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Jeffrey D. Kahn
Southern Methodist University, Dedman School of Law

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PROFESSOR FREDERICK C. MOSS, OR, THE EDUCATION OF A JUNIOR COLLEAGUE

Jeffrey Kahn

THE modern law school replaced the traditional practice of legal apprenticeships through which young men (they were almost always men) acquired the professional education and skills they needed at the knee of an established member of the bar. The new approach, created by Christopher Columbus Langdell at Harvard shortly before the start of the twentieth century, emphasized theory over practice.¹ Clinical legal education slowly emerged several decades after, in the words of Jerome Frank, “American legal education . . . was seduced by [this] brilliant neurotic.”² In addition to Professor Frank, an early supporter of clinical education was Robert Storey, then the Dean at Southern Methodist University’s Law School.³

Today, graduation from the SMU Law School requires eighty-seven term hours of credited classroom instruction, satisfaction of a professional skills requirement (which may be met by successful completion of one of many excellent clinical programs), and a public service requirement.⁴ Graduate and pass a state’s bar examination and you can hang out your shingle. You are ready to practice law! Or so the story goes. As it turns out, most newly minted lawyers, at SMU and elsewhere, prefer to find positions as associates with established firms. Better, according to the popular student wisdom, to get a few years under the belt before striking off on one’s own. In other words, it is worth finding a sort of apprenticeship.

1. Rosamond Parma, *The Origin, History and Compilation of the Case-Book*, 14 *LAW LIBRARY JOURNAL* 14–29 (1921). The origins of the case method of legal instruction are somewhat contested, see, e.g., Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1, 5 n.7 (2000) (crediting John Norton Pomeroy with its creation), but the standard founding myth is more suitable for my current purpose than whatever the truth happens to be.

2. Jerome Frank, *A Plea for Lawyer-Schools*, 56 *YALE L.J.* 1303, 1303 (1947).

3. Robert G. Storey, *Law School Legal Aid Clinics*, 3 *J. LEGAL EDUC.* 533, 533–34 (1951) (“The clinical method exposes the student to actual problems by confronting him with actual people who are in actual trouble. . . . In connection with the Southwestern Legal Center at Southern Methodist University in Dallas we have opened a legal aid clinic where honor students, under faculty supervision, will care for all cases referred by the City-County Welfare Board of Dallas.”).

4. SMU, *Dedman School of Law Graduate Catalog 2009–2010*, available at <http://smu.edu/catalogs/2009/file/DedmanLawFinal.pdf>.

This I know because I was recently a law student. My friends and I thought these same thoughts and, after graduation and the bar exam, we sought apprenticeships, too. Some of us obtained clerkships in the chambers of judges. Some took jobs in state or federal government offices, or in private firms. I took the first route and, early in my clerkship, asked the judge what I should do if I wanted to become a law professor. You need a bit of practical experience, he said (he was not a Langdellian). Apply to become a trial attorney in the Justice Department. Just don't stay too long or the law schools will be suspicious of your bona fides. As I said, he was not a Langdellian but knew the type.

I took the judge's advice and, about three years later, found myself at SMU. But I found myself there a bit perplexed, even scared. Who, I wondered on my first day as an assistant professor of law, will teach me how to teach? Not the substance, about which I foolishly felt confident, but the nuts and bolts. Where was the manual on writing a syllabus, dividing a textbook into digestible reading assignments, writing an exam, or setting a curve? What did good teaching notes look like? Who did I see about tutorials in the Socratic Method? My new colleagues were terrifically friendly. But they all seemed to be operating under the assumption that I knew what I was doing. And now did not seem the right time to correct their misperceptions.

How had I missed my apprenticeship? The voice inside my head sounded the Brooklyn-accented, world-weary, sarcastic rebuke of a disbelieving Mona Lisa Vito from the film *My Cousin Vinny*: "They didn't teach you that at law school either?"⁵

And that was just the teaching part. Looking around from my new vantage point as a junior faculty member, I dimly perceived that political hazards lay in the path of the unwary. I was warned by well-meaning senior colleagues to keep my head down at faculty meetings and to remain ever vigilant. But the vigilance of the untenured is a paranoid watch. Who would help me walk through the minefield of contentious faculty meetings, professional rivalries, and office politics that exist in every good academic institution? Who would be my guide?

Fred Moss, that's who. I didn't know at the time how lucky I was to have met him when I did. And I didn't know at the time how lucky I was that this man's philosophy could not reasonably be described as even remotely similar to the worldview of Christopher Columbus Langdell.

Langdell is reported to have said, "the library is to us what the laboratory is to the chemist or the physicist and what the museum is to the naturalist."⁶ My first sustained interaction with Professor Moss was not in the library (although I later discovered that he knew the place backwards and forwards). Instead, he waited a few weeks into the start of the term and then invited me to join him for one of the Dallas Bar Associa-

5. *My Cousin Vinny* (Twentieth Century Fox 1992). I note that notwithstanding this doubt expressed about his abilities, Vinny Gambini won his case, although it wasn't pretty.

6. Frank, *supra* note 2, at 1304.

tion's frequent luncheon lectures, a talk on terrorism prosecutions by a former federal prosecutor. Like all such events, this one was held at the Belo Mansion in downtown Dallas.

The lecture was fascinating, but Professor Moss never commented on it. He also never told me to join the Dallas Bar Association (although he was careful to note immediately after I disclosed my Michigan Bar affiliation that one didn't have to be a member of the Texas Bar to join). Nor did he say a word about the importance of maintaining ties to the local legal community (although a steady stream of lawyers interrupted our lunch to greet him). And he never explained why he drove us back to the Law School via a different route than he took to get there. But each was a carefully offered piece of advice of professional and practical importance: (1) Not all knowledge is to be found at the University; (2) Stay connected to members of the practicing bar; and (3) Know how to get home when the freeway is clogged.

Professor Moss had started his legal career as a federal prosecutor and the habits of a trial attorney are embedded in him.⁷ I had been taken on this excursion to be shown evidence in support of arguments he made subtly but persuasively. I kept going back to the Belo.

Hesitantly, I began to seek advice on my teaching from him. How much detail to put into the syllabus. How to detect whether my class was ready to move on to the next issue, or needed more review. How to deal with a troubled student. Reflecting on those meetings, I am struck now by how "how"-driven my questioning was. I also remember that Professor Moss offered advice, not judgment. My errors were not called out for what they were. Alternative practices were diplomatically offered. And the door was always open (or at least, ajar. Professor Moss's willingness to be interrupted was expressed by the angle between door and jamb. An acute angle meant he was working—the door was always at an acute angle—but precision mattered. In my experience, entry was welcome beyond about 20 degrees.)

Occasionally, I would find in my mailbox an offprint of one of his many articles on teaching.⁸ A short time after its discovery, Professor Moss

7. After graduating from the Villanova Law School in 1968, Fred Moss went into the United States Army. He was in Vietnam during most of 1970. After honorably completing his military service, he joined the United States Attorney's Office in the District of Columbia, his hometown. He left there in the summer or early fall of 1975 and went up to Harvard as a teaching fellow, where he stayed for three years. In 1978, he moved on to SMU, where I met him twenty-eight years later. The best law reviews always require citations to authority, and rightly so; the SMU Law Review is no exception. That said, I will not identify my authority except to say that it is an impeccable source.

8. Two articles that I particularly enjoyed reading are: Frederick C. Moss, *A 2006 Law Grad's Speech to the Graduating Class of 2050*, 15 WIDENER L.J. 243 (2006) and Frederick C. Moss, *"Is You Is, Or Is You Ain't My [Client]?"*: A Law Professor's Cautionary Thoughts on Advising Students, 42 S. TEX. L. REV. 519 (2001). The one that Fred never gave me, but I wish he had, is: David G. Epstein & Frederick C. Moss, *Ex post: To Billy Ray & Bill: With All Due Respect*, 7 GREEN BAG 2D 197 (2004). I am very pleased, however, to have been given the Justice Stevens Bobblehead that Fred received from that publication in appreciation for this work.

would come around to my office, ostensibly on other business, and then almost embarrassingly mention that he'd left something for me to look over. This modesty was not only characteristic, it was directly correlated to the helpfulness of the article. I read attentively.

Professor Moss's helpful advice extended beyond the classroom. I was encouraged to take my family to the Texas State Fair, particularly the animal exhibition halls. My daughter may never know that it is not her father she should thank for the joy this put into her then-toddler heart. Restaurants were named and rated. Movies and concerts suggested. Didn't he know that I had no time for this? I was up late every night preparing for class, working on articles, worrying. Balancing work with family and time off did not come easily to me. What little sanity there was that first year, I now realize that I owe to these well-timed suggestions to take it down a notch.

As it happens, my wife and young daughter visited relatives overseas several times during my first years at SMU. They would be gone for several weeks at a time, often during the term. Fred and his wife Martha conspired to cushion my forced return to temporary bachelorhood. Each time, just as my canned goods and instant noodles dwindled to dangerously low levels, casting hungry shadows on the back wall of the pantry, an invitation to dinner would arrive from the Moss home. I would bring a bottle of wine but two would be opened. Extra portions of fish, potatoes, green vegetables, and other properly cooked and nutritious food were heaped on my plate. I always left happy, with stomach, mind, and heart equally satisfied.

Fred's retirement took effect at the end of the Fall 2009 term. Some on the faculty privately expressed the opinion that Fred had been dispossessed of his office rather hastily after so many years of occupancy (especially since the room then sat empty for the remainder of the academic year). But Fred seemed to view this fussing as a tempest in a teapot, even a silver-lined teapot. After all, the eviction had focused his attention on the need to triage his books and papers, and the library carrel he had been assigned was perfectly adequate for his needs. Another lesson for those who were paying attention: Don't sweat the small stuff.

Finally, as I soon learned, Professor Moss is what is known as a wicked good folk musician. Lesson: Find yourself a hobby.

Frank described Langdell as: "a cloistered, bookish man, and bookish, too, in a narrow sense. In his student days at Harvard Law School, he haunted the library, poring over the Year Books; he is said to have expressed regrets that he had not lived in the time of the Plantagenets. In his sixteen years of practice he led a secluded life, seeing little of clients, for the most part in the law library writing briefs and drafting pleadings for other lawyers."⁹

9. Frank, *supra* note 2, at 1303.

Although early in his career Professor Moss taught at Harvard, he is no Professor Langdell. Thank God. And I thank my lucky stars that I met him when I did. It has been a very nice apprenticeship.

