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The Deanship

Ellen Ash Peters[†]

Others of his admirers have eloquently described the breadth and depth of Eugene V. Rostow's achievements during his long and distinguished legal career. My Tribute will instead focus briefly on "Gene the Dean," which is how I first came to know him.

Three aspects of the Rostow deanship in its initial years stand out. One was his leadership in reshaping Yale's educational mission. A second was his commitment to rebuilding faculty collegiality. The third was his understanding and support of new members of the faculty.

The most important of his educational reforms, launched in 1956 early in his deanship, was the first-term program. The proposition that new lawyers-to-be could best be acculturated to their new discipline in a small group of sixteen now seems self-evident because it is an idea that has been widely accepted throughout the American law school community. At the time of its initiation, however, the first-term small group program was a remarkable departure from the then-standard law school setting of classes of seventy-five or more students. The small group built on Yale's great strength as a small school to make Yale the most admired and respected law school in the country today.

The small group setting was designed to encourage students to take an active role in their legal education from its very outset. Dramatically less intimidating than a large classroom, the small group was a supportive environment for the exploration of a new discipline and a new vocabulary. It was a safe place for the exchange of views about any and all of the issues raised by contracts, torts, civil procedure, or constitutional law. It taught students to value the contributions of their classmates in the shared struggle to make sense of this arcane new world. It empowered each of them to ask what needed to be asked and to answer what needed to be answered,

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sustained by the understanding that each in turn would sometimes hit the nail on the head and sometimes miss something of significance.

From the point of view of faculty members, especially those who were assuming a professorial role for the first time, the small group was as much a learning experience as a teaching experience. Somewhat to my surprise, however, even when I was a seasoned campaigner with tenure, a small group continued to offer new challenges, for the group and for me, every time I was fortunate enough to have such an assignment. The small group always educated me and enhanced my pleasure at watching budding lawyers grow with enthusiasm for their chosen profession and with confidence that they could cope.

The small group served several discrete purposes. For many students, it was the foundation for the formation of study groups. It provided linkage with skills training in research and writing. It revealed that the case celebrated in your casebook might never again be cited for its holding.¹ The supervision of first-term papers, with the assistance of a third-year student, uncovered not only varying degrees of writing ability but also unresolved difficulties in legal analysis. The first term is a good time to help law students confront and correct any such problems.

Even more important, the small group program encouraged its members to develop a sense of community that is so important (and, regrettably, so often missing in the legal profession as a whole). As an example, one fall, a contracts small group was following its normal path when, around Thanksgiving, the father of one of the students unexpectedly died. The father had been the mainstay of a family business. Despite valiant efforts by all concerned, no one but the student was available to take over immediately. Duty called. With visible regret, the student decided that he had to resign from the law school then and there. He did not think he could manage his family responsibilities as well as his Yale responsibilities. Indeed, it was by no means clear that he would ever return to the law school. But—his small group intervened. They took notes for him, they prepared summaries for him, they visited him whenever he had some free time. They coached him for his final examinations in each of the first-term courses. They saw him through. He finished the first term in good standing and, some years later, was able to return to the school and complete his legal education.²

1. *James Baird Co. v. Gimbel Bros.*, 64 F.2d 344 (2d Cir. 1933), is a case that then was widely cited in leading casebooks for the proposition that a bidder on a construction project could not escape its contractual obligation if it discovered, even before construction had begun, that it had made an error in calculating its bid. As best I can tell, it has rarely been cited and rarely, if ever, been followed.

2. In fairness, not all of Dean Rostow's reforms were as successful as the small group program. Dean Rostow also initiated the divisional program to enable students to study some aspect of the legal curriculum in depth, not so much to become specialists but to have the

In addition to his educational initiatives, Dean Rostow made it an important part of his agenda to rebuild faculty collegiality. The faculty in 1956, when I first joined its ranks, was not a functioning community. The pool of professors had been thinned by resignations and by denials of tenure, some apparently quite controversial. The newcomers in 1956-1957 were an extraordinarily eclectic group, even by Yale standards. A great number of us had no professorial experience. Except for an economist, my new colleagues had solid credentials, however, in their work in private practice. My own record was even more attenuated. Two years out of law school, I had been a law clerk³ and a research assistant at Boalt Hall, the law school of the University of California at Berkeley.⁴

The Dean went about the monumental task of molding this motley crew into an intellectual community by hosting and supporting a great number of faculty social events. These events included dinners at his home, at the beach, and at other faculty homes. They were all wonderful parties, with good food and good wine. People came to know each other as friends. Everyone was invited, and as far I could tell, everyone attended. The Dean provided the social glue without which highly individualistic and opinionated scholars cannot easily work together to achieve the shared goals of a great law school.

One measure of the Dean's success was the lively ongoing dialogue in the faculty lounge, in which, most of the time, scholarly discussion was the order of the day and interesting ideas were warmly received—and warmly criticized. The fact that the faculty regularly congregated there was emblematic of collegial scholarship. It wouldn't have happened without the Dean's social events.

Finally, Dean Rostow provided important support, at important times, to individual faculty members. I can speak only to my own exchanges with him, but I have no reason to believe that my experience was unique. The faculty had confidence in his personal guidance and his generous allocation of institutional support services.

My first contact with the Dean was a telegram that I received from him in 1956, during the spring term of my work as a research assistant at Boalt. The telegram offered me a position as an assistant professor at a salary of

experience of writing a major paper on a topic arising out of the program. This program turned out to demand excessive amounts of faculty time. Over time, it was discontinued.

3. My clerkship was with Chief Judge Charles E. Clark of the United States Court of Appeals for the Second Circuit.

4. I was especially grateful for an academic appointment at Yale. Not only did Yale offer immeasurable academic challenges, but it also provided an opportunity for gainful employment. In 1956, there were formidable barriers to the entry of women into the legal profession. Supreme Court Justice Sandra Day O'Connor, for example, a high ranking graduate of the Stanford Law School, could initially obtain no position at a national law firm except that of a legal secretary. Sandra Day O'Connor, *Portia's Progress*, 66 N.Y.U. L. REV. 1546, 1549 (1991).

\$7000. For me, that was a princely sum. It immediately doubled my family's income. I learned later that, although other candidates for faculty positions had been vetted out in extensive personal interviews, I had escaped that daunting process by dint of the fact that California was too far away.

My first assignment, in the fall of 1956, was to teach a small group in contracts.⁵ Sometime during that fall, the Dean called me in to discuss my second-term teaching obligations, which, he said, would be family law and commercial law. Family law promised to be an interesting adventure because I could approach it from a fresh perspective, never having taken any such course during law school. Commercial law, on the other hand, was closer to my law student interests.

People sometimes ask me how I came to focus my professorial career on that subject. The Dean is the answer. Having been told of my teaching assignments, I naturally replied, "Yes, sir." It never occurred to me to say anything else. As it turned out, this teaching experience led me to the discovery of what became a lifelong interest in the intricacies of the then-new Uniform Commercial Code and the policy choices that it represented. I was extremely fortunate in that my senior colleague, Grant Gilmore, a draftsman of the Code, shared my enthusiasm and encouraged my research and writing.

Other meetings with the Dean were more personal. In the spring of 1957, I was pregnant. It was reasonably clear that no one on the faculty then had any awareness of my condition. Perhaps I might have been able to conceal my pregnancy altogether.⁶ I was concerned, however, about my professorial future. I decided to meet with the Dean, fully expecting to be wished a fond farewell, perhaps with the suggestion that the school might consider rehiring me once my child or children had grown.

Instead of delivering this unhappy news, the Dean asked me how I proposed to handle the situation. I asked permission to teach only one small group class in the fall, instead of taking on a second course then, and to add that second obligation to my regular commitments for the following spring. To my surprise and delight, the Dean immediately agreed.⁷ His was a remarkable decision. This happened at a time when law schools had few women students and even fewer women professors. The Dean took my request seriously because, in less than one year, in his eyes I had become a member of the Yale family.

5. Then as now, an assignment to teach a small group was the preferred way to introduce new faculty members to their professorial role.

6. At Boalt Hall, I met one of the very first women to become a tenured professor at a major law school. She had found it necessary to conceal her pregnancy, to teach until the day that her child was delivered, and to return to teaching the following day.

7. As it happened, the Dean never asked me to teach an additional course that spring.

Even families have disagreements sometimes. One arose in the context of decisions about tenure. As Dean Kronman has observed, the Law School hired eighteen new faculty members in the mid-1950s.⁸ The governing board agreed that “everyone” in this group would be granted tenure no later than 1960, without regard to scholarly publication or classroom performance. “Everyone” did not include Ellen Peters. I thought then, and think now, that this decision was unfair. I wondered whether to resign.

It seemed appropriate to explore the tenure situation with the Dean. The Dean was perfectly candid. The governing board had reached a decision and that decision would stand. He neither defended the decision nor deprecated it. Instead, he looked to the future. He offered me a reduced teaching load, and additional research assistance, to enable me to demonstrate the scholarly achievements on which the governing board insisted. Most important, he expressed his confidence that I could do the work. It was his encouragement that persuaded me to stay. In 1963, *The Yale Law Journal* published a major article of mine,⁹ and in 1964, the governing board voted my tenure.

Recently I was asked, if forced to choose, whether I would have opted to be the Southmayd Professor of Law at the Yale Law School or the Chief Justice of the Connecticut Supreme Court. I hedged, dwelling on the great good fortune that allowed me to do both. My interlocutor would have none of it. He insisted that I respond to the question, one to which I had never before considered an answer. To my own surprise, I decided that the most meaningful part of my professional life was my academic career at Yale. Without my twenty-two years on the Law School faculty, I would never have had the encouragement to explore the nooks and crannies of our complex legal landscape. I would never have had the opportunity to participate in a community of scholars. It was my Yale experience that taught me to be as good a judge as I can hope to be.

I am forever and deeply indebted to Dean Eugene Victor Rostow, who made it all possible.

8. Anthony T. Kronman, *In Memory of Gene Rostow*, 113 YALE L.J. 9, 10 (2003).

9. Ellen A. Peters, *Remedies for Breach of Contracts Relating to the Sale of Goods Under the Uniform Commercial Code: A Roadmap for Article Two*, 73 YALE L.J. 199 (1963).
