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Closing Argument > column

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It started with a room

The American Board of Criminal Lawyers customarily conducts its annual meeting in the hometown of its president. As I had the privilege to hold that title this past year, the lively roundtable discussions of legal issues and the formal dinner took place in Chicago in October 2008.

I chose to conduct the Saturday and Sunday morning events at Northwestern University School of Law's Lincoln Hall.

Lincoln Hall is the most impressive classroom at the law school. Occupying space in the old building on Chicago Avenue between the Magnificent Mile and Lake Michigan, you can almost hear the echoes of parliamentary arguments made in the House of Commons, which was the model for the classroom. On one wall hangs a large painting of its namesake, our 16th president. Flat, wooden seats with tall, erect backs arranged horseshoe-style descend from the rear to the front of the classroom on three sides, all facing a well at the bottom.

There used to be a chalkboard at the room's north end, behind a long desk, and from behind that desk and in front of that chalkboard sat or stood some professors whose stature was equal to the room. When Jon R. Walz taught evidence and Jack Heinz taught criminal law they "worked the well," walking and gesturing, entertaining and enlightening.

I told members who attended our meeting about Walz and Heinz, and how important they were — along with Lincoln Hall — to what I decided to do in life.

Students at the law school met at Lincoln Hall in the spring of 1970 to discuss the bombing of Cambodia and the killing of four Kent State students who were protesting the war. We voted to close classes. I recall driving to Northwestern's Evanston campus and noticing that students had ripped out the wrought iron fencing that bordered Sheridan Road, using it to barricade the street. It has been gone ever since.

I also associate Lincoln Hall with the Chicago Seven trial. In one of life's unfortunate quirks, the assignment wheel for that case pointed to the Honorable Julius Hoffman. The trial became the best show in town. Self-proclaimed "yippies," including Abbie Hoffman (no relation to the judge) and Jerry Rubin, along with peace activist David Dellinger and others, were indicted for causing rioting at the 1968 Democratic National Convention. William Kunstler, a seasoned New York lawyer, was lead counsel for the defense.

One day Kunstler spoke to our evidence class in Lincoln Hall. He was provocative, witty and charismatic. It might have been the day I decided to become a trial lawyer.

I participated in the Judson H. Miner Moot Court Competition at Lincoln Hall in my third year. In the semifinal round there were five judges — four acting state court judges and James R. Thompson, then U.S. attorney and soon-to-be Illinois governor. After the competition, I was invited to apply at the prosecutor's office.

I spent four and a half years in the U.S. attorney's office, from March 1973 to September 1977. In those days, assistants stayed only three or four years and then left, usually to do civil work at one of the law firms, though a few went on to practice criminal defense law at boutique firms. In those days, most large firms did not practice criminal defense.

Sitting in Lincoln Hall in October 2008 led me to reflect on how much has changed. Since 1977, salaries for assistants have grown, and the size of the office has grown, too. Assistants stay longer. And when they leave, a fair number join large, predominantly civil law firms that also do some criminal defense work. Criminal law is no longer rare in large firms, a concession to the fact that more corporations are being investigated and more white-collar crimes are being indicted than ever before.

In the 1970s, assistants were not concerned with sentencing, as they are today. The judge, not the government, wielded the power to determine how long a defendant might spend in jail. A person who went to trial might even receive probation. You might go to federal court and see a bench trial. Government lawyers rarely insisted on a jury trial when the defense had waived.

Back then, although winning was important to the prosecutor, it did not mean getting the longest sentence possible. No one was heard saying, "The best sentence is the biggest sentence." No doubt the Federal Sentencing Guidelines altered the dynamics of the process.

In 1987, the guidelines introduced "charge-based sentencing," giving prosecutors power to influence sentences as never before. Attaching numerical values to crimes, aggravating factors and mitigation ensured that no guilty pleas would be resolved without painstaking attention to the guidelines.

They may now be advisory, but they remain strongly influential. The number of lawyers and judges who practiced before the guidelines were introduced is dwindling. Thus, their effect remains powerful, as evidenced by the United States having more people in prison than any other country in the world.

Significant events of scholarship, protest and government — Lincoln Hall has seen them all. It has taught generations the importance of fairness and the rule of law.

It should teach us today that the best result is the fairest. ■

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