

Dr. Edwin Vieira addressing the Committees of Safety
[<http://www.committeesofsafety.org>] tea party at Faneuil Hall.
(YouTube video is at the
http://www.youtube.com/watch?feature=player_embedded&v=klte7XMdQGY webpage)

Part 5/5 Edwin Vieira at Faneuil Hall Dec 14 2008

TRANSCRIBED by John R. Wilkenson

INTRODUCTION: Edwin, of course, has four degrees from Harvard, one being from Harvard Law School. And he told me a wonderful anecdote the other night about what he studied at Harvard Law School, and what he did not study, what he was not assigned. So I wonder if you [speaking to Dr. Vieira] could just retell that anecdote for us because all of the law schools in the country really are pyramidally still organized under Harvard, how they teach it, and how you would teach it, if you would.

DR. EDWIN VIEIRA: Well, it's really a historical point that for a very long time, law was taught out of essentially textbooks. These were written by some expert in the field, and he would cover a whole subject.

Blackstone, Sir William Blackstone, wrote a set called "Commentaries on the Laws of England", which was exactly that: deciding what the laws of England were, and essentially his interpretation of them. That was the most popular law book in the American colonies before the War of Independence.

Subsequent to the War of Independence, a number of commentaries, specifically on the constitution were written. Chancellor Kent of New York wrote one. Justice [Joseph] Story, who served on the court with John Marshall wrote another, probably the best known, and, in a sense, perhaps the best of all of them. And we've seen some in more recent times, even written by professors in modern law schools.

But in the late 1800s there developed a new philosophy of teaching law: not out of these textbooks that would systematically go through, line by line, clause by clause, article by article, the Constitution of the United States, reciting history and analyzing what the terminology meant and how it applied, but teaching according to what was called the "case method". And the case method was to read decisions of the courts on the meaning of this [holding up a copy of the U.S. Constitution] document.

Well the grave difficulty in that method from a scientific point of view is that whereas the constitution can neither be right nor wrong – it simply IS – a decision of a judge can be right, or it can be wrong. So, attempting to determine what the constitution means by reading a decision of the judge has the problem exactly backwards: you determine whether the decision of the judge is valid by understanding the constitution.

I've always looked at this as not a ... as a method for a better grasp of the meaning of laws, but it was intellectual imperialism on behalf of the legal intelligentsia. Because the legal intelligentsia would then become the ones through whose interpretation of the law we would know what it was, instead of knowing it by reading it ourselves.

And by the time I went to Harvard Law School, which was in the 1970s, everything was being taught by the case method, including constitutional law. They had these books called "case books", and they were full of excerpts from [U.S.] Supreme Court opinions, and you were to read these and somehow intuit from this, rightly or wrongly, what the constitution meant.

And the premise of that whole structure was that *what the [U.S.] Supreme Court said* (emphasis added) was the constitution. Fascinating thought. Because as I remember reading the constitution – we never read it in class by the [way] – one thing I felt was fascinating. [It was a] course in constitutional law, and the first meeting the professor did not say, "Well I want you to come back on Wednesday having actually read the constitution so we'll all know what we're talking about." [Audience laughter]

All right, now that's usually not the scientific way to approach any kind of problem, so there was probably some other agenda built in there. But the last time I read the constitution, which was, what, a few seconds ago, how does it start? "We the judges?" "We the law professors?" No! It's "we the people." And there's a presumption built into that statement that we the people are capable of understanding this document [holding up a copy of the constitution] if we the people are the ones who ordained and established it. And we do not need its meaning to be translated for us by some elitist group that has set itself up for that purpose. [Audience applause]

And with all due deference to Cambridge, you do not need four Harvard degrees to understand that – or even one. A spoonful of common sense tells

you that simply by looking at this document [places hand on copy of constitution]. But I think if you want to study it from that perspective, you probably don't want to go to any of the big name law schools in the country today. [Audience applause]