



1969

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Recommended Citation

Robert A. Leflar, A Few Words about Law Teaching, 18 Clev.-Marshall L. Rev. 268 (1969)

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A Few Words About Law Teaching

*Robert A. Leflar**

IN THE PROFESSION OF THE LAW, with its triune division into practitioners, judges and teachers, the law teacher is sometimes taken for granted by his colleagues in the other branches. Sometimes he takes himself for granted, assumes that his function is fore-ordained by history, and occupies his little niche merely because it is there and he is there.

The purpose of these few paragraphs will be to look for a quick moment at the law teacher's job as it appears both in retrospect and prospect to one whose law school teaching spans more than forty years and whose fortunate experience at working with other jobs in the law has given him reason to appreciate mightily the happy chance that led him as a youth into the teaching branch of the legal profession.

A law teacher is a lawyer whose principal job is to teach law. This teacher will have other incidental tasks, for the most part undertaken voluntarily though some may have been assigned to him or forced upon him by external necessity. These extra duties will be reasonably related to his main job, else they will not be part of the job and will not bear on it except as they take time away from it. If they are related to it they will help him to perform his main job better. In that sense they will be part of the job. And that job is teaching law to students of the law.

To teach law one must learn law. The teacher cannot rely merely on what he has already learned. If law lives, as most law does, the teacher must keep abreast of it. He must know that the three or four years of his own law school study, however successful, gave him no more than a background for further study, and that ten years later he understands but little law unless he has spent much of the intervening years working to understand more of it, and understand it better. If one is interested in what he works with, as any real law teacher must be, this necessity for continuing study, and the assurance that there is material to be studied, affords persistent pleasure. It is the scholar's daily bread.

But in teaching, scholarship stands second to personal relationships. A law teacher's work is with law students, and their success is his success. They are entitled to expect scholarship, not as an exhibition but as a source of communicated understanding. The communication need not be direct and immediate, as by a news story that tells all that a reader is to know about an event; it may be indirect and subsequent, as by the inspiration that induces students to search things out for themselves. But relationship must be achieved. The reaction of the student is the objec-

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tive to be aimed at, and scholarly learning uncommunicated produces no student reactions except negative ones.

Not all the law teacher's teaching need be, nor should be, in the classroom. Much of it can be, often is, in his office and in the corridors before and after classes. Some of it can be in his home if students are invited to visit there, or anywhere they meet. More of it than many realize is initiated when the teacher is alone in his office, perhaps with the door locked, engrossed in study and writing. When a teacher has written something having to do with a subject that he teaches, most of his students will read it. They will read what he has written when they will not read what better men have said, though what he writes can lead them on to other reading—and to other thinking, too. The personal relationship that stands highest among teaching values can operate without physical nearness. A reader who knows a writer can almost see the lips move as he reads along the page. Scholarly writing does not take the place of personal relationship between teacher and law student, but it can be a part of the relationship.

Whatever of a professional character the teacher does outside the classroom can color and improve his student relationships. Any work with the law that the law teacher does is part of his law teaching. This is partly because his students usually know about what he has done and evaluate him in the light of it, but more because what he does becomes a part of him and of what he has to offer to his students. If before he began teaching he clerked for a supreme court judge that experience inevitably became so much a part of his legal education that it is a part of the law he teaches. If he later writes an article or arbitrates a labor dispute or testifies before a legislative committee that experience too becomes a part of what he teaches, whether he ever mentions it in class or not.

In his first three or four years of teaching, the young law professor has little time for outside professional work simply because the task of preparing his new courses, if he performs the task conscientiously, will take about all the time he has. But after most of his courses have been more or less permanently assigned to him, and he has reworked his notes a time or two, he has time for outside work. Six or eight hours of classes per week, even though necessarily accompanied by current review and supplementation, is no fulltime job for a good man. Student conferences take time, but they seldom require enough hours to fill a full schedule. The standard schedule is based on an assumption that the fulltime law teacher is expected to do additional work, beyond his course assignments and the student conferences that go with them.

The permissible scope of this additional work is almost as broad as is the law itself, yet subject to quite clear limitations. There is nothing wrong about deriving some additional income from the outside work,

provided the income does not become so important as to let the outside work overshadow the teaching job. The tail must not begin to wag the dog. The outside work ought to tie in specifically with the teaching job, and be in aid of it. The reason why law schools today insist upon full-time rather than parttime teachers is to assure that the teachers' main concern will be with teaching, to assure that the teaching job will never become secondary, even for a day, to other economic concerns. That is why law teachers are expected not to engage in general law practice, are expected to practice only in their specialized areas and to a limited extent.

The fact is that few fulltime law teachers engage in much private practice. Legal research and writing, assistance in projects for the improvement of the law and its administration in city, state and nation, participation in the work of governmental agencies and in public service projects of every sort (popular and unpopular), helping with general law school and university tasks, even semi-janitorial ones, working with the law school's extra-curricular programs such as the law review, moot courts, placement, alumni activities, legal aid, student counseling—these and scores of other worthwhile school- or law-connected labors serve to fill out the typical law teacher's time so that talk of a forty-hour week is utterly irrelevant to what he does. Anyone who works only forty hours a week is loafing on the job.

Today the law school faculty serves as law teacher to the legal profession, not just to students still in school. The processes of legal education do not end when the young lawyer passes his bar examination. Both practicing lawyers and judges know that they need help in keeping up with new developments in the law, and scores of continuing legal education programs sponsored by bar associations and other groups, often in collaboration with law schools, are the result. Practicing specialists and law teachers lecturing within their specialties make up the bulk of faculty members for these programs. For the law teacher this furnishes both incentive and opportunity to expand his horizons of communication at the same time that he achieves better understanding of the subject matter of his courses. The opportunities are especially fine when the teacher can take part in such programs as those of the National College of State Trial Judges, attended by more than a thousand trial jurists during this decade, and the appellate judges seminars at New York University School of Law, of which more than half of all the appellate judges in the United States have been members since the seminars were commenced in 1956. Continuing legal education educates its faculty members at least as much as it does its other participants.

Where do law school deans fit into this pleasantly crowded picture? Different deans occupy different places in the scheme of law school

things. Some stand boldly front and center, others off in one corner. Yet most law teachers agree as to where the dean's place is—sitting in the center, like a chief justice, "first among equals." There are some things he *must* do, because he is in the academic hierarchy of administration and the rest of the faculty is not. He stands between the faculty and its critics in the bar, in university administration, or wherever, when there are threats to intellectual or pedagogic freedom. He tones down his faculty when they go beyond reason in courting such threats. He sees to it that his faculty members get recognition for their work and their little triumphs, matters for which they may be too modest to call in the publicity office and which he can report for them. And he must be a head office clerk, or appoint one, to see that things run smoothly day to day. Then there are on a higher level other things that he *should* be and do. To be respected as he should be, he must himself be a legal scholar and a competent teacher. If he is good, he sets an example for his fellows by the writing that he does and by his leadership in thinking about the problems of improved legal education. Unlike deans in some other academic areas, where high class clerical-janitor work may be all that the dean does, the law school dean teaches too, in all the ways in which a good law teacher teaches, and in his specialty is a top teacher. When he does all this, he deserves his place as "first among equals."

Though deans have been known to be happy, the fulltime teacher is apt to live a happier life than his dean. He has the intellectually and relationally stimulating part of the law teacher's job, without having to do the janitor work. Even the drudgery of grading examination papers is not endless, and an occasional first class paper makes that drudgery bearable. To one who loves the law and appreciates its function in civilized society, there is a delight in teaching that affords constant satisfaction and enjoyment. Teaching law in an American law school is a good way for a man to spend his working days. Those of us who have the privilege of earning our bread and wine by working in this vineyard are fortunate indeed. The inner assurance that one's work is worth doing is the amplest return that anyone can get for his labors.