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John Henry Wigmore

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John Henry Wigmore

Wigmore, John Henry (1863–1943). Law professor and dean. Wigmore was born and reared in San Francisco. His parents were both immigrants, his mother from England and his father, of English heritage, from Ireland. Harry, as he was known familiarly, was the oldest and most favored of his extraordinarily doting

mother's seven children. The family was prosperous—his father had an importing business—and Harry was educated principally in private schools. He then attended Harvard College, prompting the mother to move the family to Massachusetts to be close to him. After graduating in 1883, he spent a brief interlude in San Francisco, but then returned, alone, to Cambridge to attend Harvard Law School.

Wigmore placed near the top of his class. He was also a founding member of the *Harvard Law Review* and originated its "Recent Cases" section. After graduation in 1887, he practiced law in Boston. Among his mentors were Charles Doe, chief justice of the New Hampshire Supreme Court, for whom he served for a time as, in effect, a long-distance clerk (and who eventually became one of the dedicatees of his great treatise), and Louis Brandeis. He also wrote articles on le-

gal and other topics. His major contribution from this period was an 1889 book on the Australian ballot. In September 1889, he married Emma Hunt Vogl of Boston, and three days later the couple began the journey to Japan, where Wigmore—over the pained opposition of his mother—served a three-year appointment as the first professor of Anglo-American law at Keio University. His flood of writing, journalistic as well as legal, continued unabated. He taught himself Japanese and soon was able to write extensively on Japanese legal history. By his account, he also played shortstop on the first baseball team organized in Tokyo.

In 1893, Wigmore started teaching at Northwestern University Law School, where he remained, except for military service, the rest of his life. He taught a wide variety of courses and throughout his career produced scholarship at a prodigious rate. At first his writing dealt largely with torts—indeed, for the next two decades he was one of the subject's leading scholars—and comparative and Japanese law remained lasting interests, among many others. But trials and the law of evidence took on an increasing role in his output. In 1899 he published the 16th edition of Simon Greenleaf's treatise on evidence. The dominant nineteenth-century American work on the subject, it was badly dated. Wigmore, pouring his massive energy into the project, adhered to the original organization and kept the text largely intact, but added a great deal of new text in brackets. The work was awarded the first Ames Prize by Harvard Law School as the most meritorious book or essay on the law published in a four-year period. Nevertheless, the publisher, Little, Brown, recognized that its organization, much of which was arranged around substantive areas of law, was hopelessly out of date, and encouraged Wigmore to write a new treatise.

The first edition of the new treatise appeared in four volumes in 1904–5. It immediately achieved great acclaim and became the standard American reference work on evidence. The treatise reflected Wigmore's remarkable ability to absorb, systematize, synthesize, and analyze vast quantities of information. His ability to complete the work in so short a time, and do considerable other work as well, was facilitated by efficient work practices, great reading speed, a confident nature, and an office and (childless) household organized around his needs. As William Twining has written, Wigmore's "simplicity of vision" accounted in large part for "his unrivalled mastery of his field"; in his view, "the world is full of a marvellous diversity of things, but with application and a systematic approach they can be reduced to order," and so, "supremely self-confident and untroubled by doubt,

he reduced more material to order than any other legal scholar."

The treatise's usefulness to practitioners as a source for finding law, in an age long before electronic research resources, was augmented by Wigmore's extensive use of parenthetical summaries of cases. His forthrightness in expressing his opinions helped make the treatise authoritative. His explorations of foreign law and of other disciplines broadened its intellectual base. Wigmore's characteristic emphasis on history has prolonged the treatise's useful life even after many of his pronouncements became outdated. He published a second edition in 1923, a very extensive supplement in 1934, and a third edition in 1940. According to Felix Frankfurter, it was "unrivaled as the greatest treatise on any single subject of the law." Edmund Morgan, perhaps the next leading evidence scholar in the first half of the twentieth century, disposed of all other treatises in the field with the summary statement, quoted from an earlier review by John Maguire, "Wigmore is still first, and there is no second." Until the codification of the Federal Rules of Evidence, drafting of which relied heavily on the treatise, it was the dominant source of American evidentiary law.

Wigmore addressed the problem of proof, as opposed to evidentiary doctrine, in *The Principles of Judicial Proof as Given by Logic, Psychology, and General Experience, and Illustrated in Judicial Trials* (1913, 3d ed. 1937), with optimism enhanced by substitution of the word "Science" for "Principles" in the title. His approach, featuring complex charts that promised a method of systematizing the inferential process in a given case, had little impact during his lifetime, but in recent decades it has gained significant scholarly attention. His confidence in the potential rewards offered by a scientific approach to law also led him to play an important role in the founding of the American Institute of Criminal Law and Criminology and its journal, which unlike the institute still survives.

In 1901, while preparing the first edition of the treatise, Wigmore accepted appointment as dean of Northwestern's law school. He held the position for 28 years and was the school's dominant force. When he became dean, the school was under intense competitive pressure from the new law school of the University of Chicago, which was supported by Rockefeller money. Persuading the Northwestern trustees to fund the law school more generously and soliciting contributions from alumni, Wigmore was able to achieve the construction of a new building for the school with remarkable speed. He also paid intense personal attention to the library's collection of international materials; a capable pianist and fluid ditty

writer, he composed the school song. Always of a reforming bent, he did much to modernize the law school, promoting its law review, continuing legal education and moot courts, and integrating legal aid into the curriculum. Near the end of his deanship, he again raised funds necessary for a new building for the law school, this one on its present site on the shore of Lake Michigan.

During World War I, Wigmore served on active duty in the army in Washington, D.C., primarily on the staff of Gen. Enoch H. Crowder, the provost marshal general and judge advocate general, but also with numerous special assignments. Much of his time was consumed by supervision of a survey for the Selective Service Administration of the nation's manpower needs. He rose to the rank of colonel, a title he continued to relish long after returning to academia, and he added military law to the fields in which he was a leading expert. He emerged from the war more jingoistic than before, as his bitter debate with Frankfurter over the Sacco-Vanzetti case illustrates. Still active in his early 80s, Wigmore was killed in a freakish taxi accident.

RICHARD D. FRIEDMAN

William R. Roalfe, *John Henry Wigmore: Scholar and Reformer* (1977); William L. Twining, *Rethinking Evidence: Exploratory Essays* (1990).
