustle and bustle, its prosperity, the presence of political power, culture and wealth, its thriving commerce, the daily comings and goings both inside and outside of the state, provided a yeasty environment for two innovative educators to establish seminal educational

Litchfield Historical Society. The years of the Litchfield Law School coincided with the building of the turnpike in New England; by 1840, there were 3700 miles of new road in New England, and a turnpike that ran across New York state. Students traveling from New England coastal towns could either take a packet boat to New Haven, or a packet boat to Boston, and then from there take a stagecoach to Litchfield. *Id.*

¹⁴ Emily Noyes Vanderpoel, *CHRONICLES OF A PIONEER SCHOOL FROM 1792 TO 1833, BEING THE HISTORY OF MISS SARAH PIERCE AND HER LITCHFIELD SCHOOL* 21 (Cambridge: University Press, 1903)[hereinafter Vanderpoel].

¹⁵ McKenna, *supra* note 6, at 69.

¹⁶ The Sheldon Tavern, for example, where George Washington really did sleep, was a stately home built in 1760; the entrance portico and Palladian window, designed by William Spratt, appear in architectural histories. *LITCHFIELD, CONNECTICUT, 250TH ANNIVERSARY, 1719-1969, COMPILED BY THE LITCHFIELD HISTORICAL SOCIETY* 33 (Lakeville, Connecticut: The Pocket Knife Press, 1969). See also J. Frederick Kelly, *THE EARLY DOMESTIC ARCHITECTURE OF CONNECTICUT* 119-120 (New York: Dover Publications, 1924).

¹⁷ Harriet Beecher Stowe grew up in Litchfield, and was a frequent visitor to Tapping Reeve’s home. She describes her visits to the garden (which still stands in a much diminished state today): “How well I remember Judge Reeve’s house, wide, roomy and cheerful! It used to be the Eden of our childish imagination. I remember the great old-fashioned garden, with broad alleys, set with all sorts of stately bunches of flowers. It used to be my reward, when I had been good, to spend a Saturday afternoon there, and walk up and down the flowers, and pick currants off the bushes.” *Quoted in* George C. Boswell (ed.), *LITCHFIELD BOOK OF DAYS: A COLLATION OF THE HISTORICAL, BIOGRAPHICAL, AND LITERARY REMINISCENCES OF THE TOWN OF LITCHFIELD CONNECTICUT* 116-117 (Litchfield, Connecticut: A.B. Shumway, 1899)[also quoted in McKenna, *supra* note 6, at 69].

¹⁸ McKenna, *supra* note 6, at 69.

¹⁹ *Id.*

institutions.²⁰ One was Sarah Pierce (1769-1852) who believed that young women, as well as young men, should receive an education,²¹ a

²⁰ By 1800, the Academy Movement was in full swing throughout New England. Barbara Nolen Strong, *THE MORRIS ACADEMY: PIONEER IN COEDUCATION, 1790-1888* 30 (Morris, Connecticut: Morris Bicentennial Committee, 1976)[hereinafter Strong]. In Connecticut, the establishment of academies throughout the state was stimulated by the School Law of 1799 which provided that a school society could establish a school of higher order than the common schools by a vote of two-thirds of the inhabitants of a town at a legal meeting. *Id.* These schools "usually offered reading, penmanship, English grammar, composition, arithmetic, and geography. Sometimes, Latin, Greek, religion and morality were added." *Id.* One of the more innovative academies, founded in 1790, was the Morris Academy, located in the part of Litchfield known as South Farms. (Later it became the town of Morris.) *Id.* at 1. Prior to the academy movement, most boys went first to the common schools which taught the three Rs. *Id.* at 20. Boys who wanted to go further prepared for college at Latin Grammar Schools, or "studied in the home of a minister or lawyer to prepare for a profession." *Id.* The Litchfield Law School was one such learning center, as was another "in the home of Dr. Joseph Bellamy in Bethlehem." *Id.* The Morris Academy distinguished itself as a coeducational academy. *Id.* at 22.

²¹ Sarah Pierce was born in 1767 in Litchfield, the youngest of at least eleven children; she died at age 85 in 1852. White, *supra* note 7, at 110-114. When her father died in 1783, her older brother, anxious to marry and to have at least some members of the family self-supporting, decided that Sarah should become a teacher. He sent Sarah, aged 17, to New York, exhorting her to have friends instruct her "in everything in walking standing and sitting, all of the movements of which tho' they appear in a polite person natural, are the effects of art, while country girls never attend to and which you had best take the utmost pains, or you will never appear natural & easy in. I am somewhat fearful that your old habits at your age can not be so thoroughly removed, as to give place to a natural careless genteel air, and which totally hides all the art of it. The Books I left you I wish you not to read much in town, I want you to study the fashions, the art of pleasing to advantage and for this purpose to spare no necessary expense, and if you do not appear as genteel as any of the girls it will be your own fault, you must however pay a great regard to economy and always remember that every Dollar takes so much from my future prospects, on which you know that not only yours but mine and all our families happiness depends." *Id.* at 111. (It is a good thing that Sally Pierce did not learn sentence structure from him.) Her brother married in 1786, died in 1788, and the care for the family fell upon Sarah. She never forgot what her calling was supposed to be, and took in her first pupil in 1792. *Id.* Only six years after its founding, Miss Pierce's school had become important enough that the prominent men in town erected a building in which to house its director; that was when the name the "Female Academy" attached. *Id.* at 112. Tapping Reeve headed the subscription list, contributing \$40. A new school building was erected in 1827, and the Female Academy continued as a school for young women until its doors were closed in 1855. *Id.* at 112-114.

In a study of Catharine Beecher, a daughter of Henry Ward Beecher, Kathryn Sklar indicates that at first the Female Academy's curriculum emphasized the social arts, writing that it was only natural for young ladies like Catharine Beecher to receive "instruction on those rules of delicacy and propriety so important for every young woman," and that they should have "learned lady-like manners" and "cultivated and refined conversation." Kathryn Kish Sklar, *CATHARINE BEECHER: A STUDY IN AMERICAN DOMESTICITY* 17 (New Haven: Yale University Press, 1973)[hereinafter Sklar]. The education at a competing co-educational school, the Morris Academy, was much sterner. See Strong,

radical idea at a time when only 40 percent of the women in eighteenth century Massachusetts, for example, could write their own names.²² Her school, which came to be known as the Female Academy, bore at its outset many of the attributes of a finishing school, but later due to Pierce's "vision and high mindedness,"²³ aspired to much higher

supra note 20. Compared to the Morris Academy, "Girls at Miss Pierce's Female Academy in Litchfield, however, had a much wider range of leisure activities. Fashioned more like a finishing school, its curriculum included some of those ornamental female accomplishments that James Morris deplored. Caroline Chester's journal, which she kept during 1816 while at Miss Pierce's, reveals that drawing, painting, and fancy sewing were among the required pastimes. Recreation included long walks and evening visits with friends, carriage rides and berry-picking expeditions. Organized dances and 'societies' or clubs reveal a different emphasis from the Morris Academy. School was seldom kept on Saturdays, and Caroline enjoyed those rare holidays. Strong, *supra* note 20, at 51.

²² Sheldon S. Cohen, *A HISTORY OF COLONIAL EDUCATION; 1607-1776* 102 (New York: John Wiley & Sons, Inc., 1974)[hereinafter Cohen]. Another historian writes: "The education of a girl in book learning was deemed of much less importance than her instruction in household duties. Small arrangement was made in any school for her presence, nor was it thought desirable that she should have any varied knowledge. That she should read and write was certainly satisfactory, and cipher a little, but many girls got on very well without the ciphering, and many, alas! without the reading and writing." Alice Morse Earle, *HOME LIFE AND CHILD LIFE IN COLONIAL DAYS* 123 (New York: Macmillan Publishing Co., 1969)(Abridged from Shirley Glubok (ed.))[hereinafter Earle].

²³ McKenna, *supra* note 6, at 75. Pierce's ideal was to train women in all the same subjects that men were taught, even though she never claimed they were equal: "It is not now necessary to enter into a discussion of the question whether the abilities of the sexes are naturally equal; it is sufficient to notice that the circumstances of life require a different exercise of those abilities. The employments of men and women are so dissimilar that no one will pretend to say that an education for these employments must be conducted upon the same plan: but the discipline of the minds, the formation of those intellectual habits which are necessary to one sex are equally so to the other. The difference in their employments requires a difference of personal qualifications but not a difference of intellectual exertion." *Address at the Close of School, October 29, 1818 by Miss Pierce*, Vanderpoel, *supra* note 14, at 176-177.

It is difficult to assess how many of Pierce's ideals came to fruition for her young female students, although if we were to judge success by the standard of marriage to successful, educated men, the experience of Connecticut's Chief Justice Origin Storrs Seymore is revealing; it also indicates the close relations between the Litchfield Law School and the Female Academy. When Seymore entered Congress, as late as 1850, he was met and welcomed by over thirty members of the House of Representatives who had either graduated from the Litchfield Law School or who had married women educated at Pierce's Female Academy. *Id.* at 79-80. Seymore served for a time as Judge Gould's assistant at the Law School, was a member of both the Connecticut Assembly and the United States House of Representatives (1851-1855), and was consecutively Judge of the Connecticut Superior Court, the Connecticut Supreme Court, and finally in 1873-74, its Chief Justice, one of five chief justices from the Litchfield Law School. *Id.* at 80.

pedagogical goals for her women students, introducing geography, history, chemistry, astronomy, and botany to the curriculum.²⁴



PORTRAIT OF MISS SARAH PIERCE
Founder of the Litchfield Female Academy

[Collection of the Litchfield Historical Society, Litchfield, Connecticut]

All those educated by Miss Pierce were expected to comport themselves according to the strict Puritan tradition that still held sway.²⁵ The girls

²⁴ *Id.* These ideas were revolutionary for their day. Girls were barred from New England's colleges and public grammar schools in the eighteenth century. Cohen, *supra* note 22, at 102. It was "deemed necessary that young girls should be imbued with a knowledge of the Scriptures and be taught the necessities for being a good wife, but because of a woman's subordinate role in society there seemed little to add to this limited foundation." *Id.*

²⁵ Kathryn Sklar found in her research that Litchfield was one of the most conservative of New England towns and that even during the Victorian family life of the Beecher household, pre-revolutionary manners were still alive. Sklar, *supra* note 21, at 15-17.

were expected to rise early, dress neatly, and to exercise before breakfast; they were not permitted to “walk for pleasure” or to be outside after nine in the evening.²⁶ When the family with whom they boarded requested that they retire, the girls were expected to comply; none was permitted to attend any public ball or sleighing until she was sixteen years of age.²⁷ Sarah Pierce took the education of her students very seriously, and her school became “a model for pioneering efforts in female education.”²⁸

Litchfield’s other innovative educator was a lawyer named Tapping Reeve (1744-1822). In 1784, Tapping Reeve established a private law school known as the Litchfield Law School.

In 1798, Reeve took on as an associate a former student of the school, James Gould.²⁹ Gould succeeded Reeve as the sole proprietor in

“Some of the older generation still wore cocked hats with powdered queues, ruffled stocks, white-topped boots, silk stockings and buckled knee breeches.” McKenna, *supra* note 6, at 71. Apparently this retention of the eighteenth century style of dress was characteristic of “all male citizens with any claim to respectability,” including Judge Reeve and most law students. *Id.* at 72-73. The Southerners turned out to be an exception to the rule; they were characterized as “gay bloods,” who “disported themselves in pink gingham frocks.” *Id.* at 70, *quoting* White, *supra* note 7 at 99. Rebellion against the conservative older forms of dress often symbolized rebellion against the old order: “Bold was the youth who defied custom, for tight trousers . . . pantaloons, disheveled hair and laced shoes had an unholy significance; they were the trade-mark of Sabbath breakers, tipplers, and ‘ruff-scuff,’ in short, of the followers of the ‘atheist and libertine,’ Thomas Jefferson.” Mansfield, PERSONAL MEMORIES, 122-40, *quoted in* McKenna, *supra* note 6, at 73.

²⁶ This rule about being at home by nine presented problems. On one occasion, Margaret Hopkins, a student at the Female Academy who roomed in Miss Pierce’s house, went to spend the evening at “Aunt Bull’s,” one of the larger boarding houses. A law student at the party moved back the hands of the clock, so that when Margaret was escorted home, the house was locked. After much beating on the door, Ms. Pierce herself appeared “at the door in night-cap and gown, candle in hand. We are not told what happened to Margaret, but we may guess.” McKenna, *supra* note 6, at 77.

²⁷ Periodically there were dances in the large ballroom of Catlin’s Litchfield Tavern, private theatrical events, and winter sleigh rides. Often in the early evening, the girls at the Female Academy would take long walks in the streets of Litchfield in large groups. Mansfield later married one of the girls from the Female Academy. *Id.* at 71.

²⁸ *Id.* at 75. From one of the student journals, we get this insight into Miss Sarah Pierce’s intellectual bent: “Saturday the whole school read round in the Bible the first chapter of Proverbs. Miss Pierce asked what was the beginning of knowledge? The fear of the Lord. But fools despise wisdom and instruction.” Vanderpoel, *supra* note 14, at 169.

²⁹ John H. Langbein, “Blackstone, Litchfield, and Yale: the Founding of the Yale Law School,” in Anthony T. Kronman (ed.), HISTORY OF THE YALE LAW SCHOOL 24 (New Haven: Yale University Press, 2004)[hereinafter Langbein]. James Gould was born in Branford in 1770. A graduate from Yale, he delivered the Latin Salutatory Oration, the highest scholastic honor of the graduating class. White, *supra* note 7, at 103. From 1798 to 1816, Gould devoted all of his time to the law school, practicing as a lawyer only during holiday intervals. In 1816, he was appointed Judge of the Superior Court and Supreme Court of



PORTRAIT OF TAPPING REEVE

[Collection of the Litchfield Historical Society, Litchfield, Connecticut]

1820, and ran the school until it was closed in 1833.³⁰ The Litchfield Law School was the first formal, systematized instruction of the law in this

Errors. *Id.* Gould was a scholar, having written a treatise on pleadings; he was also known for his eloquence and intellect. "As a lawyer, Judge Gould was one of the most profoundly philosophical of that age. He carried into the forum the same classical finish which appears upon every page of his writing. It would have been impossible for him to speak an ungrammatical sentence, use an inelegant expression, or make an awkward gesture...His arguments also, like his writings, were expressed in the most brief forms in which a speaker can convey his thoughts to his hearers. He seldom spoke longer than half an hour, and the most complex and important cases never exceeded an hour." Gideon H. Hollister, 2 HISTORY OF CONNECTICUT 602-3, *quoted in* White, *supra* note 7, at 105.

³⁰ McKenna, *supra* note 6, at 155-176.

country, a fourteen-month lecture series that created the bridge between the hodge-podge of the law office apprenticeship system and the system of university education that began to prevail later in the early to middle nineteenth century.³¹

The American lawyer during the colonial period had very few options when it came to his legal education. Some colonial lawyers were educated in the English Inns of Court; perhaps some one hundred and fifteen young men crossed the Atlantic between 1760 and the close of the Revolutionary War to receive an English legal education.³² This pilgrimage was taken particularly by young men from the southern colonies where there was “no tradition of hostility to lawyers, and the returning men were treated as the cream of professional and social aristocracy.”³³ But traveling to the Inns of Court was the exception to the rule.³⁴ Some

³¹ *Id.* at 67. “The Litchfield School served temporarily at least to bridge the gap between the law office apprenticeship system, which had failed to give aspiring students the systematized instruction they wanted, and the colleges, which were not as yet prepared to give it.” *Id.*

³² James D. McGuire, *The Growth and Development of American Law Schools*, 8 Rocky Mtn. L. Rev. 91 (1936)[hereinafter McGuire]. In eighteenth century England, there were two forms of law: Civil, with its formal Latin and law French, and the Common law. Charles E. Consalus, *Legal Education During the Colonial Period, 1663-1776*, 29 J. Legal Educ. 295, 306 (1978)[hereinafter Consalus]. Civil law, which was highly structured, was taught in the university; common law was studied at the Inns of Court and was more practical. *Id.* These two kinds of law brought about a bifurcated Bar, with the barristers or counselors being more elite and educated at the university, and the solicitors or attorneys being more like “tradesmen” and trained at the Inns of Court. *Id.* When William Blackstone became the first Common-law professor at Oxford (1758-1766), it marked a departure of only teaching Civil law in the university. *Id.* There were four Inns of Court: Lincoln’s Inn, Inner Temple, Middle Temple, and Gray’s Inn. Paul M. Hamlin, *LEGAL EDUCATION IN COLONIAL NEW YORK* 13 (New York: New York University Press, 1937)[hereinafter Hamlin].

In this country, there was “insufficient legal business available in the colonies to support functional divisions of practice along traditional lines.” Stephen Botein, “The Legal Profession in Colonial North America,” in Wilfried Priest (ed.), *LAWYERS IN EARLY MODERN EUROPE AND AMERICA* 129, 137 (1981). This meant that the formal training for a barrister would not be different from that of an attorney, and even prominent colonial lawyers had to engage in “most of the petty work—such as debt collection—that occupied inferior practitioners in the mother country.” *Id.*

³³ Consalus, *supra* note 32, at 307. About 60 colonists attended the Inns of Court before 1760; 115 more went between 1760 and 1766. *Id.* Most of those were from the states of Virginia and South Carolina, although some were from Maryland, New York, Pennsylvania, and Massachusetts. *Id.*

³⁴ The four Inns of Court that evolved together into a functioning law school were often described by lawyers and non-lawyers as the “Third University of England.” David Lemmings, *Blackstone and Law Reform by Education: Preparation for the Bar and Lawyerly Culture in Eighteenth-Century England*, 16 Law & Hist. Rev. 211, 228 (1998).

young men tried to educate themselves by self-study,³⁵ but both before and after the Revolution, the vast majority of early American lawyers received their rudimentary training in the law from a system of apprenticeship known as “reading law” in the law office of an experienced legal practitioner.³⁶

Reeve’s educational innovation was part of a more general trend towards augmenting apprenticeships with more formal, vocational training. In the final years of the 17th century and the early years of the 18th, economic opportunities abounded in New England.³⁷ Prior to this time, the focus had been on localized farming and fishing,³⁸ but increasingly,

Before 1640, each society had developed a series of learning exercises, moots or case disputations, involving the participation of all the ranks of membership; each also provided a course of “readings” given by the benchers during Lent and summer vacation which explicated “some important statute in detail and provided opportunities for debating its ramifications via theoretical cases.” *Id.* Participation in the various parts of this regime was the origin of the inns’ hierarchy: the “inner-barristers” who were students under the bar; the “utter-barristers” who were men who had been called to the bar, and “benchers” or “readers” who were senior members who sat on the bench at moots and had read or were expected to read. *Id.* In the Georgian inns, by contrast, the readings ended in 1678, and exercises “either ceased altogether or tended to become merely formal, surviving into the eighteenth century as a purely probationary requirement for call to the bar.” *Id.* at 229. John Baker believes the sudden decline of the importance of the Inns of Court coincided with “the arrival of judicial positivism in the sixteenth century.” J.H. Baker, *THE THIRD UNIVERSITY OF ENGLAND: THE INNS OF COURT AND THE COMMON-LAW TRADITION* 20-21 (London: Seldon Society, 1990). “To the modern mind of the age of reason, the old exercises had become a barely comprehensible nuisance; they had been tried and found ‘useless’, and so legal education for the time being was dispensed with.” *Id.* at 21. However, Baker also argued that for three hundred years, between the 1340s and 1640s, “the inns of court and chancery constituted one of the greatest law schools the world has ever known. Custodians of the English legal tradition during the period of its foundation as a science, they may fairly be said to have helped create the common law.” *Id.* at 22.

³⁵ One author described three options open to young men in the colonial period who wanted to become lawyers: First was a reading program of self-study. Brian J. Moline, *Early American Legal Education*, 42 Washburn L.J. 775, 779 (2004). “The student read whatever law books he could borrow and picked up what practical law he could on his own.” *Id.* Second, he could serve as a scribe or assistant in a government or judicial office, and third, he could serve as an apprentice with an established lawyer. *Id.*

³⁶ McGuire, *supra* note 32, at 91. The abuses of the apprenticeship system were particularly evident before the Revolution before there were any state bar associations. Patrick Henry, for example, was said to have spent only six weeks in preparation before he applied for admission to the bar, and even then, his period of study was not spent under a lawyer’s supervision. *Id.* George Wythe, a signer of the Declaration of Independence and the first professor of “law and police” at William and Mary College in Virginia in 1779, complained that “he was wholly neglected by his instructor, and considered the time spent in his office wasted.” *Id.* at 91, 93.

³⁷ Cohen, *supra* note 22, at 72.

³⁸ *Id.*

wealthy, merchant capitalists were engaged in ambitious commercial ventures such as trade between the West Indies, Europe, and the African coast importing such products as molasses, sugar, ivory, gold dust, and African slaves, and exporting livestock, fish, wheat, lumber and rum.³⁹ Many former farmers left the country and entered trade; personal fortunes were amassed, and most of the increased wealth accumulated in New England's urban centers.⁴⁰ The emergence of this mercantile gentry altered New England's social structure—ministers slipped to a more “middling level” of society, and the new wealthy merchants joined “magistrates, physicians, and lawyers at the apex of the class pyramid.”⁴¹

These extensive economic changes in the eighteenth century “combined with the growing utilitarian outlook, brought an enlarged base for vocational education.”⁴² Apprenticeship training was now extended in such fields as “law, medicine, trade, and commerce to meet the expanded professional and technical needs of the new society.”⁴³ While most of the apprentices' training was acquired while working at the job, more and more in the eighteenth century, the apprentices were “learning at school not only reading and writing, but also part of their trade education.”⁴⁴ In addition, some of the masters in larger towns were supplementing their apprentices' training with evening schools.⁴⁵ With this increased emphasis on formal vocational training in the eighteenth century,⁴⁶ what held true for other trades ended up holding true for the law as well, as witnessed by the establishment of Tapping Reeve's law school.

In our own time, we think of the law as a subject of post-graduate education, a lofty profession requiring long years of study and dedication. In the eighteenth century, however, law was simply regarded as a

³⁹ *Id.*

⁴⁰ *Id.* at 72-73.

⁴¹ *Id.* at 73-74. The middle class consisted of the newer tradesmen-farmers, artisans, and certain pastors, with the lowest class being the poorer farmers, indentured servants, unskilled urban laborers, and at the very bottom, slaves and Indians. *Id.* at 74.

⁴² *Id.* at 92.

⁴³ *Id.*

⁴⁴ Quoting Robert F. Seybolt in his study of apprenticeship education, in Cohen, *supra* note 23, at 92. There was still an effort to distinguish the law from the trades. The term apprentice was not always used, since that referred to a person learning a trade; the correct term was “clerk” or “pupil.” W. Hamilton Bryson, *The History of Legal Education in Virginia*, 14 U. Richmond L. Rev. 155, 158 (1979)[hereinafter Bryson]. A person who had already been called to the bar, but who still wanted to work under the supervision of an older lawyer was said to “devil for him; this position was similar to that of the modern associate in a firm of lawyers.” *Id.*

⁴⁵ Cohen, *supra* note 22, at 92.

⁴⁶ *Id.*

practical endeavor. As such, it was expected that a young man could learn it easily enough by private study and a formal apprenticeship. John Langbein characterized the apprenticeship system in the 18th century legal community in this way: "Apprenticeship involved learning the law the way we expect someone today to learn plumbing: in the workplace, as a practical trade. You do not go to university to study the theory of plumbing. You learn plumbing by working with, observing, and imitating an experienced master."⁴⁷ The apprentice would enter into a contract with the master-lawyer who usually extracted a promise to pay from the apprentice's family and a promise to perform certain tasks from the apprentice, in particular copying legal documents.⁴⁸ The apprentice also gained invaluable access to the lawyer's library at a time when law books were expensive and hard to come by.⁴⁹ Here was how things were supposed to work: The apprentice would devote his time to helping out

⁴⁷ Langbein, *supra* note 29, at 19.

⁴⁸ *Id.* The lawyer might pocket a fee of a hundred pounds a year. *Id.* "A famous preceptor could command as much as five hundred dollars. For this the clerk could study legal forms, abstracts, the few books the lawyer might own and notes on cases. He would also copy in longhand pleadings, wills, and other such documents as the lawyer might prepare." Consalus, *supra* note 32, at 308.

These contracts were almost always unwritten, although a few have come to light. For example, here is the language of a 1742 indenture whereby James Alexander agreed to instruct William and his father, Philip Livingston: "Dureing all which Term the said apprentice his said master faithfully Shall Serve, his Secrets keep, his Lawfull Commands gladly Every where obey, he shall do no Damage to his Said Master, nor see to be done by others without letting or giving notice to his Said Master, he shall not waste his Said Masters goods nor lend them unlawfully to any, he shall not Comitt fornication, nor contract matrimony within the Said term, att Cards, dice or any other unlawful game he shall not play, whereby his Said Master may have damage, with his own goods nor with the goods of others within the said term without License from his said Master, he shall neither buy nor Sell, he shall not absent himself day nor night from his Said Master's Service without his leave, nor haunt ale houses, taverns or play houses, but in all things as a faithful apprentice he shall behave himself towards his said Master, and all his dureing the said term. AND the Said Master [illegible] ye best [illegible] of Method that he Can Teach of Cause the Said apprentice to be taught the professions of an attorney and Councill at Law to the best of his ability . . ." Hamlin, *supra* note 32, at 41-42.

⁴⁹ Langbein, *supra* note 29, at 19-20. One of the main advantages of studying at the Inns of Court was that there were more law books available than in the colonies. Consalus, *supra* note 32, at 309. Only 33 law books were published in America before 1776; eight of these were reprints. *Id.* Of the 150 published English reports, no more than 30 were known in the colonies. *Id.* It was even difficult to find colonial statutory law; in New Jersey, for example, the statutes were not collected and published until 1732. *Id.* There were no public or bar association libraries, and the "only place one might find a real collection would be in a lawyer's office, and only the well-to-do lawyer had any kind of collection at all." *Id.*

in the office and to reading the law, and the master-lawyer would guide him in his reading and teach him the trade.

This apprenticeship system was intimately connected to the licensure system in early America.⁵⁰ After the apprentice had served his time, then the master-lawyer would certify him for admission to the bar.⁵¹ His “time” was often set by the courts or the bar associations. In the early nineteenth century, young men in many of the states were obliged to spend long periods of study in law offices before being admitted to practice law. In Massachusetts, for example, between 1810 and 1836, college graduates were required to study three years as an apprentice in a law office, and others five years, before being allowed to appear in any court.⁵² Presumably after doing his “time,” the young man would be deemed ready to practice law, and could someday have apprentices of his own.

The apprenticeship system of legal education garnered a lot of criticism, and for good reason. No agreed-upon curriculum existed for the body of knowledge that each lawyer should acquire; neither was there any way to monitor or control the quality of instruction.⁵³ The young

⁵⁰ Langbein points out that this was true of study at the Inns of Court as well: “This linkage of education and licensure is a deep theme in the history of legal education. It was characteristic of the inns of court in their heyday (call to the bar of the inn followed years of participation in the learning exercises of the inn), and it has played a significant role in the life of American law schools to this day.” Langbein, *supra* note 29, at 20. All American law schools must be accredited by the American Bar Association and the Association of American Law Schools, “in conspiracy with state bars.” *Id.*

⁵¹ *Id.* at 20.

⁵² McGuire, *supra* note 32, at 92-93. These requirements were later swept away during the period of Jacksonian Democracy on the “belief in the right of anyone to an equal opportunity to practice law, regardless of educational qualifications.” *Id.* at 93. This “free for all competition” went unchecked until the Civil War; during the period from 1865 to 1890, bar associations once again began to be organized for the purpose of “raising standards and requirements, and in the growth and development of schools of law.” *Id.*

⁵³ Boredom was a problem as well. The books that the clerks were supposed to read were usually “not the most interesting of companions. Not intended as textbooks, often over a century old, borne down with technicalities and obscurities, these books often were written in a style that defied comprehension.” Charles R. McKirdy, *The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts*, 28 J. Legal Educ. 124, 130 (1976) [hereinafter McKirdy]. Many of the students were fresh from college where they had been studying literature or the classics. How many of us recognize the dismay of Joseph Story who came from college to a law apprenticeship, writing, “Hither my pursuits had been wholly of a literary and classical character. I loved literature, and indulged freely in almost every variety of it to which I had access, from the profound writings of the greater historians, metaphysicians, scholars, and divines, down to the lightest fiction, the enticing novel, the still more enticing romance, and the endless pageantries and imaginings of poetry. You may judge, then, how I was surprised and startled on opening works,

man was literally at the mercy of the master-lawyer for whom he apprenticed. Sometimes the instruction was minimal, perfunctory, or even non-existent; often the student was exploited as a source of cheap labor.⁵⁴ Thomas Jefferson warned a young relative against becoming an apprentice, arguing that “I have ever seen that the services expected in return have been more than the instructions have been worth.”⁵⁵ When Joseph Story went to read law in the office of Samuel Sewall of Marblehead, he complained that “that excellent man put into his hands for reading Coke on Littleton, and left forthwith for Washington to enter upon his duties as a member of Congress.”⁵⁶

On the other side of the Atlantic, Blackstone was critical of the English office clerkship system as well.⁵⁷ Noting a decline in the Inns of Court as educational institutions and the absence of any alternative formal legal education, Blackstone warned in his first lecture at Oxford in 1753 that a young man “in subservience to attorneys and solicitors, will find he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know.”⁵⁸ If the student was not instructed “in the elements and principles from which the rule of practice is founded, the least variation from established prece-

where nothing was presented but dry and technical principles, the dark and mysterious elements of the feudal system, the subtle refinements and intricacies of the common law, and the repulsive and almost unintelligible forms of processes and pleadings, for the most part wrapped up in blackletter, or in dusty folios.” Letter of Joseph Story to William W. Story, January 23, 1831, *quoted in* McKirdy, *id.* at 130-131. In New York, a large percentage of the bar of 1776 were college graduates, 67 practitioners out of some 175 members. Hamlin, *supra* note 32, at 117. It would come as no surprise that men who had graduated from college might be disappointed in the inconsistent and impartial education provided by an apprenticeship.

⁵⁴ William Livingston, who later became the revolutionary governor of New Jersey, was a vocal critic against the apprenticeship system, having clerked for a New York lawyer in the 1740s; he complained of “receiving no instruction in his studies and of being overworked in ‘servile Drudgery.’” Langbein, *supra* note 29, at 20. In a letter to the *New-York Weekly Post-Boy* (August 19, 1745), he denounced it as, “an outrage upon common honesty . . . scandalous, horrid, base and infamous to the last degree!” McKenna, *supra* note 6 at 14. No one could become a competent lawyer, “by gazing on a number of Books, which he has neither time nor opportunity to read; or . . . be metamorphos’d into an Attorney by virtue of a Hocus Pocus . . . If [lawyers] deserve the imputation of injustice and dishonesty, it is in no instance more visible and notorious, than in their conduct towards their apprentices.” *Id.*

⁵⁵ *Quoted in* Langbein, *supra* note 29, at 20.

⁵⁶ *Quoted in* McGuire, *supra* note 32, at 91.

⁵⁷ McKenna, *supra* note 6, at 15.

⁵⁸ *Id.* Blackstone did note that there were a few excellent lawyers who had been trained in this fashion, but they were the exception to the rule. *Id.*

dents will totally distract and bewilder him”⁵⁹ Blackstone also worried that men of quality would not want to submit to the servitude of copying “the trash of an office,” and that men of lesser distinction might be the only recruits into the profession.⁶⁰ No one thought the apprenticeship system was a good one, but at this juncture in the history of American legal education, there were few other options—until Tapping Reeve started the Litchfield Law School.

Tapping Reeve’s law school was an innovative response to the deficiencies of the apprenticeship system. We can only surmise that Reeve was influenced by Blackstone’s argument that legal education must constitute a formal, systematic presentation of a body of coherent principles. We do know that *Blackstone’s Commentaries* was a staple in the Litchfield Law School library, and that Reeve and Gould’s lectures were by and large organized and based upon Blackstone,⁶¹ although they added coverage on law tailored-made for the American economy, such as bills of exchange, promissory notes, insurance contracts, and charter parties.⁶² We also know that 1000 sets of *Blackstone’s Commentaries*, of which his introductory lecture formed a part, were imported into the American colonies in 1771 and sold at ten pounds each.⁶³ Surely the young Tapping Reeve, as a rising lawyer and a university man,⁶⁴ must have read Blackstone. It is only a small stretch of the imagination to

⁵⁹ *Id.* The rest of that quote from Blackstone is: “*ita lex scripta est* is the utmost his knowledge will arrive at; he must never aspire to form, and seldom expect to comprehend any arguments drawn *a priori*, from the spirit of the laws and the natural foundations of justice.” *Id.*

⁶⁰ “We must rarely expect to see a gentleman of distinction or learning at the bar...And what consequence may be, to have their interpretation and enforcement of the laws (which include the entire disposal of our properties, liberties and lives) fall wholly into the hands of obscure or illiterate men, is matter of very public concern.” *Id.*

⁶¹ By and large, the Litchfield law course followed, and augmented, Blackstone’s Volumes Two and Three, concerning property, succession, tort, and civil procedure. Langbein, *supra* note 29, at 29. Volume Four, which covered criminal law, was substantially curtailed; Constitutional law was not covered. *Id.* Langbein points out that the Litchfield curriculum was almost totally devoted to private law, and that the curricula of American law schools would be influenced by that emphasis for years to come: “We see in this respect the influence of the law-office culture from which the Litchfield Law School emerged. Crime was relatively rare in provincial Litchfield, and it was not a market the upper crust of the legal profession expected to serve. Likewise, constitutional law was as yet scarcely a field of law office practice. The curricular traditions of American legal education would long bear the influence of the law offices from which the first law schools grew.” *Id.*

⁶² *Id.*

⁶³ McKenna, *supra* note 6, at 16, n. 43. In the following year, a Philadelphia publisher, Robert Bell, published an American edition in four volumes; booksellers and individuals were able to subscribe in advance for 1400 sets at eight dollars each. *Id.*

⁶⁴ Reeve graduated first in his class at Princeton in 1763. *Id.* at 21.

believe that Tapping Reeve would have been influenced by Blackstone's urgings to systematize and formalize legal education.

But how that actually came to fruition appears to be more based on happenstance—and on Tapping Reeve's devotion to his wife, Sally Burr Reeve. Theirs was an extraordinary love story. When Sally Burr and her younger brother Aaron were four and two years old respectively, they lost both of their parents within a two-week period in a smallpox epidemic.⁶⁵ They went to live with their uncle, Timothy Edwards, a bachelor son of the famous theologian Jonathan Edwards; Timothy Edwards did his best to see to it the orphaned niece and nephew were properly cared for and educated.⁶⁶ When the precocious Aaron Burr was seven, and his older sister Sally age nine, their Uncle Timothy hired a young man named Tapping Reeve as Aaron's tutor.⁶⁷ By all accounts, Tapping Reeve was a brilliant man with a penchant for teaching; he had graduated first in his class at Princeton in 1763, and spent seven years thereafter teaching, both as a private tutor and at a grammar school connected with Princeton.⁶⁸ While Reeve was tutoring the young Aaron Burr, he fell in love with his pupil's older sister. By the time Sally was fifteen, Reeve had declared his love for her, and discovered to his great joy that it was reciprocated. It turned out to be a rocky courtship, to say the least, but not because either of the lovers lacked constancy.

From descriptions of Reeve, it is not hard to see how a young woman might have fallen in love with him. By all accounts, Reeve had charisma: "In physique he was a large, portly man; his figure was well proportioned and commanding. His facial expression fits the phrase a 'serene countenance.' He had soft, dark eyes of rare beauty, and a beaming expression of benevolence and intelligence. His dark hair fell in long tresses on broad shoulders. There was nothing obtrusive about him: his

⁶⁵ Milton Lomask, *AARON BURR: THE YEARS FROM PRINCETON TO VICE PRESIDENT, 1756-1805* 19 (New York: Farrar, Straus, Giroux, 1979) [hereinafter Lomask].

⁶⁶ *Id.* at 25. Sally and Aaron Burr's maternal grandfather was one of the most famous Puritan theologians of New England, Jonathan Edwards (1703-1758). Jonathan Edwards's first born son, and name's sake, went into the ministry; his second born, Pierpont, became a lawyer, and the youngest, Timothy, pursued a mercantile career. *Id.* No one is quite sure why Timothy, only twenty-one himself and not yet married, became their guardian, but in 1760, guardianship papers were issued, and the children came to live in his home in Elizabethtown, New Jersey. *Id.* at 20. Timothy promptly married, however, and he and his wife had fifteen children of their own. *Id.* at 21.

⁶⁷ McKenna, *supra* note 6, at 26.

⁶⁸ Reeve taught at a Presbyterian grammar school in Elizabethtown connected with the College. *Id.* at 21.

manner was both gentle and dignified. He seemed able to win affection, sympathy, interest, all without effort.”⁶⁹

Sally Reeve was also greatly admired. In a letter, written later by one of the law students who boarded with the Reeves, she was described sitting next to a roaring fire on a snowy winter’s night in 1779: “She was still but a young matron and in the full flush of a beauty that was less of feature than of expression. I thought then and I think now that Mrs. Reeve was one of those women to whom it was an honour to any man to bow in deference. She had inherited the faculty of close logic which distinguished her Grandfather, the great Dr. Jonathan Edwards, and the persuasive grace of her Father, the Rev. Dr. Burr of Princeton. She was small and slight, with a dazzling complexion, clear cut features, and deep gray eyes that under any intellectual excitement became brilliant. Her smile was irresistible.”⁷⁰ Tapping Reeve and Sally Burr must have been an attractive couple, and a good match intellectually.

But no one in the Edwards family found Tapping Reeve an acceptable suitor for Sally Burr, except for her rebellious, younger brother Aaron.⁷¹ Once the attachment was discovered, the object of Reeve’s affection was exiled from her uncle’s house, and shuttled back and forth between friends and relations in Stockbridge, Boston, and Fairfield.⁷² While they were apart, a steady flow of love letters was exchanged between them, and Sally’s younger brother—who liked Reeve very much—acted as their intermediary.⁷³ It was during this difficult period of separation that Reeve turned to the law. He had been tutoring at Princeton, and in a letter to Sally in 1769, mentioned quite casually, almost as an afterthought, that “the Study of Law proves agreeable.”⁷⁴ This was the first inkling in Tapping Reeve’s personal history that he

⁶⁹ *Id.* at 36. There unfortunately seem to be no existing portraits of Sally Burr.

⁷⁰ *Id.* at 46.

⁷¹ As a child, Aaron Burr must have been a handful; he had a habit of running away from his guardian. Lomask, *supra* note 65, at 22. At age four, he took offense at something his uncle had said and ran away from home for “three or four days;” he ran away again at age eight. *Id.* At age ten, he ran away, heading for the docks of New York where he signed up with an outward-bound vessel as a cabin boy. When Uncle Timothy tracked him down, “Aaron shinnied up the shrouds to the head of the top gallant mast. From there he refused to budge ‘until all the preliminaries of a treaty of peace were agreed upon.” *Id.*

⁷² McKenna, *supra* note 6, at 27. Besides the differences in their ages, the Edwards family may have balked at the reputation of Tapping Reeve’s father, Rev. Abner Reeve, a Yale graduate, a Presbyterian minister, and a man with a history of alcoholism. *Id.* at 19-20. Abner Reeve had been forced to resign, or had been dismissed, on more than one occasion for his intemperance, although he later sobered up and spent the last thirty years in the same pulpit of a First Congregational Church in West Brattleboro. *Id.* at 20-21.

⁷³ *Id.*

⁷⁴ *Id.* at 28.

had any interest whatsoever in the law. Perhaps his intent was to better his chances of winning Sally Burr's hand. Lawyers were well respected in colonial Connecticut. They took the lead in politics and often gained "property and influence far above the average"; they also derived prestige from learning, for "like the ministers, they often obtained college degrees, and the people of Connecticut respected learning just as they admired economic success."⁷⁵

Whether or not Tapping Reeve chose to become a lawyer to enhance his stature in the disapproving eyes of the Edwards family, we will never know.⁷⁶ What we do know is that Tapping Reeve moved to Hartford in 1771—perhaps to be closer to Sally who was spending most of her time in Fairfield at that time—and to begin an apprenticeship with a distinguished lawyer, Jesse Root.⁷⁷ Reeve was admitted to the bar of Litchfield County in 1772, and immediately settled into the practice of law. Once again, surely thinking that by now he would be considered a more suitable match, Tapping Reeve asked her guardian for Sally Burr's hand in marriage. Once again, Timothy Edwards opposed him. In a letter written to Sally in 1772, Reeve bemoans their plight: "I have just been conversing with your Uncle who says he is resolved to oppose me &

⁷⁵ Jackson Turner Main, *CONNECTICUT SOCIETY IN THE ERA OF THE AMERICAN REVOLUTION* 51 (Hartford, Connecticut: The American Revolution Bicentennial Commission of Connecticut, 1977). Connecticut lawyers not only retained political leadership during this era, but they combined this "tradition of capable professional leadership combined with economic success. Indeed only they and the traders seem clearly to have benefited financially from the turmoil after 1775." *Id.* at 67. "Connecticut's lawyers included few of the self-taught backcountry lawyers who in other colonies won applause." *Id.* There was considerable social mobility in Connecticut at this time, even though there was a "conspicuous socioeconomic rank order, headed by the economically successful and by the religious, military, and political leaders, together with a few Gentlemen and Misters." *Id.* at 11. (A "Mister" was often added to someone's name if he had a college degree and lacked another title, although the use of "Mr." became democratized during the eighteenth century. *Id.*) However, in Connecticut "class lines never hardened but remained fluid, and no fixed hierarchy emerged in religion, politics, the military, or the economy." *Id.* Thus it was possible for a man like Tapping Reeve to dream of improving his social situation.

Studying law was very popular after the Revolution. Noah Webster wrote in 1787: "Never was such a rage for the study of the law. From one end of the continent to the other, the students of this science are multiplying without number." *Quoted in* Charles Warren, *A HISTORY OF THE AMERICAN BAR* 322 (New York: Howard Fertig, Inc., 1911) [hereinafter Warren]. The practices seemed to have a high volume of cases, with one lawyer's docket having from one thousand to fifteen hundred cases at a time; "these cases were small, however, and brought in small fees." *Id.*

⁷⁶ We do know that personal ambition often played a "salient role" in an individual's choice to pursue the law: "To some, including Adams, the legal profession seemed an avenue of upward mobility, an avenue to greater economic, political and social opportunities." McKirdy, *supra* note 53, at 124, 125.

⁷⁷ McKenna, *supra* note 6, at 28-29.

treats me barely with common kindness.”⁷⁸ Reeve then tells Sally that he has turned down an opportunity to marry a rich woman, and that he has remained true to her:

I refused to entertain one single thought concerning an amiable person with a very considerable fortune who would have married me and rendered my circumstances as to wealth easy through Life—if this was no temptation then when I had so gloomy apprehensions, what possible temptation can be thrown in my way sufficient to influence me now, when I do know of your esteem? Oh my dearest! When they are about to use their arguments with you, judge how painful my situation must be when my very happiness itself is at stake unless I had an Assurance of your Affections; but rest assured, my faithful Charmer, I will never believe that you will abandon me or prove inconstant; however, whilst I write, the tears starting from my eyes, to think of myself should that ever be my dreadfull case.⁷⁹

Sally Burr promptly gave Tapping Reeve an “assurance of her affections,” and Reeve petitioned to marry her—again, and again, while Aaron Burr practiced his advocacy skills to argue for their union. Finally, when Sally Burr was 18 years old, after nearly four years of separation from her beloved, the recalcitrant Uncle Timothy Edwards could no longer say no to the pleadings of his niece and nephew. He relented.⁸⁰ Tapping Reeve and Sally Burr were finally married in 1773, and the couple soon moved into their new home in Litchfield that Reeve had been getting ready for her.⁸¹ They remained utterly devoted to each other until Sally Reeve died in 1797 in her forty-third year, “to the deep grief of as devoted a husband as ever lived.”⁸²

⁷⁸ *Id.* at 32.

⁷⁹ *Id.* Here is the remainder of the love letter, for the die-hard romantics: “They say that if I had an Assurance of your esteem I should care nothing about you. This my Dear you know to be mistake, as I have felt more passion and kindness for you since, I suppose I have expressed more tenderness than before, as far as I have had opportunity. It gives me great pain to be the cause of uneasiness to anybody—but if you feel distressed to think of the vexation you may be put to, please to go to Mr. Ogden’s if you are well enough; if you are not and can attend visitation, I will come to Mr. Caldwell’s. O my lovely Sally from your ardent Lover, T. Reeve.” *Id.*

⁸⁰ Even in this, the uncle was not that gracious. He wrote to his niece that at the outset he was opposed to the marriage because she was too young, but that now she was older (18 years) and capable of good judgment, he agreed to assume a “passive role.” *Id.* at 33. Reeve must have somewhat won him over since Timothy Edwards added that whatever happened, he had a high regard for Reeve, and great affection for her. *Id.*

⁸¹ *Id.* at 37.

⁸² Boardman, *Sketches of the Early Lights*, quoted in McKenna, *supra* note 6, at 54. This may be disturbing to the die-hard romantics (see note 80 *supra*), but a year after Sally’s death, Tapping Reeve married Elizabeth (Betsey) Thompson three decades his junior.

Sally Reeve had suffered from poor health all of her life.⁸³ From her brother Aaron's letters, it is apparent that "many, if not all of Sally's mature years were spent as a virtual invalid, and Reeve's tender and unwearied care for his wife was common knowledge."⁸⁴ Sally's Reeve's delicate physical condition had a profound effect on Tapping Reeve's professional career.

Taking care of her "induced him to forego any other business or political appointments to offices which would have called him away from Litchfield. Out of love for Sally, he deliberately chose to put her welfare above his own career; any ambitions he may have entertained for advancement were pushed aside."⁸⁵ In 1792, for example, he turned down the honor of being named a member of the state Council, a post which "might have led to the governor's chair."⁸⁶ Instead, Tapping Reeve decided to stay in Litchfield so that he could take care of his wife, and establish a successful law practice. Once again, Reeve's devotion to Sally had given shape to his professional life, and for every door that slammed shut due to his decision to stay by her side, another one opened.

Sally's younger brother Aaron—a teenager in a culture that did not recognize adolescence⁸⁷—had just graduated from Princeton and was having a difficult time trying to decide what to do with his life. He spent some time studying to become a minister in the home of a Dr. Bellamy of Bethlehem, but he found the home oppressive and was easily

Betsey was unlike Sally who was small in stature, and a beauty. Catherine Beecher described Betsey as "the largest woman I ever saw, with a full ruddy face, that had no pretensions to beauty; but her strong and cultivated mind, her warm and generous feelings, and her remarkable conversational powers made her a universal favorite. She was both droll and witty, while she made so much sport of her own personal appearance that it removed all feelings of its disadvantages." *Quoted in McKenna, supra* note 6, at 92.

⁸³ McKenna, *supra* note 6, at 49. The precise nature of her illness is never made clear, although she seems to have been a chronic asthmatic. *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 53. He was appointed as Justice of the Peace for Litchfield County in 1783, and in 1788, he was named the state's attorney for the County, but neither of these positions required Reeve to be away from Litchfield for any significant periods of time. *Id.*

⁸⁶ *Id.* at 54.

⁸⁷ In colonial New England, childhood was "barely recognized as a distinct stage of life with its own emotional and physical needs . . ." James Axtell, *THE SCHOOL UPON A HILL: EDUCATION AND SOCIETY IN COLONIAL NEW ENGLAND* 201 (New Haven: Yale University Press, 1974)[hereinafter Axtell]. Adolescence "was yet to be born of industrial society. Adulthood was considered the norm for all behavior to such an extent that, after the age of six or seven, young people were simply regarded as the subjects of imperceptible, evolutionary changes towards full maturity." *Id.* at 201-202. My guess is that the fact that there was no category for the adolescent did not stop young people in their teens from acting like adolescents.

distracted;⁸⁸ indeed, “his attendance at classes was interrupted by frequent visits to Litchfield to take tea with his sister and brother-in-law, whose successful practice impressed him.”⁸⁹ Burr was restless and dissatisfied and had begun to acquire an animosity towards Dr. Bellamy and organized religion. Then he got the bright idea that a career in the law might suit him,⁹⁰ and he convinced his Uncle Timothy to allow him to move in with his sister Sally and Tapping Reeve for the purpose of reading law, to be given access to Reeve’s law library, and to receive instruction from him.⁹¹ In this manner, Tapping Reeve came to have his first law student in 1774.⁹² Aaron Burr was all of eighteen years old.⁹³

⁸⁸ Dr. Bellamy was known for his “domineering temper” and for a manner so ‘abrupt and dogmatical’ that it was not uncommon for a prospective student, having reached the parsonage-school in the morning, to pack his bags and depart before the day was done.” Lomask, *supra* note 65, at 32.

⁸⁹ McKenna, *supra* note 6, at 40.

⁹⁰ *Id.* at 40-41. The leap from minister to lawyer may seem odd to us in the twenty-first century, but the ministry during the colonial days and the Revolution was politically powerful. “The ministerial politicking was not always in the open, not always demonstrative, but it was prevalent; at conferences and consociation meetings, the party line was drawn; in sermons and in parish calls the word got to the freemen; and when voting time came, the proper, conservative law went into the books, the right man somehow took the governor’s chair or the constable’s mace.” W. Storrs Lee, *THE YANKEES OF CONNECTICUT* 22 (New York: Henry Holt & Co., 1957). It was also not that uncommon, at least during the colonial period, for “colonists to practice more than one profession, a tendency particularly prevalent among educated men who had access to the theoretical and practical manuals of several fields.” Lawrence A. Cremin, *AMERICAN EDUCATION: THE COLONIAL EXPERIENCE, 1607-1783* 209 (New York: Harper & Row, 1970) [hereinafter Cremin].

⁹¹ McKenna, *supra* note 6, at 41. There was some question whether Aaron Burr should study with Timothy’s lawyer brother, Pierpont Edwards, or with Tapping Reeve. Timothy replied, “I would have you act your pleasure therein.” Lomask, *supra* note 65, at 32.

⁹² McKenna, *supra* note 6, at 41. Aaron Burr remained a little more than a year reading law with Tapping Reeve. He was “a serious student. He learned quickly and benefited greatly from Reeve’s style of teaching, with which he was already familiar.” *Id.* Burr later studied in the law office of a New York lawyer, Thomas Smith, for six months. In letters from this period, there is little mention of his readings in the law. Rather his letters “said a great deal about the young women of the vicinity, enough to give the impression that the little Connecticut town was populated exclusively with luscious girls and that Aaron was in love with all of them and vice versa.” Lomask, *supra* note 65, at 33. Burr left Litchfield to take part in the American Revolution. *Id.* at 34. During his first summer in Litchfield, twelve of the American colonies named delegates to the First Continental Congress in Philadelphia. *Id.*

⁹³ Lomask, *supra* note 65 at 33. This may seem a young age to graduate from college, but New England’s colleges in the colonial period admitted young men “anywhere from ten to thirty years old. Most were fifteen, but the leaven of significantly young and obviously older classmates created an unusual social situation. The younger boys, who tended to come from upper-class homes where their natural precocity had been nurtured by private tutelage and parental solicitation, were too small to share fully in the rough-and-tumble

Perhaps it was the Burr-Edwards family connection that made students flock to his Litchfield office, but more likely than not, Tapping Reeve was a superb teacher. This came as no surprise—the man had a long history of experience as a scholar and a teacher before he ever started to study or practice law. The reputation of his early students also brought a certain cache to an apprenticeship with Tapping Reeve. He soon acquired a cadre of excellent apprentices, such as Oliver Wolcott Jr. and Uriah Tracy, both of whom were Yale graduates and had journeyed to Litchfield for the purpose of studying law at Reeve's law office.⁹⁴ Wolcott came from a wealthy and renowned family; his father had signed the Declaration of Independence, and Oliver Wolcott, Jr. went on to succeed Alexander Hamilton as Secretary of Treasury under Presidents Washington and Adams (1795-1800), and served as governor of Connecticut from 1817 to 1827.⁹⁵ Uriah Tracy went on to become a member of the Connecticut Assembly, its speaker in 1793, then served two years in the House of Representatives, was the State's Attorney for Litchfield County from 1794 to 1799, and accumulated a fortune.⁹⁶ (All four of Tracy's daughters ended up marrying law students from the Litchfield Law School.⁹⁷) With students of the quality and fame of Aaron Burr, Oliver Wolcott, and Uriah Tracy, Tapping Reeve's reputation as a legal educator began to spread throughout New England, and eventually beyond its borders.⁹⁸ Tapping Reeve was finally making a name for him

camaraderie of the majority, while the older students—men in fact—usually burned their candles out trying to make up for lost time in preparing for the ministry.” Axtell, *supra* note 88, at 204. In terms of social class, the colonial students were less heterogeneous, most of them “coming from families that enjoyed high social status and the benefits of material wealth.” *Id.* at 206-207.

⁹⁴ McKenna, *supra* note 6, at 55.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.* One of Uriah Tracy's daughters, Sally, married James Gould in 1798. *Id.* at 98. She was then 16, and he was 28; they went on to have ten children, all of whom lived to maturity. *Id.*

⁹⁸ *Id.* at 57. There were relatively few law students in Litchfield who had come from the newer western states and territories. One reason for that was the existence, beginning in 1799, of the law department of Transylvania University in Lexington, Kentucky. Lawrence B. Custer, *The Litchfield Law School: Educating Southern Lawyers in Connecticut*, 2 Ga. J. S. Legal History 183, 194 (Spring/Summer 1993) [hereinafter Custer]. While on a map, the Kentucky school looked closer, it was easier to get to Litchfield for many students from the southern states. “A six-week journey on horseback or in a coach or a trip by sea was preferred over an attempt to travel from the southern seaboard through the wilderness—much of it still Indian territory—to the transmontane state of Kentucky.” *Id.* at 194-195. A student traveling from the Western territories would make their way to Pittsburgh, and then from there, they traveled the national road to New Jersey, crossing the Hudson into

self, although it was not so much as a lawyer, but as a teacher of the law.

It was Reeve's devotion to his wife Sally that prompted him to create a free-standing law school out from under the roof of his home and law practice. By 1782, Reeve had written and organized his law lectures and was giving them on a regular basis to students in his law office that was then located in his home on South Street.⁹⁹ All the traffic in the house got to be too much for his wife. With the new lectures and so many students flocking to Litchfield to study with Reeve, their "household routine was being continually disrupted by the goings and comings of students, visitors and lawyers."¹⁰⁰ To avoid the "noise and confusion in their house," in 1784 Reeve put up a separate building in his side yard into which he moved his law library; there he gave his lectures on the law and held moot courts.¹⁰¹ This was the genesis of the country's first law school.

It is not clear that Reeve understood the giant step that he had taken. He himself never made any distinction between his law office and his law school. In a letter of recommendation that he wrote for a former student in 1810, Reeve wrote, "Mr. Henry Starr has read law in my office and constantly attended the lectures there delivered from the 24th day of October 1809 to the 10th day of August, 1810."¹⁰² Perhaps Reeve was too much in the middle of things to recognize what he had done—but he had done it just the same. He had started the nation's first law school.

New York City. Display from the Tapping Reeve House and Law School, the Litchfield Historical Society. The trip from New York took two days, and included traveling on a packet boat across the Long Island Sound to New Haven, then a stagecoach from New Haven to Litchfield. *Id.* Students from northern Ohio would take lake boats to Erie and Buffalo, and then travel by road or canal to Albany where they would pick up the stagecoach to Litchfield. *Id.*

⁹⁹ McKenna, *supra* note 6, at 60.

¹⁰⁰ *Id.* Here is a description of the Reeve household as the new law school was being built, from a book about Benjamin Tallmadge, a revolutionary soldier and business man: "Judge Reeve turned the corner of his house as Benjamin lifted the latch to swing open the picket gate. Before the gate had moved, Tapping Reeve was greeting the Tallmadges and insisting they come inside to enjoy his hospitality. At the threshold the judge introduced his wife. She was a sister of Aaron Burr. The large rooms were somewhat cluttered with the books and papers of the law students. The judge was actively superintending the construction of his law school, a frame building measuring roughly twenty feet. Here he expected to hold his classes with ten to twenty students." Charles Swain Hall, BENJAMIN TALLMADGE, REVOLUTIONARY SOLDIER AND AMERICAN BUSINESSMAN 94 (New York: AMS Press, Inc., 1966).

¹⁰¹ McKenna, *supra* note 6, at 60.

¹⁰² *Id.* at 59-60.

Over the sixty years of the Litchfield Law School's operation, more than one thousand law students were educated.¹⁰³ Many of these young men were movers and shakers, not only in the legal world of the late eighteenth and early nineteenth centuries, but in the history of the nation. Besides Reeve's brother-in-law, Aaron Burr, another alumnus, John Caldwell Calhoun, also became a Vice-President of the United States.¹⁰⁴ Three graduates sat on the United States Supreme Court;¹⁰⁵ six cabinet members were Litchfield Law School alumni.¹⁰⁶ Tapping Reeve's law school also graduated men who were prominent in diplomacy,¹⁰⁷ and the United

¹⁰³ Samuel H. Fisher, LITCHFIELD LAW SCHOOL 1774-1833, BIOGRAPHICAL CATALOGUE OF STUDENTS 1 (1946)[hereinafter Fisher]. There were no records before James Gould became associated with the law school; the official Register listed the number of students from 1798 to 1833 at 805. *Id.* at 2. Estimates of students enrolled before 1798 was 210, making the total number 1,015. *Id.* The number matriculating in any given year varied greatly. Two of the largest classes entered in 1813 and 1823, with 55 and 54 students respectively. *Id.* at 3. Fisher was not the only scholar to attempt an accounting of all the students of the Litchfield Law School. Langbein, *supra* note 30, at 44-45, notes 79-81. An earlier scholar of the Harvard Law School, Charles Warren, tried his hand at it in 1908 (Charles Warren, HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA 126-50 (Union, New Jersey: The Lawbook Exchange, Ltd., 1909); see Langbein, *supra* note 29, at 38, note 21; McKenna also attempted to tally the numbers of students, see McKenna, *supra* note 6, at 146.

¹⁰⁴ Fisher, *supra* note 103, at 3. John C. Calhoun, who entered the Litchfield Law School in 1805, was in "enemy territory" for a Jeffersonian since Reeve was a "passionately partisan Federalist." Irving H. Bartlett, JOHN C. CALHOUN: A BIOGRAPHY 50 (New York: W.W. Norton, 1993). Calhoun was able to "approach the experience without any qualms," and was an outstanding student: "What amazed Calhoun's fellow students was not so much the ease with which he absorbed details of the law as the effortless way he appeared to use his knowledge in the debates presided over by Judge Gould. As his Maryland friend Virgil Maxcy recalled, Calhoun rarely argued from an outline or took notes of opponents' arguments. 'He relied on his tenacious memory for preserving the order established by his own mind.'" *Id.* at 51.

¹⁰⁵ Fisher, *supra* note 103, at 3. Henry Baldwin of Pennsylvania from 1830 to 1844; Levi Woodbury of New Hampshire from 1845-1851, and Ward Hunt of New York, from 1873 to 1882. *Id.*

¹⁰⁶ Oliver Wolcott of Connecticut succeeded Alexander Hamilton as Secretary of the Treasury under Washington and Adams from 1795-1799; John C. Calhoun was Secretary of War under Monroe from 1817-1825 and Secretary of State under Tyler from 1844-1851; Peter Buell Porter of Michigan was Secretary of War under John Quincy Adams from 1828-1829; Levi Woodbury served as Secretary of the Navy under Jackson from 1831-1834, and as Secretary of the Treasury under Jackson and Van Buren from 1834-1841; John Young Mason of Virginia was Secretary of the Navy under Tyler from 1844-1845 and then served as Attorney General under Polk from 1845-1846, and then as Secretary of the Navy under Polk from 1846-1849; and John Middleton Clayton served as Secretary of State under Taylor from 1849-1850, having helped to negotiate the Bulwer-Clayton Treaty during his term of office. *Id.*

¹⁰⁷ Charles Scott Todd was Minister to Russia, and Bradford Ripley Wood was Minister to Denmark. *Id.*

States Congress was inundated with graduates from the school. More than ten per cent of the alumni ended up in Washington: one hundred and one of them in the House of Representatives, and twenty-eight in the Senate.¹⁰⁸ Fourteen Governors and ten Lieutenant Governors of the several states had studied law under Reeve and Gould, and at least thirty-four former students became members of the highest courts of their states, with sixteen of them being appointed Chief Justices or Chancellors.¹⁰⁹ Several of the men became Court Reporters,¹¹⁰ and others joined the academy as lecturers at Yale, Harvard, Cincinnati, George Washington, and Fairfield, Vermont.¹¹¹ As is often true of law graduates, not all of them engaged in legal careers or pursued the political life: at least twenty-four of them entered the ministry, and others became editors, writers, teachers, or presidents of banks, insurance companies, and railways.¹¹²

In the Biographical Catalogue of Students of the Litchfield Law School, there is one melancholy note about the author's methodology: "One difficulty in securing the life histories of many of these men arose because of their early deaths, before they had established themselves in their local communities and before they had been able to leave notable

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 4. The young men at the Litchfield Law School came from every State which had been admitted to the Union. Connecticut led with 275 graduates; New York had 128; Massachusetts with about 100. *Id.* at 5. The South was heavily represented: Georgia furnished 70 graduates; South Carolina 45, and Maryland 37. *Id.* Students also came from Louisiana, Ohio, Alabama, Tennessee, Kentucky, Indiana and Missouri. *Id.* at 5-6. Traveling from the south was arduous as there were no stagecoach routes south of Richmond, Virginia. Students traveling from points further south had to get by private coach, horseback, or on foot to Richmond, or another port town such as Charleston or Savannah. From there they would take a stage coach to New Jersey, and board a ferry across the Hudson to New York City, then cross the Long Island Sound to New Haven, and then a stage coach to Litchfield; the cost for the whole trip was \$55. Display at the Tapping Reeve House and Law School, the Litchfield Historical Society.

¹¹⁰ The following ten were responsible for issuing Federal and State Reports: Thomas P. Day published several Connecticut Reports; Thomas P. Devereux and Francis L. Hawkes were Court Reporters in North Carolina; Henry W. Greene and William Halstead were reporters in New Jersey; Samuel M. Hopkins published some of the New York Reports; Theron Metcalf some of the Massachusetts Reports; and Eugenius A. Nisbet some of the Georgia Reports. Benjamin Chew Howard was for many years a Reporter of the United States Supreme Court, and Elijah J. Paine, Jr., issued Reports of the United States Circuit Courts. Fisher, *supra* note 103, at 5-6.

¹¹¹ *Id.*

¹¹² *Id.*

records behind.”¹¹³ Here is a sobering statistic—and a reminder of how lucky we are to live a century or two later: more than twelve per cent of the alumni of the Litchfield Law School died before they reached their thirty-sixth birthdays.¹¹⁴ Others were more fortunate. Even though the school closed its doors in 1833, three alumni lived into the twentieth century.¹¹⁵ The last surviving alumnus of the school, Henry Joseph Ruggles, a Shakespearean scholar, died in 1906.¹¹⁶

* * *

The Litchfield Law School and Sally Pierce’s Female Academy existed side by side and brought Litchfield a nationwide reputation as a center of learning and cultural life.¹¹⁷ Students from all over the United States traveled long distances, on horse back and in carriages, to find room and board in Litchfield in order to pursue their studies.¹¹⁸ As

¹¹³ *Id.* at 5. The Biographical Catalogue made no effort to chronicle the various causes of death. However, three students died while at Litchfield; three were killed in duels; four took their own lives; and seven died from accidents or while at sea. *Id.* “One is reported to have been killed by Indians in Texas.” *Id.*

¹¹⁴ *Id.* Not all died early deaths. Nineteen of them reached age ninety or over, and three of them lived until the twentieth century. *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* Ruggles practiced law in New York City, and with his brothers, both of whom had also graduated from the Litchfield Law School, “helped lay out Union Square and Grammercy Park.” *Id.* at 106. Ruggles was also the author of *The Method of Shakespeare as an Artist* (1870) and *The Plays of Shakespeare Founded in Literary Forms* (1895).

¹¹⁷ One author characterizes Litchfield as “a launching pad for the Federalist counter-offensive against democracy, irreligion, and economic uncertainty . . . the closest approximation to a Federalist utopia existent. Early nineteenth century Litchfield combined the attributes of an idyllic country village and a thriving metropolis.” Andrew M. Siegel, “*To Learn and Make Respectable Hereafter*”: *The Litchfield Law School in Cultural Context*, 73 N.Y.U.L. Rev. 1978, 1990 (1998)[hereinafter Siegel]. Literacy in Litchfield was almost universal; the town supported one of the state’s first newspapers, a full-fledged library, a local “lyceum” that sponsored speeches on political, philosophical and literary topics, and twenty-eight schools “dotted the town and the surrounding country-side.” *Id.* at 1991. Litchfield’s elite, as they surveyed the crisis of the early nineteenth century “were predisposed to think in moral, or even spiritual, terms.” *Id.* at 1993. The world view was decidedly Calvinist, and the “struggle to stem the Jeffersonian tide and reconstitute the Federalist social order would be fought as a battle to strengthen the faith and the character of individual citizens.” *Id.* In that spirit, Litchfield was home to a thriving temperance campaign; in 1789, 36 of the town’s leaders, including Tapping Reeve, signed a pledge to abstain from alcohol. *Id.* at 1994.

¹¹⁸ In 1810, the year that Catharine Beecher attended the Female Academy, there were more than one hundred girls in attendance; some were from as far away as Savannah, and a good number were from New York City. McKenna, *supra* note 7, at 70. One source states that over the years, more than three thousand girls were educated there. *Id.* Since so

Catharine Beecher described the decades in Litchfield after 1800, there was “a free and easy way of living, more congenial to liberty and sociality than to conventional rules.”¹¹⁹ Young men and women from all states of the Union filled the homes and streets of Litchfield; yes, they came to study, but they also came to Litchfield to meet one another, to take walks, to have parties, to attend dances, to go on sleigh rides—to fall in love and ultimately to marry each other. “Romances abounded,” Beecher claimed, “and the atmosphere of the town lent itself to innocent social amusement.”¹²⁰

Litchfield was the perfect town to harbor two such schools—sophisticated and “sufficiently self-assured to condone a cultivated worldliness among its residents,”¹²¹ and yet pious enough—and isolated enough—to promote a culture of serious study. As one alumnus of Reeve’s law school remembered in 1879, “the student in the Litchfield Law School had nothing to do but *learn the law*. The isolated location of the village—in those days when the cities of Hartford and New Haven were distant a day’s journey—the absence of any facilities for wasting time in amusement; in short the quiet and seclusion of a small country village furnished opportunities for study, and impediments for every thing *but* study, which never can be found in law schools established in large cities, as is universally the case now.”¹²²

But it is clear that others who studied with Tapping Reeve had more fun than that. Another law student contradicted the claim that there was nothing to do in Litchfield but study: “I greatly enjoyed those evening sleigh rides, and those country suppers, when we would ride off to Goshen, or Harwinton, or some other village, and order our turkey and oysters, served up with pickles and cake, and then set Black Caesar to play jigs on a cracked fiddle. But the grand occasion was something beyond this when we got sleighs and fine horses, and buffalo robes, and foot stoves, and invited the belles of Litchfield, who never hesitated to go, and set off to the distant village to have a supper and dance. I seldom

many of the students at the law school did not come from Connecticut, Reeve’s course was therefore not geared towards the practice of law in any one particular state. By 1800, there were also law students from a few English speaking countries, such as Canada, England, India, and British Guiana. *Id.* at 61, 63, 107.

¹¹⁹ Lyman Beecher, AUTOBIOGRAPHY, I, 159, as quoted in McKenna, *supra* note 6, at 78.

¹²⁰ *Id.* at 73.

¹²¹ *Id.* at 78.

¹²² *The Litchfield Law School*, 20 Albany L. J. 72-73 (1879), unsigned, quoted in McKenna, *supra* note 6, at 70.

danced, and some of the girls did not, but there were always some who did, and we had jolly times.”¹²³

Another law student, Edward D. Mansfield, described the sight that greeted him on his arrival in Litchfield on a June evening in 1823—a sight so deeply etched on his memory that almost two hundred years later, we can still feel the edges of his vision: “One of the first objects which struck my eyes was interesting and picturesque. This was a long procession of school girls, coming down North Street, walking under the lofty elms, and moving to the music of a flute and flageolet. The girls were gayly dressed and evidently enjoying their evening parade, in this most balmy season of the year. It was the School of Miss Sally Pierce, one of the earliest and best of the pioneers in American female education. That scene has never faded from my memory. The beauty of nature, the loveliness of the season, the sudden appearance of this school of girls, all united to strike and charm the mind of a young man, who, however varied his experience, had never beheld a scene like that.”¹²⁴

Edward Mansfield, like so many of the Litchfield law students, married one of the young women from the Female Academy.¹²⁵ Both Sarah Pierce and Tapping Reeve took a proactive stance towards the serious business of making suitable matches. Pierce controlled the guest lists to the Academy’s balls and “was willing to withhold invitations from those who had reputations for drunkenness, dishonesty, or forward-

¹²³ Edward D. Mansfield, *PERSONAL MEMORIES* 135, *quoted in* McKenna, *supra* note 6, at 78. “The girls from Miss Pierce’s School came in for these evening rides, ‘though the nine o’clock hour had to be carefully watched.’” *Id.*

¹²⁴ Edward Deering Mansfield, *PERSONAL MEMORIES, SOCIAL, POLITICAL AND LITERARY SKETCHES OF MANY NOTED PEOPLE, 1803-1843* (Cincinnati: R. Clarke & Co., 1879) 122, *quoted in* Vanderpoel, *supra* note 14, at 258, and McKenna, *supra* note 6, at 71. Here is another poetic quote: “And the thought of it has so filled me with visions of that city sat upon a hill that-light of the world set round with bright eyes + legal luminaries—that miracle of law + sentimental reason + romance love + logic . . .” Willis Hall to Seymour, July 17, 1827, Display at the Tapping Reeve House and Law School, Litchfield Historical Society.

¹²⁵ McKenna, *supra* note 6, at 71. Many of the law students boarded in homes that also housed their female counterparts at Sarah Pierce’s school. Siegel, *supra* note 118, at 2009. Not only were there many social events such as monthly coed dances at Ms. Pierce’s, lavish balls at the law school, sleigh rides, bowling and boating in the summer months, but the students at the two schools wrote and produced plays, to which they always invited their counterparts.” *Id.* Even on the Sabbath, there was a lot of social interaction: “[Y]oung people filled the back pews of Lyman Beecher’s Congregationalist Church, socializing so extensively that the preacher occasionally stopped the services to admonish the wayward youth.” *Id.* Siegel refers to Litchfield as a “veritable marriage market,” since the “choice of marriage partners took on immense importance for Connecticut’s conservative elite. *Id.* at 2010.

ness.”¹²⁶ At the beginning of each term, Pierce and Reeve would exchange lists of the “eligible” students matriculated at their respective schools.¹²⁷ One law student, boarding with Judge Reeve’s widow in 1830, bemoaned to his family the fact Mrs. Reeve had opined that “all the marriageable young ladies have been married off, and that there is at present nothing but young fry in town, consequently it will not be as gay as usual. The young ladies, she tells me, all marry law students, but as it will take two or three years for the young crop to become fit for the harvest, you need apprehend no danger of my throwing up my bachelorship.”¹²⁸

So the question remains: Was Litchfield a place for study, and for study only, or was it a social scene where one might hope to find a suitable spouse? As is true of all truths, the truth about Litchfield in the late eighteenth and early nineteenth century depends on the truth’s teller: For some, it was a place for serious study; for others, a place for serious fun. But no matter your view, Litchfield was a place for educational innovation.

* * *

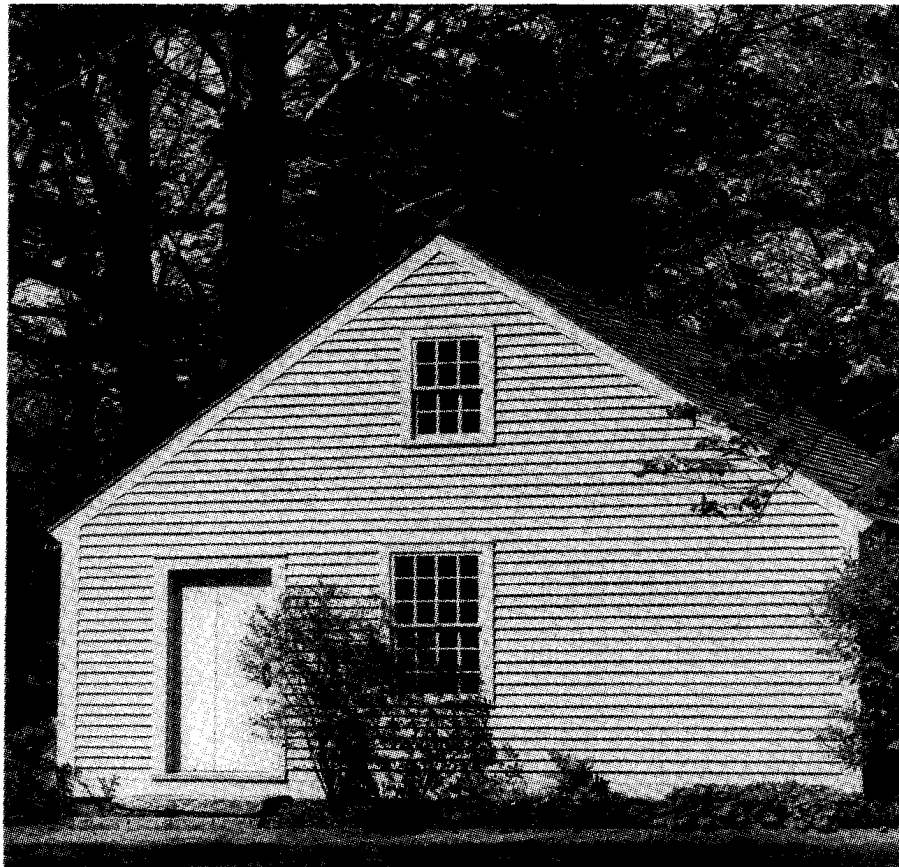
If time travel were possible, a visit on any given day to the Litchfield Law School of the early nineteenth century would seem strange to any contemporary law student. The Litchfield Law School building itself was—and remains today—very unprepossessing. Its one-frame building, which served both as a classroom and a library, was very small—twenty by twenty-two feet—and unheated.¹²⁹ It was very spare and had no fireplace; no one has found trace of a flue for a chimney there.

¹²⁶ Siegel, *supra* note 117, at 2011.

¹²⁷ *Id.*

¹²⁸ Anonymous Letter (October 28, 1830) *quoted in* Kilbourne, *supra* note 12, at 188-189.

¹²⁹ McKenna, *supra* note 6, at 60, 65. After Tapping Reeve’s death, the house was removed to West Street in Litchfield and incorporated into a house. LITCHFIELD, CONNECTICUT: 250TH ANNIVERSARY, 1719-1969, COMPILED BY THE LITCHFIELD HISTORICAL SOCIETY 43 (1969)[hereinafter *Litchfield: 250th Anniversary*]. In 1910, the school was salvaged and given a place near the Litchfield Historical Society Building, when it was finally in 1930 returned to its original site. *Id.* In 1931, a group of young lawyers, including Chief Justice William H. Taft and Samuel H. Fisher of Litchfield, raised money to buy the Reeve house and the law school building; in 1966, it was declared a National Historic Landmark. *Id.* at 2.



THE LITCHFIELD LAW SCHOOL

[Collection of the Litchfield Historical Society, Litchfield, Connecticut]

In the cold Connecticut winters, the only heat in the law school would have been hand-carried footstoves: "Students had to write their notes with fingers numbed by the cold, perhaps encumbered by gloves or mittens, while bundled up in mufflers and overcoats."¹³⁰ Students sat at wooden desks and took copious notes while Reeve (and later James Gould) "sat on a high wooden chair at a slanted lectern with a large shelf underneath to hold the hefty tomes he consulted from time to time. Chair and desk were mounted on a wooden platform where he sat

¹³⁰ McKenna, *supra* note 6, at 65.

looking down on them.”¹³¹ When Gould joined Reeve in 1798, the school had twenty students; enrollment was at its peak in 1813 with fifty-five students.¹³² The room must have been packed.

Reeve and Gould had a set order to their lectures, by and large based upon Blackstone’s scheme but with updates and augmentation; the course of lectures lasted about fourteen months.¹³³ Usually Tapping Reeve began with Municipal Law, after an introductory lecture,¹³⁴ but a student could start the course at any time. There was no academic year as such—the sequence ran for the fourteen months (including two vacations of one month in the spring and one in the fall), and a student could jump in (or out) at any time.¹³⁵ The course of study was planned with no specific reference to any particular state; three-fourths of the students came from outside Connecticut.¹³⁶ Tuition was \$100 for the first year, and \$60 for the second, but no student was allowed to matriculate

¹³¹ *Id.*

¹³² Langbein, *supra* note 29, at 25. There is a discrepancy between scholars, as is often the case when it comes to numbers of students. McKenna states that when Gould came on board in 1798, there were forty students. McKenna, *supra* note 6, at 107.

¹³³ *Id.* at 27. Here was the list of lectures which formed the core of the Litchfield Law School’s curriculum, in the order they were given throughout the term of the course: Municipal Law; Master and Servant; Baron and Feme; Parent and Child; Guardian and Ward; Executors and Administrators; Sheriffs and Gaolers; Contracts; Fraudulent Conveyances; Bailments; Inns and Innkeepers; Covenant broken; Action of Debt; Action of Account; Notice of Request; Assumpsit; Defenses to Actions; Private Wrongs; Evidence; System of Pleading; New Trials; Bills of Exceptions; Writs of Error; Practice in Connecticut; Bills of Exchange and Promissory Notes; Insurance; Charter Parties; Joint Owners of Vessels; Partnership; Factors; Stoppage *in Transitu*; Sailor’s Contracts; Powers of Chancery; Criminal Law; Real Property; Estates Upon Condition; Modes of Acquiring Estates; Devises; Title by Deed; Actions for Injuries to Things Real. McKenna, *supra* note 6, at 64.

We know from some of his judicial decisions that Reeve would depart from English precedents when application of *stare decisis* did not seem appropriate, given different social conditions. “It is said that unnecessary departures from the common law of England are not to be favored; that by such means everything is rendered uncertain. I am fully of the opinion, that few maxims of our law are more important than that of *stare decisis*; but it must be acknowledged by all, that our system of law respecting real property is, in many instances, very different from the English system.” *Bush v. Bradley*, 4 Day 298, 305 (1810), *quoted in* Craig Evan Klafter, *REASON OVER PRECEDENTS: ORIGINS OF AMERICAN LEGAL THOUGHT* 70 (Westport, Ct.: Greenwood Press, 1993)[hereinafter Klafter].

¹³⁴ McKenna, *supra* note 6 at 63-64.

¹³⁵ *Id.* at 63. The phased curriculum, where some subjects are regarded as foundational and must be mastered before moving onto more advanced course work, would not come into legal education until the 1870s; it was another one of Christopher Columbus Langdell’s inventions. Langbein, *supra* note 29, at 28.

¹³⁶ McKenna, *supra* note 6, at 63.

for less than three months.¹³⁷ Neither were the students working towards a degree; indeed, no degree was granted.¹³⁸ The student who attended the Litchfield Law School would receive a letter from either Reeve or Gould that stated he had read law in his office and had attended his lectures for a certain period of time. This letter would then be presented to the local bar authorities in satisfaction of at least part of the requirement that students clerk in a law office before being admitted to the bar.¹³⁹ The proprietors of the Litchfield Law School continued to perceive of their endeavor as part of the apprenticeship system. Not only were there no degrees, no academic year, no required residency, no admissions criteria—and this part most contemporary law students *would* like—there were no written examinations either.¹⁴⁰

The daily schedule for a law student was described by Ebenezer Baldwin in a letter to his father dated March 23, 1810: “[B]reakfast half past 7 o'clock—from 8 to 10 I read a lesson which I had previously studied the day before. At 10 [I] attend the lecture and take notes. From 11 until dinner time I am employed in copying and correcting my notes for preservation. After dinner I recite until 3—the remaining part of the afternoon and evening are devoted to the lesson of the succeeding day and the other avocations of the law.”¹⁴¹ During the lecture in the morning which lasted for about an hour and a half, either Reeve or Gould would sit in and read his lectures notes “slowly enough for the

¹³⁷ *Id.* at 63.

¹³⁸ Langbein, *supra* note 29, at 26.

¹³⁹ *Id.*

¹⁴⁰ *Id.* There were three-hour oral examinations given every Saturday, primarily to prepare the student for the bar examination, which was, however, “largely ceremonial and represented little more than a rite of passage into the profession.” Custer, *supra* note 99 at 192. This policy of having no written examinations carried over into the early university law schools. It was not until Christopher Columbus Langdell instituted the annual examination that a system of assessment was introduced. *Id.* Langbein links early legal education to parole: you get your letter or your degree for time served. Langbein, *supra* note 29, at 26.

¹⁴¹ Ebenezer Baldwin to his father Alexander Baldwin, March 23, 1810. Display at the Tapping Reeve House and Law School, the Litchfield Historical Society. It was also a time-consuming task to make one's ink and maintain the points on one's quill pens, although the commercial sale of prepared inks had become common in the eighteenth century. Mike Darton (ed.), *PRACTICAL CALLIGRAPHY* 36 (New York: Crescent Books, 1990)[hereinafter *PRACTICAL CALLIGRAPHY*]. The most common recipes were for carbon inks, using a pigment such as lamp black which was suspended in a mixture of gum and water. Most of the lettering I saw in Litchfield Law School books was brown, but that was not due to the original use of sepia ink, but “the result of the chemical change in an ink that was originally made from iron salt and oak gall, that has gradually worked its way into the surface and lightened with age.” *Id.*

students to transcribe the lecture word for word.”¹⁴² After the noon day meal, the students were expected to read the authorities cited in the lectures in the law library, and eventually to rewrite their notes into a formal notebook.¹⁴³ The process was laborious, and time-consuming, as Thomas Telfair, a Litchfield Law School student, wrote home to his father in 1807: “Now from calculation, I find, that in order to take with me a complete course of Lectures, I shall have to be under the necessity of writing between 12 and 14 pages a day, besides reading that portion of Law which propriety assigns me.”¹⁴⁴

¹⁴² Langbein, *supra* note 29, at 27. Reeve in particular was known for asides: “Reeve sometimes rose to eloquence in public address, but more often, according to Simeon Baldwin, he was careless and commonplace. His thoughts, we are told, often outran his utterances; he thought faster than he could articulate ideas. And he would occasionally leave a sentence unfinished to begin another, as if distracted by what one student described as ‘a huddle of ideas.’” McKenna, *supra* note 6, at 147.

¹⁴³ The scripts used were mostly decorative, flowing, looped and elaborate and written without lifting the pen. PRACTICAL CALLIGRAPHY, *supra* note 141, at 26. English penmanship was highly influential, in particular Edward Cocker’s *The Pen’s Transcendencie*, published in 1657, and George Bickham’s *The Universal Penman*, published serially between 1733 and 1741. *Id.* at 27. A London writing master, Joseph Carstairs, published his writing book in 1830, just around the time the Litchfield Law School closed its doors; Carstairs advocated a technique using the entire arm, rather than the hand and fingers, to control the pen’s flow. *Id.*

¹⁴⁴ Writing masters were universally honored in seventeenth century America. Earle, *supra* note 22, at 157. The most famous was Abiah Holbrook of Boston who died in 1769 and was famous for his “fine knotting or knotwork” and who trained John Hancock. *Id.* at 157-158. In 1745, he had 220 scholars training at his school, and ministers, merchants, statesmen, and patriots were taught what came to be known as the “Boston Style of Writing.” *Id.* at 158. Thomas Telfair to his father, Alexander Telfair, April 2, 1807, Duke University. Display at the Tapping Reeve House and Law School, the Litchfield Historical Society. Another Litchfield law student writes: “Those of us who were in earnest, of whom I was one, immediately returned home, and copied out into our lecture [note] books all the principles and cases. My lecture books made five volumes. The lectures, the references, and the copying took me, on an average, from nine o’clock until three or four o’clock, with the intermission of near an hour for dinner. Five to six hours a day employed in this manner was my regular work at Litchfield, and very seldom was a day missed.” McKenna, *supra* note 6, at 167.



A 20TH CENTURY ARTIST'S RENDITION OF THE CLASSROOM
AT LITCHFIELD LAW SCHOOL

[Collection of the Litchfield Historical Society, Litchfield, Connecticut]

Indeed, an education at the Litchfield Law School consisted of listening to the transmission of the law in a systematic fashion, and then writing it down.¹⁴⁵ Directly from the mouths of Reeve and Gould, the law

¹⁴⁵ The teaching methods of Tapping Reeve were not unique to the Litchfield Law School. At seventeenth century Harvard, for example, there were three academic exercises: the lecture, the declamation (rhetorical exercises engaged in by students), and disputation, a form of student debate. Cremin, *supra* note 91, at 215-216. The lecture "was the master's way of demonstrating systematic thought at its best In a sense, the lecture was an oral textbook—frequently a series of commentaries on some classic treatise—which students often transcribed verbatim" *Id.*

was sounded in the air, day after day, a few hours at a time, to be transcribed, and later embellished and preserved in a set of lecture notes by the law student.¹⁴⁶ There was something to show for the fourteen months of study: a handsomely leather-bound set of folio volumes that were full of elegantly compiled lecture notes.¹⁴⁷ The system relied heavily upon the oral tradition, with reinforcement and clarification from written sources, but the goal was to create a book, hand-written, tailor-made by the student himself.¹⁴⁸ He was the apprentice scribe of the body of knowledge that had been passed on to him from his teachers, Reeve and Gould, and in the process of inscribing, he himself became the master.¹⁴⁹ Reeve and Gould never published their lectures. Indeed, if

¹⁴⁶ Dictation of the law shows up in the story of Moses and the Ten Commandments as well. When Moses first received the tablets with the Ten Commandments, he read God's writing and smashed the tablets to the ground because he saw the sins of the Israelites. Exodus 32: 15-16. When Moses went back to Mount Sinai to receive another copy, God instructed Moses to take dictation: "Then the LORD said to Moses, 'Write down these words, for in accordance with these words I have made a covenant with you and with Israel.'" Exodus 34:27-28. God not only dictated to Moses, but he also wrote on the tablets: "Now the LORD said to Moses, 'Cut out for yourself two stone tablets like the former ones, and I will write on the tablets the words that were on the former tablets which you shattered.'" Exodus 34:1.

¹⁴⁷ "Of course there was nothing to prevent a student from borrowing a set of notes from another student who was willing to lend them on a temporary basis. Notebooks of the greatest value to the owner would be those possessed by the student who spent a year, or perhaps the full fourteen months at the School." McKenna, *supra* note 6, at 119.

¹⁴⁸ Decades before publication of Chancellor Kent's Commentaries in 1826, "no complete scholarly assessment of the legal system of the nation, or of any of its states, existed. Young men and their families knew that a lawyer who emerged from his legal training with such a systematic guide to the science and practice of law had a major advantage over his competitors; acquisition of such a guide was one of the primary reasons aspiring lawyers chose to study at the Litchfield Law School." Siegel, *supra* note 117, at 2007. Moot courts also "made their debut at the Litchfield Law School." *Id.* at 2008. The moot courts were optional during Reeve's tutelage, but became required under Judge Gould. *Id.* Receiving the topic a few days in advance, the law student would "retreat to his room for frantic preparation, and deliver a prepared statement before one of his instructors," answering questions from the "judge" who would then critique his performance. *Id.*

The notion of the "moot" was modeled after the Moot of Gray's Inn in London, and lawyers in New York gathered regularly before the Revolution to debate a question of law, and by "debating some problem, the members gained a clearer idea of its meaning and implications, while at the same time they were compelled to think and reason legally." Hamlin, *supra* note 32, at 97.

¹⁴⁹ It seems that Tapping Reeve did not himself engage in the laborious task of copying his own lectures. In a journal of John P. Brace, the nephew of Sally Pierce and teacher at the Female Academy, he notes that in the summer of 1813, "I was very industrious. I copied law lectures for Judge Reeve to pay for my law tuition of the winter before; I read every morning at Judge Holme's office, in which I was, and copied law papers for him." Emily Noyes Vanderpoel, MORE CHRONICLES OF A PIONEER SCHOOL FROM 1792 TO 1833,

they had, the effect would have been to “diminish the interest in and importance of the lectures, and to bring textbooks containing the entire course, at least in broad outline, into being.”¹⁵⁰

Some might think that Tapping Reeve’s experiment in legal education was a failure. Certainly the idea had no staying power.¹⁵¹ Eventually, law schools came to be established within universities, with such schools as William and Mary, Columbia, Harvard, and Yale taking the lead.¹⁵² John H. Langbein posits four “fatal weaknesses” of the Litchfield Law School that ensured it would wither and die in the face

BEING ADDED HISTORY ON THE LITCHFIELD FEMALE ACADEMY KEPT BY MISS SARAH PIERCE AND HER NEPHEW JOHN PIERCE BRACE 145 (Cambridge: The University Press, 1929).

¹⁵⁰ McKenna, *supra* note 6, at 119. Indeed, Reeve and Gould “preserved their system of lectures as a jealously guarded asset of their school.” *Id.* For an account of the process by which James Kent distilled his lectures into published form, see John H. Langbein, *Chancellor Kent and the History of Legal Literature*, 93 Colum. L. Rev. 547 (1993). Not only were treatises published, but Connecticut took the lead in “making the first move towards the establishment of a record of American law, by the passage, through the efforts of two of its great lawyers, Roger Sherman and Richard Law, of a statute, in 1785, requiring the judges of the Supreme and Superior Courts to file the written opinions, in disposing of cases on points of law, so that they might be properly reported.” Warren, *supra* note 75, at 328.

¹⁵¹ This was true of many other proprietary law schools that opened and closed throughout the nineteenth century, although many came up with innovative responses to the failures of the apprenticeship system. In Virginia, for example, the Lexington Law School, which was highly successful between 1849 and 1861, educated more than two hundred lawyers. Bryson, *supra* note 44, at 183. John White Brockenbrough employed the “catechetical system of instruction,” examining his students on assigned readings, then discoursing on parts where the students were having difficulties; the school was divided into beginners and those more experienced, and the course lasted five months, “at the end of which there was a moot court at the trial level.” *Id.* “The positive aspects of the proprietary law schools were their freedom to experiment with new teaching methods and the practical experience which the teachers brought to the classroom. The judges were in daily contact with the practice of the law and could draw on this for their instruction of their students.” *Id.* On the downside, they were only part-time teachers and had to spread themselves too thin. *Id.* Often the teachers were judges who were poorly paid and needed to supplement their income; students “were attracted to these teaching judges because of their high legal reputations.” *Id.*

¹⁵² William and Mary College in Virginia was the first to recognize the need for formal instruction in the law, adding it to its regular curriculum in 1779 with the establishment of a chair in law and police, instigated by then Governor Thomas Jefferson. (No separate College of Law was ever established, however.) McGuire, *supra* note 32, at 91, 93. Columbia also had an early professor of law from 1793 to 1798, but the law school itself was established in 1858. *Id.* at 93. In 1817, Harvard was the first law school to be established as a regular department of a university, although prior to 1839, the curriculum was “somewhat uncertain.” *Id.* at 94. The second law school to be established as a regular university department was Yale in 1824; the University of Virginia followed suit in 1825. *Id.* at 95.

of competition from the burgeoning university law schools.¹⁵³ 1) it was a proprietary school; 2) it followed a pedagogy of lecturing; 3) it had no ability to attract philanthropy; and 4) the school was isolated, due not only to geographical remoteness but to its “isolation from the intellectual currents of a university.”¹⁵⁴

The fact that the law school was a proprietorship created a crisis of succession, both when Reeve and Gould disagreed in the 1820s, and later when Gould became too ill to lecture in the 1830s.¹⁵⁵ Even if Gould had found a successor, a small proprietary school could never compete with the newly founded—and well-funded—university law schools, such as Harvard and Yale.¹⁵⁶ A new style of pedagogy was being offered in the new university law schools, one intimately connected to the rise of the

¹⁵³ Langbein, *supra* note 29, at 30-31. It should be noted that despite the movement towards formalized legal education, “reading law” continued to be an acceptable way to train for a legal career, especially in the west. Brian J. Moline, *Early American Legal Education*, 42 Washburn L.J. 775, 801 (2002-2003). In Kansas, for example, law office study “was a viable option to law school in Kansas until well into the twentieth century.” *Id.* As of 1900, more than half of America’s lawyers had not attended law school, or even college. *Id.*

¹⁵⁴ Langbein, *supra* note 29, at 31. “Litchfield exemplified the view that law was an autonomous discipline, so autonomous that a single lecturer could master it and then impart it by dictation in a fourteen-month course. We learned across the twentieth century what the Litchfield proprietors had no particular reason to know in their day, that law schools thrive in association with the study of cognate fields of knowledge.” *Id.*

¹⁵⁵ The Litchfield Law School was never incorporated. White, *supra* note 7, at 108. When Reeve left teaching in 1820, Gould continued “to pay him a third of the net receipts from tuition, annually.” *Id.* Reeve and Gould were very different in temperament. Quoting a Litchfield law alumnus, “It was feeling that predominated and ruled the character in Reeve, and intellect in Gould. Their students respected both, but they loved only one.” *Id.* at 103. In 1833, only six students had enrolled in the entering class, and Gould’s health was failing; he had been able to maintain the school only with the aid of a son who sometimes read his lectures to the class and of a young lawyer in Litchfield, Origen Storrs Seymour, who later became the Chief Justice of Connecticut. *Id.* at 108.

¹⁵⁶ The Harvard Law School had been founded in 1817, resulting in decreased enrollments from Massachusetts, and in the later 1820s, the New Haven Law School had become Yale. Langbein, *supra* note 29, at 29. “Yale College graduates, who had supplied a quarter of the Litchfield student body, were ever less likely to trek up to remote Litchfield for law school.” *Id.* Both Harvard and Yale were able to attract significant donations to fund their new law schools. *Id.* at 31. Even by 1816 when the Litchfield Law School was in full swing, the idea of a legal education as a professional school connected with a university was espoused by Judge Isaac Parker, the First Royall Professor of Law. Charles R. McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 Wash. U.L. Q. 597, 626 (1981)[hereinafter McMannis]. Parker’s idea was to cover only the academic part of professional training, with office training to be obtained in a shorter apprenticeship. *Id.* at 626-627.

legal treatise.¹⁵⁷ What had once been a “stream of law reports and treatise literature” by the 1820s had become a “torrent,”¹⁵⁸ and this torrent of publications made Litchfield Law School’s “whole theory of instruction antiquated.”¹⁵⁹

With books now readily available, the university law schools had shifted to the so-called “text-and-recitation” method of pedagogy instead of the lecture method used at Litchfield.¹⁶⁰ Under text-and-recitation instruction, the law school would lend selected treatises to the students, assign them particular chapters to read before each class meeting, and then call upon them in class to recite what they had learned and to answer questions. Responsibility for covering the entirety of the law was thus shifted from the lecturer to the treatise writer (and to the student): “The instructor simply assigned the stuff and then paced the students in recitation sessions, but he did not have to be master of what he taught.”¹⁶¹ The lecturing enterprise that Tapping Reeve and James Gould had engaged in, and which had been such an improvement over the apprentice system, was now old hat.¹⁶²

¹⁵⁷ John H. Langbein, “Law School in a University: Yale’s Distinctive Path in the Later Nineteenth Century,” in Anthony T. Kronman (ed.), *HISTORY OF THE YALE LAW SCHOOL* 53, 55-56 (New Haven: Yale University Press, 2004)[hereinafter Langbein II].

¹⁵⁸ *Id.* at 54. Before 1800, there were three law treatises on American law: Nathaniel Chipman’s *Reports and Dissertations* (1793); Zephania Swift’s *A System of the Laws of the State of Connecticut* (1795), and William Wyche’s *A Treatise on the Practice of the Supreme Court of Judicature of the State of New York in Civil Actions* (1794). Between 1800 and 1820, another sixteen American law treatises were published, including Tapping Reeve’s *Law of Baron and Femme, of Parent and Child, of Guardian and Ward, of Master and Servant* in 1816, and between 1800 and 1826, another ten treatises on American law were published. Klafter, *supra* note 133, at 183-184.

¹⁵⁹ White, *supra* note 7, at 108.

¹⁶⁰ Langbein II, *supra* note 157, at 55. Among the works assigned for study in this way at Yale were Blackstone, Chitty’s treatise on contracts and on pleading, Cruise on real property, and Starkie on evidence. *Id.* Langbein notes a recurrent theme in the history of legal education, “the connection between developments in legal literature and in legal education.” *Id.* While the new university law schools did not invent the text-and-recitation format, which had been long the standard mode of instruction in their undergraduate schools for all sorts of subjects (logic, metaphysics, geography, theology, natural science), the law schools “seized upon the similarity between legal treatises and traditional college textbooks, in order to imitate the technique of teaching that had long typified the college classroom.” *Id.* at 56.

¹⁶¹ *Id.*

¹⁶² By 1870, with the introduction of the case study method at Harvard Law School by Christopher Columbus Langdell, the text-and-recitation method of teaching was itself old hat. At the outset, Langdell’s innovations were hardly met with enthusiasm by his students; not only were they confused, but attendance in his class fell precipitously, leaving him with only seven students. McManis, *supra* note 156, at 633. It took Ames and

The fact was that no one had any use any more for the leather-bound books that the students at the Litchfield Law School had created from their lectures notes. The new technologies that allowed for cheap printing, and ready access to law books, rendered unnecessary the student's writing down the law.¹⁶³ Someone else had already done that for him—it was all right there in the book, typeset by a machine.

We tend to label these kinds of technological advances as progress. Surely access to affordable texts made legal education much less labor intensive. But sometimes valuable things get lost in the name of progress. The law student who attended the Litchfield Law School had to spend many hours a day, writing and rewriting the law slowly, and with intention. This process encouraged the lawyer scribe to be concise and precise; it also gave him a deeper understanding of the law. By spending so much time with the words that flowed from the end of his quill-tipped pen, concentration merged into meditation.

I have no source of authority for that proposition. I could “*see infra*” myself, pointing to my own methods of study in law school described in the first part of this essay, but that would be cheating. Who is allowed to be his own source of authority? But my own methods of law study did entail a process of writing and rewriting not unlike the methods followed by the young men who studied at Tapping Reeve's Litchfield Law School. In my travels to India this summer, I came to wonder: perhaps I *could* footnote myself, on the theory that I had been there.

Keener to perfect the case method by combining it with the Socratic method for teaching reasoning skills: “Langdell's successors thus shifted the focus of the case method of law study from substance to process; from an inductive search for a system of legal principles to a honing of certain professional skills, from what judges said to what judges should have said, from a dogmatic teaching tradition to a critical one.” *Id.* at 634. This was a very different enterprise than the one undertaken by Reeve and Gould at the Litchfield Law School.

¹⁶³ Langbein opined, “Having students construct a handwritten legal encyclopedia became a fool's errand in the changed circumstances of the revolution in legal publishing that got underway in the last decades of Litchfield. In the language of today's financial pages, the Litchfield proprietors failed to adapt to technological changes that made their business obsolete.” Langbein, *supra* note 29, at 30.

MIDDLE-LOGUE: METAPHYSICAL POSSIBILITY NUMBER TWO—THE
REINCARNATED APPRENTICE LAWYER SCRIBE¹⁶⁴

I go to India every summer, and every summer I take questions with me about the status of my soul—who made it?, what is it made of? how did it get here? where is it going?¹⁶⁵ Of course, every summer I also take

¹⁶⁴ The word “scribe” comes from the Latin *scribere*, meaning to write. Marc Drogin, *YOURS TRULY, KING ARTHUR: HOW MEDIEVAL PEOPLE WROTE, AND HOW YOU CAN, TOO* 20 (New York: Taplinger Publishing Co., 1982). In the medieval period (roughly 400-1500 CE), monks worked in monasteries making copies of the Bible and other books of learning: “[D]ozens and then hundreds of monasteries were treasure houses of knowledge which demanded enormous amounts of writing and copying.” *Id.* at 17-18. The students learned to form the letter shapes by keeping in mind the ductus, or the sequence of strokes and their direction; each letter had to be formed in such a way that it was done as quickly as possible, with concern for visual appeal, and “in such a manner that the pen completed its task near or moving toward where the next letter would begin.” *Id.* at 20. The writing room, known as the scriptorium, was usually unheated, with desk tops set at steep angles, and no candles, because of the “danger of dripping wax marring the books or flame destroying them.” *Id.* at 24. In the early medieval period, the scribes did all the writing, the colorful chapter headings, and the huge elaborate capital letters filled with pictures, but in the later period, “these tasks were often left to specialists: rubricators (from the Latin for red, referring to the large red letters), and illuminators, who painted pictures or elaborate page borders, and whose use of gold was said to light up or illuminate the page—hence their name.” *Id.* at 26.

Books were very expensive and rare in the medieval period. Literacy was not universal; one had to either enter a religious order or have enough wealth to hire a tutor or afford tuition at a monastery school. Paul B. Newman, *DAILY LIFE IN THE MIDDLE AGES* 171 (Jefferson, North Carolina: McFarland & Co., 2001). Books were copied out by hand on to thin sheets of parchment made from the skins of calves, sheep, goats, and even squirrels in the case of very small books. *Id.* Their value meant that monasteries and universities attached “chains to the stout wooden covers of books” to secure them to the shelves to prevent theft, since students would sell or pawn the books “to pay for their drinks and other necessities.” *Id.* Having a private library, “even one with only a dozen books, was such a rarity for most of the Middle Ages that palaces and castles housing such collections were often famous far and wide . . . books were deemed equal to gold, jewelry, and other precious objects among the household treasures.” *Id.* at 171-172.

Recent studies emphasized that “monasteries did not have a monopoly of book production in the early Middle Ages;” there were both monastic scribes and illuminators, and professional scribes and illuminators, and “almost all the possible combinations of their respective activities are to be found in the manuscripts.” J.J.G. Alexander, “Scribes as Artists: The Arabesque Initial in Twelfth-century English Manuscripts,” in M.B. Parkes & Andrew G. Watson (eds.), *MEDIEVAL SCRIBES, MANUSCRIPTS & LIBRARIES: ESSAYS PRESENTED TO N.R. KER* 88-89 (London: Scolar Press, 1978). One layman illuminator, Hildebert, was inclined to include self-portraits on the texts he was working on. *Id.* at 109. In one, Hildebert is shown as a scribe with quills and ink horns on his lectern, another quill behind his ear, and he is in the “act of throwing a sponge at the mouse who is busy eating his lunch.” *Id.* at 111.

¹⁶⁵ Touro Law School (where I teach) has the only American Bar Association approved summer school program in India. (Most of the program takes place in Shimla, although we spend the last ten days in Dharamsala; both are located in the state of Himachal Pradesh.)

other more mundane questions with me, depending on how the last solar cycle has gone—questions as deep as: Should I buy a new car or tough it out with the Subaru? How can I make some extra money to straighten a set of adolescent teeth? Will I recognize the day when it's time to put the cat to sleep?

Under the heat of the hot Indian sun, my dualisms melt like wax. I can no longer distinguish between alive and dead, rich and poor, old and young, work and play, now and then, ugly and beautiful, shallow and deep. This cognitive disruption is one of the reasons that I return to India. I like the way the walls between categories of thought are effaced, how my mind scrambles, making me feel dizzy and dazzled. Invariably, I find that the more profound questions about the status of my soul intrude on my more prosaic concerns.

Because I teach both Hinduism and Buddhism, I must confront the possibility that the Judeo-Christian tradition, with its “one round only” has gotten it wrong. What I think of as myself—with a beginning and an end—may just be a wave in a vast sea of prior lives.¹⁶⁶ This thought, once I begin to take it seriously—which is much easier when everyone around you believes it to be true—always forces me to perceive my ordinary life differently. What shore I end up crashing upon may depend on how well I take care of my children;¹⁶⁷ I don't need to worry about my Subaru

We take anywhere from 18 to 35 law students each summer from all over the United States and offer courses that give the student some perspective on the Indian law, legal system, culture, religion, and world views. My course is entitled *Indian and Tibetan Law and Philosophy*, and it is a perfect vehicle to contemplate the status of one's soul.

¹⁶⁶ In the Bhavadgita, the most sacred of Hindu texts, Krishna relates to Arjuna the reason he should not shirk his duties as a warrior in an impending battle against his cousins. “If you think that this Self can kill/or think that it can be killed,/you do not well understand/reality's subtle ways./It never was born; coming/to be, it will never *not* be./ Birthless, primordial, it does not/die when the body dies./Knowing that it is eternal/unborn, beyond destruction,/how could you ever kill?/And whom could you kill, Arjuna?/ Just as you throw out used clothes/and put on other clothes, new ones,/the Self discards its used bodies/and puts on others that are new./The sharpest sword will not pierce it;/the hottest flame will not singe it/water will not make it moist;/wind will not cause it to wither./It cannot be pierced or singed,/moistened or withered;it is vast/perfect and all pervading,/calm, immovable, timeless.” Stephen Mitchell (trans.), *BHAGAVAD GITA* 2.19-2.24 (New York: Three Rivers Press, 2000).

¹⁶⁷ Depending on what roles I am playing in life, how I perform my dharma will affect what karma I generate in this lifetime. Dharma is variously defined as “Duty; one's prescribed work; the duties assigned to one's caste; one's calling; virtue; righteousness; goodness; the pattern of right living; living in accord with the order of the universe; the divinely designed right order of things.” Barbara Powell, *WINDOWS INTO THE INFINITE: A GUIDE TO THE HINDU SCRIPTURES* 406 (Fremont, California: Jain Publishing Co., 1996). The most inspiring symbol of dharma is Rama, the hero of the epic Ramayana. Rama is the eldest son and rightful heir of King Dasaratha who is denied the throne because his

because it's just an illusion, and besides, what will be, will be,¹⁶⁸ I must treat my cat with compassion—she may be my dead grandmother. Things never look quite the same after a month in India.

On a recent summer trip to India, I took these two mundane questions with me: Why was I so obsessed with the Litchfield Law School, and what was so unsatisfactory about the Evidence course I

stepmother demanded that Dasaratha, in fulfillment of a promise he had granted her long ago, crown her own son and banish Rama. To ensure that his father may keep his pledge, Rama voluntarily goes into exile for fourteen years with his wife, Sita. (Sita displays her own wifely dharma by going with him: "I'm coming with you; my place is at your side wherever you may be . . .") R.K. Narayan, *THE RAMAYANA, A SHORT MODERN PROSE VERSION OF THE INDIAN EPIC* 56 (New York: Penguin Books, 1972). Rama tells everyone it is his duty as a son to obey his father, and reminds everyone the worth of a king's word: "My father's name is renowned for the steadfastness of his words. Would you rather that he spoke false? . . . I am thrice blessed, to make my brother the King, to carry out my father's command, and to live in the forests." *Id.* at 49.

¹⁶⁸ According to Hinduism, under the law of karma, we are reborn according to our past deeds: "Some souls enter into a womb for embodiment; others enter stationary objects according to their deeds and according to their thoughts." KATH UPANISAD, II 2. 7, S. Radhakrishnan trans. 638 (Delhi: Oxford University Press, 1953). (In theory, I suppose I could even end up reincarnated as my next Suburu.) If we have no understanding of the ultimate reality and remain mired in the illusory world of the senses, we will be continually born and reborn again in the endless cycle of samsara: "He, however, who has no understanding, whose mind is always unrestrained, his senses are out of control, as wicked horses for a charioteer/He, however, who has understanding, whose mind is always restrained, his senses are under control, as good horses are for a charioteer./He, however who has no understanding, who has no control over his mind (and is) ever impure, reaches not for that goal but comes back into mundane life./He, however, who has understanding, who has control over his mind and (is) ever pure, reaches that goal from which he is not born again." *Id.* at I, 3.5-8, at 624. In explaining caste, Kinsley summarizes the effect of one's karma on one's rebirth thus: "The philosophical ideas underlying the caste system are *karma*, the moral law of cause and effect, according to which a person reaps what he or she sows, and *samsara*, rebirth according to the nature of a person's *karma*. The basic idea is that what one is now is the result of all that one has done in the past, and what one will become in the future is being determined by all one's actions in the present. In effect, a person's present caste identity is one brief scene in an endless drama of lives that will end only with *moksha*, liberation from this endless round of birth, death, and rebirth." David R. Kinsley, *HINDUISM: A CULTURAL PERSPECTIVE* 6-7 (Englewood, California: Prentice-Hall, Inc., 1982).

Buddhism also accepted the doctrine of karma. Here a Buddhist sage answers King Menander's question about why men are not all alike: "some short-lived and some long, some sickly and some healthy, some ugly and some handsome, some weak and some strong, some poor and some rich, some base and some noble, some stupid and some clever? The Elder answers: "As the Lord said . . . Beings each have their own karma. They are . . . born through karma, they become members of tribes and families through karma, it is karma that divides them into high and low." From *Milindapanha*, quoted in Ainslie T. Embree (ed.), 1 *SOURCES OF INDIAN TRADITION* 108-109 (New York: Columbia University Press, 1988).

teach? How could two such random topics of internal conversation have anything to do with the status of my soul? Or, for that matter, with each other?

The spring before I had visited the museum at Tapping Reeve's house and the Litchfield Law School. It was my friend's idea, but I was happy to go—although not thrilled. My attention span for museums is notoriously short. Usually I am the first one to defect and head off for the museum gift shop, but this time my host ended up waiting for me. I found it difficult to leave the one-room schoolhouse on South Street that constituted Tapping Reeve's law school.

The only light in the room came from the front door and the small-paned windows, a diffuse, grey light. It was a late afternoon in March, and rain threatened. For some time, I sat there alone, perched uncomfortably in the din on a smooth, narrow, worn wooden bench, contemplating the ink wells of law students now many centuries dead. I found myself staring at Tapping Reeve's lectern, preparing myself to take notes, to write down every bit of law that Tapping Reeve had to impart. I had a strong sense that I had been in that room before. Not as a teacher, but as a student. It was a potent *déjà vu*.

Later, in India, I couldn't stop thinking about the experience, and wondered about my obsession. Perhaps it was just a failure of imagination, this kinship I felt with the Litchfield Law School. After all, Reeve and Gould were engaged in educating new lawyers. Children want to know about their counterparts in history; doctors are curious about healers from the past; poets wonder about poets of yore. So why not law professors? Many of us, when we first enter into a new historical period might be inclined to ask: What would it be like if I were living in north-west Connecticut in the late eighteenth century? And since in this instance I am a law teacher, when that question gets answered, I ought to move into the shoes of Tapping Reeve. It is not just about ego, although there is some of that. It has more to do with how our minds work. We like to move immediately into familiar territory when exploring the unfamiliar.

But maybe there was something more to it than that. I did not simply step into the shoes of the law teacher, Tapping Reeve.¹⁶⁹ I did not

¹⁶⁹ The only indication I ever had that I might have been Tapping Reeve in a former life had to do with his notorious absent-mindedness: "One day when walking along North Street on the way to a friend's house, he was seen distractedly carrying an empty bridle from which his horse had slipped away unnoticed. The Judge, in spite of this, went through the motions of fastening the bridle to the hitching post and entering the house, oblivious of the fact that the horse had wandered off." McKenna, *supra* note 6, at 160. That kind of behavior seems familiar, although I have never started a car that was not there.

automatically go up to the lectern at the Litchfield Law School; no, I sat down on one of the student benches instead. The familiar feeling was one of bending over, listening intently, writing the law down, word for word, with a quill pen in my right hand.¹⁷⁰ And here is where the questions about the status of my soul began to intrude on my obsession. If we were to take seriously the idea that reincarnation really works, the more likely scenario would be this: In one of my past lives, I had been a law student—an apprentice lawyer scribe—at Tapping Reeve's school. This means that the familiarity I experienced at the Litchfield Law School was nothing more than a fragment of memory triggered by a physical setting I had once known well. That fragment and encoded memory erupted, having somehow survived the transmigration of the soul.

This second metaphysical possibility puzzled me. Months later, sitting in the dark, under the eaves of a Tibetan guest house, wrapped in a shawl, listening to the monsoon rain on a tin roof, and the distant, deep rumble of thunder, I wondered: Why wasn't I obsessed with Litchfield's Female Academy? As a woman, wouldn't I more easily fit into the shoes of a student of Ms. Pierce's? Maybe as an educator, I could have been Sally Pierce herself, in an earlier incarnation. Looking at her made me doubt that. On my desk were portraits of Tapping Reeve and Sally Pierce. From the latter, a rather stern, solemn owl of a woman peered out at me, her face framed in white ruffles, with a set of fierce eyebrows arching beneath her white linen cap. Sally Pierce was all intelligence and Puritan determination. I saw nothing familiar, no residue of former self there. More than likely, I would have been one of her pupils, a plain, funny young woman whose parents had sent her to Litchfield to catch herself a lawyer husband. I wondered if I would have been interested in what was going on at the law school on the other side of the green? Surely I would not have been invited to participate, not for some time.¹⁷¹ How much more natural

¹⁷⁰ Quill pens were used throughout the seventeenth and eighteenth centuries. Kip Christensen & Rex Burningham, *TURNING PENS AND PENCILS* 4 (East Sussex: Guild of Master Craftsman Publications, Ltd., 1999). Feathers from ravens, peacocks, swans and geese were used. The "natural bend of the feather quill fitted well into the writer's hands. Feather quills provided a soft and responsive touch on the parchment that allowed the writer to write with a fluid and elegant motion on the sensitive animal skins." *Id.* Because of the rise in trade and the development of the arts and sciences during this period, geese were raised only for their valuable pen quills; a single goose could supply 10 to 12 good pen quill feathers. *Id.* The natural feather quill pen was replaced by the steel pen quill, invented in 1830 by Joseph Gillot; the steel pen could be mass produced, and in 1850, 180 million pens were produced in Gillot's steel pen factory in Birmingham. *Id.* at 5.

¹⁷¹ The first woman lawyer in the Americas arrived in the Colony of Maryland in 1638; Margaret Brent was involved in over 100 court cases in Maryland and Virginia, and was a major landowner as well. In 1869, Belle A. Mansfield became the first attorney to join

it would be to imagine myself a female pupil, as we parade up and down the main streets of Litchfield, laughing, arm in arm with some other ward of the Female Academy. But that is not what resonates with me. I find my former self sitting on a bench taking notes in Tapping Reeve's Law School. That must mean: I was a young man.

These ruminations led me to wonder about something else that has always troubled me. How is it that some people are drawn to certain historical periods and to certain places? The Judeo-Christian tradition has no way to account for this phenomenon; the theory of reincarnation does. When I was twelve years old, I read Gandhi's autobiography, and everything I could get my hands on about India. As soon as I could find a way to get back to India, I went, and will go, again and again. My second daughter has an inexplicable passion for early twentieth century Russia; someone else I know cannot get out of a monastery—or is it a nunnery?—in Ireland sometime in the ninth century. Historians, and others who muck around in the past, are often pulled towards a particular century or a particular place. The fact that we may have lived a particularly exciting, satisfying or otherwise memorable past life in that prior time, and in that place, may explain why, in this time and place, we feel drawn to it now.

Maybe those scholars in my footnotes had also felt an inexplicable connection to the Litchfield Law School—Marian C. McKenna and John H. Langbein, for instance—perhaps for the same reason. Maybe we were all of us at one time students of Tapping Reeve and James Gould, and that what we seek in our study of the Litchfield Law School is some sort of reunion with the past, a past that we can now only vaguely sense, but that is still very much an integral part of us. Maybe that is true of all who love history—that what passes for the study of mankind's past is in fact a search for one man's, one woman's past. Again, there is that question of the transference of—or perhaps the persistence of—gender.

We don't even know what we are looking for most of the time. No wonder we can't seem to find it.

The other mundane question that I brought with me to India on this one summer was my Evidence class. I didn't like the way it had gone this

the licensed bar in the United States, having passed the Iowa state exam after informal study. In that same year, Lemma Barkaloo became the first woman law student in the nation, but did not complete her degree at Washington University in St. Louis, choosing instead to take the Missouri bar after one year of study; she passed, began practicing in 1870, and died of typhoid fever at age 22. In 1870, Ada Kepley became the first woman to earn a formal law degree from Union College of Law in Chicago, now known as Northwestern University. Women's Legal History Biography Project, Stanford Law School (web-site).

past time around. One might think that it would be easy enough to keep in different compartments, one's preoccupation about an Evidence course and one's wild ruminations about a recycled soul and Tapping Reeve's Litchfield Law School. It would be comforting to know that some part of my life stay in its box identified with a familiar yellow stickum: A Worry About Ineffective Teaching.

But oh, no. This second metaphysical possibility about reincarnation began to dominate my mental horizon, and I began to wonder if perhaps the apprentice lawyer scribe I used to be might be trying to communicate with me. He didn't like the way my Evidence course had gone this past year either. In fact, his chronic complaints were the source of my dissatisfaction. Through my eyes, he had seen my Evidence students with their laptops, tap tap tapping, click click clicking every single word I had uttered, thinking that they had captured the law—and he knew that it was not a good way to learn. That's not how they did it back in his day, or in your day either, he wanted to remind me.

If I could remember sitting on a bench at the Litchfield Law School at the end of the eighteenth century, then wasn't I somehow sharing his consciousness? Is that perhaps the explanation for schizophrenia and multiple personalities? What passes for the voices inside one's head, or for more than one person inhabiting a single body, is in fact some kind of glitch in the mechanism of amnesia as the soul migrates from life-time to life-time? By sitting on that bench, had I inadvertently unlocked the door to my forgetting, and become aware of this young man's presence, this apprentice lawyer scribe I once had been at Tapping Reeve's Litchfield Law School? If that were the case, then all I could say for certain was this: We neither of us liked the way Evidence was going.

PART II: A DIATRIBE IN WHICH WE DEPLORE TAKING NOTES WITH LAPTOPS IN THE LAW SCHOOL CLASSROOM¹⁷²

Let me begin by describing what takes place in a large lecture class in our law school. Just to orient you as to time: We are in the middle of the first decade of the twenty-first century. It is Monday morning, and over one hundred students are seated in the law school auditorium.

¹⁷² I realize that there are those who will discount this entire second section as the clichéd ramblings of a Baby Boomer (born between 1943-1960) about the work ethic and cognitive practices of those Generation Xers (born 1961-1980), and those of my current students the Generation Nexters (born between 1980-2000) See Ron Zemke, Claire Raines & Bob Filipczak, *GENERATIONS AT WORK: MANAGING THE CLASH OF VETERANS, BOOMERS, XERS, AND NEXTERS IN YOUR WORKPLACE* 9-27 (New York: American Management Association, 2000)[hereinafter *GENERATIONS AT WORK*].

Professor X stands at the front of the room, his stack of notes propped up on the lectern. A dapper man, sporting a well-tailored grey pin-stripe suit and a bow tie, Professor X wears a cordless microphone attached to his lapel and paces back and forth in the front of the room while the few stragglers make it to their seats. At 9:30 on the dot, in crisp, perfectly formed, complex sentences—some with semi-colons—he begins to lecture on the niceties of our state’s civil practice. He interjects his presentation with a series of carefully planned hypotheticals. (My office is located behind the auditorium, so I have heard the hypotheticals repeated time after time, in just the same intonation, the details just the same.) Nameless, faceless Plaintiff files a petition; nameless, faceless Defendant responds. Something happens in the course of litigation, and a legal question arises—what to do? In his script, Professor X has the answer.

After each sentence, Professor X pauses until the tap tap tapping, click click clicking of the keys of one hundred laptops have caught up with him. It is an odd sight: watching over a hundred identical manuscripts being word-processed simultaneously. The lecture notes that Professor X relies upon, much like the notes of Tapping Reeve and James Gould, are not in any published form. If you don’t get them from his lecture in class, then you don’t get them at all.¹⁷³ The goal of each and every student is the same: to produce a document that exactly duplicates Professor X’s notes.¹⁷⁴ No one ever asks a question.

This dictation passes for an education?¹⁷⁵ I harrumph to myself. No one in the room is disturbed in the slightest, except for those students who cannot type fast enough to make an accurate and thorough transcription. I have always thought that being disturbed is a prerequisite

¹⁷³ Two legal educators, succumbing to student entreaties to provide all the text to their in-class presentations, discovered that once in possession of all the important words, there was a resulting “increase in student passivity and a decrease in attendance and preparation.” Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. Legal Educ. 551, 559 (2004)[hereinafter Caron & Gely].

¹⁷⁴ There are many student notebooks from Tapping Reeve’s law school available for study in The Litchfield Historical Society, and several dozen other students’ notebooks accessible in libraries across the United States. See Siegel, *supra* note 117, at n. 163, 2012. Siegel finds that “the text remains absurdly consistent across notebooks but the page numbers differ.” *Id.* I fail to see the absurdity. That was the task at hand: to transcribe verbatim the words spoken by Reeve and Gould so that they could be taken home in the notebook to serve as a law office source of authority.

¹⁷⁵ In other terms, I might complain that the student is not engaged in active learning. “Active learning recognizes that, during classroom time, students should be engaged in behavior and activities other than listening. Active learning requires students to undertake higher-order thinking, forcing them to engage in analysis, synthesis, and evaluation.” Caron & Gely, *supra* note 173, at 552.

for learning. I associate learning with demolition; a flash of insight is like a wrecking ball. With all that dismantling and dust, it's a dirty, destructive, disturbing process, or it ought to be. But no one is registering any distress over the possibility that auditorium walls might tumble. Indeed, no walls are tumbling down. Sheet rock—prefab sheet rock from Home Depot—is going up. The only noises in the room are Professor X's voice, and the tap tap tapping, click click clicking of the keys of a hundred laptops.

But my harrumphing is hypocritical. I cannot really say that I am offended by Professor X's pedagogy, at least not at this bend in the river. This course comes at the very end of law school, and is in many ways meant to be a review for the bar exam. Indeed, that is what Professor X does so very well: He summarizes settled law in a succinct fashion, presumably settled law that the students have already wrestled with and mastered—settled law they need to know for that big test of settled law. This isn't the time or place for a wrecking ball.

No, it is not Professor X's words that I have problems with, it's how the students treat them: His words become the subject of capture. It is as if Professor X were standing at the front of the auditorium, spewing white cabbage butterflies from his mouth. He breathes in deeply and exhales to the very bottom of his lungs, and as he does, a cluster of fluttering, animated bits of tissue paper pour out into the cavernous auditorium. He breathes in deeply and exhales again, and another trembling white cloud flows out into the room. With each exhalation, the students' voile nets are poised in the auditorium's stagnant air, ready to swoop down on the butterflies, to stop their wings from beating, to still their frantic, silent flight. With the careful aim of skilled predators, they capture beneath their nets his spoken words. Once trapped inside the voile prison, the words become inert, as inert as specimens in a butterfly collection, pinned to a corkboard with their wings spread apart in a simulacrum of life. The words become as inert as the sentences that nestle in the notes on the lectern that Professor X has read from year after year; indeed, the words now captured in sentences on the laptop screens are identical to Professor X's words. That was, after all, the purpose of the transmission.

This might be appropriate for a review course in the state's civil practice, but not for Evidence. I hate it when my words in Evidence become the subject of capture. Perhaps I am a Luddite, but I do not like the use of laptops in my classroom.¹⁷⁶ Their use promotes the students'

¹⁷⁶ I prefer Mark Slouka's characterization: "My gripe, I should point out, is not so much with the technologies themselves as with the general lack of concern over the consequences that many new applications may come to have. I'm a humanist, not a

preoccupation with capturing each and every word. I am amazed that they assume that because I am talking, I am lecturing. I will speak a sentence, and gaze out at a sea of young people, all of whom are staring at their computer screens. In unison, they all go tap tap tap tapping, click click clicking, nodding intently at no one as they insure that each and every syllable that I have uttered appears on their screen. I have even had students stop me if I am talking too fast for the dictation, and request that I play back the last few minutes—and then be annoyed if there is even the slightest deviation, as if I were an faulty DVD player that did not know how to jump back to the preceding scene.

The only benefit of this peculiar pedagogical situation: No one looks at the teacher much anymore. This suits me just fine. Day after day, year after year, it becomes a burden to be the only three-dimensional object in the front of the room. Because they are bored, students scrutinize the individual who stands in the front, and there are days when I wake up and moan to myself, “If only I could teach from inside a brown paper bag, or from underneath a desk.” But the phenomenon of laptops in the classroom, and the pressure to capture the teacher’s utterances on the screen, has resulted in my not being looked at much anymore. This has coincided with my perception that as I grow older, I grow increasingly invisible. Once I hit fifty, I felt as if I were being slowly erased from the cartoon. First, I was just smudged around the edges, but lately, as I creep towards the next decade, I feel more and more *not there*. This can be a great help to someone with Buddhist aspirations; it is much easier to shed the self when no one else recognizes that you are there either.

But aside from this curious side-effect—not being looked at much anymore—I do not approve of the use of laptops in my Evidence class.¹⁷⁷ The students are somehow under the misapprehension that their job is to capture my every word, just as they do in Professor X’s lecture. But capturing my every word has little or nothing to do with learning how to use the rules of evidence. Those rules are by and large already captured in the rule book that I give them on the first day of the semester. If a student wants to know how the hearsay rule is formulated, then he

Luddite.” Mark Slouka, *WAR OF THE WORLDS: CYBERSPACE AND THE HIGH-TECH ASSAULT ON REALITY* 9 (New York: BasicBooks, 1995)[hereinafter Slouka].

¹⁷⁷ Almost all entering law students by the early years of this century own a computer and are computer literate. Rogilio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 Santa Clara L. Rev. 1 (2002). In 1996, 67% of the author’s students at Washburn owned a computer, and 80% regularly navigated the Internet; by 2001, 95% of entering students at DePaul, the author’s new law school, owned a computer, and nearly all navigated the Internet. *Id.* at 20.

should open up the rule book and check out Rule 801. I don't care if he captures the rule on his laptop, or whether he memorizes it, or spits it back at me verbatim on an exam. For all I care, he may—and is encouraged to—bring the rule book to the exam, and look up the rules when he needs them. What I do care about is that he understands how the hearsay rule works in a trial, that he learns both when and how to apply the hearsay rule, and then when and how to apply its exceptions— all of which are also laid out in the rule book. No one needs to type the law of evidence into their computers. The law of evidence is already captured.

Most of the sentences in a trial, or in an Evidence class, only have meaning within the context of a certain set of facts; they are ephemeral, manipulable, and lack significance outside the boundaries of who did what to whom. Whether a bit of testimony has any relevance depends upon the proposition the offerer of the evidence seeks to prove, and that proposition is dependent in turn on the substantive law that applies in the case. If a certain level of *mens rea* is required in order to prove that the homicide is first degree murder, for example, then the proposition might be: This defendant sitting here in the courtroom hated the victim and therefore had a motive to kill him in a heinous fashion. Or the proposition might be related to the legal requirement of causation: This defendant sitting here in the courtroom was the person who actually killed the victim in a heinous fashion.

The point is this: A student may be able to accurately define relevance, and still be totally unable to determine whether a certain piece of evidence has relevance. To do that requires an understanding of the concept of relevance. Memorizing Rule 401 won't help the student acquire that understanding, but learning how to formulate those ephemeral, manipulable, and contextually bound sentences that belong to the certain set of facts will.¹⁷⁸ The task has nothing whatsoever to do with

¹⁷⁸ Memorization, rarely discussed in law school, is often required to do well on exams, but in Evidence, memorization won't get you all that far. Still, it is the strategy most students have learned to use on tests: "I know that material so well," an A student exclaims, "I could take that exam in my sleep." Most students still prepare by memorizing as many facts as they can from required reading and class notes. And many, if not most, teachers insist that students know key information as well as they know the backs of their hands." Ellen J. Langer, *THE POWER OF MINDFUL LEARNING* 69 (New York: Addison-Wesley Publishing Co., 1997). Langer defines memorizing as "a strategy for taking in material that has no personal meaning. Students able to do it succeed in passing most tests on the material, but when they want to make use of that material in some new context they have a problem." *Id.* In Evidence, the context is always new since each and every trial presents a new set of facts. Not only that, memorization is dull: "Higher levels of student boredom occur in schools that emphasize memorization and drills." *Id.* at 71. Better for the teacher to "provide opportunities for the development of knowledge through flexible understanding of course material." *Id.* "Memorization remains widespread because teachers can easily

capturing the words of the teacher, so all that tap tap tapping, click click clicking of the computer keys is for naught. The student would do better to put his computer away, and actively participate in class. Still another danger lurks from the use of the laptop in the classroom—it creates the illusion that the student has understood the words, just because he has captured them.

Donald M. Norman's work provides a respectable conceptual framework within which to gripe about the use of laptops by students in my Evidence class.¹⁷⁹ Norman distinguishes between two types of cognition: experiential cognition and reflective cognition.¹⁸⁰ Experiential cognition "leads us to a state in which we perceive and react to the events around us, efficiently and effortlessly."¹⁸¹ Experiential cognition involves "perceptual processing"¹⁸² that is reactive, almost reflexive.¹⁸³ In the experiential state, the mind is "externally driven, captured by the constant arrival of a barrage of sensory information."¹⁸⁴ When we play a video game, for example, or watch television intensely, or visit a science museum with "fancy, sexy exhibits. Push a button, watch something move"—we are in the experiential mode of cognition.¹⁸⁵ Games, especially action games, "are stimulating

grade academic performance based on memorized material; people believe that certain "basics" must be learned before other areas can be tackled; the notion that there are basic truths in the world that are accepted by everyone creates a sense of stability; and, teachers are teaching in the same way they were taught—through memorization." *Id.* at 73. I still think the dirty little truth about law school remains: there are times when the student just has to memorize.

¹⁷⁹ Donald A. Norman is the founding Chair of the Department of Cognitive Science at the University of California, San Diego. Donald A. Norman, *THINGS THAT MAKE US SMART: DEFENDING HUMAN ATTRIBUTES IN THE AGE OF THE MACHINE* (New York, Addison-Wesley Publishing Co., 1993)[hereinafter Norman].

¹⁸⁰ Norman warns about the dangers of dividing something as complex as human cognition into only two categories; he makes no claim that the two modes of cognition "capture all thought, nor are they completely independent: It is possible to have a mixture, enjoying the experiential mode while simultaneously reflecting upon it." *Id.* at 16. Still Norman focuses on these two methods because much of our technology "seems to force us toward one extreme or the other." *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 26.

¹⁸³ "The human perceptual system is well suited for the experiential mode, hence our excellent abilities at sports and other physical activities, our expert driving and piloting of aircraft. Experiential mode plays important roles in the routine aspects of otherwise reflective tasks, such as in some phases of chess games where the perceptual recognition of the game state can lead to a well-learned, pattern-driven response without deep reflection or planning." *Id.*

¹⁸⁴ *Id.* at 35.

¹⁸⁵ *Id.* at 39. Norman points out that the experiential mode is most fully experienced when the person is himself actively engaged in doing the activity, "but it can also be appreciated vicariously, watching or reading or imagining." *Id.* at 17.

and compelling because they are event-driven activities, always presenting some new challenge to the player, maintaining attention by continual new stimulation, new challenges.”¹⁸⁶

Reflective cognition, in contrast to experiential cognition, is “slow and laborious,” and takes time.¹⁸⁷ It requires periods of quiet and of minimal distraction; the mode is that of “concepts, of planning and reconsideration.”¹⁸⁸ Reflective cognition also tends to require the aid of external supports such as “writing, books, computational tools—and the aid of other people,”¹⁸⁹ and these external supports must all be “tuned to the task at hand if they are to be maximally supportive”¹⁹⁰ Tools for reflection “must support the exploration of ideas. They must make it easy to compare and evaluate, to explore alternatives.”¹⁹¹ This reflective mode is “essential for restructuring . . . the hard part of learning, where new conceptual skills are acquired.”¹⁹² One of the problems confronting educators is how to encourage their students to “want to do the hard work that is necessary for reflection.”¹⁹³ This is where entertainment, which exploits the experiential mode, can be a motivation to engage in reflective cognition. “Once people are curious about the questions, then they are stimulated and willing to do the work involved in pursuing the answers.”¹⁹⁴

Neither mode of cognition—the experiential or the reflective—is superior to the other. Both are needed; they simply differ in how they work. Both require tools appropriate for the mode of cognition; if the tools are designed inappropriately, dangers may arise. For example, one might be engaged in the experiential mode when the situation calls for the reflective mode; similarly, one might be reflecting when one should be experiencing. Of all the perils, Norman thinks this is the greatest: that “of experiencing when one should be reflecting. Here is where entertainment takes precedence over thought. Worse, one can believe that the experiential mode has substituted for independent, constructive

¹⁸⁶ *Id.* at 35.

¹⁸⁷ *Id.* at 25.

¹⁸⁸ *Id.* “Reflection is best done in a quiet environment, devoid of material save that relevant to the task. Rich, dynamic, continually present environments can interfere with reflection. These environments lead one toward the experiential mode, driving the cognition by the perceptions of event-driven processing, thereby not leaving sufficient mental resources for the concentration required for reflection.” *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 26.

¹⁹² *Id.* at 30.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

thought, for reason and reflection.”¹⁹⁵ This is what worries me about my Evidence class.

With the almost universal use of laptops as note-taking devices in law classes, capturing each and every word the professor utters becomes a game.¹⁹⁶ By taking dictation, the student enters into the experiential mode of cognition. He is tuned to the task at hand. He is in the midst of play, and responding automatically to the reception of sense data: the professor drones, and the student types. The student has no opportunity to think about what is being said because he is totally absorbed in the task of getting the sentences onto the screen.¹⁹⁷ Perhaps that was true of taking notes by hand in my day as well, or the note-taking process that took place during the lectures given by Tapping Reeve and James Gould at the Litchfield Law School. But here is the crucial difference. Once today’s student has typed the sentences onto the screen, and pushed the SAVE button, an act of memory happens.

¹⁹⁵ *Id.* at 27.

¹⁹⁶ I am confining my complaints to the use of laptops in the classroom to take sets of comprehensive, verbatim notes. There are many other uses of computers in legal education that are laudable, such as the use of classroom computer projections, the accommodation of disabled students, the ability to access information that is not readily available at the researcher’s institution, the possibility of multi-party discussion with colleagues around the world, communication with students outside the classroom, and long-distance learning, among others. See Anna William Shavers, *The Impact of Technology on Legal Education*, 51 J. Legal Educ. 407, 408-409 (2001); Charles D. Kelso & J. Clark Kelso, *How Computers Will Invade Law School Classrooms*, 35 J. Legal Educ. 507 (1985); Paul F. Teich, *How Effective Is Computer-Assisted Instruction? An Evaluation for Legal Educators*, 41 J. Legal Educ. 498 (1991); Kevin D. Ashley, *What I Told the Law and Computers Association of Japan About Information Technology in Law School Education*, 62 U. Pitt. L. Rev. 545 (2001). Using a word-processor to edit written work is also extremely liberating. See Patricia Marks Greenfield, *MIND AND MEDIA: THE EFFECT OF TELEVISION, VIDEO GAMES, AND COMPUTERS* 137-138 (Cambridge: Harvard University Press, 1984)[hereinafter Greenfield].

¹⁹⁷ The laptop also precludes the typist from drawing diagrams that the professor might put on the blackboard: “Tapping their laptop computers, kids can’t draw diagrams with a pencil. Instead, they use a computer drawing program—which wastes time and distracts them from the concept at hand.” Clifford Stoll, *HIGH TECH HERETIC: WHY COMPUTERS DON’T BELONG IN THE CLASSROOM AND OTHER REFLECTIONS BY A COMPUTER CONTRARIAN* 48 (New York: Doubleday, 1999). Stoll also rants (and he is inclined to rant, if not rave) against teachers providing handouts made available over the internet. *Id.* His message is not far off from mine, however: “Technology makes learning fun. Just one problem. It’s a lie. Most learning isn’t fun. Learning takes work. Discipline. Commitment, from both teacher and student. Responsibility—you have to do your homework. There’s no shortcut to a quality education. And the payoff isn’t an adrenaline rush, but a deep satisfaction arriving weeks, months, or years later. Equating learning with fun says that if you don’t enjoy yourself, you’re not learning.” *Id.* at 12. Here Stoll and I part ways: I actually love to study, research, and write—and have been known to experience an adrenaline rush.

But it is the computer that remembers the words, not the student. Furthermore, that act of digital memory means that the student will have no need to re-record the words again;¹⁹⁸ he will have no opportunity to meditate upon those words, to enter into the reflective mode of cognition that the slow process of making an outline by hand entails.¹⁹⁹ By capturing the words of the professor, the mode of cognition is solely experiential; no restructuring of thought, no reflection takes place. The student ends up with a full set of typed notes, but he never feels the impulse to delve into the dictionary or to name his cat *Replevin*. The law never becomes his own. It stays outside his skeleton; it barely enters his mind.²⁰⁰

¹⁹⁸ With word-processing on the computer, the writer sees his "initial product on the video screen rather than on paper. Because the text you create is in the computer's memory, as well as on the screen, you can make changes electronically, without any need for physically erasing or crossing out. You can even 'cut and paste' electronically, moving words, paragraphs, or pages from one part of the text to another with a few key-strokes... You can print out a given piece of text in a different format without retyping it. Similarly, you can revise the text without retyping, by merely going back to the original version, saved on tape or disk, and electronically revising it." Greenfield, *supra* note 196, at 138.

¹⁹⁹ Just to demonstrate that I truly am a dinosaur and that students know what is best for them, in a study of whether keyboarding or handwriting an exam enhances a final grade, it was discovered that students with LSAT score at or above the law school's median keyboarded more often than did students with scores below the median; in short, stronger students use computers. Kif Augustine-Adams, Suzanne B. Hendrix & James R. Rasband, *Pen or Printer: Can Students Afford to Handwrite Their Exams?*, 51 J. Legal Educ. 118, 124 (2001). The authors, however, admitted that "to the degree that standardized test scores correlate positively with socioeconomic status, it may be that those with lower LSAT scores keyboard less frequently because they are less likely to have had access to computer technology in their homes and schools." *Id.* at 129. The authors also cited to considerable authority that "the quality of a student's handwriting affects her grade." *Id.* at 119. (Interestingly enough, that advantage accorded papers with high-quality handwriting "disappears when the grader herself has poor penmanship." *Id.* at 119-120.)

²⁰⁰ Or to sound more scientific, we could use the language of memory, and say that the law may temporarily enter his short term, or primary, memory, but is never organized and placed into long-term or secondary memory. The two terms, primary and secondary memory, were coined by William James. William James, 1 *THE PRINCIPLES OF PSYCHOLOGY* 643-647 (New York: Dover Publications, Inc., 1950). "The stream of thought flows on; but most of its segments fall into the bottomless abyss of oblivion. Of some, no memory survives the instant of their passage. Of others, it is confined to a few moments, hours, or days. Others, again, leave vestiges which are indestructible, and by means of which they may be recalled as long as life endures." *Id.* at 646. Some cognitive scientists have opined that there are not "two independent mnemonic processes," propounding a unitary theory of memory. Nancy C. Waugh & Donald A. Norman, "Primary Memory," in Donald A. Norman, *MEMORY AND ATTENTION: AN INTRODUCTION TO HUMAN INFORMATION PROCESSING* (New York: John Wiley & Son, 1976) [hereinafter Norman II]. Norman believes that there are three forms of memory: sensory short-term storage (such as visual short-term memory), short-term or primary memory, and long-term memory. *Id.* at 113.

Sometimes mankind makes large leaps forward because of new technologies. With the widespread use of computers, we are in the middle of such a leap, and my generation has been left far behind.²⁰¹ Some of us will never catch up, explaining how someone like me might feel more at home with the education received at the Litchfield Law School—an education based on listening, writing, reading, and writing again. Reading and writing were the central activities in my legal education, and in the legal education of the students of Tapping Reeve.

But when I look at my own law students, I despair. More and more, I find that my students do not like to read and write, and in some instances, their language skills are woefully inadequate.²⁰² They are more adept at engaging in a modernist version of the oral tradition. If I talk a bit of law at them, they quickly apprehend, but when we read together in class, the level of comprehension takes a nose dive. When I ask them to read a rule from the Federal Rules of Evidence, or part of a case, they sometimes stagger around the sentences with no sensitivity to syntax. Particularly when we look at a statute, I may ask them to take a provision apart in class, and discover that they are unable to name the parts of speech. How, I wonder, can they possibly understand who is doing what to whom in an appellate decision if they cannot distinguish among the subject, the verb, and the direct object?²⁰³ Their

²⁰¹ The generation before my own is even further behind. Writing in 1983, in a book whose subject was *Writing with a Word Processor*, William Zinsser makes an argument in favor of the physicality of writing: “I belong to a generation of writers and editors who think of paper and pencil as holy objects. I taught myself to type at the age of ten and ever since have been banging out words onto paper, and then crossing them out and penciling other words in, and then retyping what I had revised. The feel of paper is important to me. I have always thought that a writer should have physical contact with the materials of his craft—that he should be able to spread out his notes and his early drafts and to work on them with his sacred pencil.” William Zinsser, *WRITING WITH A WORD PROCESSOR* vii (New York: Harper & Row, 1983). For an insightful description of the difference between those who were raised on printed text and those who were raised on-line, see Diane R. Donahoe, *Bridging the Digital Divide Between Law Professor and Law Student*, 5 Va. J.L. Tech. 13 (2000)[hereinafter Donahoe].

²⁰² Someone might suggest that since I teach at a fourth tier law school, I am merely applying an elitist value system to students who have entered “law school with lesser skills and less developed learning strategies” Michael Hunter Schwartz, *Teaching Law By Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 San Diego L. Rev. 347, 354 (2001). By teaching in Touro’s Summer Program in India, however, I have had an opportunity to teach students from a wide range of law schools, from the first to the fourth tier—and I stand firm behind my generalizations.

²⁰³ There has been a trend in the professional education establishment against teaching language conventions. Only 55% of education school professors say they would require students to demonstrate that they know proper grammar, punctuation, and spelling before receiving a high school diploma. William J. Bennett, Chester E. Finn, Jr. & John T.E.

vocabularies are lean and mean, and not infrequently I suspect they have no idea what I am saying—even though they are typing frantically away, capturing my syllables, but not my meaning. Every once in a while, I feel perverse and will stop and ask: Who knows what the word I just used means? A few might know, but most do not, and if I had not stopped to ask the question, they would never know the answer that I will force upon them. Often the same cavalier attitude is shown towards their writing. It is not uncommon for me to find blatant instances of plagiarism on a student research paper because the author was under the misconception that writing consisted of a well-seamed exercise in “cut and paste” from on-line sources.²⁰⁴

This ignorance, sometimes verging on illiteracy in one’s native language, is profoundly disturbing to me. I am, after all, describing future lawyers, and words are the lawyer’s stock and trade.²⁰⁵ This is a select group of young people who are being trained to help others through the medium of language, to write opinion letters, memoranda, appellate briefs, to see that contracts are made, property transferred—and in those rare moments of grace, that justice is done.²⁰⁶ This unique genre

Cribb, Jr., *THE EDUCATED CHILD: A PARENT’S GUIDE FROM PRESCHOOL THROUGH EIGHTH GRADE* 166 (New York: The Free Press, 1999)[hereinafter Bennett]. The National Council of Teachers of English says, “the power of language and the rules that it follows are discovered, not invoked . . . Language instruction is developmental rather than remedial.” *Id.* My problem is that too many of my law students have not yet discovered how a sentence is formed.

²⁰⁴ There has been speculation that on-line sources will make books obsolete altogether. See D.T. Max, “The End of the Book” *Atlantic Monthly* 61 (Sept. 1994). One view is that the “book will become the equivalent of the horse after the invention of the automobile or the phonograph record after the arrival of the compact disc—a thing for eccentrics, hobbyists, and historians. It will not disappear, but it will become obsolete. *Id.* at 67.

²⁰⁵ I am probably being chauvinistic here. Lawyers don’t have a monopoly on the need for precise language. Zinsser points out that good writing is necessary for a wide range of professions, including those in the sciences, technology, medicine, business and finance. *Id.* at ix. A chemist, for example, must review the literature, be able to explain how an experiment was done before, what to expect in the lab, and how to plan his or her work—all requiring the precise use of language. As one science teacher described his writing assignment, “Having to plan their work helps them to write it up as they go along, so that writing becomes woven through the entire class and lab experience. If they fall into a pitfall they can explain how they got there, and that’s education. The process also enabled *me* to see how their minds worked.” William Zinsser, *WRITING TO LEARN* 46 (New York: Harper & Row, 1988).

²⁰⁶ William Zinsser also points out that much of the world’s business (including the law) is conducted via email. William Zinsser, *ON WRITING WELL* xi (New York: HarperCollins Publishers, 2001) Because email is a spontaneous medium, and not “conductive to slowing down or looking back . . . a badly written message can cause a lot of damage.” *Id.* Now more than ever, it is necessary for workers to be able to write sentences in emails that are “tight and logical and clear. The new information age, for all its high-tech gadgetry, is

of word smithery requires the best tools and the highest level of skill by the lawyer who wields them. The precise words of the law must be chosen slowly, and with intention.

The operative words here are “slowly, and with intention.” I worry that my students’ many distractions, all made available through recently developed technologies, make it impossible for them to do anything slowly, and with intention—to maintain the sustained level of concentration needed to acquire a genuine understanding of the law they are supposedly mastering. Perhaps the fact I live with adolescents has colored my perception, but to me, they all seem to suffer from ADHD.²⁰⁷

While my own children are avid readers,²⁰⁸ I am distressed by the behavior I witness when they are in the process of writing a paper. She—pick a girl, any girl—will sit at the computer where music is streaming softly into her elbows from on-line. There will be a small instant message box that keeps popping up on the computer screen from which she reads and answers short sentences from a multitude of friends who are all sitting at home at their computers doing the same thing.²⁰⁹ She may, if

finally, writing-based. E-mail, the Internet and the fax are all forms of writing, and writing is, finally, a craft, with its own set of tools, which are words. Like all tools, they have to be used right.” *Id.*

²⁰⁷ ADHD stands for *attention-deficit/hyperactivity disorder*. Russell A. Barkley, *TAKING CHARGE OF ADHD: THE COMPLETE, AUTHORITATIVE GUIDE FOR PARENTS* 19 (New York: The Guilford Press, 2000)[hereinafter Barkley]. It is a “developmental disorder of self-control. It consists of problems with attention span, impulse control, and activity level.” *Id.* I am being facetious when I suggest that all individuals under the age of 25 have ADHD. The fact is, conservatively estimated, 5-8%, or more, of schoolchildren have ADHD; at least one, or even two children with ADHD are in every classroom throughout the United States. *Id.* at 20. It was thought that ADHD was an American myth, since people believe it to be only diagnosed in the United States. *Id.* at 23. The fact is that ADHD is a universal disorder found in every country studied so far, although because the United States is the leader in the amount of research conducted on childhood mental disorders, it is “therefore likely that the United States at times comes to recognize disorders and develop treatments for them long before other countries do.” *Id.* The classic symptoms: inattention and poor ability to stay on task to completion; impulsiveness and the inability to think about the results of one’s actions; over-activity or frequent restlessness. *Id.* at 27.

²⁰⁸ My daughters are Generation Next (born between 1980-2000). See *GENERATIONS AT WORK*, *supra* note 172. This means that they read more than the Generation X before them. They are also “used to learning in a highly interactive way. If you went to school in classrooms where kids sat in straight rows of orderly desks and you’ve been assuming that picture still exists, think again. Kids spend lots of time working on projects in teams. To the proverbial ‘man from Mars,’ today’s classroom looks like barely contained chaos.” *Id.* at 244.

²⁰⁹ I know that my description is not unique because I read of others who have teenagers sitting on computers at home, ostensibly doing their homework. Instant messaging (IM) exists in time differently from other computer technologies. David Weinberger, *SMALL PIECES LOOSELY JOINTED* 61 (Cambridge: Perseus Publishing, 2002). Both IM conversants

her mother is not around to shut it off, also have the television on—that would certainly be her preference. No books are in evidence. Instead, she is garnering her information from the computer, moving back and forth from various on-line encyclopedias and other sources that are minimized at the bottom of her screen. There may well be a sister calling out from another room, asking for permission to borrow an article of clothing for tomorrow morning. And then her cell phone rings.

She is juggling a multitude of sources of information and tasks all at once: music, television, instant messaging, telephone, encyclopedias, her sister's supplications, and her mother ranting and raving in the background about too many distractions.²¹⁰ Whatever attention she brings to bear upon her research paper is constantly interrupted, and she leaps from one thought to another with great agility and speed. I marvel at her ability to stop on a dime, change direction, attend to something else competing for her attention, stop on another dime, and change direction again, sometimes back to the thought she was originally working on, if she can remember what that was, or on to something new.²¹¹ When I ask

are online at the same time, and both type simultaneously, meaning that IM conversations frequently have a “two-steps forward, one-step-back structure as one person responds to the previous comments while a new comment is being entered.” *Id.* at 61-62. (This also means that you cannot do drafts of an IM message as you can with an email.) “In addition to these two temporal characteristics—the simultaneity of responses and the immediacy of the writing—you will be immediately struck by one more way that time shapes IM if you watch a teenager like our daughter. While using a computer to do her homework, our daughter usually has five or six IM windows open among which she caroms in the intervals between message and response.” *Id.* at 62.

²¹⁰ Weinberger is much more cheerful than I about how distracting the Web can be: “It is not an accident that the Web is distracting. It is the Web’s hyperlinked nature to pull our attention here and there. But it is not at all clear that our new distractedness represents a weakening of our culture’s intellectual powers, a lack of focus, a diversion from the important work that needs to be done, a disruption of our very important schedule. Distraction may instead represent our interest finally finding the type of time that suits it best. Maybe when set free in a field of abundance, our hunger moves us from three meals a day to day-long grazing. Our experience of time on the Web, its ungluing and regluing of threads, may be less an artifact of the Web than the Web’s enabling our interest to find its own rhythm. Perhaps the Web isn’t shortening our attention span. Perhaps the world is just getting more interesting.” *Id.* at 69. If it is a Friday night, and I have googled the definition of a word, and stagger away from the computer two hours later, having entered and exited a collage of sites about history, politics, literature, and art—something I am wont to do on a Friday night (it’s my idea of fun to go on a “reference high”)—then I agree with Weinberger. If we are talking about the sustained study and mastery of detailed, technical and complex legal material, then I do not.

²¹¹ John Seely Brown is more hopeful about what he calls the adolescent’s “multiprocessing”: “People my age think that kids who are multiprocessing can’t be concentrating. That may not be true. Indeed, one of the things we noticed is that the attention span of the teens at PARC—often between 30 seconds and five minutes—parallels that of

her, "How can you work with the music on?" Or "How can you be writing a paper and instant messaging at the same time?" She just snaps her gum and shrugs her shoulders. She doesn't understand how it is that I cannot do these things. Indeed, I have even had a daughter say once to me, "I can't work in silence when a lot of things aren't going on. I'm used to working this way. Leave me alone. You do things your way, and I'll do things mine." So, I do leave her alone, not because I want to, but because I have to. Even my youngest, who is now in high school, is too old to be ordered around by her mother. Her argument about having to do things her way always shuts me up.

Things are different for these children, I have to remind myself. For one thing, they grew up learning the alphabet from *Sesame Street* on television, in a medium, unlike print, that "is often rapidly paced and always in continuous motion."²¹² Studies have shown that restricting a child's television viewing "decreases intellectual impulsiveness and increases reflectivity, as measured by a standardized test."²¹³ Another

top managers, who operate in a world of fast context-switching. So the short attention spans of today's kids may turn out to be far from dysfunctional for future work worlds." John Seely Brown, "Growing Up Digital: How the Web Changes Work, Education, and the Ways People Learn," *Change* 13 (March/April, 2000).

Another set of authors warns us not to accuse the Generation X (born 1960-1980) of having little-to-no attention span; they merely process "work in a very different way, having learned how to "parallel process" (a computer term coined by William Strauss), such as reading and typing a response to an email while having a conversation with a co-worker with whom he makes occasional eye-contact. GENERATIONS AT WORK, *supra* note 172, at 112. In this scenario, the Baby Boomer co-worker storms off, accusing the Gen Xer of not caring about the conversation, but he claims to be just "parallel processing," which "he says is the best way for him to concentrate. As he sees it, he is occupying his surface consciousness with trivial information so he can focus his deeper consciousness on more complex tasks." *Id.* That may be true of his cognitive process, but as a die-hard Baby Boomer, I would say: he is just rude.

²¹² Greenfield, *supra* note 196, at 91. We will miss Fred Rogers on the television very much for his slowness and his intentionality. One study found "that *Mr. Rogers*, a children's program that is unusual for its slow pace, pauses for the child to respond, and creation of a distinct fantasy world, stimulates make-believe play, particularly in less imaginative preschool children. *Sesame Street* has also been found to foster imagination in children initially low in imagination, although less so than *Mr. Rogers*." *Id.* at 89.

²¹³ *Id.* There is no evidence to support the idea that watching too much television causes ADHD. Barkley, *supra* note 207, at 83. Some studies have found that children with ADHD watch more TV, but it is more likely that is because it "requires less effort and a shorter attention span than other leisure pursuits, such as reading." *Id.* Young adults who have ADHD did watch more TV, played more video games, talked on the phone more, and "went joyriding more often in their cars than the control young adults did, while the latter spent more time reading studying for work or college, and exercising than the young adults with ADHD." *Id.* Such studies only tell us what those with ADHD do with their spare time, not that those activities cause ADHD. *Id.*

study found that heavy television watching “was associated with less ability to wait and more restlessness. In Canada, adults in a town without television tended to be more persistent in problem-solving than adults from similar towns with television.”²¹⁴ These findings “may reflect the fact that television, unlike print, must be processed at the pace of the program. There are always new stimuli that demand assimilation; the viewer has no time to persist in understanding the old ones.”²¹⁵ These qualities apply to *all* television, regardless of the program’s pace.²¹⁶ The reduction of reflectivity and persistence due to heavy TV watching must stem not from pacing, but from “the universal fact that it is a medium that unfolds in real time. By virtue of this fact, it paces the viewer, rather than vice versa.”²¹⁷

Is it any surprise my daughters and my students have restless work habits?²¹⁸ Not only did they tune in early to the TV, but that was soon replaced by computers, the internet, I-pods, cell phones and instant messaging. They do not feel comfortable in silence. They do not need silence. They do not like silence. They do not understand silence. Neither are they all that comfortable with solitude.²¹⁹

²¹⁴ Greenfield, *supra* note 196, at 31. On the other hand, television can be used for active learning, even though it is a one-way medium. Cited for this proposition, for example, is the four-year old’s participation in watching *Sesame Street*. *Id.* Unlike Mr. Rogers, who simulated the pre-school by asking the children watching to answer questions, *Sesame Street* was more successful in stimulating mental activity by format rather than by request. *Id.* at 32. For example, James Earl Jones begins reciting the alphabet, and each letter appears next to his head as he says it; then after a few repetitions, the child begins to anticipate the letter before it appears. The anticipation “elicited by repetition enables the child to learn the alphabet as well as to recognize the individual letters.” *Id.* at 31.

²¹⁵ *Id.* at 92.

²¹⁶ *Id.* Fast-paced shows had “frequent cuts, scene changes, and action of various sorts. Slow paced shows did not.” *Id.*

²¹⁷ *Id.*

²¹⁸ Would that they would leave the computer for awhile and go out for a walk, but we live in a culture that stays indoors. Mark Slouka describes suburbia and its inhabitants: “Looking at these communities, one thing is utterly obvious: no life outside the home is possible here. There is no play-ground, no park, no field or meadow. Children don’t play ball in the streets; couples don’t scandalize grandmothers by kissing too long and passionately in the shadows of the trees (there are none); neighbors don’t talk or even argue. The only option, if you want to go out, is to take a car. So what do the people in these communities do? What else *can* they do? They live inside: watching television, listening to their home entertainment centers, playing computer games. When they go out, they do so mainly to go in: to a mall, a store, a movie theater.” Slouka, *supra* note 176, at 79.

²¹⁹ I must insert a footnote here to indicate that my indictment is of the “normal” law student, a young, unmarried and childless person in their middle twenties. Many of our best students are older women who are returning to school after years of domestic

But students need to work in both silence and solitude to learn the law. My weaker students often seem not to have understood what it means to “learn” anything. How many times have I gone over a woeful exam with a first-year student and pointed out where she did not seem to have knowledge of a crucial rule or definition. “Geez,” the student will say in her defense, “I knew that, but I just couldn’t remember it,” to which I usually answer, “But my job is to test whether you learned the law. Learning something entails remembering the rule, being able to articulate it to others, and to use it in new situations.” And in Evidence, she doesn’t even need to remember the rule—just remember where to look for it.

Consider this small excerpt on the terminology of cognition, on what it means to “learn” something:

Learning is not exactly a term of art, but is used quite broadly If the memories of a system are identifiable, however, it is useful to refer to learning with respect to each memory. Where there is a memory, there is also a set of functions for using it: the *acquisition* of knowledge by this memory and the *retrieval* of knowledge from the memory, to which *access* is required to determine what is retrieved. The term

sacrifice. Many of them are still burdened with familial duties, and the problem is not that they dislike silence and solitude, but that there are few opportunities to find them. As May Sarton wrote: “It is hard for women, perhaps, to be ‘one-pointed,’ much harder for them to clear space around whatever it is they want to do beyond household chores and family life. Their lives are so fragmented . . . this is the cry I get in so many letters—the cry not so much for ‘a room of one’s own’ as time of one’s own.” May Sarton, *JOURNAL OF A SOLITUDE* 56 (New York: W.W. Norton, 1973).

I do not mean to suggest that all learning must be acquired in the state of solitude; there is a time and place for more social forms of education. Diana R. Donahoe points out that for the new generation of electronic media learners, the thinking process is “interactive and social. E-mail, chat rooms, and instant messaging are your main form of exchanging ideas with others.” Donahoe, *supra* note 201, at 5. Even in Tapping Reeve’s day, there were informal study groups and more social ways of honing skills and knowledge. One student writes home, “We have a number of young men of promising talents whose appetites for knowledge is quickened by emulation. They have formed themselves into societies for composition and extemporaneous speaking. At the meetings of these bodies every ordinary exertion is redoubled from the hope of being first or the fear of being last in the catalogue of merit.” William C. Cumming to his father, August 17, 1806. Display at the Tapping Reeve House and Law School, the Litchfield Historical Society.

In country schools during the colonial period, the learning of spelling was also done communally: “The master gave out the word, with a blow of his strap on the desk as a signal for all to start together, and the whole class spelled out the word in syllables in chorus. The teacher’s ear was so trained and acute that he at once detected any misspelling The roar of the many voices of the large school, all pitched in different keys, could be heard on summer days at a large distance.” Earle, *supra* note 22, at 148.

learning usually refers to the acquisition side, but people are not usually considered to have learned something unless, under some circumstances, they can access and retrieve the learned knowledge from the memory and use it in a response. It thus tends to be used to stand for the entire process²²⁰

In very simple terms, the student is arguing: “I had, at one point in time, acquired knowledge of that rule or definition—or where to find it—but I did not put into place strategies to retrieve it from my memory so that I could get access to it on the exam.” Can we say that she had really learned it?

This student feels frustrated because she believes she has taken all the steps she needed in order to learn the material: she read the cases, she took notes on her laptop computer, and then she reviewed them for the exam—all strategies that probably held her in good stead in her college courses. But for the study of law or medicine or for any body of complex and technical knowledge, those steps will not suffice.²²¹ And while I rarely would say so to the aggrieved student, I would argue that she probably had not even taken those minimal steps of preparation. Her eyes may have moved over the printed pages of her textbook and her notes, but she had not read them actively—or absorbed what she read.²²²

²²⁰ Allen Newell, *UNIFIED THEORIES OF COGNITION* 305 (Cambridge: Harvard University Press, 1990).

²²¹ In an 1810 letter from a father to his son who was studying at the Litchfield Law School, the father warned, “I suppose you have by this time secured nearly a couple of lectures—but you must remember that writing them off merely will not make a Lawyer—a great Deal of reading + reflection will still be necessary—& I feel a confidence that you will not be neglecting that, disappoint my fond hopes + expectations. Your advantages are great + my expectations are proportioned to them with sincere + ardent wishes for your success and happiness.” Letter from Simeon Baldwin to Ebenezer Baldwin, October 7, 1810, Baldwin Family Papers, Yale, 55 I Box 9, folder 128 Display at the Tapping Reeve House and Law School, Litchfield Historical Society.

²²² I should point out that the reading I am referring to is of a specific genre, that of reading the law, cases, statutes, etc. The simple view of reading is that it is the product of decoding and comprehension. Peter Dewitz, *Reading Law: Three Suggestions for Legal Education*, 27 U. Tol. L. Rev. 657 (1996). Decoding for the fluent adult reading is based on orthographic knowledge (spelling patterns) and phonological knowledge (letter sound associations.) *Id.* at 657. Most law students can decode words, but reading comprehension is based on additional types of knowledge: domain knowledge, what the reader knows about a given domain, an understanding of text structure, and strategic knowledge, a “set of mental processes or tactics used by a reader to achieve a purpose.” *Id.* at 657-659. (Regarding strategic knowledge, the reader might internally paraphrase, summarize what he has read, re-read the text, or consult outside material, for example. *Id.* at 659-660). Mature readers employ reading strategies to avoid comprehension breakdowns “with great efficiency and success.” *Id.* at 660. An expert reader is “the more cautious and thorough re-reader. Compared to the novice, the expert spends more time analytically re-reading the

Here we have something to learn from the past—however we learn about history. It is a past that has continuity and resonance with the study habits of the young men at the Litchfield Law School. A law student of the late eighteenth or early nineteenth century did not *have* a book to read; he had to *borrow* a book to read.²²³ The scarcity of books, and absence of any technologies to reproduce their contents, resulted in a form of reading that was far more active than what we engage in today. Human minds can only hold so much information. Without the luxury of being able to take the book home, the student of the past needed to make a record of what he had learned. The making of a record served dual functions: first, it impressed upon his mind the importance of what was recorded, facilitating memory, and second, it preserved the substance of what was learned in the event that memory failed.

This intense form of reading included the notion of making a record of what the reader had learned. While the Latin word *legere* was commonly used in the ancient world to denote the act of reading, it “also meant to single out, select, extract, gather, collect, even to plunder and purloin.”²²⁴ In this classical sense, reading was not regarded as a passive act, but as an “inherently active discriminating, and selective exercise. One did not merely encounter a text; one harvested it, separating the wheat from the tares in order to glean the pith and marrow. The term also signified a kind of rapine, even the violent confiscation of the fruit of another man’s tree.”²²⁵ Because access to books was almost nil, the poets and scholars of earlier times would pick “literary fruits from the

text, noting important facts, marking the rule in the case, and underlining key terms. Novices tend to underline on the first reading of a case with the same frequency as the expert, but then engage in much less close re-reading.” To properly read the law, it takes time and the reader must be active; he must “set a purpose for reading, search for important information, make inferences, summarize, and monitor the developing meaning.” *Id.* at 665, 659.

²²³ The library at the Litchfield Law School had strict rules about borrowing privileges. Fines issued for students who took down a volume and did not return it to its proper place, or for writing on the pages of the books. McKenna, *supra* note 7, at 116. Certain books were deemed “privileged,” and were to be used either in the library, or taken only to the student’s room for study. *Id.* at 116-117. “Extensive reading notes were to be made from the volumes classified as ‘privileged’—that is, the privilege existed to take them from the library. Volumes ‘not privileged’ were the more heavily used books or folios, scarce volumes of the English *Reports*, and rare, expensive or irreplaceable books that were to remain in the library.” *Id.* at 117.

²²⁴ Earle Havens, *COMMONPLACE BOOKS: A HISTORY OF MANUSCRIPTS AND PRINTED BOOKS FROM ANTIQUITY TO THE TWENTIETH CENTURY* 8 (New Haven: University Press of New England, 2001)[hereinafter Havens].

²²⁵ *Id.*

trees of other men,” and deposit them in their own collections.²²⁶ “Placed in new homes, these prizes are divorced from their former contexts, and so take on new meaning and significance. Words, phrases, quotations, even whole works, are, in this manner, arranged, sometimes very carefully, sometimes haphazardly, according to the fancy of the gatherer.”²²⁷ They kept them through the ages—those who are readers in the *legere* sense—in their commonplace books.²²⁸

The term “commonplace book” refers to a “collection of well-known or personally meaningful textual excerpts organized under individual thematic headings.”²²⁹ Borrowed from philosophical and rhetorical concepts of Aristotle, the Latin intellectual world developed the notion of the reader compiling quotes from and notes about ideas that he had encountered within the pages of a book.²³⁰ In the fifth century, the Latin

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ There is, of course, an entire history of the phenomenon of reading. See, e.g., Alberto Manguel, *A HISTORY OF READING* (New York: Viking, 1996). The first mention of what we call “silent reading,” for example, was Augustine’s description of a fifth century bishop named Ambrose, who when he read “his eyes scanned the page and his heart sought out the meaning, but his voice was silent and his tongue was still. Anyone could approach him freely and guests were not commonly announced, so that often, when we came to visit him, we found him reading like this in silence, for he never read aloud.” *Id.* at 42. Normal reading at the time was performed out loud, which made ancient libraries very noisy, in comparison to the silence that reigns in our modern libraries, except for the tap tap tapping click click clicking of the laptops: “The readers at the Ambrosiana spoke to one another from desk to desk; from time to time someone would call out a question or a name, a heavy tome would slam shut, a cartful of books would rattle by. These days, neither the British Library nor the Biblioteche Nationale is utterly quiet; the silent reading is punctuated by the clicking and tapping of portable word-processors, as if flocks of woodpeckers lived inside the book-lined halls.” *Id.* at 44.

²²⁹ Havens, *supra* note 224, at 8. These passages, or sometimes the headings, were historically called “commonplaces.” *Id.* Plucked from the works of Aesop, Dante, Cicero, Shakespeare, Goethe, Proust, and many others, “adages, epithets, axioms, poems, purple passages, apothegms, proverbs, puns, maxims, epigrams, anecdotes, mottoes, and so on” were written down in bound volumes of blank or ruled pages; they were organized according to “various purposes and organizational principles.” *Id.*

²³⁰ *Id.* at 13. For Aristotle, the commonplace was an abstract concept consisting of the various forms of argument one used to support a philosophical proposition or to explore “through rhetoric, the probability and validity of propositions as well.” *Id.* Cicero, the ancient Roman statesman and orator, was responsible for carrying the commonplace into the Latin intellectual world. *Id.* Commonplaces included quotations of authoritative figures whose words, “having long been approved for their profundity and confirmed by the reputation of their authors, could be deployed as a form of external evidence that would endorse a given position.” *Id.* at 14. By late antiquity, “the tradition of selecting out and employing the commonplaces in philosophical and rhetorical discourse was well established.” *Id.* at 16.

grammarian and philosopher Macrobius, for example, described how a commonplace book facilitated learning, understanding, and creativity. He analogized the process to a bee wandering to and from the various flowers in a garden, sipping nectar, arranging their spoil, distributing it among their honeycombs, in so doing “mixing with them a property of their own being, so I too shall put into writing all that I have acquired in the varied course of my reading For not only does arrangement help the memory, but the actual process of arrangement, accompanied by a kind of mental fermentation which serves to season the whole, blends the diverse extracts to make a single flavor; with the result that, even if the sources are evident, what we get in the end is still something clearly different from those known sources.”²³¹

While the medium of the commonplace book reached its zenith during the fifteenth and sixteenth centuries, throughout the medieval period, there were compilations of excerpts from theological texts known as *florilegia*, or books of flowers, and later during the 17th, 18th, and 19th centuries (even the 20th), “commonplace books were compiled in great numbers by scholars and laymen alike, in nearly every conceivable shape and size.”²³² Over the course of their history, the use of commonplace books did not decline; rather, “as general subject matter and habits of reading changed over the course of human history—adapting to new forms of cultural authority and expression—so did the structure, function, and subject matter of the ever-conformable and ever-protean commonplace book.”²³³ In the 17th century, it became popular for students to organize their commonplace books according to the alphabet. Obadiah Walker, in his *Of Education: Especially of Young Gentlemen* (1673), offered his

²³¹ Quoted in Havens, *supra* note 224, at 16. Macrobius did not give credit to Seneca, from whom he must have borrowed. My guess is that the following quote from Seneca was in Macrobius’s commonplace book: “We also, I say, ought to copy the bees and sift whatever we have gathered from a varied course of reading, but such things are better preserved if they are kept separate; then, by applying the supervising care with which our nature has endowed us . . . we could so blend those several flavors into one delicious compound that, even though it betrays its origin, yet it nevertheless is clearly a different thing from that whence it came.” *Id.* at 14.

²³² *Id.*

²³³ *Id.* Commonplace books constituted the foundation for standard reference books such as encyclopedias, books of quotations, thesauruses, anthologies, indexes, dictionaries, and the like. *Id.* at 9. Even the New York Public Library Desk Reference is a form of commonplace book, owing something “to the time-honored tradition of compiling and organizing words, facts, and text excerpts in commonplace books, from antiquity to the present day.” *Id.* To complicate the history of commonplace books, throughout the centuries these collections have gone under various names, among them notebooks, miscellanies, pocket books (a term that is now used for a woman’s purse), memoranda books, diaries, albums, scrapbooks, etc. *Id.* at 10.

student this method of organizing his commonplace book: "A succedaneum to memory is writing; and students are wont to serve themselves of common-place-books, excellent helps to ordinary memories. The best way that I know of ordering them is; To write down confusedly what in reading you think observable . . . Afterwards at your leisure set down in the margin of the page of your index where the head is, to which such entry relates: and so enter into the index under such a head the page of your note-book, wherein such sentence is stored. These note-books, if many, are to be distinguished by A,B,C, etc." ²³⁴

The student who "read law" had his own form of commonplace book where he discovered important principles that he garnered from books and copied them down. Commonplace books became a major part of legal pedagogy in the seventeenth century at a time when the English common law tradition underwent "systematic reformulation and consolidation" under Lord Edward Coke and Matthew Hale.²³⁵ In this country, particularly during the colonial period, those who read the law, ordinarily kept a commonplace book, taking notes from whatever legal treatises they could get their hands on.²³⁶ To begin a commonplace book, the young aspiring lawyer would take a large blank book and write at the top of each page the major divisions of the common law, in alphabetical order, and then individual points of law would be added on the appropriate page.²³⁷ Both Thomas Jefferson and John Marshall kept commonplace books.²³⁸

The leather-bound books of notes written by the law students at the Litchfield Law School were in the tradition of a commonplace book—at

²³⁴ Quoted in Havens, *supra* note 224, at 30.

²³⁵ *Id.* at 38. In a primer for the benefit of law students at the Inns of Court, William Phillips wrote, "And Mr. Fulbeck saith, that as well for the student's ease, as for preserving and continuing his memory, it is a profitable course for him under titles, to digest the cases of law, into which he may transferre such things as he hears or reades . . . Neither hath there been any learned and judicial lawyer, who hath not made a collection of his own. Therefore we may conclude that common places are matters of great use and essence in study, as that which assureth copy of invention, and contracteth judgement to a strength." Quoted in Havens, *supra* note 224, at 38.

²³⁶ Bryson, *supra* note 44, at 160. Commonplace books were kept by many people during this period, not just by lawyers. "This writing out of aphorisms, statements, etc., not only fixed them in the memory, but kept them where the memory, if faulty, could easily be assisted. It also served as practice in penmanship . . . [T]he usual entries are of a religious character; extracts from sermons, answers from the catechism, verses of hymns, accompany stilted religious aspirations and appeals. In them a painful familiarity with and partiality for quotations bearing on hell and the devil show the religious teaching of the times." Earle, *supra* note 22, at 169.

²³⁷ *Id.*

²³⁸ *Id.*

least they looked like and were created in the same fashion as a commonplace book. But there were two central differences: the leather-bound books created at the Litchfield Law School were organized by legal principles and not the alphabet, and their content was dictated not by those who took dictation, but by Reeve and Gould. We know that James Gould not only recognized how useful the leather-bound books of notes would be to the young lawyers once they opened their law offices; he also recognized the value of creating such a book as a heuristic device: "The future use, for which the pupil designs his own notes, is that of a manual, or common-place book, to aid him in his professional practice: and I am persuaded, that a given individual can, in no other way, acquire so ready and accurate a knowledge of the law as by digesting it in his own handwriting."²³⁹

The very act of writing with one's hand engages not only the mind, but the body.²⁴⁰ Handwriting originates not from the hand, but from the brain: "Stimulated by brain impulses, two muscle groups work to perform the act of writing. Extensor muscles extend the fingers and flexor muscles draw the fingers in—while the brain impulses are translated directly onto the page."²⁴¹ Perhaps this was most true in the seventeenth and eighteenth century. The handwriting during this time

²³⁹ James Gould, 1823, Yale University. Display at the Tapping Reeve House and Law School, Litchfield Historical Society.

²⁴⁰ As Natalie Goldberg put it, writing is "physical." "It doesn't have to do with thought alone. It has to do with sight, smell, taste, feeling, with everything being alive and activated. The rule for writing practice of 'keeping your hand moving,' not stopping, actually is a way to physically break through your mental resistances and cut through the concept that writing is just about ideas and thinking. You are physically engaged with the pen, and your hand, connected to your arm, is pouring out the record of your senses. There is no separation between the mind and body; therefore, you can break through the mind barriers to writing through the physical act of writing . . ." Natalie Goldberg, *WRITING DOWN THE BONES: FREEING THE WRITER WITHIN* 86 (Boston: Shambhala, 1998).

²⁴¹ Allan Conway, *ANALYZE THIS: WHAT HANDWRITING REVEALS* 7 (Canton, Ohio: PRC Publishing, Ltd., 2004). This means that the state of the brain at the time of writing directly influences the writing on the page, making the science of graphology—the study of personality through handwriting—possible. *Id.* Apparently, medical cases have shown that where people have lost a hand or an arm, when they learn to write with the other hand, "their writing develops the same characteristics as before. Where patients have lost both arms, mouth or foot writing also develops with the same characteristics. However, when people become ill, stressed, very tired, or greatly troubled, their handwriting changes." *Id.* The graphologist interprets the "strokes, pressures, and loops of a person's handwriting, which reveal their strengths, weaknesses, and hidden motivations." *Id.* at 8. Its uses purportedly include identifying compatibility of partners, diagnoses, how to build an effective work team, and how to detect a person inclined toward fraud and theft. *Id.* at 9-10.

period required great manual dexterity and skill.²⁴² Not only did the

²⁴² Tamara Plakins Thornton, *HANDWRITING IN AMERICA* 15 (New Haven: Yale University Press, 1996) [hereinafter Thornton]. Learning to write included instruction in the physical manipulation of writing tools and materials. The writer had to contend with cutting a proper nib for his quill with a penknife. “Poorly cut quills dried up quickly, carried the ink unevenly across the paper, or otherwise made execution of a proper script impossible, and even well-cut quills required constant sharpening.” *Id.* at 14. The ink needed to be mixed, and then the penman was required to “rule guidelines in pencil, and he certainly had to learn how to treat the paper with powdered pumice or sandarac, variously known as gum sandrick or pounce, so as to prevent the ink from soaking in.” *Id.* at 14-15. One’s penmanship also varied according to social status. *Id.* at 18. In any penmanship treatise of the seventeenth or eighteenth century, you would find an “entire range of hands, each reserved for—and therefore a marker of—a specific occupation, gender, or class.” *Id.* There was mixed use of hands in seventeenth century America, with Cotton Mather using a Gothic cursive, and John Winthrop writing occasionally in the Italian hand, and at times making use of secretary, but the overall trend was clear: “By the end of the 1600s, native Gothic scripts were archaic, the Italian-derived scripts the rule.” *Id.* at 19. Learning to write was complicated. A fully literate farmer might learn only a single hand, but other writers might have to learn several; “penmanship education might well entail the laborious mastery of successive scripts.” *Id.* at 22.

The Declaration of Independence was engrossed by Timothy Matlack (1730-1829) in an English roundhand script. (<http://www.calligraphersguild.org/penmen.html>) Engrossers were called upon to “letter in large, clear handwriting such legal documents as land deeds, mortgages, baptism certificates, and military commissions. A large staff of engrossers was once used on Capitol Hill to letter Congressional Bills prior to submission for passage.” *Id.*

Just as writing required a great deal of skill, so did Chinese calligraphy. In the tenth century, Ching Hao, a landscape painter, wrote a treatise on brushwork: “Generally there are four major aspects: Chin [tendon], Jou [flesh], Ku [bone]. And Ch’i [the vital force of the line].” *Quoted in* Kwo Da-Wei, *CHINESE BRUSHWORK IN CALLIGRAPHY AND PAINTING: ITS HISTORY, AESTHETICS, AND TECHNIQUES* 4 (New York: Dover Publications, 1981). Flesh meant the fat part of the stroke that looks solid; the expression of line is called bone, the tension between the two ends of a line the tendon, and ch’i “refers to the energy pulsing within a line or among the lines.” *Id.* In the 18th century, brushwork was described thus: “What is brushwork? Light, heavy, swift, slow; concentrated, diluted’ dry, moist; shallow, deep; scattered, clustered; flowing and beautiful, lively; [the artist] knowing all these, wherever the brush goes on paper will be perfect.” Explained, this means: “The words light and heavy refer to the pressure the artist employs in wielding the brush. Concentrated, diluted, dry and wet or moist are terms applied to the use of ink or color. Shallow, deep, dense and loose are the essential aspects of composition; and the terms flowing, beautiful, and lively refer to the over-all harmony and vigorous expression of a painting or calligraphy.” *Id.*

Many educators believe that because elementary school children are going to do most of their writing on computers, penmanship should be sacrificed for other more important educational tasks. Bennett, *supra* note 204, at 159. These authors disagreed, arguing that “learning to write neatly teaches lessons that extend beyond penmanship itself. The attitude that the appearance of the marks one leaves behind doesn’t matter because a child can always type when legibility is important is an attitude that fosters slovenliness. Good penmanship requires discipline, attention to detail, and pride in work—all things

writer have to produce “proper letter shape and slope, students in the quill and ink era had to control the passage of ink onto the paper in order to execute hairline upward strokes (ascenders) and contrasting thick, ink-laden descenders. Some writing masters taught their pupils how to strike and flourish—that is, how to decorate their hands with elements ranging from simple curlicues and spirals to fanciful birds, dragons, and angels. And, of course, everything had to be done without spotting and smudging.”²⁴³ Mastery of all these skills required the student to practice, and the method of pedagogy was to copy handwritten models.²⁴⁴

Because print copies of texts were unavailable, we know that Americans in the seventeenth and eighteenth centuries were in the habit of copying almost everything, from “sermons and lectures, passages from medical books and legal writings, poetry and essays.”²⁴⁵ Not only was this practical, but “the practice of transcription also reinforced the notion of reading as the passive inscription of authoritative texts into one’s inner being and of writing as the subsequent copying of those texts. If reading was the internalization of received truths, then writing was simply its reexternalization.”²⁴⁶ Once again, we encounter the notion of the active reader who enters into a text, discovers something there that grabs his attention, and copies it down—and in so doing, he makes it his own.

A theme runs throughout this history about the value of writing things down—of putting pen to paper as part of the learning process. True, the metaphors change over time and according to the bent of the metaphor maker: Writing is the way we gather nectar from the flowers we read to create our own honeycomb; writing is the reexternalization of truths that have become inscribed into one’s inner being; writing is how we allow the law to seep into the marrow of our bones. The idea is the same, however, and can be said in many ways: that writing by hand is a tool of the reflective mode of cognition, enabling a student to undertake the hard work of restructuring one’s thought; that writing by hand

that are good for young students.” *Id.* at 160. I would also argue that good penmanship requires obedience, something I totally lacked as a student; hence my terrible handwriting, at least at the initial note-taking stage.

²⁴³ Thornton, *supra* note 242, at 15.

²⁴⁴ “These might be set by the writing master at the top of a sheet of paper or slate, demonstrated on the blackboard, taken from an engraved copybook, or (by the end of the eighteenth century) provided in the form of printed copy slips, in all cases, to be imitated over and over again down to the length of the page or slate.” *Id.*

²⁴⁵ *Id.* at 18.

²⁴⁶ *Id.*

helps a student to read actively; that writing by hand helps a student to truly learn.

Beneath these variations on a theme is a truth rarely articulated—that writing of this kind creates a state of mind, one acquired only when the student works slowly, and with intention. And I would add that writing of this kind must be done in silence and in solitude. Like calligraphy,²⁴⁷ to write in the script of the day requires a certain mindset: “The calligrapher’s state of mind, when working, is tremendously important. Calligraphers must have complete detachment from outward disturbances. They need to cultivate a deep sense of tranquility, an emptiness of mind, a state of no-thought. They must work from the soul. This happens when the thoughts settle, when the mind is still.”²⁴⁸ This state of mind sets the conditions for meditation, and ultimately for understanding.

My students are selling themselves short, the tap tap tappers, the click click clickers of all those laptops. They have much to learn from the young men who sat on wooden benches and took notes at the Litchfield Law School, who then went back to their boarding houses and reformulated their notes by the light of a flickering candle. My students might even have something to learn from me. The irony is, they already think they do. That is why they are all tap tap tapping, click click clicking their way through Evidence. I want to tell them to stop. What I have to teach them can only be learned in silence, when no one else is in the room—including me.

And so, I have finished my diatribe against the use of laptops as note-taking devices in the modern day law school classroom. As I learned—ever a dictionary explorer—the word “diatribe” comes from the Greek meaning “a wearing away,” from diatribein “to rub hard, rub away, consume (time).”²⁴⁹ I have already worn away your patience, and if you have actually read this far, consumed your precious time. Chances

²⁴⁷ At times, the term “calligraphy” is used to describe the formal penmanship of the late eighteenth century. For example, Jacob Shallus, who has been determined to be the “engrosser” of the Constitution, is also described as the “Calligrapher of the United States Constitution.” Arthur Plotnik, *THE MAN BEHIND THE QUILL: JACOB SHALLUS, CALLIGRAPHER OF THE UNITED STATES CONSTITUTION* (Washington, D.C.: National Archives and Records Administration, 1987). Shallus, the son of German immigrants and a revolutionary soldier, developed the skill of penmanship and eventually served as a clerk for the Pennsylvania legislature. *Id.* at 3. He was given the job of transcribing the more than 4,400 words of the Constitution on a Saturday evening, to be ready for signing on the following Monday. *Id.* at 5.

²⁴⁸ Wolff, *supra* note 3, at 23.

²⁴⁹ William Morris (ed.), *THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE* 365 (New York: Houghton Mifflin Co., 1973).

are—assuming the youth of my reader—this diatribe will be utterly ignored, which is as it should be. It is the prerogative of youth to ignore the wisdom of their elders. I did it too in my time, whenever that may have been, or will be.

EPILOGUE: METAPHYSICAL POSSIBILITY NUMBER THREE—
THE INSANE LAWYER SCRIBE

My possibility #3 is a misnomer: It is not really “metaphysical,” but physical, belonging squarely to the empiricist episteme that has dominated Western thought for several centuries.

For reasons currently unknown to science, but surely knowable in the future with more research, the chemicals in the patient’s brains have gone haywire, causing her to experience a mild psychotic episode at the Tapping Reeve Law School. Most probably the temporary psychosis was caused by an underlying seizure disorder—in short, her wires are a little loose. While the patient has experienced similar psychotic episodes when she travels to India (where her over-active imagination runs rampant), when she is in her daily routine, she appears capable of performing her assigned tasks, despite her frequent assertions that she is either a lost time traveler, or more peculiar still, that she is a reincarnation of a late 18th century law student from Northwest Connecticut. There is no reason why, with proper treatment, she cannot continue to teach Evidence. While her behavior is somewhat eccentric, she is benign.

Recommendation: Follow protocol and administer anti-psychotic medication. Should the condition persist, or if she becomes a danger to herself or others, we may have to consider institutionalization.

Under this third possibility, it matters that I am female. My gender gives me the freedom to be insane since no one is listening to what I have to say in the first place. If by some quirk of fate, they happen to listen, then what I have to say is perceived as so outrageous, it is discounted altogether. I am also beginning to appreciate the virtues of being not only female, but on the edge of elderhood. It is a powerful conjunction—to be an old lady. Surely no one else in our culture is as unattended to as the old lady. That she is crazy is not only of little interest to anyone, but is expected—and in most instances, tolerated. Her eccentricities are regarded as benign.

It is early morning. Barefoot and in a bathrobe, I have taken a cup of coffee out to my garden. There is a light wind coming from the north, and the sky is pale pink on the horizon. I take a tentative sip of coffee and think to myself that the future looks very interesting. “Be careful,” she says suddenly in my right ear in a low, lisping voice. “What you

think now may not always be true." I have heard her before, always while I am out in the garden, under the hot sun, tending my herbs, bending over basil and thyme, harvesting fresh mint. I nod. I know that she speaks the truth about the contingency of truth. Crazy old ladies may not be attended to at all, unless there are men around who are losing power and need someone to blame. "Then they burn," she whispers. The wind whistles through the pine trees behind my back, and I curl my toes into the damp, brown earth, the bottoms of my feet feeling suddenly hot.



Bachrach, ca. 1927

Justice Oliver Wendell Holmes, Jr.
Courtesy Special Collections Dept., Harvard Law School Library