American Legal History – Russell

Henry W. Taft, A Century and a Half at the New York Bar (New York, 1938).

[Taft, partner in the large Wall Street firm now known as Cadwalader, Wickersham, and Taft, published this book privately in 1938, telling the history of the firm. The book begins with the careers of John Wells and George Washington Strong, who lived in the early 19th century, and formed the partnership which ultimately grew into the giant Wall Street firm. Taft, in writing the book, had access to firm records, and to the letters and Journal of George Templeton Strong (1820-1875), son of one of the founders of the firm. The excerpts from Taft's book which follow make liberal use of quotations from this remarkable Journal.]

BEGINNINGS OF THE COLUMBIA LAW SCHOOL

George Templeton Strong was elected a trustee of Columbia College in 1853. He soon became actively engaged in the development of the Law School of that institution; and for many years he was in continued contact with its work, particularly during the incumbency of Professor Theodore Dwight, of whom he seems to have been the principal adviser.

On November 2, 1858 Mr. Strong notes that "our new Law Prof. *Dwight* dined here" (at Mr. Strong's home) and made a "favorable impression . . . Prospects of the Law School brightening." A house was rented for the activities of the school, but the purchase of a library had to await a further communication from Prof. Dwight; and on February 7, 1859 the professor submitted to the trustees "a clear & creditable paper--& we voted $2000. for a law-library." On the following 1st of May one of the colonnade houses in Lafayette Place, formerly occupied by John Astor, was taken possession of. On May 26, 1859 arrangements had been made with all of the lecturers excepting Daniel Lord, who Mr. Strong said, was "high & mighty & Dan'l Lordish--& evidently expects us to go down on our knees to him & beg the privilege of using his name."

In December 1859 complaints were heard of Dr. Francis Lieber, the well-known author in the field of political philosophy. Despite his distinction in his own specialty, he exhibited a Teutonic tendency to disputation which became a disturbing factor. In December 1859 he took offence because examinations in his

special subjects were not to be a condition of a degree, which he considered would degrade his Chair. Mr. S B. Ruggles, the father-in-law of Mr. Strong, sympathized with him, and asked "whether we want the Law School to turn out mere attornies." But while "high & liberal culture" was to be aimed at, it was questioned whether the school was strong enough to go far towards that ideal aim with "young attornies & lawyers' clerks" who could hardly be expected to "sacrifice a couple of hours daily to Political Science & Legal Philosophy. It is a great point gained that so many (upwards of 60) consent to come in & be taught the practicabilities of their profession."

In February 1860 William Curtis Noyes delivered lectures in the Law School which were very popular; and Mr. Strong comments: "This *School* is the only one of our seeds of Post-Graduate instruction that survives & grows--our only '*University*' nucleus."

In March 1860 the subject of Dr. Lieber's connection with the school recurs, and Mr. Strong comments that:

> "His sensibilities are lacerated because he fears he 'is to be a mere adjunct of Dwight's' in the Law School, & he intends to decline all farther share in it's duties. Sorry to lose him. But he ought to see that the School cannot be established & will not win students unless training in practically useful & profitable knowledge--(such knowledge of the R. S. & Wendell & Cowen & Hill as it's Dwight's office to impart) be it's prominent feature. Lieber's political philosophy & *Spirit of Laws*--& Nairne's Law & Ethics--must be gradually worked into the system. If we make them essential & obligatory portions of the course at once, we shall simply frighten students away & dwarf or destroy the School--as a yearling baby would be stunted or killed by a diet of beef & Madeira."

An entry of April 13, 1860 is included because it notes a historical step in the development of the Law School:

> "To night to Nairne's Lecture--Law School--one of his Course on Ethics. Subject 'the ground of moral obligation.' Very hightoned and quite forcible. Coleridgean in doctrine. Attendance slim--but mostly Law Students with pens & note books. Saw Dwight. Tells me the Law School Bill is through both houses--and *signed*. So we of the Law Com: of Col: Coll: are authorized to manufacture Attornies &

> Counsellors. Pity that nasty little 'N. Y. University' Law School of Judge Clerke's & P. Y. Cutler's should have got a like Bill through, prescribing a shorter term of attendance."

Any entry under date of May 2, 1860 is no less important:

> "To night, Prof: Dwight & Gouv: Ogden here, a sub-committee of the Col: Coll: Law Committee, settling the form of the Law School Diploma, under the Act of April 7th--and arranging other matters. There is hope that we can get a fraction of the graduating class to attend a 3d year, and we must set up another Degree, 'Master of Laws' perhaps, or some such thing, to be conferred on those who do so."

About this time the General Term of the Supreme Court held that the law as to the admission to the bar of graduates of the Law School without further examination, was unconstitutional. Mr. Strong comments:

> "We shall present a cleaner case in certain points, but I have no doubt they will treat our Diplomas with like contempt. I think they are manifestly wrong,--and it may be worth our while to carry the question to the Court of Appeals--so that it may be settled one way or the other. If the Act of April /60 don't give us this privilege, Judge Parker's Albany Law School ought not to enjoy it under a like Act passed some years ago."

In emphatic colloquial terms he expresses himself as follows:

> "Dwight is to move tomorrow at General Term for an order admitting our Law School graduates under the Act of /60. He read me his points, which are about as conclusive as anything in Euclid. I have the Opinion of the Court on the '*University*' application,--& a most shallow & flippant production it is. The Legislature is bad enough, but our Courts are little better. Witness the arrogance with which these three Judges--two of them second-rate lawyers, & the third (Leonard) a tenth-rate groggy attorney, overrule & nullify an Act of the Legislature, without even hearing Counsel. They ought to be impeached. Dwight's motion will be denied of course, & its denial won't do us much harm. A Bench adorned by Leonard & Sutherland naturally dreads an *educated* Bar, and instinctively discourages whatever tends to raise the professional standard from it's present zero point of utter degradation."

The School was "prospering beyond my hopes" and the decision of the General Term "is generally discussed & condemned. It is spoken of as a decision against the *College*--(tho' in fact agst this nasty little sham Law School of Cutler's & Judge Clerke's) & advertises us most effectively."

On May 22, 1860 Judge Sutherland declined to hear Professor Dwight on a motion to admit the school under the Act which had been declared to be unconstitutional. On being reminded that the Act had been declared without argument to be unconstitutional and had never been before the court, Judge Sutherland admitted that he had never seen it and

> "took the papers, with a very bad grace--said the Court would see whether there was any material distinction between the two cases: and was generally swinish & sulky. They will deny the motion of course.
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> "We go to the Court of Appeals. There is one view of the case on which that Court may go against us--but it does not seem to have occurred to the Supreme Court, and I am not sure there is anything in it. On the question of a discretion in the S. C. the exercise of which cannot be reviewed, I have no doubt at all."

On June 16, 1860 Professor Dwight was heard at length on the Law School appeal in the Court of Appeals, which held an evening session for the purpose, "Judge Denio--O'Conor & others say it was a very able argument," and in the following autumn, on October 16, the Court of Appeals reversed the order of the General Term. As a result, on November 25, 1860, the Supreme Court "at last reluctantly concluded that it won't do to nullify the decision of the Court of Appeals" and Judge Ingraham showed the discontent of the court at the reversal by remarking that "the Court had some feeling about the case:--& it would have been better if they had *had notice of the argument of the appeal*." Evidently, the reversal rankled in the minds of the court and there appeared in the *Morning World* of November 27, 1860, an "extraordinary opinion as to the effect of the decision" and Mr. Strong comments, "Who ever heard before of an inferior tribunal 'protesting' against a decision of an appellate court--& carrying it into effect at the same time?"

On May 23, 1860 occurred the first Law School Commencement at the Historical Society Hall on Second Avenue and "Bidwell delivered an address to the class, of about an hour, & very creditable."

In April 1861 Mr. Bidwell continued his lectures, this time on the "Law of Defamation." It was "a brilliant success."

In November 1862 the School is "expanding and thriving." Dwight is receiving his salary from fees and it amounts to more than $6000. Students are asking for a third year with a degree of Master of Laws--"That School has thriven beyond the utmost we hoped--thanks to Dwight's admirable talent for teaching."

In 1866 a question arose as to whether the degree of LL.D. should be conferred upon Charles O'Conor. Dwight favored it, but it was opposed on various grounds in the board, many of which could be classified as founded on prejudice against Mr. O'Conor as an individual, but Mr. Ruggles and Hamilton Fish opposed it because they were

> "unwilling that the College confer any academic honor on any man who has been using his great talent & learning to weaken the National Cause & to uphold the cause of secession & of slave breeding, all through these years of war. It's said that O'Conor is to be Jeff: Davis's leading counsel on his trial for treason.
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> O'Conor has asked Gov't to send J. D. to New York for free conference with his counsel. So says Ham: Fish."

Mr. Strong was also opposed to the proposal for reasons which he regarded as patriotic.

"The prevailing sentiment concerning the admission of young women to the law School was adverse, Mr. Strong commenting that:

> "No woman shall degrade herself by practicing law, in N. Y. especially, if I can save her. Our Committee will probably have to pass on the application, pro forma, but I think the clack of these possible Portias will never be heard at Dwight's moot-courts. 'Womens' Rights-women' are uncommonly loud & offensive of late. I loathe the lot. The first effect of their success would be the introduction into society of a third sex--without the grace of a woman or the vigor of man, and then woman, being physically the weaker vessel, & having thrown away the protection of her present honors & immunities, would become what the squaw is to the male of her species,--a drudge & domestic animal. This would be Barbarism *plus* Railroads & Telegraphs. And it might be long before the whirligig of Time brought us another Age of Chivalry to found a new civilization."

On May 13, 1868 he discourses on the condition of the Columbia Law School and believes that the school ought not to be made dependent upon Professor Dwight's life and health, and thinks that if he were to die or resign, "it would evaporate & evanesce the next day." He is not satisfied with the equipment of professors and thinks they add nothing to the strength of the school.

On May 17, 1871 the mind Mr. Strong reverts again to his idealistic plan for elevating the bar and the bench. He refers to an act of the legislature passed in that year restoring

> "the old practice as to admission of attornies, making three years in an office the preliminary requisite, tho' I believe our Law School retains it's privileges under the Act of April /60. This swing back of the pendulum is encouraging--the end of an Elective Judiciary looks less remote."

On May 22, 1871 the Law School Committee determined at last that the continued existence of the school was to be "no longer dependent on Dwight" and that there was to be a rearrangement of the personnel and schedule so that the school could proceed in the event that it was deprived of the services of Professor Dwight. The recommendations of the Committee were subsequently adopted, and it was decided to appoint an adjunct Professor of Municipal Law and to organize a third-year course. But Dwight was evidently reluctant to fall in with the suggestion, and it was felt that he would make it uncomfortable for the additions to the faculty:

> "He does not understand, perhaps, that altho' the School is (thanks to him) most successful & useful & creditable to the College, we are perfectly ready to cut loose from it, unless we can give it a Faculty & make it an Institution with D. for it's head, instead of D's private Legal Academy."

In November 1874 there is much talk about the Columbia Law School and at the meetings radical changes in organization are proposed and

> "sundry unpleasant truths spoken out at last, as to the great dissatisfaction of many Trustees with our present arrangements. The School has proved too successful & has grown far too unwieldy for any one Prof., however able--but Dwight cannot bear to have any one associated with him."

Finally, in December 1874, a test for admission was devised,

> "either a college diploma, or an *examination including Latin*. This will keep out the little scrubs (German Jew boys mostly) whom the School now promotes from the grocery-counters in Avenue B. to be 'gentlemen of the Bar.' Dwight relucts at anything that tends to diminish the number of students & the aggregate of fees, but he was tractable & reasonable."

THE JUDICIAL SCANDALS OF 1869

IN MAY 1869, the year of the scandals in the Judiciary, George Templeton Strong notes in his Journal that the tenor of the valedictory address of the late United States District Judge, George Chandler Holt, and the addresses of the other speakers at the Columbia Law School Commencement was that "corruption in our legislative bodies--our great corporations--& now even in the state judiciary--& in the sheriff's office--has at last reached a stage that must produce Revolutionary action if no legal remedy can be found;" and he adds "The strongest expressions to this effect received the loudest applause, & every condemnation of our accused Elective Judiciary System brought down the house."

Criticism of the bench is repeated and emphatic. Mr. Strong concludes in his Journal a long statement of the condition with the following:

> "With us, in this State, this supreme object of Civil Government is so far from attainment that a Judge of our Supreme Court is prima facie disreputable. His office is something against him, to be apologized for & explained away before one can recognize him as honest & a gentleman. I verily believe that by pulling one or two strings, I could obtain 'an allowance' of $150,000.00 in the *Schermerhorn* partition suits now in my office, & that allowance would be a lien on all the real estate covered by those suits. It might be good fun to get such an award, just to see how shocked & confounded Edmund & William would be when they heard of it. But the joke would be indecent--a profane trifling over the corpse of a profession that was once most honored & noble."

On February 1, 1870 was held the first meeting to establish the Association of the Bar of the City of New York:

> "Last night's meeting (26th St. & 5th Ave.--G.C.A.'s School building) was successful. It sought to create a 'Bar Association,' & appointed committees for that purpose. The decent part of the profession was

> well represented. Nearly 200 were present, & among them was the virtuous D. D. Field. Van Winkle in the chair. Speeches by Judge Emott, Henry Nicoll, Evarts, John McKeon (!), D. B. Eaton, S. J. Tilden &c generally rather good, though too subdued in tone to suit my taste. But Choate & others told me they thought moderation best *at first*. I have not much hope of good from this movement, but it may possibly accomplish something."

As if to justify the movement on the part of the bar, the next entry deals with the conditions in the Supreme Court in the following manner:

> "Here is a specimen--a very mild specimen--of the way in which the Supreme Court of the State of N. Y. does business. In these Schermerhorn partition suits, the parties, all *sui juris* & all represented, agreed on three Commissioners, all well known as experts in real estate, & as beyond exception. When the interlocutory decree appointing them is moved for, Mr. Justice Cardozo says that Mr. *Gratz Nathan*, another little Jew, & a nephew of the Judge's, must be a Commissioner, & that we may choose which of the three we will strike out to make room for him!!! Nathan would do no service & would charge $10,000 for doing it. Cardozo would confirm the charge & probably pocket half the money.

But six days later Judge Cardozo changed his mind "having been notified that we should simply abandon the suits & make a voluntary partition in case he persisted."

Mr. Strong becomes impatient at the reluctance of the Bar Association to proceed against the judges, and in December 1871 he notes:

> "It's members are *afraid* to get up a case agst Barnard, Cardozo & Co., though abundant proof of corruption is within their reach. If they should fail, Barnard &c would be hostile to them, & they would lose clients. The Counsel of the *VII Bishops* had more backbone. I feel inclined to resign from this Bar Association."

But subsequently, the Association did make charges and the Judiciary Committee of the State Assembly took them up with the result which is a matter of judicial history of this state.

Mr. Strong drops into biblical quotations in the following words:

> "'Run ye to & fro through the streets of Jerusalem, and seek in the broad places thereof, if ye can find a man, if there be any that executeth judgment, that seeketh truth.' Unless some peaceful & lawful remedy be found, a dangerous convulsion cannot be far off. To degrade venal judges & to restore confidence in the Courts, is manifestly the first step toward reform. If God restore 'our Judges as at the first, & our counsellors as at the beginning'--regenerate Bench & Bar--breathe into them the spirit of Chancellor Kent & John Wells, & of their professional brethren, every department of public service will soon be disinfected. But such energy can hardly be hoped for."

Subsequently, Mr. Bidwell was retained by counsel for Cardozo, but only "for consultation" and Mr. Strong adds:

> "This is for the sake of his white cravat & his high character, for there can be nothing to consult about, & there has been no consultation. Cardozo wants to be able to talk about 'my eminently respectable Counsel, Mr. B. & Mr. O.'*****Bidwell took this retainer reluctantly, feeling bound by the strict rule that forbids a refusal, unless there be an actual prior retainer on the other side. But I think he was wrong, and that that rule applies to none but *judicial* proceedings. On investigations by Legislative or Congressional Committees, & the like, Counsel do not appear professionally & as sworn officers of a Court, but merely as experts in badgering witnesses, and they have a perfect right to accept or decline that function. This Committee is no *Tribunal*. I regret that Bidwell should have befouled his fingers by touching--even formally--such filth as Cardozo.--The immaculate Barnard is weak enough to publish a 'protest' against Mr. S. J. Tilden's acting as a member of this Committee, because Tilden has publicly denounced him, & is not *impartial*. Impartiality is the first qualification of a Judge, but it is not essential to a Prosecutor, or to him who collects evidence for a prosecution."

The embarrassing position that Mr. Bidwell was placed in is indicated by the following entry of March 21, 1872:

> "*Bidwell* subpoenaed to attend Judiciary Committee, now investigating Barnard. With characteristic timidity, he 'really could not undertake to state the general opinion of the N. Y. Bar as to Mr. Barnard,' & so was not examined after all."

In some glee Mr. Strong notes the condemnation of Barnard by the Legislative Committee by a vote of 33 to 2, and then proceeds:

> "Very good as far as it goes. But downright Bishop Latimer would have gone a step farther--'There lacks a fourth thing to make up the mess, which, so God help me, should be *hangum tuum*, a Tybrun tippet to take with him. . . . Yea, and were it my Lord Chancellor himself, to Tybrun with him!' Latimer is right. Barnard's skeleton neatly hung on wires in a glass case, should 'point a moral & adorn' the New Court House."
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