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# The Teacher as Lawyer

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theoretical enough to force students to wrestle with the problems he and I were discussing.

That troubled me because much of what he said seemed true and because I believe we can do better. If we do better, justice—a substantive vision of justice—will have something to do with it. The most important question to ask of the innovations and perspective Jack Himmelstein offers is whether they point us in that direction.

## THE TEACHER AS LAWYER

JAMES L. BROSS\*

Questions and comments during the SALT conference contained a common theme: junior faculty believed that they had a humanistic approach to law teaching that institutional obstacles often stifled, and that even when the approach had been implemented, students often failed to appreciate it. The chances for both implementation and appreciation can be increased if junior faculty take a fuller view of both lawyering and humanism. Lawyering does not assume the inevitable triumph of virtue simply because it is virtuous; humanism is not a gimmick to be used on students like an audio-visual aid.

Comments at SALT were set in the imagery of the idealistic young faculty member as a Galileo whose ideas would triumph despite isolation and scorn. But while scientific revolutions may possess an inevitability that transcends the individual who institutes the revolution, the same expectation does not attach to approaches to human action. The structure of the solar system existed without Galileo; the pattern of human action depends on the presence of particular human actors. The Galileo of the law school must be a lively actor who uses effective advocacy and humanism.

### I

#### THE ADMINISTRATIVE SYSTEM

The lawyering task of the new faculty member begins with an analysis of the decisionmaking system of the law school because the

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humanistic role requires a responsive understanding of the problems of people functioning within that system. A look at the administrative situations within the law school will reveal three sorts of committee assignments:

1. Positions that allow powerful results in proportion to the amount of work required: the tenure committee exemplifies such positions. Committees in this category are often closed to newcomers through institutional rules or practical lack of opportunity.
2. Positions that require immense effort to produce virtually imperceptible results and that offer little institutional reward for those results. Administration of affirmative action programs can fall into this category when faculty support is purely pro forma.
3. Positions that have the potential to produce significant results at the expense of prolonged, large-scale effort, if the effort is directed intelligently. Admissions work can fall in this category.

Category 2 administrative work can be done for the good of society, for the sake of a higher justice, or as penance for past sins. It can also be done in the context of a bargained-for exchange that can lead to other advantages. The faculty member can assume the role of Androcles in dealing with the local lion, the dean. Deans have a nearly infinite variety of thorns in their paws; the filling of undesirable administrative positions constitutes such a thorn. With an awareness of those thorns, a faculty member can almost always remove a thorn as a prelude to asking for a favor. The true humanist in this situation will resist the temptation to plant a thornbush outside the dean's office as a prelude to asking each favor.

An additional reason to assume a role in a category 2 position is the opportunity it offers to learn the system. The most junior faculty member should take such a position only if a more visible, senior faculty member is available to draw blame and opprobrium for an inherently unpopular administrative function away from him. The way the senior faculty member handles such blame and opprobrium can be a practical example of the much-heralded insulating function of tenure.

Category 3 can be available to one who analyzes a system carefully. The job of faculty secretary is almost always available for the asking. The rewards of the job are not self-evident, unless one considers that the secretary has the opportunity to "assemble" the legislative history of faculty decisions. As memories fade and the reason for a past action becomes disconnected from the action, the written record of faculty meetings can be the basis for interpretation of institutional rules. Since the secretary has immense power of selectivity

and wording in recording all but the precise motion passed, the secretary can effectively create the context in which individual faculty choices are placed.

Admissions work shares with the job of faculty secretary the need for a long-term perspective. The choice of a student body will determine the curriculum in the long run more effectively than will an overt curriculum plan. No school can continually offer courses in which no students enroll while refusing to offer the courses demanded by large numbers of students. The consistent willingness to make dreary recruiting trips to colleges, to assist in creating the publications that present the school's public image, and to wade through piles of applications can change the identity of the law school in the long run.

All of these administrative tasks share several characteristics common to legal work generally. They require a long-term perspective on the accomplishment of goals, a willingness to submerge the ego's desire for immediate gratification, effective oral and written advocacy, and a moderating sense of systematic ethics to keep technique from overpowering value.

## II

### THE TEACHING SITUATION

A teacher who succeeds in bringing new approaches to the classroom may still find large-scale resistance among students and therefore needs to understand the origins of such resistance. Some of these factors are related to the self-selection process that precedes application to law school; others relate to the law school's admissions choices within that self-selected pool. The possibility of influencing the latter should be clear. The greater impact on student resistance to new approaches has to do with the method and message of traditional first-year classes.

When law school entrants receive the message that "what you have been doing for the last twenty years is not good enough if you want to be a sharp lawyer in our complex society," it tends to pull the rug out from under them. If one teacher sends out the additional message that the method used in other law school classes is also "not good enough," the already bewildered student is likely to move on to hopeless confusion. The easiest way for students to resolve the dissonance of such conflicting messages is to assume that the majority of traditional teachers are correct and that the minority of new-style teachers are incorrect. A similar resolution of conflict in demands is likely to occur with regard to an unusual method of teaching, even