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Law School Engagement in Professionalism and Improved Bar Relations

by Donald J. Weidner

"The evidence suggests a kind of dissonance between the purposes our society foresees for the university and the way the university sees itself."¹

It is useful to keep in mind the broader perspective that the cost of higher education is out of control. To some, this means that tenured faculty are out of control.² Nationally, faculty have voted themselves decreased teaching loads³ and have justified the lower loads on the ground that they are necessary to support faculty research. This has caused people to look hard at the product of our research, and they are not as impressed by it as we are, at least not enough to want to continue to pay us to do it.

Within the law schools, writes Dean Anthony Kronman of Yale Law School, the relationship between faculty teaching and faculty scholarship is "pathological."⁴ The dominant schools of legal thought, writes Kronman, show contempt for the common law tradition and for claims to practical wisdom. Professor Mary Ann Glendon of Harvard writes that the scholarly enterprise has been "transformed" by

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advocacy scholarship that makes no attempt to fairly value the pros and cons of the opinions of others.⁵ She adds that many law professors hardly teach law at all, and that we need to do a much better job preparing our students to practice law in the modern administrative state.

We in the academy need to reach

out and engage the rest of the legal profession: a) because, politically, we need to start making more friends; and b) because it is the right thing to do.

We should consider the analogy between single-minded law firms and single-minded law schools. Academics decry the single-minded pursuit of money by individual lawyers and by their firms. We mourn that firms and their clients value the rainmaker but not the prudent counselor. We should also decry the single-minded pursuit of academic prestige by individual faculty and by their schools. We should mourn that schools and their faculty value the meta-theoretician but not the contributor to the profession. Just as we in the schools are asking the firms to value more than the dollar, judges and lawyers are asking those of us in the law schools to value more than the esteem of other academics.

Most basically, we need to ask the same tough questions of ourselves that judges and lawyers are currently

asking of themselves. We should start asking about how we treat one another. In a very recent article,⁶ Chief Justice Randall T. Shepard of the Indiana Supreme Court tells fellow judges that they need to stop sniping at one another. The same point should be made by professors to professors. We are setting a bad example for our students, and we are undermining our own efforts, when we demean one another, either orally or in print. To some extent, the point is already being made, and I think particularly of Wallace Loh's article calling on faculty to take responsibility for the care and feeding of deans. Faculty also need to take responsibility for the care and feeding of one another. We need to set aside the single-mindedness that disturbs Dean Kronman and reanimate the broader dialectic identified by Professor Glendon. We decry the Rambo tactics of many practitioners. If Professor Glendon is correct, we should also decry Rambo teachers and Rambo scholars.

We also need to examine whether we have consciously or unconsciously shown too much disdain for the students we teach or for the lawyers they will become. If Dean Kronman is correct, we show contempt for the common law tradition and for the role of lawyer as prudent counselor. We should consider that humility is a desirable personal and professional characteristic. We should appreciate that professional respect, like happiness, is something we cannot achieve for ourselves unless we give it to others.

Most fundamentally, we need to undertake a systematic program to integrate more faculty more fully into the life of the legal profession. Justice Shepard's article urges judges to get more involved, and deans should urge their faculties to do the same. Indeed, I suggest that the faculty and the judges work in concert.

It is critical to be inclusive in this effort. We cannot confine the initiative to the faculty who are already active with the bar or to those who are traditional doctrinal analysts. Faculty with interdisciplinary interests, faculty with more philosophical

and theoretical orientations, and other faculty with trenchant social criticism, must be included in invitations to participate.

Deans need to get in the business of expressing enthusiasm for the contributions your faculty stand poised to make to the profession. Building up faculty morale is an important part of the dean's job and an important product of this initiative. Shore up faculty morale and at the same time provide faculty with enrichment experiences. Help them to have the confidence to undertake a new kind of professional growth experience. Faculty engaged in their own professional growth are the faculty most likely to make education the best growth experience for their students. In addition, your school, your faculty, and you will look better if you become an advocate for them and for the contributions they would be delighted to make to the profession.

The Professionalism Movement and Law Schools

Deans and faculty should realize that the professionalism movement provides an excellent opportunity for the law schools. When as dean I was appointed to our Florida Supreme Court Commission on Professionalism, I confess that I was somewhat skeptical and somewhat fearful that the effort would involve too much law school bashing and too many unpleasantly invasive proposals. I have been delighted to have been proven wrong.

I have come to learn that the professionalism movement is much more than an attempt by lawyers and judges to address the bad manners of our graduates. The essence of the Florida experience is that leaders of the bench and bar are attempting to revitalize relationships within the legal profession. They are attempting to respond to the "spiritual crisis" that Dean Kronman describes, and they very much want the help of the law schools. Any dean who wants a judge's view of the importance of this initiative, and of how a dean might proceed, should telephone Justice Harry Lee Anstead, chair of the Florida Supreme

Court Commission on Professionalism, to discuss his vision for engagement of the law schools.

The judiciary, particularly the appellate judiciary, are our natural mentors and allies. Justice Ruth Bader Ginsburg has recently written that no two jobs in the legal profession are more alike than that of law professor and appellate judge.⁷ There are many obvious "connects" between appellate judges and law faculty. We both spend significant time on appellate opinions. And most law schools use judges as adjunct faculty. But all too often, adjunct faculty and full-time faculty fail to enrich one another. We are like small children engaged in parallel play — we seem to be doing the same thing, but not together.

There are several less obvious political connects. First, judges, like some deans and faculty, are very conscious of the fact that they need political allies. Second, the "eat-what-you-kill" mentality of much current practice has been even more off-putting to some judges than it has been to many faculty. It seems that, more than ever, many judges feel ethically or professionally compelled to avoid socializing with the practicing bar. Third, many judges in leadership positions are concerned with the need to enrich the career of the lifetime judge. We in the academy should be more concerned with the need to stimulate the vitality of the lifetime professor. We boomers are not going to go away quickly or gracefully. The generation before us hasn't yet gone away, and we need to make sure that senior faculty have continuing growth experiences. The bench and the academy can turn to one another for professional allies, for professional stimulation, and for personal growth. Each is the other's most likely starting point.

A Program of Engagement

It is important to explain to senior members of the bench and bar the great progress the law schools have already made in advancing professional skills training. It is also important to articulate at the local level the

professional contributions faculty make at the national and at the international levels. Often these very important contributions are invisible locally. As Justice Shepard tells fellow judges, the very task of explaining what you do leads you to valuable introspection. Nevertheless, these efforts should not ignore the fact that some of our strongest critics are quite informed about what we do.

Deans should initiate a program to involve more faculty in continuing judicial education and in the life of the judiciary.

One of the obvious changes in the legal profession over the last few decades is the rise of mandatory continuing legal education. Less apparent has been the rise in mandatory and other continuing judicial education. Continuing judicial education has become big business and law faculty ought to ask what their role should be in it. Address it as a target of opportunity. Ask what institutional outcomes should be achieved with respect to it.

I was so excited by Justice Shepard's article that I called him up. He gave me a wonderful example of relationship-building between the bench and the academy through continuing judicial education. Indiana has instituted a special graduate program for judges that is modeled on the University of Virginia program for judges. Admission is competitive. Judges are admitted on application and only if they commit to come for a full week in residence for two years in a row. The setting is bucolic, in a retreat-type facility. The tone is one of a mini-sabbatical. Each year, the judges take three courses that meet 75 minutes a day. *All the instructors are law professors.* At the end of the

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week, the judges take examinations prepared by the faculty. Only if the judges pass the exams do they receive a certificate of completion.

The professors are there to learn as well as to teach. The program is designed to engage faculty who "are not the usual suspects" at bar functions. "We have recruited people who don't show up on that radar screen," reports Justice Shepard, who believes that the effort has been extremely worthwhile. This past summer, the courses that were offered included Law and Technology, Comparative Law, and Law and Bioethics. In the evening, there was a special program on Law and Literature. The summer before last, the courses were Jurisprudence, Legislation, and Law and Economics. Clearly, the full range of faculty can be engaged in this kind of effort. Bringing judges and faculty together, in residence, for a full week, builds relationships in a way that a shorter academic conclave will not. To date, the programs have received rave reviews.

Now to a critical point about money. The Indiana program is specially funded by the legislature. Justice Shepard also reports that Indiana is the first state to finance its own CLEO program. The Indiana Legislature has made ongoing appropriations that, when fully phased in, will generate \$450,000 a year in badly needed scholarship money. Similarly, in Florida, the two state schools have for the past several years received an appropriation of \$400,000 a year to fund sum-

mer stipends for law students to intern with trial judges. We could not have done this without judicial support of the request. This is the true joy of every dean — we have gotten money for a worthy cause out of someone else's budget.

Think of the efficiency of your time as a fundraiser. Under our university foundation's current reinvestment/distribution policy, it would take an endowment of \$10,000,000 to guarantee an annual \$400,000 in scholarship monies. How many conversations must a dean have in order to raise \$10,000,000 in endowment? The Florida summer stipend program took one conversation with a lawyer-legislator who was delighted to serve the universities and the courts with one stroke.

The point is quite simple — if deans start thinking creatively about their own states, they may be able to more than make up for lost federal funding.

Judges and professors need to get beyond parallel play. They should be brought together in a variety of more casual settings that can break down barriers. At the very least, faculty and judges can break bread together. More importantly, schools will be enriched by having full-time judges in residence. Special legislative appropriations may be available for judicial sabbaticals. Distinguished attorneys can also be brought into residence. Once again, their firms or companies may pay the freight. At Florida State, our last practitioner in residence was paid for by IBM.

Similarly, faculty may want to take full- or part-time research appointments in residence with courts. It may not be a traditional step for experienced academics, but it could be a very valuable enrichment experience, particularly for more senior faculty.

Beyond the Judiciary

As we consider residencies with the judges, we should consider Professor Glendon's counsel that we should look beyond our love affair with the judiciary and more fully engage other branches of the profession. We should

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provide for faculty professional enrichment leaves, part- or full-time, with legislatures, government agencies, and law firms. The result may be a valuable enrichment experience both for the participating faculty member and for the external agency. At the very least, mutual respect among the participants is likely to be enhanced. Further, professorial externships may send a valuable signal to the broader professional community. Most importantly, spending some time in the world our students will occupy can only help us to better understand how to prepare them. It may also increase our respect for them and for their careers. And, here again, there may be an opportunity to fund a worthy cause through someone else's budget.

Deans, particularly at schools that do not find it efficient to produce their own continuing legal education programs, should initiate an effort to get more faculty invited as speakers. This may be easier said than done. Arms of the organized bar may be slow to open to faculty. Many continuing legal education programs, for example, are controlled at the section level. Being a speaker may be a plum assignment reserved for the active section member. For broader faculty involvement, it may be important to engage leadership in some "top down" ways. This is one place where the bench and bar leadership, working together, can help the academy.

The bar feels compelled to listen to the bench in a way in which it does not feel compelled to listen to the academy. If the judges tell bar leaders they should do something, it will at least be given serious thought. Moreover, the bench can set an example by being more inclusive with respect to faculty. It can credential faculty by inviting them to teach continuing judicial education. Practicing lawyers have incentive to listen to the women and men who teach the judges.

Boards of visitors and alumni associations can be enlisted in this effort. Last year, we had alumni leaders attend a faculty meeting to discuss faculty interest in serving as speakers and as resources. The alumni were

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astonished to find a pervasive and warm enthusiasm and willingness to serve.

Faculty should on occasion write for nonfaculty consumption. Most faculty members could easily write something that would make a contribution to someone in the bench or bar. Even if external constituencies do not like the message we send, they will be grateful that we took the time to send it. Members of the bench and bar are grateful for every indication that we think they are worth speaking to.

Faculty also should be encouraged to be active in law reform. Young faculty should be introduced early on to the work of the American Law Institute and to the efforts of the National Conference of Commissioners on Uniform State Laws. Justice Shepard is urging judges to get more involved. We should proceed arm-in-arm with those who heed his call. We occupy a special position with respect to law reform because we, like the judges, are supposed to remain "above the fray" of financial interest and speak to the ideals of the justice system.

Some judges and some faculty will say that they do not like the politics of some of the influential agencies in the path of law reform, such as the American Bar Association. Justice Shepard's response is simple: Don't withdraw from the work of law reform because the world as you see it is not perfect.

Justice Shepard makes another point that I think must be made to law deans and professors: Law reform

efforts at the state level are of critical importance and cannot be overlooked. Too many of us, to a fault, have little or nothing to do with the bench or with the bar or with law reform in the state in which we teach. Many judges believe that scholarly commentary is critical to the work of the courts. Yet state courts, legislatures, and agencies often attract little faculty interest.

Not one of us would counsel a new faculty member to begin an academic career by concentrating on the law of a particular state. But, especially after it becomes clear that a faculty member is in a state for the long haul, it is not too much to ask for some contribution within the state, particularly at a state school. At the very least, deans should show that a contribution within the state is valued.

There are deans and professors who feel that involvement at the state level is best left to the law schools at the bottom of the pecking order. I disagree.

Faculties who have the greatest national and international accomplishments and perspectives, faculties with healthy communities of philosophers and meta-theoreticians, have the most to offer at the lowest cost. We teach our students that the lowest-cost providers of a social good may have the greatest duty to provide that good. I think of Berkeley's Professor Mel Eisenberg as an exemplar. His recent writings in corporate law are both theoretical and interdisciplinary, embracing, among other things, the work of cognitive psychologists. Yet he also serves the work of the American Law Institute, the Uniform Law Commissioners, and, yes, even the California State Bar. Deans should expose younger faculty members to role models like Professor Eisenberg.

Faculty and the State Bar

Consider establishing an institutional membership program with your state bar analogous to the ABA institutional membership program. Our Florida Bar directory is two inches thick. It includes, of course, all the members of the bench and bar. It also

lists a wide range of administrators, with the courts, with the bar, and with the legislature. A sociologist would have a field day with the fact that law professors are not listed. An institutional membership program would make it easier for law professors to be listed, perhaps by area of expertise, enrolled in the relevant section and called upon for law reform or other public service. We tell our students that relationships should be structured to reduce organization and information costs. We should apply that lesson to our relationships with the profession in our home state.

Consider a variety of additional ways to make it easier for others to call upon faculty as resources. Make it easier, for example, for those planning continuing judicial education or other programs to shop for faculty. Like many law schools, Florida State publishes a list of recent faculty scholarship. We have also published, and circulated to the bench and bar, a brochure on our "Faculty Resource Group," a list of faculty who have volunteered to serve as speakers or resources in particular substantive areas. We also posted on our home page a fuller listing of faculty accomplishments. Even if a home page or a brochure results in only a few invitations to faculty, it can nevertheless send an important signal to the bench and bar that faculty stand ready to serve. We train our students to understand the importance of signaling and bonding costs. Once again, we should apply our own lessons to ourselves. In addition, the process of preparing the brochure can be an affirming experience for faculty and can help reorient their expectations of themselves.

Start collecting data to establish baselines and expectations. You may find that, with relatively little effort, you wind up with a very impressive portfolio of faculty accomplishments.

Full-time faculty should consider some team-teaching with members of the bench and bar. At Florida State, we have created a series of "practicums" to supplement traditional courses. The practicum is a one-hour, skills-heavy, optional supplement to a more traditional course. A full-time

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faculty member teaches the traditional course and in addition team-teaches the practicum with a judge or with a practicing attorney. It is an important learning experience for faculty, as well as for the students.

At bottom, the reinforcement schedule must be considered. It is important to faculty that they understand what is rewarded and what is not. Deans may be able to generate external incentives (such as endowed professorships) when internal incentives are insufficient. One of our larger endowed professorships at Florida State, the Goldstein Professorship, was contributed by The Florida Bar Foundation. It is an incentive for a faculty member who will agree to interact with some regularity with the public interest bar, particularly with the portion of the public interest bar dedicated to providing legal representation to those who need it the most. We also have the Pat Dore Professorship, given by the Administrative Law Section of The Florida Bar, to provide incentive to a faculty member to interact with the state administrative law bar.

The university reinforcement schedule also should be considered. Schools vary greatly on what will be valued by university promotion and tenure committees and by university provosts and presidents. It is clear that, on some campuses, faculty portfolios will be enhanced by speeches and shorter papers, which will also remind other university faculty that law faculty are players in the legal

marketplace. On other campuses, the situation is less clear.⁸

Conclusion

There are a number of reasons we should undertake a program to integrate law faculty more fully into the legal profession. First, we, as other university faculty, need to justify the privileged position we are fortunate to hold. Second, we need to realize that we have come to measure our own success almost exclusively in terms of the prestige we have with other academics, disregarding how others see us. We need to define success, at least in part, on the basis of the good we can do for others. Third, the time is ripe. Leaders in the bench and bar are in the throes of a sincere conversation about how to improve the legal profession, both for the benefit of the people in it and for the benefit of the rest of society. We need to be a part of that conversation, both for our own personal development and for the good of our students and of our communities. □

¹ DONALD KENNEDY, *ACADEMIC DUTY* (1997).

² COUNCIL FOR AID TO EDUCATION, *BREAKING THE SOCIAL CONTRACT — THE FISCAL CRISIS IN HIGHER EDUCATION 18-19* (1997): "In our view, the most pressing reform needed today in the higher education sector is the redesign of the governance structure of institutions so that decision makers can think and act strategically." See also John D. McKinnon, *State Pushes for Limits on Tenure*, *W.St.J. F1* col. 6 (Feb. 4, 1998).

³ *BREAKING THE SOCIAL CONTRACT*, *supra* note 2, at 19. "The average teaching load in major research universities . . . has been reduced from about eight courses a year to four or five. Institutions must calculate the effect of such changes on costs and benefits. No fundamental restructuring can occur until the current incentive system governing faculty behavior is changed."

⁴ ANTHONY KRONMAN, *THE LOST LAWYER* (1993).

⁵ MARY ANN GLENDON, *A NATION UNDER LAWYERS* (1994).

⁶ Randall T. Shepard, *What Judges Can Do About Legal Professionalism*, 32 *WAKE FOR. L. REV.* 621 (1997).

⁷ Ruth Bader Ginsburg, *On the Interdependence of Law Schools and Law Courts*, 83 *VA. L. REV.* 829 (1997).

⁸ See Robin Wilson, *Women Lose Tenure Bids Despite Backing from Departments*, *CHRON. HIGHER ED. A.10* (June 6, 1997).