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Copying and Copyright Issues at the Litchfield Law School

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In a recent article in this journal, Catherine R. Blondel-Libardi provided an overview of the Litchfield Law School, including an explanation of the notebook method used at the school over the course of its lifetime (1784-1833). Students who attended the school paid a set fee to its proprietors, Tapping Reeve and James Gould. They would, in exchange, be given the opportunity to hear lectures on the law from which they made sets of notes, which they were meant to augment with other authorities and meticulously recopy into bound notebooks. Many copies of these notebooks have survived. However, it has become increasingly clear that not all surviving copies were created by students who actually attended the school. As Blondel-Libardi noted, “some alumni [also] chose to sell their notebooks to incoming students, a practice frowned upon by Reeve and Gould.”

This article picks up on the point about illicit copying at the Litchfield School and offers readers of the journal an exploration of this particular problem and its connection to larger copyright issues at this famous Connecticut institution. More specifically, it reports on and reproduces excerpts from an 1826 letter evidencing Gould’s attempts to stop unauthorized reproduction of the law school notebooks.

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Students copy each others notes all the time and most would be surprised, as we will see the copier in this case was, to be accused of engaging in inappropriate and perhaps even illegal activity in doing so. Gould, however, took a very proprietary attitude towards the lecture notes made at the School. They were, after all, the prized possession of the Litchfield operation. He did not hesitate to say what he thought proper and not proper with respect to who could make a copy and who could not. However, in the incident reported here both parties express outrage. Their mutual indignation indicates that the situation was in fact in a grey zone, both morally with respect to student practice and legally with respect to the copyright issues that were involved. How would lawyers and aspiring lawyers in early nineteenth-century Connecticut behave in such a situation? How did it bear on the fate of this famous institution?

Introduction

The Litchfield Law School is probably the most famous of the early American experiments in formal legal education. The best estimate is that 1000 students attended over its fifty-year history from 1774 to 1833. In addition to its illustrious graduates – a list that includes vice-presidents, senators, congressmen, judges, and other prominent figures of the early American republic – the school stands out in a period in which most initiatives in formal legal education were fitful and short-lived. Most lawyers received their training apprenticing in the office of a more senior lawyer, who took them in for a set fee (usually $100). The students would then work copying the lawyer’s papers and assisting him in his practice, as well as taking the opportunity to learn or “read” law using the senior lawyer’s collection of law books.
The Litchfield Law School, while more formal than most apprenticeship arrangements, was not college-affiliated. It was a proprietary school, which meant that the fees charged by Reeve and Gould were kept by them as the owners or proprietors of the operation just as they would be in an apprenticeship arrangement. While this direct-pay system for formalized legal education came to be much disparaged later in the nineteenth century, Litchfield’s status as a proprietary school never prevented it from being viewed as anything other than an elite training, with an established reputation for producing the future leaders of the young nation. And although it was stridently Federalist in terms of political persuasion, this did not detract from Litchfield’s status as one of the few programs of national stature. In his 1921 report on the history of legal education, Alfred Zantinger Reed noted that “[the Litchfield Law School] was not the first law school in America, but it was the first law school of national reputation that taught students from all parts of the country.” Approximately two thirds of the students came from out-of-state, including a significant number from the Southern states. A Litchfield education in the 1780s was later described as “probably the best professional instruction available in the United States.”

The Litchfield School was established and run by Tapping Reeve, a lawyer who moved to picturesque Litchfield in Northeastern Connecticut with his young bride, Sally Burr Reeve, sister of Aaron Burr. Indeed, Burr was Reeve’s first student in 1774. Given the prevalence of apprenticeships, it was by no means unusual to arrange, as Reeve did, for a series of students to come and study with him. However, instead of having those students assist him in the practice of law, Reeve had, within a ten-year period, turned teaching them the law into his primary business. As Reed put it, “1784 is the date usually
assigned as the foundation of the Litchfield Law School. Its catalogue claims 1782.
Doubtless it was never born – it simply grew.”

The large house in the center of town where the Reeves lived was probably financed by Sally’s inheritance. Her mother was one of the daughters of Jonathan Edwards and her father, Aaron Burr Sr., served as president of the New Jersey College (later Princeton). Reeve worked as a tutor there, and taught both Sally and Aaron Jr. in their youth. The two children were orphaned at a very young age after their parents and grandparents fell victim to a string of sudden and deadly illnesses. The Edwards family, in whose care Sally found herself, was originally opposed to the match to Reeve. However, after some family opposition, the two married and moved to Litchfield in 1773. Sally’s ill health kept Reeve close to home during these years. And after he started taking on many students, it was probably this that prompted him to move the lectures from the family parlor to a separate schoolhouse built in the yard of the house in 1784.

Reeve ran the operation on his own until 1798, the year that Sally died and in which he became a judge. Subsequently, in what seems to have been a double bid to make his life easier, he remarried – a much younger woman who had been his housekeeper – and he took on a business partner – a former student named James Gould and the two ran the school together until 1820. Historians of the school generally credit Gould with bringing a greater level of formality to the business by, for example, issuing catalogues and advertisements, as well as by keeping better track of the students who attended. However, Gould does not seem to have been as well-liked by the students as Reeve was.
The program itself required students to come to the town and board with a local family for the term of the course, typically fourteen to eighteen months. Students would pay Reeve and Gould $100 for the first twelve months and $60 for a second year, with a varying number of months in the second year. The content of the course focused primarily on private law. However, it included criminal law, which Gould probably introduced when he joined Reeve in 1798. And constitutional law was treated to some extent, where, for instance, it made its way into the curriculum through moot court sessions. Students attended morning lectures in the small schoolroom in the yard of Reeve’s house. Gould also had a schoolhouse built for the yard of his house where the students came to hear his lectures. During the lectures, the students took notes, which they then reworked in the afternoon – recopying them and adding references using a collection of the school’s books.

As one student reported in a letter to his father, “I rise between 7 & 8, make a fire & send for breakfast[..] From there to Lecture where I remain until between 10 & 11 – there to my room & copy Lectures till 5 pm[..] I have dinnertime at 1 pm.” The same student wrote that

[Litchfield] is indeed the place for law. [It] is all Law. I believe [?] we have a Lecture every day in which the rule of Law is given and the Authorities so that we have to look [up?] the Authorities as cited. Only if we wish to substantiate the point and there is a library to which we have access to [such?] those Authorities.

As Gould himself put it in an advertisement for the school in 1928:

[Notes on the lectures] are taken down in full by the students, and after being compared with each other, are generally transcribed in a more neat and legible hand. The remainder of the day is occupied in examining the authorities cited in support of the several rules, and in reading the most approved authors upon those branches of the Law, which are at the time the subject of the lectures. These notes, thus written out, are, when complete, comprised in five large volumes, which constitute books of reference, the great advantages of which must be
apparent to every one of the slightest acquaintance with the comprehensive and abstruse science of the Law.26

At least some students did seem to consult these authorities, as there was a need to establish rules and penalties for failing to return books borrowed from the school’s small library.27 The ultimate aim was each student to make their own set of these “books of reference” so that they could take them with them out into practice. As Gould put it, the notebooks would serve as “a manual, or common-place book, (including a repository of references,) to aid [the student] in his professional practice.”28

**Copying Issues**

As laudable as the goal of making one’s own “books of reference” was, it was difficult to escape the reality that what was involved here was primarily dictation. As one student from 1823, Edward Deering Mansfield, put it, Gould “read the principle from his own manuscript twice distinctly, pausing between, and repeating in the same manner the leading cases.”29 Charles G. Loring, who attended in 1813, said that when Gould spoke, “every word was pure English, undefiled and every sentence fell from his lips perfectly finished, as clear, transparent and penetrating as light, and every rule and principle as exactly defined and limited as the outline of a building against the sky.”30 Consider the following passage from the notebook of Gould’s son George, who attended the school in 1827.31 The topic in this passage of the notes is the effect of a statute on bonds for the performance of covenants in which some parts of them are lawful and some are not:

This distinction arises, I conceive, not from any difference in principle, between the effect of a partial illegality created by statute in one instance, and by the common law in the other; but from the phraseology and structure of statute law; which in such cases, declares the bond or security void; i.e. (according to the construction given to the words), if the whole bond or security – If a statute
should merely declare a particular clause, or condition, in any obligation to be void; the whole obligation would not be so, I trust.32

Transcribing such stiff and formal prose verbatim could not have been very interesting or engaging. One gets the impression that this problem had gotten quite bad in the last decade or so of the school’s existence.

On May 24, 1824, a young man, Ralph Garwood Camp, wrote to Seth Staples, who operated a rival law office school in New Haven, to ask about the price of tuition, room and board, and so on. Camp wrote his letter from Litchfield.33 That this young man was prepared to incur the time and expense of traveling to New Haven when Gould’s school was right at hand gives a strong indication that Staples’s school had come to be preferred.

Indeed, some of Staples’s students are reported to have said that the notebook method condemned the Litchfield students to “copying from his [Gould’s] lips the principles laid down and the authorities referred to.”34 In contrast, the students at the Staples school used the “treatise-recitation” method that had them draw the principles from the textbook through their self-study and which saw those principles “shifted, tested and illustrated” in the recitation lesson.35 What use, after all, could there be in “the mere entry of [principles and decisions] in a note book”?36

Later commentators were also quite critical of the notebook method. Simeon Eben Baldwin, whose grandfather attended the Litchfield program in 1812, and who was a great champion of the lecture-treatise method used in combination with recitations at Yale Law School, wrote that “Judge Gould clung closely to his manuscript, from which he read so slowly that the students, each seated at a separate desk, could write down
everything that was uttered.” Such “dictation” was, according to Baldwin, “a medieval and … inadmissible mode of instruction.”

Dictation also left the Litchfield notebook method open to abuse. Why pay to come to the town and hear the lectures in person when one could simply copy exactly what would be heard from someone else who had attended? Indeed, this is exactly what Seth Staples is now suspected of having done. This founder of the law office school in New Haven that was the precursor of the Yale Law School had been thought to have attended the Litchfield School in 1798. He certainly made a copy of the Litchfield notes bearing that date. It turns out, however, that Staples could not have been there that year, and he likely copied his set of notes from his friend, the later Connecticut law reporter, Thomas Day. Yale Law School librarian, Tracy Thompson, prepared a typescript of Staples’s correspondence with Day, which shows that Staples was in New Haven for most of 1798, and in it she presented the theory that Staples copied Day’s notes.

Indeed, there is quite a bit of evidence that such illicit copying was widespread. For instance, one student, Augustus Hand, reported to his father in 1827 that he was in the process of making a copy of a complete set of notes and that there were at any rate “one or two copies in town” available for reproduction. He and the former student and sometime assistant at the school who supplied him with the original notes hoped to keep the “business between [themselves] for these Lectures are sacred to the Judge [Gould] being the labor of his life in the same manner as a patent [right. So we talk less and write faster].” According to Hand’s report to his father, the going rate for a hired hand to do the transcription was $130, quite a hefty sum.
The reason why the problem of rampant copying did not put the school out of business earlier than it did was how laborious and expensive handwritten copying was, as Hand knew. The unavailability of Photostat photocopying was a technological fact on Reeve and Gould’s side throughout the life of the school. Had full copies been readily available, law students in every lawyer’s office across the country could have simply added a copy of the lecture notes to the list of books to be read during their apprenticeship period. As it was, Reeve and Gould could, as Reed put it, preserve “their system of lectures as a jealously guarded asset of the school.”45

As Lawrence Friedman has written, the Litchfield Law School’s “lectures were never published; to publish would have meant to perish, since students would have lost most of their incentive for paying tuition and going to class.”46 And while it is true that Reeve and Gould never published the lectures as such, Reeve did publish two treatises, one of which reproduces large parts of his lectures on “the law of husband and wife.”47 However, this book, Baron and Femme, did not appear until 1816, four years before Reeve left the school. Reeve’s second book was not published until after his death and it is unclear how much of it was ghost written by the former student who helped bring the book to press.48 Gould’s own published work on the law of pleading, which according to him “contain[ed], with some additions, the substance of my lectures,” did not appear until 1832.49

Reeve’s incentive to publish was in some measure financial. A statute passed in 1811 brought in forced retirement for judges at the age of seventy.50 He was therefore forced to resign and tendered his resignation after just one year of being chief justice of the Supreme Court of Errors in 1815.51 This left him to rely for his income on the school
alone. However, he set to work on *Baron and Femme*, which as Jacqueline Calder put it, “was not only a treatise of Reeve’s philosophy of law but a means of earning some money, which he desperately needed.”52 Letters to former students showed that Reeve had a keen interest in generating profits from the sale of the work.53 Once he was forced to retire from the school in 1820, his troubled financial situation was such that students went so far as to circulate a letter to raise funds to get him out of debt.54

Something seems to have happened to the notebooks over the course of the life of the school, perhaps connected to the change in ownership from Reeve and Gould and their different personalities and pedagogical styles. Reeve was said to have had a wandering speaking style, speaking extemporaneously, leaving some sentences unfinished and so on.55 Most incidents relating to Reeve depict a rather bumbling and eccentric person, much loved for all that.56 However, one also gets the impression that he was not organized enough to be doing anything like providing rote dictation to the students.57 And reading sections of early notebooks one gets the sense that there are more variations one as between the other than with later notebooks. Gould had a different personality and it seems that the more the course became exclusively his, the more rigidity crept in. As the lectures became fixed in stone, the more reproducible they became, and the less actual attendance mattered or would have been seen by students as a valuable experience that was worth paying for. Robotic copying, in other words – either from the lecturer’s lips or from someone else’s notes – would become indistinguishable as pedagogical experiences. Unauthorized copying of the notes might well become more of a problem under those conditions. Such a conclusion, however, would need to be
verified by systematic comparisons of notebooks from earlier and later periods in the life of the school.

Future researchers investigating such a thesis should, however, be aware of a bias against Gould that seems to have crept its way into the Litchfield literature, which may have a distorting effect.\textsuperscript{58} For instance, Baldwin wrote the following in an oft-repeated statement: “It was feeling that predominated and ruled the character in Reeve, and intellect in Gould. Their students respected both, but they loved only one.”\textsuperscript{59} There has been a tendency to see Reeve as a great teacher and a wonderful person whereas Gould was perceived as a rigid pedagogue and cold-hearted.\textsuperscript{60} This seems to fit just a little too perfectly with the “Judge Gould [who] read his able and finished lectures with a cold dignity to his students, each seated at his separate desk, intent on copying from his lips the principles laid down and the authorities referred to.”\textsuperscript{61} Although in this case, it might well be a case of “if the shoe fits.” As a judge, Baldwin wrote that Gould tended towards the pedantic, “swell[ing] the bulk of the reports, without always, or even often, contributing to their essential value.”\textsuperscript{62} Baldwin attributed this to “his [Gould’s] long occupancy of the teacher’s desk” – “An instructor of the young in any study is apt to think that no one can explain a point of difficulty in that study so well as himself.”\textsuperscript{63} Other, modern commentators have arrived at much the same conclusion about Gould’s judicial writing, noting his tendency to write at length rather unnecessarily and in a nitpicky way with an arrogant tone demonstrating a pretense to the scholarly.\textsuperscript{64} Whether this resulted in excessive ossification of the course as compared against the notebooks made under Reeve remains to be seen. What can certainly be said is that Gould took an
extremely proprietary stance towards the lecture notes, well demonstrated in the incident outlined below.

**The 1826 Letter**

On November 18, 1826, George Smith Catlin wrote the following to his friend and recent student of the Litchfield Law School, George C. Woodruff: “I have this day received your letter of the 14th which I confess contains information which I [?little?] expected to hear.”65 What was this unexpected news? Apparently Gould had commissioned Woodruff to write to Catlin four days earlier to communicate Gould’s demand that Catlin pay the $100 tuition fee or face possible legal action, as it had somehow come to Gould’s attention that Catlin had a copy of his lecture notes even tough Catlin had never attended the School.

Woodruff had attended the Litchfield course just one year earlier.66 He and Catlin were peers and appeared to be on friendly terms.67 However, as young as Woodruff was – twenty and not yet called to the bar – he seemed to be effectively acting as Gould’s lawyer in the matter, a fact of which Catlin, chum or no chum of Woodruff’s, would have been aware.

Catlin made it clear to Woodruff that he would not hand over payment for the copied set of notes, writing at the outset of the letter “I have no fears on the subject. I am advised that Judge Gould has no remedy.”68 Catlin went on immediately to claim that as he had made his copy from someone else’s copy it “does not amount to a publication.”69 If anyone was “guilty,” as he put it, of circulating an unauthorized publication, it was the man who had provided this copied from copy.70 Who was this person? It was future Lieutenant Governor of Connecticut, William S. Holabird. Holabird was more at fault
than Catlin was, Catlin claimed, since it was Holabird who “advised, aided and assisted in this trend … and also furnished a copy from which I copyed.”

Holabird attended the Litchfield course in 1815. By calling it a “trend,” Catlin implied that Holabird had been in the habit of lending out his copy of the notes. Catlin wrote that he copied the notes “while with H.” Had Holabird been doing this with students who came to apprentice with him for over ten years? The unrestrained copying of notebooks threatened to financially ruin a school whose advertised raison d’être was to provide its students with a set of hand-made books. Pretty soon the nation would have obtained a Litchfield education without ever having set foot in Litchfield! One could see why Gould was concerned.

Now Gould might have been motivated by a certain amount of political feeling in having Woodruff pursue the issue with Catlin. If Gould knew that Holabird was the source of Catlin’s set of unauthorized notes, it might have ultimately been Holabird he was trying to send a message to – to get him to stop lending out his notes. One set of reminiscences characterized Holabird as “the great democratic leader of the bar” and “a man around whom the young democratic lawyers liked to gather … really one of the instructors in political matters among the democratic lawyers.” As a staunch Federalist, the unauthorized (and unpaid for) use of his lecture notes to train young Democrats must have been particularly irksome to Gould. Interestingly, although Catlin was born in Harwinton, just down the road from Litchfield, he ended up spending his career in more Democratic circles in the Northeast part of the state in Windham County.
Even if Holabird was more “guilty” than Catlin was, Catlin wrote to Woodruff that “in the opinion of eminent lawyers even he [Holabird] is not liable … [since] the copy was taken before the copyright was secured. I think we are both safe.”

Connecticut was the first state to adopt a copyright statute in 1783 based on the English model. Such a statute would protect authors against unauthorized infringement of their original works by those who might seek to reproduce and sell them, keeping the profits for themselves rather than having those profits go to the true author. The two terms of fourteen years of protection the Connecticut statute provided “the Author of any Book or Pamphlet not yet printed” who was an inhabitant or resident of the United States was contingent on registration of the work with the office of the Secretary of State. Once attached, the protection extended to a wide array of unauthorized reproduction – publishing, printing, vending, uttering, or distributing. A national statute, adopted in 1790, provided similar terms, requiring registration with the United States District Court and the United States Secretary of State.

Luckily for Catlin and Holabird, neither Reeve nor Gould had registered the lecture notes for copyright protection under either statute. In fact, Gould did this one year after the incident with Catlin, on September 8, 1827.

Catlin wrote in his defense that he copied the lectures because he was “much less extended” than he expected to be should he have come to Litchfield and, moreover, he had “not [been] certain of attending there at all.” However, he wrote, “I always intended to attend the delivery of a course of his [Judge Gould’s] Lectures if my pecuniary circumstances would admit of it. And it is now my intention to [do so].” This he said
he had resolved upon “before I [?received?] your line.” Catlin did attend in 1827, the same year Gould registered the lecture notes for copyright protection.

Catlin bid Woodruff tell Gould “what my intentions are upon this point,” i.e. that Catlin was coming and he would therefore be paying. One wonders what kind of welcome Catlin was given and how he came to feel about his teacher given what would seem to be Catlin’s strong sense that he had done nothing wrong.

Although Gould’s threatened legal action would likely be unsuccessful, Catlin noted the “trouble and expense” that would be incurred by himself or Holabird should the Judge “take any measures to obtain a remedy.” He was therefore willing to extend the following olive branch: “[I]f you [Woodruff] think it will be anything like a consolation or satisfaction to his [Gould’s] feelings for the injury rec’d – if he says anything more to you on the subject please to tell him, that it’s my intention to hear the lectures delivered.” However, if Gould would not be appeased, Catlin was insistent. “[I]f this is not a sufficient answer to his claims or if he is not satisfied with it – he may [?pursue?] what cause he pleases and take his remedy if he can find it – for I will not pay him for the delivery of a course of Lectures that I never heard.” Catlin’s bottom-line position here indicates he thought Gould was in the wrong to demand the fee and there was no fault, moral or legal, in what he had done.

Copyright and the School’s Demise

Gould made other threats of legal action in letters written in 1826. Some of these accused certain “New Haven men” of spreading false rumors that his poor health meant that lectures would not be provided. He wanted to take these particular people to “public account” but did not since those who had provided him with the information had not
given him permission to use it in this way.89 Other rumors circulated that Gould had a drinking problem. Those accusations played a role in a falling out between Gould and the Reeves.90 The trouble began in 1820 over the issue of whether Reeve should retire from the school – there being some serious questions about his ability to keep teaching. He did retire, under a financial arrangement that left him and his family upset. They retaliated by putting out the rumor that Gould had forced Reeve out of the school and that Gould was a drunk. Reeve died in 1823. Gould’s sons were still re-examining the fight between the families as late as 1873.91

Was Seth Staples one of the nasty “New Haven men” who were trying to put Gould out of business after Reeve left? Staples sold his business in his law office school to his friend and mentor David Daggett in 1824 and moved to New York City.92 If it is correct that Staples had an unauthorized copy of the Litchfield notes, this is somewhat ironic given the fact that his specialized area of practice came to be intellectual property rights. Frederick Hicks wrote that Staples became “an expert in patent law, and was for many years counsel for Charles Goodyear in the series of cases over his patent for vulcanizing rubber.”93 The friend whose notes Staples probably copied, Thomas Day, was the Secretary of State for Connecticut at that time.94 Even more ironically, if the copyright regime had not been switched from a state to a national system in 1790, it would have been Day’s office that would have been holding Gould’s copyright on the lectures in 1827.

It is likely that Day and Staples saw nothing wrong with what they were doing in 1798 – either morally or legally. Indeed, Catlin’s outrage over Woodruff’s letter (tell the Judge “I will not pay him for the delivery of a course of lectures that I never heard”95)
indicates that even in 1826 there was no moral consensus that the practice was wrong. As we saw, the incident did not prevent Catlin from attending the School, a strong indication that he was not ashamed of what he had done such that he could not look Gould in the eye. Similarly, Augustus Hand did not seem to think there was anything problematic about the copying he was doing in 1827 (with none other than a former assistant at the school), while recognizing that if the Judge knew about it he would not be pleased.

Gould certainly had strong ideas about what may and may not be properly done with the notes, which he considered his personal property, and what propriety or gentlemanly behavior demanded. And, indeed, his use of Woodruff as intermediary in the Catlin affair had something of “the second” who assisted in duels of the day about it. However, even though Gould might have been acting out of a sense of what he thought proper in a general gentlemanly sense, he did not appeal to Catlin’s honor; he made a demand backed up by legal threat. However, he made that demand without having secured the legal protection he needed for it to carry weight, what looks to us now like a rather glaring oversight for such a learned legal scholar and teacher.

The date of the Staples incident shows that illicit copying of the lecture notes had been a problem from the School’s earliest days. Why had the notes not been registered earlier? Reeve’s lecturing might have been more contemporaneous than Gould’s, differing enough from year to year that students were sufficiently motivated to capture the particular impression the year that they were there, mitigating the problem of rampant illicit copying. If that thesis is correct and the dictation and robotic copying became a lot worse under Gould’s tenure, making unauthorized reproduction a greater concern, one
still wonders why Gould did not register the notes earlier and in his own name shortly after Reeve left in 1820. The legal protection Gould wanted and needed was available. Why then did he not avail himself of it?

The answer is that it was probably not until later in the 1820s when the School began to enter its decline that things became desperate enough for Gould to feel he needed to turn to the law in this way. This might looks to us now like rather odd reticence for a lawyer. Perhaps softer, more gentlemanly intervention worked better in a less legalistic time, which rather ironically the School was helping to make obsolete by producing so many lawyers! In any event, actually registering the lectures in 1827 should probably be taken as a sign that things had gotten quite bad, a signal that the operation was really in trouble. Gould now needed to be able to write to individual copiers and perhaps even large-scale imitators using copies of the lecture notes, order them to cease and desist and have that carry legal weight.

What is most interesting about this is not that Gould finally did turn to the law for protection but that as the proprietor of one of the earliest and most famous seats of legal education it took him so long to do so. The delay may indicate that although he never liked students making copies of the notes and always had natural or instinctively proprietary feelings towards them, he may himself have taken some time to come around to seeing them as proper objects for copyright protection. That is to say, it might have taken him some time to see this as a matter for the law at all even as the situation became increasingly dire. Perhaps it was one of his students – someone like the young Woodruff – who advised and convinced the teacher that this was now the new, proper way to
proceed, participating in the creation of an expanded instinct about what could and should be owned in this formal legal way.

Notes


3 See text infra p. [text currently at p. 8].


9 See McKenna, Tapping Reeve and the Litchfield Law School, 41.

10 Reed, Training for the Public Profession of the Law, 129 n, 3.

11 See Jacqueline Calder, Life and Times of Tapping Reeve and his Law School (Paper prepared pursuant to a Master’s degree, University of Vermont & Litchfield Historical Society Internship, 1978) (copies available at the Litchfield Historical Society Library & Yale Law School, Lillian Goldman Law Library), 8-9; McKenna, Tapping Reeve and the Litchfield Law School, 37-39.

12 McKenna, Tapping Reeve and the Litchfield Law School, 23.

13 See ibid., 24-25.

14 See Calder, Life and Times of Tapping Reeve, 3-5; McKenna, Tapping Reeve and the Litchfield Law School, 19-34 (the opposition was due partly to Sally’s young age but was perhaps also because of Reeve’s background – his father was a minister who had been expelled from various congregations for intemperance).
Like many members of the Edwards and Burr families, including her brother Aaron, Sally had mysterious ailments. McKenna called this an “erratic strain” in the Edwards family (in both its men and women) – an “over-delicate, over-sensitive, highly nervous organization that persisted for generations and cropped up with some frequency among the descendants of the great theologian.” McKenna, *Tapping Reeve and the Litchfield Law School*, 49.

Sally was only forty-three when she succumbed to an “almost life-long invalidism.” See ibid., 49, 87-89 (including photograph of tombstone).

Elizabeth (Betsey) Thompson was twenty-four in 1798, making her twenty years younger than Sally and thirty years younger than Reeve. Catharine Beecher described her in 1816 as “the largest woman I have ever seen, with a full ruddy face, that had no pretensions to beauty.” See Calder, *Life and Times of Tapping Reeve*, 14. Edward Deering Mansfield thought the marriage a mark of Reeve’s eccentricity. See Edward Deering Mansfield, *Personal Memoirs: Social, Political, and Literary, with Sketches of Many Noted People, 1803-1843* (Cincinnati: Robert Clarke, 1879), 127. In the months after Sally’s death, the only child of Sally and Reeve’s marriage, Aaron Burr Reeve, was already calling Betsey “Mama.” See McKenna, *Tapping Reeve and the Litchfield Law School*, 93.

See text *infra* p. [text currently at p. 11].


See, e.g., Notebook of Daniel Sheldon (1798), Litchfield Historical Society, which has as its last section “Public Wrongs” (felony, arson, burglary, larceny, robbery, homicide, murder, perjury, forgery, rescue and resisting criminal process, riots, [?] and unlawful assemblies, treason, barrety, maintenance, champerty, jurisdiction of courts in Connecticut in criminal cases, breaches of the peace, sureties to keep the peace, indictments and information, bail).


This schoolhouse was not preserved. See McKenna, *Tapping Reeve and the Litchfield Law School*, 99.

25 Augustus Hand to Samuel Hand, 12 November 1827, Litchfield Historical Society.


27 The “Laws of the Office” set out rules governing the borrowing of the law school books. The rules distinguished between non-privileged books that could be removed from the office and those that were privileged and could not be. They also set up a regime of officers to police book-borrowing, consisting of a committee of three: a chairman, a secretary, and a treasurer, whose job it was to receive and account for all fines collected. See Appendix I, “Laws of the Office,” in McKenna, Tapping Reeve and the Litchfield Law School, 177-78. Also reproduced in History of Legal Education in the United States, 1:185-86.

There is a list of books in McKenna, Tapping Reeve and the Litchfield Law School, 112. However, a better list can be found in the form of Reeve’s estate inventory, which lists law school books and household books. See handwritten copy and typescript of “Copy of Tapping Reeve’s Inventory. Re[ceived] & accepted Feb[ruar]y 14th AD. 1824. F. Wolcott, Judge,” February 2, 1824, Litchfield Historical Society.


30 Quoted in Kilbourn, Bench and Bar of Litchfield County, 187; Fisher’s Catalogue, s.v. “LORING, Charles Greely,” 79.

31 Fisher’s Catalogue, s.v. “GOULD, George,” 54.

32 Beck lists three volumes for George Gould at the Litchfield Historical Society, including notes on criminal law from 1830. See Beck, “One Step at a Time,” 93, entry 357. I was able to locate only two in the collection, one notebook on contracts (marked “Troy, New York, 1830,” although the first entry is dated 1829, quote taken from p. 36) and another on criminal law (“Geo. Gould [,] Troy, N.Y.[,] Criminal Law[,] 1830[,] May 13”).

33 Letter from R.G. Camp to Seth Staples, 24 May 1824, Yale Law School, Lillian Goldman Law Library, Rare Book Room.


35 Ibid.

36 Ibid. Unfortunately, there is no date for this description. Hicks was not assiduous about identifying sources as he did not use footnotes, a frustrating feature noted by other scholars. See Langbein, “Blackstone, Litchfield, and Yale,” 37 n, 3 (calling this “[t]he grievous shortcoming of Hicks’ history”).


40 This notebook is located at the Yale Law School, Lillian Goldman Law Library, Rare Book Room.

41 See Tracy L. Thompson, The Correspondence of Seth P. Staples to Thomas Day, from the Period 1797 to 1839 (New Haven, Ct.: 1996), available at the Yale Law School, Lillian Goldman Law Library. See also Langbein, “Blackstone, Litchfield, and Yale,” 50 nn. 139, 140.

42 Augustus Hand to Samuel Hand, 12 November 1827, Litchfield Historical Society.

43 Augustus Hand to Samuel Hand, 30 January 1829, History of Legal Education in the United States, 1:193 (words in the last square bracket are taken from the transcript of the letter at Kilbourn, Bench and Bar of Litchfield County, 190).

44 Ibid. Using the Consumer Price Index, $130 in 1829 would be approximately $2,814.75 in 2005 dollars. Since the cost of $100 for hearing the lectures was well known, presumably the person charging this amount for a copy thought of it as costing the person who ordered it only an additional $30, approximately $649.56 in 2005 dollars. See Samuel H. Williamson, “Five Ways to Compute the Relative Value of a U.S. Dollar Amount, 1790-2005,” (MeasuringWorth.Com, 2006), available at http://www.mswth.com/uscompare/. It is also possible that given the fact that Hand was writing to his father and perhaps hoping he would proffer the sum that he inflated the going rate.

45 Reed, Training for the Public Profession of the Law, 131.


47 Tapping Reeve, The Law of Baron and Femme; of Parent and Child; of Guardian and Ward; of Master and Servant; and of the Powers of Courts of Chancery (New Haven: Oliver Steele, 1816; reprint, Buffalo: William S. Hein, 1981). So, for instance, the earliest extant set of notebooks created by Eliphalet Dyer (1791) at the Connecticut Historical Society in Hartford contains an essay “Can a feme covert by the laws of Connecticut devise her real Estate?” substantially reproduced in two chapters in Baron and Femme. Reeve also stated in the preface that “the work contains that which for many years has been delivered as lectures to pupils.”


49 James Gould, Preface to A Treatise on the Principles of Pleading in Civil Actions (Boston: Lilly & Wait, 1832), v.


52 Calder, Life and Times of Tapping Reeve, 27.
See Tapping Reeve to Samuel Law, 4 March 1817 (“I have arrived at that time of life that I can no longer hold a seat on the Bench so that I have to depend on my school and the books I publish for a livelihood”). Reeve wrote to Law at least three times in 1820 about proceeds from sales of the book. 25 October 1820 (send him the money and keep the book on hand in case there is an opportunity to sell it); 9 November 1820 (Did Law receive the last letter? Have not received the money yet); 4 December, 1820 (Money has arrived safe in hand. Law should let him know of other places where it might be sold). All letters from Tapping Reeve to Samuel Law are located at the Litchfield Historical Society. Calder’s also noted letters to other former students from this period – 1819 and 1820. See Calder, *Life and Times of Tapping Reeve*, 44 n, 139.

For a copy of the “Circular Letter” sent in 1822, see McKenna, *Tapping Reeve and the Litchfield Law School*, 199-200. See also Calder, *Life and Times of Tapping Reeve*, 27-28 (identifying the circular letter, letters Reeve wrote to former students regarding sales of the book, and even a letter to David Daggett asking him to sell copies to those representatives sitting in the House of Congress).

See David Sherman Boardman, “Sketches of the Early Lights of the Litchfield Bar,” in Kilbourn, *Bench and Bar of Litchfield County*, 43 (“His [Reeve’s] ideas seemed often, and indeed, usually, to flow in upon him faster than he could give utterance to them, and sometimes seemed to force him to leave a sentence unfinished, to begin another, – and in his huddle of ideas, if I may so express it, he was careless of grammatical accuracy, and though a thorough scholar, often made bad grammar in public speaking. Careless as he was of his diction and thoughtless as he was of ornament in ordinary cases, yet some elegant expressions and fine sentences would seem, as if by accident, to escape him in every speech … and then he never failed to electrify and astonish his audience”).


So, for instance, when Boardman, who attended the school in 1794, asked Reeve for a copy of a particularly riveting courtroom delivery the problem was that “not a word of it [was] written beforehand.” Boardman concludes the anecdote by reporting: “A day or two after he saw me in Court, behind his seat, and beckoned me to him and said he had tried to comply with my request, but it was so gone from him that he could make nothing of it.” See Kilbourn, *Bench and Bar of Litchfield County*, 43.


Calder reproduced a version of the “cold heart” characterization of Gould (Augustus Hand described Gould as “a cold hearted [?] mortal … perhaps I may say almost without any good qualities of the heart”). She also referred to Baldwin’s entry as “a good short essay on Gould.” See Calder, *Life and Times of Tapping Reeve*, 31, 38 n, 66.

One of Staples’s students, quoted in McKenna, *Tapping Reeve and the Litchfield Law School*, 169.


Ibid., 476.

George Smith Catlin to George C. Woodruff, 16 November 1826, identified by Calder, Life and Times of Tapping Reeve, 46 n, 167. This letter is located at the Litchfield Historical Society, Woodruff Collection, under “Gould, James.” Quotes are from my own transcript of the letter. Underlining is reproduced as in the original with square brackets are used for inserted portions of text, combined with question marks to indicate where there is uncertainty about a word. Hereinafter “Catlin letter, 1826.”

Fisher’s Catalogue, s.v. “WOODRUFF, George Catlin,” 139 (attended Litchfield Law School in 1825 and called to the bar in 1827).

So, for instance, Catlin wrote to Woodruff “I am extremely obliged to you for imparting this information to me so early,” and reports “My situation here is very pleasant. I am very pleased with the Gents in Whose office I have [?sat?].” Catlin letter, 1826.

Ibid.

Ibid.

Ibid.

Ibid.


Catlin letter, 1826.


See Fisher’s Catalogue, s.v. “CATLIN, George Smith,” giving Harwinton as birth place and listing practice of law in Windham, prosecuting attorney for Windham County (1842-1843), judge of Windham County Court (1850-51), where he died at an early age in 1851.

Catlin letter, 1826.


Ibid., 617. For an explanation of the background in Connecticut, specifically the problem of rogue editions and Jonathan Trumbull’s advocacy for a statute, see Christopher Grasso, A Speaking Aristocracy: Transforming Public Discourse in Eighteenth-Century Connecticut (Chapel Hill: University of North Carolina Press, 1999), 318-23.

The Librarian of Congress was made the registrar for all copyrightable material in 1870. See Richard Rogers Bowker, Copyright: Its History and Its Law: Being a Summary of the Principles and Practice of Copyright with Special Reference to the American Code of 1909 and the British Act of 1911 (Boston & N.Y.: Houghton Mifflin, 1912), 35-37.

Bogucki, Senior Copyright Research Specialist, Reference & Bibliography Section. Please note, the original clerk’s handwriting makes it difficult to tell whether the title registered was “A system of municipal laws …” or “A system of municipal law …” in the singular. Copy of report on file with the author.

81 Catlin letter, 1826.

82 Ibid.

83 Ibid.


85 Catlin letter, 1826.

86 Ibid.

87 Ibid.

88 Ibid.

89 See Calder, Life and Times of Tapping Reeve, 31; McKenna, Tapping Reeve and the Litchfield Law School, 167-68.

90 See Calder, Life and Times of Tapping Reeve, 28-29.

91 See ibid., 45 n, 149, letter identified by Calder, Henry G. Gould to George C. Woodruff, 23 June 1873, quoted from Litchfield Historical Society typescript (“Strange that Wm [his brother William Tracy Gould] should have forgotten the reports that Miss Ogden [a family friend who lived with the Reeves] to my certain knowledge, did circulate about father being intemperate & of his turning adrift Judge Reeve, without justice or reason. Many persons living in 1822 – testified to the same. Among them was Hannah Huntington Wolcott, daughter of Frederic Wolcott, Esq. who averred that Miss Ogden went from house to house, and wildly & frantically proclaimed the scandal […] The alienation between the families lasted 15 years – ending 1835 – two years [sic twelve?] after Judge Reeve died, (at the earnest request of Mrs. Reeve seconded by Miss Ogden – Mrs. Reeve in special, acknowledged the wrong that had been done to father by the reports).” According to Henry “the report reached Washington, the Federal city.” He called the charge “outrageous” -- “Father had used gin, ordered by Dr. Sheldon – for his complicated [health] complaints – but really was not intemperate”). Calder found one other piece of evidence that Gould did have a drinking problem.

92 See Hicks, History of the Yale Law School, 8.

93 Ibid. The catalogue to auction Staples’s library of over 1000 books in 1862 “held 16 titles on the subject of patents alone; an area in which he practiced almost exclusively after leaving New Haven.” Thompson, “Catalogue of the Private Law Library of the late Seth P. Staples, Esq,” in Correspondence of Seth P. Staples to Thomas Day, 37.

94 Fisher’s Catalogue, s.v. “DAY, Thomas,” 43.

95 Catlin Letter, 1826.