

OWEN J. ROBERTS AND THE LAW SCHOOL

Edwin R. Keedy †

Owen Josephus Roberts was born in the Germantown section of Philadelphia on May 2, 1875. He attended the Germantown Academy and graduated in 1891. He then entered the University of Pennsylvania where he graduated with honors in 1895. During his undergraduate course, he concentrated on the study of Greek and at one time considered becoming a teacher of that subject. However, he decided to study law and entered the University of Pennsylvania Law School in the fall of 1895. Among his teachers were Dean William Draper Lewis, Francis H. Bohlen, William E. Mikell, George Stuart Patterson and George Wharton Pepper.

Roberts early showed marked ability in the study of law and, at the end of his first year, was elected to the newly formed board of student editors of the *American Law Register*, which later became the *University of Pennsylvania Law Review*. During his third year he won the Sharswood Prize for the best graduation essay with a paper on "The Rights of Stockholders with Reference to the Management of a Corporation," which was published in the *American Law Register*.¹ He received the degree of LL.B. with highest honors in 1898. In that year, he started the practice of law and was also appointed a teaching fellow in the law school. His promotion was rapid, for he was made a lecturer in 1900, assistant professor in 1901 and professor in 1907. He remained professor of law until June 30, 1919, when he resigned to devote all his time to his practice as head of the firm of Roberts, Montgomery and McKeehan, founded in 1912. While a member of the faculty, he taught bankruptcy, contracts, damages and real property. However, after 1903 his only course was real property. As a teacher he was stimulating and forceful and successfully employed the case method of instruction.

An able graduate of the Class of 1908 has prepared for this sketch the following vivid description of Roberts as a teacher:

"It is hard to see how the doctrine of dependent relative revocation or the distinction between a specific and a demonstrative legacy could inspire a group, even of second year law students,

† Professor of Law Emeritus, University of Pennsylvania; Dean, University of Pennsylvania Law School, 1940-45; A.B., 1899, Franklin and Marshall College; LL.B., 1906, Harvard University; LL.D., 1926, Franklin and Marshall College, 1950, University of Pennsylvania.

1. 46 AM. L. REG. 352, 411, 484 (1898).

at four o'clock in the afternoon. But somehow, under Professor Roberts, they did. There was something electric about that class of his, something vital and invigorating. Undoubtedly it was the personality of the man. He was a born teacher. He saw things so clearly himself, that he could only impart them one way—equally clearly.

“Not that he was a pedant, or a didactic instructor. Far from it. His primary purpose, at all times, was to train us to think for ourselves. But he wanted us to think with precision, never forgetting that the law admits of fine distinctions, which must often be drawn if cases are to be won. He never lost sight of the fact that we would some day be lawyers, representing clients, appearing before courts. He wanted us to possess a kit of sharp tools when we came to ply our trade. Accordingly, after every discussion; after every recounting of the history, common-law or statutory, which lay behind the doctrine under consideration, and the development of that doctrine into its present form; and after every dissection of the cases illustrating the doctrine, he would tell us what the law is, as nearly as one could be positive about it. We went out of his classes stimulated, sometimes a little dizzy, but we never went out wondering. He saw to it that we knew, before the hour was over, exactly what we had been talking about.

“Of course, we all admired him. He was so big, so ruggedly handsome, so brilliant, so overwhelming in repartee, and so interested, withal, in the work we were doing and that he was doing with us, that we couldn't help being interested too. Therein lies the great secret of the successful teacher. Make the subject interesting, make the students *want* to learn more about it. They will soon find out ways to learn. I doubt if he ever thought of it quite that way, although he may have. I think it more likely that the method was instinctive with him, that his mind worked that way. He loved teaching. He came very close, at one time, to making it his life's work. We all felt that atmosphere, when we sat in his room. We never thought that it was a chore for him to come out and conduct his classes. Somehow we knew that it was a treat to him, as it was to us.”

Roberts, while a member of the faculty, published a number of articles on various subjects. One of these, “Some Observations on the Case of Private Wadsworth,”² which appeared in 1903, was particularly timely. During the anthracite coal strike in the fall of 1902, when the Pennsylvania National Guard was on active duty in the coal-fields, Private Wadsworth, acting under the orders of the commanding general, shot and killed a peaceful civilian. The question arose whether he could be tried in the civil court for murder or was

2. 51 AM. L. REG. 63, 161 (1903).

subject to the exclusive jurisdiction of the military authorities. In his article, Roberts argued to the conclusion that martial law cannot exist in this country in time of peace when the civil courts are open and functioning. This article aroused considerable public interest and led to his appointment as first assistant district attorney of Philadelphia, a position which he held for three years. In May of 1918, while still a member of the faculty, he was appointed by the Attorney General of the United States as Special Deputy Attorney General to prosecute, in the eastern district of Pennsylvania, cases arising under the Espionage Act of World War 1. While serving in this capacity, he obtained several convictions for violation of the act.

Although his connection with the law school ended in 1919, his continued interest in legal education is shown by the fact that he served as a member of the Council of the American Law Institute from 1924 to 1936. Moreover in 1943, two years before his retirement from the Supreme Court, he was elected a life trustee of the University of Pennsylvania.

In the summer of 1948, when the deanship of the law school unexpectedly became vacant, Justice Roberts, at the age of seventy-three, as an act of loyalty to the school, accepted an invitation to become the dean. He resigned this position at the end of three years, during all of which time he served without compensation. As dean, he devoted much thought to the problems of administration, which he was ready to discuss with his colleagues. Several times he expressed the opinion that the relationship of the members of a law faculty with each other is similar to that of the judges of an appellate court, with the dean corresponding to the chief justice.

Of his many accomplishments as dean of the law school, two in particular deserve mention. His success in obtaining a substantial increase in faculty salaries was an important factor in preventing loss of personnel, particularly of the younger men, to other law schools. He also succeeded in enlarging substantially the funds available for student scholarships; and this had the effect of attracting students from a wider geographical area as well as improving the calibre of the student body. Mention should also be made of his continued efforts to enlarge and improve the Biddle Law Library, and of his efforts to expand the placement program. As a result of the latter, several of the top students were appointed law clerks to Justices of the United States Supreme Court.

When he became dean he had not expected to do any teaching, but his absorbing interest in legal education induced him to conduct a seminar on constitutional law and to instruct one of the two sections of the class in torts. The seminar, which was continued for two years,

was concerned during the first year with due process of law and during the second year with the problem of federalism. The students attending the seminar had the unusual opportunity of discussing many decisions of the Supreme Court with the Justice who wrote the opinions. For the teaching of torts, he decided to try an educational experiment. Instead of employing the traditional case method, he assigned readings in a textbook and then discussed with the students in class problems which he prepared from decided cases relating to the portion of the text which had been studied. He made careful preparation for this course, and it was inspiring as well as interesting to see the former Justice working in the library along with the students. Although the students were stimulated by the new approach, he admitted quite frankly that the novel experiment was not so successful a teaching method as he had hoped it would be.

While dean he received two notable academic honors. In 1948 he was invited to deliver the Gasper P. Bacon Lectures at Boston University, and in 1951, the Holmes Lectures at Harvard. His subject for the former lectures was "American Constitutional Government; The Blue Print and the Structure."³ His subjects for the latter were "Sovereignty and the Power to Tax," "Conflicts of Police Power" and "The Fourteenth Amendment."⁴ As a conclusion to the Holmes Lectures he stated ". . . that doctrines announced as corollaries to express grants of power to the Congress have more and more circumscribed the pristine powers of the states, which were intended to be reserved to them by the Constitution, and that resistance to the expansion of those doctrines seems to have weakened as our nation has grown."⁵

As one reflects upon the numerous accomplishments of Roberts in his relationship to the law school, one can say with assurance that his reputation as a teacher and a scholar is among the most enduring. As dean, his devotion to his responsibilities at the school was unremitting, and his vision and forceful leadership helped to bring the law school through critical post-war years with higher standards and renewed strength. Perhaps the qualities that stand out most strongly are his greatness of mind and character. Because of these qualities the students whom he taught, and the faculty with whom he worked, will always cherish that association. For the present writer it was a stimulating and pleasurable experience, after an interim of twenty-nine years, to be associated again with Owen Roberts on the faculty of the law school.

3. 29 B.U.L. REV. 1 (1949).

4. ROBERTS, *THE COURT AND THE CONSTITUTION* (1951).

5. *Id.* at 95.