

THE COMMUNITY OF LAW TEACHERS AND SCHOLARS EXPANDS: GUIDEPOSTS FOR NEW FACULTY*

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I. INTRODUCTION

Teaching is a joy and a privilege. We never forget our teachers. As law professors we have a place, and a very important place, in our students' intellectual, ethical and professional development. That is a privilege. It is also a formidable responsibility. To the extent that the undertaking inspires some anxiety, fear or trepidation, please know that such qualms are quite natu-

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ral, and even healthy. Still, I share at the onset of this perspective six very simple words my dad once told me. My father, Luigi Franzese, emigrated to this country from Naples, Italy. He was a brilliant man, possessed of a wisdom rooted in a gentle knowingness and in the beauty of simplicity. The night before I was to begin law school, he said something to me that I have since shared with every one of my classes. I had telephoned home, and said, "Dad, I'm really scared." He replied, "Paula, throw your fears out the window." I have invoked those words on so many occasions since then: the night before the bar, before my first court appearance, before I was to begin teaching, and every semester since. Moreover, the lessons learned from my first and most precious teachers, my parents, helped shape my philosophy for living, teaching and learning that I share here.

II. A PHILOSOPHY OF TEACHING—SIX GUIDEPOSTS

1. *Begin by going within.* Take some quiet time to ascertain and to define your vision of what you want and what it is that you stand for. I am not referring just yet to the actual goals that you set for each course and class that you teach. Rather, I am suggesting that you take some time to ask or to remind yourself what it is that you intend to achieve as a consequence. As Erich Heller once remarked: "Be careful how you define the world; it is like that."¹

Create your vision. Then live that vision. Define those attributes that you value most; those qualities that represent the best of what you stand for as an educator and as a person. Then by your daily words and deeds, aim to exalt those virtues.

I want a classroom environment that is rooted in challenging, fruitful and rigorous exchange predicated on mutual respect and caring for each individual. I stand for excellence, integrity, compassion and innovation as a human being, living and teaching the gentler virtues. Write down your own vision and what it is that you stand for. Refer to your words each day. They are a safe harbor in the changing winds of time.

2. *Nurture and cultivate professionalism.* Professionalism is rooted in a vision of our life's work as a noble and high calling. The law is a formidable instrument that can be wielded to accomplish great good. Sadly and alarmingly, however, the legal profession, and, indeed, society as a whole, finds itself in crisis,

¹ E. Heller, *The Disinherited Mind* (1959).

embroiled in increasingly contentious and combative approaches to dispute resolution.

As attorneys, and as members of the academy, we are in a unique and privileged position to help transform for the better this bleak landscape. A professional stance requires recognition and appreciation of this privilege, together with acceptance of its attendant responsibilities and obligations.

Professionalism depends upon our establishing and maintaining an honorable and sacred trust with our students, with each other and with the larger community. These fiduciary relationships necessitate service, pride in one's work, self-respect and respect for all others. We should never hesitate to choose the path of kindness, caring and peacemaking in our approach to all endeavors. Let us seek always to introduce reason, even in the midst of seeming chaos, and compassion, even in the face of significant adversity. The decision to do so, repeatedly exercised, will go on to transform for the better the condition of our profession, far more than any courtroom or boardroom victory ever could. We shape the future. Our students, who learn from our example, represent that future.

Living, teaching and practicing these ideals is not easy. We serve a profession that for too long has relied on aggression, control, domination and manipulation as the ingredients for success. Gentleness is sometimes mistaken for weakness. Yet gentleness is to be expected only from the strong. Cruelty comes from the weak.

3. *Care about your students.* They are your allies, your charges, so much of your inspiration. You have entered into a venerable trust with them, and on their behalf. As their professor, you are esteemed, exalted, a role model. By your words and actions, both in and out of the classroom, you are teaching. Part of our imperative is to foster and to nurture the highest ideals of professionalism. How you conduct yourself, both in and out of the classroom, how you treat others, how you treat yourself, will set a standard and an example. Wear your integrity, honesty, kindness, caring, gentleness and commitment to excellence on your sleeve. Treat every student, colleague, administrator, staff member and individual with respect. Let the people in our community know that you care. Your students will not care how much you know until they know how much you care.

4. *Leave ego out of this.* Cultivate openness, a certain selflessness, a willingness to share, to give, to receive. Accept that teach-

ing is a process. This is your workshop—a very fluid, ever-changing work in progress. Relax, and be kind to yourself, mindful that it takes quite a while before a teacher is truly in his or her stride. Have fun with the process of dynamic exchange. Learn by doing. Learn from others. Seek out mentors. Sit in on colleagues' classes. Talk about what you are doing. Invite others to sit in on your classes. As you develop and present class materials, be open to different possibilities. You are involved now in an exciting partnership with your students and with your colleagues.

5. *Be enthusiastic about the material that you are teaching.* Enjoy yourself. Communicate the passion that you have for teaching, for the subject matter, for the joy of learning. Allow your zeal to come through honestly and authentically. Enthusiasm is contagious.

6. *There are no absolute rules for teaching, and particularly not for law teaching.* With such freedom comes the opportunity to try your own ideas, to create new teaching styles and to experiment. Do not feel bound to teach law the way it was taught to you. In view of the goals that you have established for yourself and the class, explore the many alternative ways that you might present the course materials and elicit student response.

Consider varying your teaching techniques over the course of the semester. I combine a somewhat modified Socratic dialogue with lectures and more actively integrated student input. For example, in my Commercial Law class each student is assigned a Uniform Commercial Code (U.C.C.) section of his or her own from the start, and is responsible throughout the semester for integrating and articulating the assigned provision's potential applicability to a host of contexts and hypotheticals. During class we often engage in simulations and role-playing, with students assigned such roles as counsel, client, debtor, creditor, buyer, seller, arbitrator, judge and/or jury. I also assume various roles when I ask questions. To add visual life to the exchange, I liberally use "props," so that the students literally wear different hats, or negotiate over some tangibly presented subject matter.

In my Property class, cases are frequently presented in the form of oral arguments, with students assigned the roles of advocate, client and the court. To render more interesting and more accessible the law of future interests, I introduce "Remainderman," the gentle and patient stakeholder, and his far more aggressive counterpart, the "Executioner," who holds the more

daunting executory interest. Topical and often controversial subject matter, such as issues relevant to nuisance law, exclusionary zoning and takings, are sometimes examined with animated "talk show" format discussion groups serving as the basis for more detailed exploration.

III. CLASS PREPARATION

A. *The Big Picture*

Effective class preparation requires clear recognition and appreciation of overall aims for coverage, coupled with meticulous attention to detail. As you begin the course preparation process, ascertain what you intend to have accomplished by the close of the semester. Set realistic goals as to the scope and content of coverage, based on the information and skills that you deem important for your students to take with them into their own professional pursuits as future lawyers, policy-makers, judges and teachers.

Planning the scope of coverage is difficult. It requires some guesswork, and, as Yogi Berra once said, "It's hard to predict, especially the future." Expect to guess wrong at times. Miscalculations yield adjustments and additional fine-tuning for the next time you teach the course.

In fact, once you have taught the course for the first time, teach it again as soon thereafter as possible. The second time through a course is a different experience from the first, presenting less stressful opportunities to reassess coverage and goals while also exploring pedagogical possibilities. This time, how might you elicit student participation? How might you facilitate the development of critical thought processes in your students? You might consider assigning cases or statutory provisions in advance. Simulations and role-playing might be woven into the fabric of class sessions. Cases might sometimes be presented in the form of oral arguments, with various students assigned the roles of counsel, client and judge.

B. *Daily Preparation*

The success of each class depends in large measure on the amount of time you spend in preparation for it. There are no precise formulas for gauging how much time should be expended in preparation. Tend to err on the side of over-preparation, particularly in the beginning. Little of this start-up investment is

wasted. With time and experience, you will arrive at your own personal sense of the amount of time necessary for effective preparation.

I prepare a transcript of sorts for each class, with questions, possible responses, and follow-up questions scripted in. This detailed recitation promotes organization, gives me a clear picture of my goals for coverage and presents paths for attaining those goals. I hasten to add, however, that in class one cannot be wedded to a script. The classroom exchange is just that—a dynamic, interactive process. Once in class, the teacher must be present, in the moment, at once flexible, responsive and alert. Before going into class, I condense all of my notes into a three or four-page roadmap, which provides the basis for classroom exchange and sets forth, at bottom, those points that I want my students to take with them by the conclusion of class.

No matter how meticulously well-prepared you are, there will be gaps in your knowledge, particularly in the beginning. Know that with time and experience, the gaps begin to close. During class, there will be questions to which you do not know the answer. When the given inquiry represents a considerable digression, you might note that the question, while not within the purview of the course, is nonetheless interesting, and that the student who raised the matter might wish to research the point and report back to you. By contrast, when you should know the answer to the question but, for some reason, the matter has escaped your attention or recollection, say so. Resist any temptation to fudge or to hedge. Once you have ascertained the response, report back to the student and/or the class. Your candor and prompt follow-up teaches an important lesson in good lawyering, and may spare your students pain later in their careers.

IV. IN THE CLASSROOM

A. Ground Rules

I set ground rules early on and articulate at the start my expectations regarding such matters as coverage, student preparation, participation, attendance and punctuality. Important norms as to what is acceptable as well as unacceptable are set during those first few formative class sessions. I endeavor to cultivate from the onset an atmosphere of mutual respect, collegiality and community.

B. Class Participation

I encourage class participation, and aim to foster a climate in the classroom where all students feel empowered and safe to take risks, free from the specter of professorial badgering or bullying. I welcome questions and comments, and also actively call on my students. I explain at our first meeting the importance of gaining fluency in the language of the law, and note that there is no better way to attain such fluidity than by practicing.

I listen carefully to the questions that my students ask during and after class. I try to discern why the given question has been asked. Does it suggest some underlying doctrinal confusion? Does it represent perhaps a less than artful way of getting at some other concern? Does it contain particularly valuable ideas, warranting further exploration? I spend at least one hour after each class thinking about what just transpired, especially cognizant of the questions and commentary generated during and after the class session.

To promote focus and continuity, I conclude each class with a question or questions, or a problem or hypothetical, to be taken up at the start of the next session.

C. Active Listening

During class, I try at all times to focus on what is going on in the minds of my students. I maintain eye contact, sensitive to the level of attentiveness within the class. As the minutes tick by, do energy levels begin to wane? Is interest sagging? Am I sensing a growing remoteness between myself and the class? I have learned to listen to and to trust my instincts. When I feel that I am losing the attention and/or comprehension of the class, I react immediately. Depending on the circumstances, I will ask if there is some confusion or question that needs to be clarified. Sometimes the time of day (or night) in which the class is given, or the physical conditions in the classroom contribute to individual and collective fatigue or distraction. Alternatively, sometimes the sheer intensity or complexity of the subject matter, presented over a considerable length of time, triggers temporary brain overload. At such times, I offer my students an opportunity to revive or regroup, often by leading the class in a brief digression. During such breathers I may introduce a short tangent based on my experiences in practice or share an amusing (or sometimes less than amusing) anecdote or story.

In sum, I urge you to relish and embrace all of the possibili-

ties that our chosen context presents. Expect both good and bad days, and do not let either go to your head. Give it your all. Live the words of George Bernard Shaw, who said, "I want to be thoroughly used up when I die. For the harder I work, the more I live. I rejoice in life for its own sake, for life is no brief candle for me. It is, instead, a splendid torch, which I hold in my hands for this moment. I must make it burn as brightly as possible before I hand it to the future."

V. MOTIVATION FOR SCHOLARSHIP

Scholarship is another aspect of our lives as teachers. We are, in effect, teaching, and communicating with, our fellow scholars in our scholarly articles. We are in a service profession, the best motivation for which is the love we have for the work we do, including writing articles, and for the people we work with. If you find an injustice in the law or a need for reform, take the opportunity to set the record straight and to put things right by writing about the problem. Only out of that passion, concern and, yes, love, can you do justice to your writing and to yourself. When I started teaching law, fewer people were so deeply devoted to scholarship as you new people entering law teaching in the last few years. Indeed, some of you have already written drafts or even articles, and, in all probability, will remain productive scholars all your lives.

If this is your first year as a law professor, you probably should not be doing much work on an article this semester. Teaching must take primacy of place, and any amount of teaching preparation is not too much. It pays off indirectly in class in ways you simply cannot predict. I think of one of the passages beloved in the Taize movement, "render not evil for evil, comfort the afflicted, strengthen the weak, love one another, honor every person," and, may I add, animal, tree and other living things, and your teaching and scholarship will bear fruit in abundance. This is a model for all our professional lives in the 90's, so your all-consuming preparation for classes is of utmost importance to the entire law school community. Once this high intensity of preparation abates, however, several temptations may come along to deflect your attention from scholarship. Practice, writing *amicus* briefs and other activities, while rewarding in themselves, may claim your attention before you establish yourself as a scholar. Do not let that happen to you.

Almost every new teacher knows enough not to short change

preparation for teaching but, historically, too few have realized what the preparation for scholarship involves, and they are diverted before they know what has happened. Scholarship has a long start-up time during which, unlike teaching, the new scholar cannot see immediate results. Quiet time for reading, thinking and developing an approach and a jurisprudence in one's own area do not prove their worth until the article is finished, perhaps a year later. If you find yourself deflected or in need of some relief from too much work, go see the associate dean. Let the dean know what you are up to even if you think he or she cannot get you out of what you have gotten yourself into.

Scholarship is particularly fulfilling as an expression of your own theories, analyses and ideas. It gives your creative and imaginative inner life a voice. It is at the same time a service to your fellow scholars who have the pleasure of exchanging ideas with you and being enriched thereby. Professors from other countries may write and ask for a copy of your piece when their library does not subscribe to the particular law review that published your article. Years later, someone you never met may find in one of your articles an idea that strikes a chord.

The two most important contributions your first article makes to your development as a scholar are these. First, when you see your thoughts beautifully set out, you discover that you have joined the ancient, honorable company of scholars. You have the confidence that you can contribute as well as anyone. You have the pride of authorship. Law reviews may edit, friends may suggest, but the buck stops with you, and the responsibility is yours. The other important result of your first article is that you now have an analytical framework, a sense of what is necessary for writing an article, an organizational maturation, which is yours alone. The experience of authoring your first article will save you invaluable time in your future endeavors. Your work habits have been tempered by the discipline of scholarship.

VI. THE JOYS AND PITFALLS OF PUBLISHING

A. *Choosing your topic*

You should pick a field which you already know something about and which interests you very much. It is easier if you teach in the area, but that is by no means a necessity. Make sure that your topic is not too broad, like "What's wrong with the criminal justice system in America," or you will be hiding behind the need to do further research for years. On the other hand, do not go

for a narrow technical topic which may be either too practice-oriented or too insignificant for a scholarly article. Avoid writing a case note, but if it is a case which first sparks your interest, use that case as the basis for working out a more general theme so that you can put the case in context. Finally, be sure to tell your readers where the law is headed and where the law should be headed.

What if you cannot find a topic? Check through recent articles in your field, zeroing in on the last five volumes of the Index to Legal Periodicals. Sound out your interests with colleagues who teach in that area. Ask them if they know of any recent problems and issues which have not been overwritten. The topic does not have to be one you come up with yourself for you to love writing about it. What types of topics are good for new scholars? Descriptive, analytical, theoretical and historical. Descriptive topics generate a lot of interest and discussion at conferences, if you are looking for feedback from others in the same field. You might compare take-over law in the United States of America with the activities of the monopolies court in the United Kingdom. In the process, you will learn more about your own system and what you think its strengths and shortcomings are. This kind of piece will practically organize itself, and you will write quickly, laying a foundation for future studies in the same general area.

In an analytical piece, you might suggest reforming the holding in a line of cases that wrongfully favors one party over the other. You may also propose reform either through a statutory provision or in judicial approaches to the cases. You will analyze what the courts have failed to take into account in their decision making or you will explain why the courts favor one side. A theoretical piece might show the shortcomings of the current economic analysis of the law which is based on short-term maximization of profit. You might argue that it is economically sound to require corporate accountability and environmental conservation which, taking the long-term view, allow maximization of profits by ensuring the continuation of the resources and, therefore, of the business itself.

In a historical piece you might trace the decline of the legal position of the creditor in relation to the debtor since the eighteenth century; alternatively, you might trace the liberating or constricting effects of some doctrine or institution we inherited from English law, such as the statute of frauds or the use of the

grand jury, or the notion of sovereign immunity. Of course, you might trace the constitutional development of a doctrine which is being applied in a different context today from the circumstances in which it originated.

B. Research

Research is both a joy and a pitfall of scholarship. If you are reluctant to put pen to paper, you can easily justify to yourself your continued research, and, indeed, you can almost congratulate yourself while doing so because you are learning and thinking. You can chalk up the time to being thorough and scholarly. Therefore, set a time deadline for your research. If possible, do the reading and research during the spring semester, develop an outline during the reading period and begin to write in the summer after you have finished grading examination papers and caught up on sleep. Begin to write whether or not you believe your research is complete.

Isolate one part of your topic from your outline and write up that portion of your article as you have it now. You may choose the section on which you have done the most research even if it is not the first section of your piece, because you may reorganize your order once you have a rough draft. Once you have written that section you will have a feeling of accomplishment, and can check whether there are any holes in that part of your argument. If so, write a note to yourself in your text telling what you need to fill in later. Then go straight on to another section and write up that portion of your article. In that way, you will prevent the joys of research from becoming the procrastination which blocks your writing. Do not be daunted or over-awed by all the learning you see in the articles in your field. Maintain your critical faculties toward the body of scholarship in your chosen field and you will make your own contribution.

C. Analysis

Once you have a fairly specific area to work in, you can focus on your own analytical approach to your topic. As you think about the material you have read, you will begin to sort out your own opinions about how to solve the problem with which you are dealing. You may find that you need to fill in historical background, sharpen your questions about case material and change or expand the types of cases you are covering. Again, your analysis may not be separable from the writing process and may de-

velop more fully as you actually put pen to paper or fingers to computer keyboard. Therefore, do not let this important stage of your scholarship prevent you from drafting your piece. Go back to your draft and scrutinize the power and persuasiveness of your analysis. Attempt to sharpen it. As you write, visualize your colleagues and other scholars in the field reading what you write. This sharpens the communication aspects of your writing.

D. Organization

When you first start to write, does it matter what your organization is? Not at all. If you get too caught up in having the perfect organization, you will never start to write. You should try to break your topic down into manageable parts so that you can ease yourself into writing and check off sections of the article as you write. This way you may also choose which selection you wish to tackle first. As far as writing is concerned, it may be easier if you think of each of these sections as a discrete project so that you can reward yourself each time you complete the draft of a section.

Once you have drafted the entire piece, you may decide to rearrange the pieces to get a better or more logical flow. If you title each section and subsection you will face no difficulty in reorganizing because you can simply print out a list of these headings and then consider whether you can devise a more logical or more cogent flow among the sections of your article.

E. Thesis

You may develop your thesis for the article as you do your research. If not, you may write an entire rough draft without developing your thesis. Do not let your lack of a coherent thesis prevent you from writing. As you go through your titles and subheadings, your thesis may jell. Your theory represents your contribution to the body of scholarly literature; it makes your piece different from all the other articles already published on the topic.

F. The apparatus of footnotes

You may think footnotes pesky and be tempted to leave them until you have written your text. Do not fall prey to this temptation. In the first place, the tenor of your footnotes stamps you as the scholar you are. You will be short-changing yourself if you merely say, "I've thought it through, and I know where I'm

going with this so who needs footnotes?" Your learning expressed in the footnotes leaves a trail for others to follow. Part of your communication with other scholars is laying out the route by which you reached your conclusions. Furthermore, you should write out your footnotes as you write your text to ensure the accuracy of your documentation as you write. If you wait until your text is complete, you may forget where your citations came from, and consequently you may spend needless hours retracing your steps. Footnotes are an integral part of the writing. They may signal different points of view from your own which you set forth in the text. Footnotes serve to keep you on course.

Finally, you should conform your footnotes to the Bluebook if you are sending your article to journals that adhere to the Bluebook. This makes less work for the citecheckers and, hence, enhances the marketability of your piece.

VII. END PROCESS

A. Should you show your piece to anyone before publishing?

Once you have reached this stage on the road to a finished product, you may face the question of whether to show your work to other scholars, and if so, to whom. From conversations with several professors, I know that the advice on this point at the new teachers' seminar in Washington differs from one year to the next.

On the one hand, some of you have heard that senior scholars quickly forget the many drafts they themselves wrote, but that when they see your rough draft, it is imprinted forever in their memories so that your finished piece never has a chance to enter their consciousness. This leads to the advice that you not show your work to the seasoned scholars in your own law school. Other wisdom suggests that you find scholars with whom you feel comfortable, and share your draft with them. There are at least two sorts of scholars you may wish to consult: (1) specialists in your field, most likely not in your own law school; and (2) the general reader who will ask questions that will permit you to test and strengthen your own beliefs, suggest organizational improvements or add new subsections for discussion.

From the very existence of our faculty development committee, you realize that we feel you have something to gain from showing your article to us or to other people you feel comfortable with. Indeed, the development committee is designed so that you can talk about your ideas from the very beginning, if you

desire to do that. This in no way means that you must feel obligated to accept anyone's suggestions just because the reader spent time talking with you or reading your draft, or because the reader might not read your next draft or your next paper. You are the author who must make the final determination about the content, shape and appeal of your own article. The same rule will serve you equally well with law review editors.

B. Where should you publish?

To get a general list of law reviews, you might look at Shepherd's Citations or the 1976 American Bar Foundation study of law reviews. You may also look through the Index to Legal Periodicals to see which journals more regularly publish your type of article or consult Joyner's *Directory for Successful Publishing in Legal Periodicals*. You should include at least some of the top journals whether you believe they will actually read your article or not. Several people who have published in those journals have said that one of the professors at that school knew the articles editor, and passed the article to the editor with a recommendation to read the piece. That is another reason to send your article to prominent scholars in the field. Although I have not tried this approach, I have on occasion, particularly when I have written in a new area, sent my draft for comments and suggestions to professors I knew. Over the years, only two of them actually made any suggestions, so do not be discouraged if you do not get feedback.

When the law reviews begin to call, what if anything, should you do to ensure that your piece will end up in the right journal? My own policy is to send my articles only to journals I am proud to publish in; then I do not worry about coordinating the law journals' response time.

In conclusion, you have tremendous resources at your law school among the new professors and your more experienced colleagues. We invite you as new colleagues to go on the journey of scholarship together with us.