



GONZAGA UNIVERSITY

# THE LAW TEACHER

Institute for Law School Teaching

Spring 1998

## A common cause

### *Teaching law and the Holocaust: Engagement and commitment*

By F. C. DeCoste

Courses in legal theory, as taught in the context of the professional law school, have among their primary ends the goal of giving prospective lawyers an articulate and committed cause to live a life of law. Law school courses in legal philosophy seek, that is, not merely to provide students with ideas about law, but to do so in a fashion that reveals lawyering as an ethically viable and sustaining, morally attractive and significant, life project.

With these purposes in mind, I have developed and twice taught a legal theory course on law and the Holocaust. I proceeded from the understanding that the ethical and moral substance and point of liberal law and lawyering could nowhere be more starkly

disclosed than in contrast to the role of law and lawyers in Germany between 1933 and 1945 and in Vichy France. But acting on this understanding proved to be troublesome. On the one hand, I had to steer clear of constructing a course in history; on the other, I could not reasonably presume that students would arrive at the course with any useful knowledge of the period generally, or of the Holocaust in particular.

These constraints very much defined the course that finally took shape. Its objectives are, first, to reveal the understanding of law that permitted German and French lawyers so directly and assiduously to contribute to state-sponsored mass murder; and second, to deploy that understanding as a means for coming to an informed view of the liberal understanding of law and lawyering. But to pursue either of these ends, it became necessary first to come to terms with the need for facts in a way that did not cede the course to history. I found the history required for disciplined reflection in the student edition of Raul Hilberg's *The Destruction of The European Jews*, in Ingo Muller's *Hitler's Justice*, and in Richard Weisberg's *Vichy Law and the Holocaust in France*, all of which are required texts.

As point of departure for philosophical inquiry, I have adopted Harold Kaplan's *Conscience and Memory:*

*Meditations in a Museum of the Holocaust* (and will add to Kaplan, when next I teach the course, Tzvetan Todorov's *Facing the Extreme: Moral Life in the Concentration Camps*). Among the many virtues of Kaplan's wonderful work is its construction of holocaust as an ethical relation between perpetrator and victim, the substance of which is abjection wrought by the most fundamental fracturing of

moral equality. So viewed, holocaust is an always potential form of human life and association. Thus the lived experience of the European Holocaust that actual relationship between murderer and violated becomes not just a cause for remembrance but an occasion

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for reflection on the possibilities for evil that reside in the politics of the human situation.

This understanding of holocaust serves to found class reflection on the origins of moral equality and the impulse to act against it, and on the ideological, political, and legal shape that impulse took in 20th century Europe, both in the totalitarian culture of Germany and in the decidedly liberal culture of France. The philosophical view of holocaust as first an ethical relation that subsequently takes moral, political, and legal form makes possible an inquiry about the relationship between moral equality (and inequality) and law. And it is from this conceptual soil that I wish slowly to emerge a view of liberal law as a subversion of power and of lawyering as a vocation, a way of life, defined by commitment to moral equality against the demands of power.

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# How to submit your article to The Law Teacher

**T**he *Law Teacher* encourages readers to submit brief articles explaining interesting and practical ideas to help law teachers become better classroom teachers.

Articles should be 500 to 1,500 words long. Footnotes are neither necessary nor desired.

The deadline for articles to be considered for the fall issue of *The Law Teacher* is Sept. 4, 1998.

You may submit an article on paper. If you have composed your manuscript on a word processor, please also include a copy of your work on a floppy disk.

Submissions through electronic mail also are welcome.

The editors will review all manuscripts; those that are accepted will become the property of the Institute for Law School Teaching.

Manuscripts, comments, and letters should be sent to:

The Institute for Law School Teaching

Gonzaga University School of Law

P.O. Box 3528

Spokane, WA 99220-3528

The e-mail address is: [ilst@lawschool.gonzaga.edu](mailto:ilst@lawschool.gonzaga.edu).

For more information, call (509) 323-3740.

## Common cause

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I have found films a most useful aid. The class viewed *Triumph of the Will* and *The Architecture of Doom* (both of which concern Nazi ideology), *The Wannsee Conference*, and *Memory of the Camps* (on the planning and execution of the Final Solution). Not only do these films make real the past for students, but they make demands upon, indeed burden and confront, student sensibilities.

I cannot, of course, speak for students. What I can do is share my observations on their experiences. In so doing, I hope to reveal what I take to be the prizes and pitfalls of teaching the ethics and morality of law in the context of the Holocaust.

Altogether, 40 students so far have joined me in exploring law and the Holocaust. Almost invariably at the beginning of the course, my students have experienced difficulties in coming to terms with how properly to conduct themselves regarding the subject matter. Their problem is not one of moral distance, of being either too near or too far, from the horrors that are the course's concern. Though too little distance is sometimes a difficulty for some students, their major predicament has a deeper, less accessible and more troubling, aspect: namely, the course's fundamental requirement that we together confront the reality of evil. My use of films arises in this context. I use them not to close distance through sentiment but instead to awaken, engage, and challenge the moral senses of my students through, I hope, empathy. But since the question of evil is a problem chiefly in terms of a moral and cultural relativism with which students are thoroughly infected, I soon discovered, too, that a cure demanded more, indeed much more, of me.

What it demanded was not merely that I clarify and declare my stand with respect to law, theoretically and politically, though that clearly is necessary. More critically and much more personally, it demanded that I disclose myself, ethically, in relation to law generally and to academic lawyering in particular. That is, I had to confess the morality of the legal enterprise. That I was led to test and to define my care for law laid bare for me the vast difference, ethically as well as morally, between teaching law and teaching about the law. The latter requires neither confession nor profession,

because it proceeds from an external, clinical, strategic, distanced perspective. When teaching law, one is professing law as a moral good and lawyering as a way of life.

Undertaken in the context of the Holocaust, then, disciplined reflection on law may disclose law's fragility and its promise—how, as Karl Llewellyn once put it, life is so terrifyingly dependent on law. The degree to which it does—whether, in confronting the horrifying reality of mass murder, students will personally confront, engage, and commit to law—turns, however, on the teacher's willingness to lead the way. And to do that well, law teachers must first take personal stock: alone, before their students do, yet in their midst, they must engage the meaning, both the responsibilities and opportunities, of their own life in law. Failing that, nothing will be won, and much could be lost. For if in teaching law and the Holocaust, law teachers manage merely to teach about law, they will have failed not just their students and themselves; they will have failed as well their responsibility to the countless faces that are the Holocaust.

If, however, they discharge that responsibility—and in so doing, disclose for themselves and for their students the burdens of law and lawyering—many more opportunities for reflection and for action will appear. My own path, for instance, has led me to reflect on the whole question of the obligations of universities, including especially law schools, with respect both to the Holocaust and to matters of moral equality more generally. It has led me as well to articulate, more consciously and earnestly than ever before the nature of the vocation of academic lawyering. All of which is to say, my experiences in teaching law and the Holocaust have fundamentally redirected my life in law. Change in the lives lived in the law, in the future, by my students made that redirection possible and is indeed the prize of the entire undertaking.

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# Circuses in the law school classroom

By Mark S. Kende

When I lived and practiced law in Chicago several years ago, a food critic appeared weekly on a local television station's evening news. He did colorful five-minute reports appraising various restaurants. He rated the restaurants in two categories. The first was food quality. In the second category, which he referred to as circuses, the critic assessed the ambiance, character, and charm of the restaurant. He favored restaurants that featured exciting or interesting circuses.

Students in Civil Procedure classes often find the federal rules dry and abstract, and this hinders their understanding of the subject. I therefore have added circuses to my Civil Procedure classes as a way of inspiring students to become more excited about studying the rules and to better appreciate their importance. I show a movie clip, hold a debate, play Class Action Jeopardy, and conduct a simulation that involves drafting, exam-writing practice, and oral argument. Though I still use a version of the Socratic case method for most of the material, I have found that these circuses provide a welcome respite and are not that time-consuming.

## Movie clip

I often start my first class by showing a movie clip from *The Fugitive*, starring Harrison Ford. Ford plays Dr. Richard Kimball, a man wrongfully convicted of murdering his wife. I show the most action-packed scene of the film, in which several prisoners stage a violent uprising on a corrections bus. The driver is shot during the turmoil and loses control of the bus, causing it to run off the highway and end up on a railroad track where a train then strikes it head-on. The scene is spectacular.

One purpose of showing the clip is simply to have the students associate Civil Procedure class with an adrenaline rush. After showing the clip, I tell the students to pretend that an engineer on the train was severely injured in the collision and that he has retained them to seek legal recourse. From that perspective, I ask them questions: How can you find out what series of events led to the train crash? Whom might you name as defendants in a civil action? What remedies would you seek? What defenses might be raised by any named defendants? What information would you seek from any defendants, and what information might they want from your client?

The students are surprisingly adept at answering these questions. For example, they usually know that any suit against the state or the corrections guards on the bus may be met by immunity defenses, that they should seek information about the state's policies for ensuring the safe transport of prisoners, and that a subpoena can be used to obtain information. As they answer my questions, I tell them that

specific federal rules govern the procedures to be followed. This exercise causes them to become immediately interested in the rules and builds confidence in their ability to figure out what's important.

## Debate

During the second week of classes, we discuss the cases governing what remedies the plaintiff can seek in a complaint. I then hold a punitive damages debate where two students represent the U.S. Chamber of Commerce and two students represent the American Trial Lawyers Association. The

student teams sit at tables in front of the class with the Chamber representatives arguing that large punitive damage awards are usually legally unjustifiable and bad public policy, while the ATLA representatives argue the opposite. Each side gets 15 to 20 minutes. The class soon starts discussing and

responding to the debaters' arguments as well.

Because high punitive damage awards are so controversial and newsworthy, this debate reaffirms the interesting and important nature of Civil Procedure for the students. In addition, the students talk intelligently to each other in the classroom, rather than simply respond to my Socratic questioning.

## Simulation

Two weeks later, I complete the pleading cases in the textbook and start the simulation. I give my students a week to draft a complaint on behalf of a woman in a retaliatory discharge case. I provide them with documents supporting her claim, including the details of a client interview, a description of witness interviews and document reviews (including an actual termination document), and a memo describing wrongful discharge law. I add to the realism of this drafting exercise by making some of the witness statements inconsistent.

After the complaints are turned in, I make written comments on each and, in class, briefly go over common mistakes. I also give students a model complaint that I have drafted. Students tell me that this exercise has helped them immensely in understanding the pleading rules and that it has made them more confident when they started law-firm clerkships. Little class time is used to do all this.

A week later, the simulation continues when I provide students with an answer to the model complaint drafted by opposing counsel (me) representing the defendant corporation. I then give them a memo specifying that the defendant has objected, on relevance and privilege grounds,

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# For adjunct faculty, try a Teach-In

By Celeste M. Hammond

Adjunct professors especially those new to teaching are a frequently overlooked group of students. For the last two summers, I have been holding a training session, which has been dubbed the Teach-In, for adjunct professors in The John Marshall Law School's graduate (LL.M.) program in real estate law.

I found Sage Publications' 1996 *The Adjunct Faculty Handbook* to be a particularly helpful resource for our adjuncts, and I directed their attention to specific chapters.

Many found the chapter on developing lesson plans and syllabi invaluable, which is not surprising since the practice of law does not routinely require practitioners to consider course content nor to draft syllabi.

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*I strongly believe that modeling is one of the best ways to learn new skills.*

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## Planning the Teach-In

When planning for the 1997 Teach-In, I realized, based on their evaluations, that our graduate students felt that the adjuncts were lecturing too much. Students wanted more opportunities for active learning. Thus the focus of the teaching effectiveness program would be teaching adjuncts how to develop collaborative and participatory classrooms.

The student comments should not have surprised me. Attorneys have enrolled in our graduate program to learn the art of commercial real estate transactions from our adjunct professors, who are among Chicago's leading real estate lawyers. Many adjuncts not only had written extensively, but they had lectured frequently at continuing legal education programs. Lecturing was the technique that they knew and had used successfully. They stuck with the tried and true in their classrooms.

Through my in-class visits throughout the year and by watching videotapes of some classes, I also realized that often a single topic was covered in great depth and in exhaustive detail in a single session; yet insufficient efforts were being made to relate the topic of the day to topics already covered (or to be covered later). The evaluations made clear that though students believed the courses provided valuable and useful information, they were having difficulty absorbing and processing the tidal wave of substantive law, practice tips, and general advice.

I was delighted that our LL.M. students had intuitively realized that they learned best in classrooms where material is presented in a context, in an organized manner, and in small chunks. To really learn, they needed opportunities to apply substantive law from the lectures to the solving of realistic problems, which occurred best through role-playing exercises, group discussions, case studies, and demonstrations. It was clear that they wanted to do more than just take notes and try to keep focused on the lectures.

I was now faced with the task of teaching this to the faculty. Since adult learners, whether they are graduate students or adjuncts, have been described as having a pragmatic and problem-centered focus, I knew that I could

not just deliver a lecture at the Teach-In, pass out some handouts, and consider the matter handled. I planned to provide the adjuncts with an array of models that they could emulate since techniques appropriate for the Drafting and Negotiations Skills Workshop might not be as effective or appropriate for the Commercial Real Estate Transactions course.

Since I strongly believe that modeling is one of the best ways to learn new skills, and since I knew from my own

experience that learning was best accomplished by watching good teachers teach, I decided to structure our Teach-In as a simulated three-hour class in

which these students would both discover and try out the skills that I wanted them to adopt. All of us would be both students and teachers. I hoped to create a dynamic classroom environment in which the ideas flowed and in which the time just flew.

As the first step in the process, I developed an agenda that I sent to all adjuncts together with their reading assignment—a chapter on adult learning that provides a primer on the psychology of teaching adults, and a chapter on teaching methods and strategies that explores a broad variety of instructional methods including lectures, discussions, and participative techniques such as student presentations, role playing, and even field trips. Both are in *The Adjunct Professor's Handbook*. I also asked two adjunct professor students to make presentations.

## The Class

The agenda for the Teach-In was my course outline in disguise. I began with welcoming remarks, which in reality comprised my lecture for the day. I told them about adult learners and the challenges that these posed to faculty and some of the ways that we could help adults learn.

Then, one of my professor students gave her student presentation by describing in-class exercises she had used. She led a discussion on what else she could have done to enhance learning in her classroom.

Next, I made use of the presentation aid technique by playing videotaped excerpts from actual classes. The tapes were painful to watch and vividly illustrated how deadly dull the lecture format was for those in the audience. It also showed a few examples of professors getting away from the lecture format and engaging the audience in a discussion. The perceptible differences in classes lead to a spontaneous discussion of how to prompt classroom discussion. The ideas flew thick and fast with everyone having something to contribute. I finally had to cut off the discussion.

For my guest lecturer I asked the director of John Marshall's media services department to do a show and tell about the media equipment that the school has available for

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## Teach-In

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classroom use. Her demonstrations ran from the simple (overheads) to the complex (PowerPoint). She gave them examples of how other faculty were using this equipment in their classrooms. For those less technically advanced adjuncts, her demonstrations were eye-opening. Everyone asked questions and started to give suggestions as to how the technology could be used.

Next, our second student presenter decided to spring a negotiation exercise on the adjuncts so that they could experience active learning firsthand. To preserve the element of surprise (which he maintained added an element of real life to the exercise), the description of his part of the class deliberately had been kept vague.

Everyone participated as a member of a two-person team representing buyer or seller of a parcel of real estate. The negotiation exercise was a good lead-in to our final task that of brainstorming strategies for increasing student classroom participation. Again, faculty participants drew on their experiences as both teachers and learners. They described successes as well as failures. It was especially

interesting to see the group take an idea and work with it until a number of improvements had been made. A real collaborative effort at problem solving was under way.

When time was up, I recalled the ways in which our class followed the suggestions of their reading assignment, and I asked for feedback. The adjuncts may not have liked having to participate in the negotiation exercise, but they recognized its value as a learning device. Likewise, they realized that classes set in a context in this case the teaching of adult learners were more effective. They realized that the day's activities taught them more than they would have learned from a lecture. They headed out with new ideas and were excited about the prospect of putting their learning into effect in their own classrooms.

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## Spice up

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to plaintiff's request for certain kinds of discovery. The memo instructs them to write a legal brief in support of a motion to compel. I tell them that they can treat the brief like an exam answer and even give them a time limit that they can follow.

After they turn in the briefs, I pick a good one and a bad one, delete student names to preserve anonymity, and copy the briefs onto transparencies, which I show to the class on an overhead projector. I go over them line by line, showing the good qualities and the problem areas. This technique, which was developed by several of my colleagues at Cooley, provides students with concrete and specific examples of the differences between good and bad exam answers in terms of legal analysis.

The next week, I tell the students that the judge in their case granted their motion to compel and that defendant produced the information. However, I tell them also that two new motions have been filed. After the close of discovery, defendant filed a summary judgment motion and plaintiff filed a motion to amend the complaint (based on new information supposedly obtained in discovery). I also give students a memo describing the motions and detailing the information obtained during discovery.

I then ask for four volunteers to do an oral argument in front of a judge, who will be played by another professor. Two students agree to represent the plaintiff, two the defendant. Later in the term, students conduct the oral argument before the judge, who questions them rigorously and then issues an oral ruling. The judge then comments about the advocates' strategies and answers questions from the class as well. This exercise enables the students to see how their actions as an attorney in the earlier part of the simulated case (the pleading and discovery parts) have a direct impact on their success in the later parts of the case

(dispositive motions). They start to see the forest of Civil Procedure, not merely the trees of each part of the course. In addition, they get to witness an exciting aspect of litigation practice.

### *Class Action Jeopardy*

This circus involves teaching class actions and Rule 23 by putting a Jeopardy board on the blackboard listing five categories, such as famous cases, public policy concerns, and potpourri. I learned of this game at an AALS conference. Each category contains answers of various values, and students are expected to figure out the correct questions just as contestants do in the television game show. I divide the class into three teams and promise to reward the winning team by giving its members some respite from Socratic questioning during the following class. Not only do students have fun competing, they learn about class actions while so doing.

Because law school generally, and Civil Procedure more specifically, can be dry, I believe that the use of circuses such as these can be of great benefit in the classroom. The increased excitement and interest that students experience, in my view, cause them to study harder, learn the material better, and understand its real importance. In addition, I have found that it makes class more entertaining for me, and I suspect that helps make me a better teacher.

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# Institute s fifth conference is set for July

The Institute for Law School Teaching will present its fifth annual summer conference on July 10 and 11 at Gonzaga University in Spokane, Washington. The conference on teaching and learning will apply a set of seven higher education principles to the law school setting. The seven principles, described in more detail on the facing page, are that:

1. *Good practice encourages student-faculty contact,*
2. *Good practice fosters cooperation among students,*
3. *Good practice promotes active learning,*
4. *Good practice gives prompt feedback,*
5. *Good practice emphasizes time on task,*
6. *Good practice communicates high expectations, and*
7. *Good practice respects diverse talents and ways of learning.*

## Structure of the Conference

The Seven Principles will provide the focus for the Institute s two-day conference. The opening session will feature a professional educator with experience in working with the Seven Principles in higher education. Seven subsequent interactive sessions, led by law teachers, will address each principle. Those sessions will include an exploration of the dimensions of the principle, a review of the research supporting the principle, and discussion of the practical application of the principle to legal education. On the afternoon of the second day, participants will apply the Seven Principles in concurrent, small-group workshops with others who teach similar subjects or skills, such as first-year courses, upper-level courses, writing courses, and clinical courses.

## Benefits to Participants

During the conference, participants can expect to increase their knowledge of foundational concepts regarding teaching and learning. Further, participants will learn how to use that

knowledge to improve their teaching and their students learning. The sessions and workshops will model the Seven Principles. They will employ a variety of active teaching/ learning methods and will help law teachers generate specific ways to apply the Seven Principles in the courses they teach next fall. Finally, participants will leave the conference with inventories they can use to assess the extent to which their courses, students, and institutions incorporate the Seven Principles.

## Registration and Deadlines

Attendance at the conference will be limited to fifty to facilitate small-group experiences. The roster will be filled in the order that the Institute receives the registration form and conference fee (\$425; checks only; payable to Gonzaga University). *Refunds:* Attendees must notify the Institute in writing to receive refunds. If notice is received on or before June 12, 1998, a full refund will be provided. No fees will be refunded if notice is received after June 12, 1998.

## Lodging and Transportation

Cavanaugh s River Inn adjacent to the conference center is offering rooms for attendees at a reduced rate. To take advantage of the rate, participants must make reservations before June 30, 1998. *Rates:* \$57 for single; \$67 for double/double (two beds for two to four people). For reservations, call 1-800-325-4000 or (509) 326-5577 and mention the Institute for Law School Teaching. Shuttle service from the airport is available.

## Meals

Breakfast, lunch, and dinner on Friday, July 10, and breakfast and lunch on Saturday, July 11, are included in the registration fee. The dinner will feature wine-tasting and a Pacific Northwest menu at Arbor Crest Wine Cellars, with a panoramic view of the Spokane River valley and surrounding mountains. Because of hazards at the site, minors will not be permitted. All meals will accommodate vegetarian diets.

## *Seven Principles for Good Practice in Legal Education*

INSTITUTE FOR LAW SCHOOL TEACHING  
SUMMER CONFERENCE: JULY 10-11, 1998

Name: _____	Phone: (    ) _____	Fax: (    ) _____
School: _____	E-mail: _____	
Address: _____	Courses you teach: _____	
_____		
City/State/Zip: _____		

Enclosed is a check for \$425. (Includes all meals on Friday, July 10, and two meals on Saturday, July 11.)

Return this form and your check (payable to Gonzaga University) to:

Institute for Law School Teaching, Attn: P. Prather  
Gonzaga University School of Law, P.O. Box 3528, Spokane, WA 99220-3528

# Teaching law: Seven guiding principles

In 1987, leading teachers and scholars in the movement to improve higher education in the U.S. developed the Seven Principles for Good Practice in Undergraduate Education. These principles, derived from decades of research on college teaching and learning, have greatly influenced theory and practice in higher education. More than 150,000 reprints were requested within six months of their publication. Subsequently, a task force of educators developed the Faculty Inventory, Student Inventory, and Institutional Inventory to provide teachers, students, and administrators a means to assess how their courses and campuses reflect the Seven Principles. Two books review the research behind the Seven Principles and describe their practical application in college: ARTHUR W. CHICKERING & ZELDA F. GAMSON, *APPLYING THE SEVEN PRINCIPLES FOR GOOD PRACTICE IN UNDERGRADUATE EDUCATION* (1991) and JUDITH A. STURNICK ET AL., *THE SEVEN PRINCIPLES IN ACTION* (Susan Rickey Hatfield ed., 1995). The following come from *THE SEVEN PRINCIPALS IN ACTION*.

## **Principle 1:** **Good Practice** **Encourages Student-Faculty Contact.**

Frequent student-faculty contact in and out of class is the most important factor in student motivation. Faculty concern helps students get through rough times and keep on working. Knowing a few faculty members well enhances students' intellectual commitment and encourages them to think about their own values and future plans.

## **Principle 2:** **Good Practice Encourages Cooperation.**

Learning is enhanced when it is more like a team effort than a solo race. Good learning, like good work, is collaborative and social, not competitive and isolated. Working with others often increases involvement in learning. Sharing one's own ideas and responding to others' reactions improve thinking and deepen understanding.

## **Principle 3:** **Good Practice Encourages Active Learning.**

Learning is not a spectator sport. Students do not learn much just sitting in classes and listening to teachers,

memorizing pre-packaged assignments, and spitting out answers. They must talk about what they are learning, write about it, relate it to past experiences, and apply it to their daily lives.

## **Principle 4:** **Good Practice Gives Prompt Feedback.**

Knowing what you know and don't know focuses

learning. Students need appropriate feedback on performance to benefit from courses. Students need help assessing existing knowledge and competence. In classes, students need frequent opportunities to perform and receive suggestions for improvement. At various points, students need chances to reflect on what they have learned, what they still need to know, and how to assess themselves.

## **Principle 5:** **Good Practice** **Emphasizes Time on Task.**

Efficient time-management skills are critical for students and professionals alike. Allocating realistic amounts of time means effective learning for students and effective teaching for faculty. How an institution defines time expectations for students, faculty,

administrators, and other professional staff can establish the basis for high performance for all.

## **Principle 6:** **Hold High Expectations.**

Expect more and you will get it. High expectations are important for everyone—for the poorly prepared, for those unwilling to exert themselves, and for the bright and motivated. Expecting students to perform well becomes a self-fulfilling prophecy.

## **Principle 7:** **Good Practice Respects Diverse Talents.**

There are many roads to learning. People bring different talents and styles of learning to college. Brilliant students in the seminar room may be all thumbs in the art studio. Students need opportunities to show their talents and learn in ways that work for them. Then they can be pushed to learn in ways that do not come as easily.

## **Conference Schedule**

### **Friday, July 10, 1998**

- 8:00 Check-in, breakfast buffet
- 9:00 Welcome, introductions, overview
- 9:30 *Development and Impact of the Seven Principles in Higher Education*
- 11:00 *Student-Faculty Contact*
- Noon Lunch
- 1:30 *Cooperation Among Students*
- 2:30 *Active Learning*
- 3:30 *Prompt Feedback*
- 4:30 Adjourn
- 6:30 Dinner at Arbor Crest Wine Cellars

### **Saturday, July 11, 1998**

- 8:00 Breakfast Buffet
- 9:00 *Time on Task*
- 10:00 *High Expectations*
- 11:00 *Diverse Talents and Ways of Learning*
- Noon Lunch
- 1:30 *Concurrent Small-group Workshops*  
*Applying the Seven Principles in:*
  - ¥ First-year Courses
  - ¥ Upper-level Courses
  - ¥ Writing Course
  - ¥ Clinical Courses
- 4:00 Final Thoughts and Evaluation
- 4:30 Adjourn

# Real-life learning

## *Teach students the ways of the administrative world*

By Casey Jarman

Much to my surprise, Administrative Law has become one of my favorite courses to teach. It tends to be a class focused on agency procedures and the political and legal interactions among the three branches of government. During the course, we address issues that arise in the context of such seemingly mundane and straightforward procedures as public notice, opportunity for comment, and access to public information; we also explore notions of agency capture, the role of the courts in both facilitating and checking agency power, social justice implications of how agencies carry out their business, and the role of lawyers in the implementation of agency agendas. While it is possible to adequately cover these issues in class using solely the standard casebook methodology, I have found that the public nature of agency decision-making makes this class ideal for sending students forth into the milieu of agency hearings to find out firsthand how the concepts they learn in class play out in the real world.

In this article, I describe what has now become a standard (and increasingly popular) assignment in my Administrative Law class: requiring students to attend an administrative hearing of a federal, state, or county agency during the course of the semester. In addition to attending the hearing, students must prepare and hand in written testimony at the hearing; giving oral testimony is optional, but I encourage them to do so. They must then turn in a copy of their written testimony to me, along with a written report (see secondary story this page).

The students are responsible for finding a hearing at which the agency accepts written public testimony. Their report and copies of their testimony are due the last week of classes.

This assignment is typically worth 30 percent of the final grade. I weight the assignment this way to let students know that I consider this experience an important part of the course and to discourage procrastination. Because agencies often hold hearings irregularly, I strongly suggest to the students that they start looking for hearings early in the semester; doing so also gives them adequate time to research and prepare their written testimony. I put on reserve in the law library a handout on drafting written testimony, as well as examples of sample testimony. (Student questions to me on drafting testimony decreased about 75 percent once I started making the handout available.) Also, at a student's request, I will read and critique drafts of written testimony prior to the hearing; however, few students take advantage of this opportunity.

As the semester progresses, I check their progress by asking what, if any, hearings they have identified and encourage oral reports to the class once the student has attended a hearing. These oral reports illustrate the variety of experiences that can occur at an administrative hearing. Some attend controversial hearings with hundreds of participants

### Requirements of the written report

Students in Casey Jarman's Administrative Law course are required to attend an administrative hearing of a federal, state, or county agency. Each must then write a report that includes the following information:

1. Name of agency and source of notice for the hearing.
2. Subject matter and purpose of the hearing.
3. Date, time, and place of the hearing.
4. Length of hearing, identity of person(s) presiding, and number of attendees and their affiliations.
5. Procedures used in the hearing, such as sign-in sheets and/or testifiers, order of testifiers, time limits on testimony, opportunities for dialogue with person(s) presiding, etc.
6. Student's observations of the hearing regarding its effectiveness in accomplishing the goals of public hearings in general and this hearing in specific.
7. Any other observations he/she wants to include.

and hours of heated testimony; others find they are the only ones at the hearing other than the agency staff. In the latter case, the students often engage the staff in a discussion after the hearing to gain a better sense of whether their experience is typical for the agency.

By having to attend hearings, students experience firsthand the frustrations and the benefits of agency process. They discover that hearings are often held at inconvenient times and in inconvenient locations with limited parking. As one student reported: I arrived at the office about ten minutes before the hearing began. (I would have been there earlier if not for the frantic minutes I spent searching for a legal parking space in that part of Kakaako).

Some students are surprised to learn that between the time they picked up the material pertinent to the hearing and the hearing itself the subject matter of the hearing was amended. For example, last semester two students prepared testimony on a permit to place a particular cellular phone service antenna at one location. They discovered at the hearing that both the configuration of the antenna and the placement had been changed without notice to the public. What appeared from reading the statute to be clear, straightforward requirements of public notice and opportunity for comment took on new meaning for these students.

Students also learn which agencies are helpful in supplying information to prepare for the hearings and which seem to view the public as an annoyance. The following

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# Public health: the important lesson

By Edward P. Richards

Last spring semester, I taught a new course titled The Constitution and the Public's Health. This essay reports what I learned in doing this and what I hope students can learn from a public health law course.

Public health is the specialty of taking care of all the little things that make modern civilization possible: food sanitation, the control of rats and vermin, communicable diseases, nuisances such as stray dogs, dangerous buildings, general environmental problems, and just about everything else that can make you sick, fall on your head, or otherwise adversely affect community health and safety. Public health initiatives were responsible for nearly tripling the life expectancy in the United States between 1850 and 1990.

## Before AIDS/After AIDS

Prior to the emergence of AIDS/HIV in 1981, few law professors were interested in public health. It was seen as an intellectual backwater, limited to bad dogs, septic tanks, and other unromantic topics. While every state and big city health department had a lawyer who did public health law, this lawyer usually worked for the city legal department or the state attorney general's office. Public health law was the bottom rung on the career ladder in these departments. The most junior person would do public health law until the next new hire came on board. Pre-AIDS, there was little

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## Real-life learning

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student received an important lesson in access to public information while completing the assignment:

*Getting the information necessary to write my testimony proved to be a very educational experience. At the DLNR, a secretary or receptionist standing near the counter immediately asked if she could help. I told her the date of the hearing, the application number, and asked to see the public record. Seeming completely surprised and confused, she disappeared into the abyss of cubicles located in the rear of the office. Just as I began to think she was lost forever, she returned and informed me that someone would be with me shortly. After about five minutes, I was told by a gentleman that the application had been assigned to a planner, I think her name is Eileen, who was at lunch. I should wait 15 minutes and then ask someone if she had returned, he said. I was very surprised and disappointed that information regarding the subject of a public hearing was not accessible during all business hours. Over the next 15 minutes, I saw two other women enter, stand at the counter, and wait to be helped. The three of us must have been invisible because neither the receptionist nor the other employees returning from their lunch asked if we needed assistance.*

Not all students confront such uncooperative staff. Many are pleased when agency staff thank them for their testimony. Others would like to be more anonymous:

*An administrator for the Liquor Commission told Kevin [another student] that we should sit in the front of the hearing room and submit our written testimony so it could be read into the record. The revelation that our written testimony would be read into the record sent waves of panic rippling through our group. [Six other law students attended the same hearing.]*

Still others are dismayed when the agency makes a decision at the end of the hearing, obviously not having taken the time to read their testimony. As one student quipped: So much for their responsibility to consider the whole record before making a decision.

All report that the experience, which some viewed with skepticism early in the semester, taught them valuable lessons that cannot be imparted in the classroom. I found the following comments by a student to be particularly compelling.

*I learned that I should have been prepared to testify even though the outcome was decided and there was nothing at stake. I kicked myself all the way home for not taking Commissioner Jervis somewhat personal challenge to testify. The more I thought about it, the more embarrassed I was. The lesson here was that I was sloppy and too reserved. Even with the [seemingly] pre-determined outcome, I should have used my best efforts to represent my school and myself. Concerned about my future as a litigator, I promised myself that from now on I would be better prepared and eager to present my arguments when asked.*

If you believe, as I do, that clinical experiences can be a valuable addition to a standard law school class, I urge you to find opportunities in your community for students to experience the living, breathing reality of the concepts they are learning in the classroom. If so, you will find, as I have, that your teaching, the students, the law school, and the wider community will benefit.

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# Public health

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institutional expertise in public health law in either law schools or state and local agencies.

When AIDS came along, it caught the imagination of constitutional and civil rights lawyers in law schools and in public interest law practice. Persons who knew nothing about disease control or general public health were now seen as public health law experts because they worked on the one sexy public health topic. Public health was a civil rights issue, and the interests of the individual were put before those of society. The result was questionable AIDS/HIV policy, and the belief among most law students and lawyers that some court somewhere had struck down all the laws that gave public health agencies the right to protect the public.

## The Background for the Course

I am a pre-AIDS public health person. I was working with public health issues as an undergraduate in biology and environmental engineering long before I thought of becoming a lawyer. Before I finished law school, I was already doing public health law. My wife had become the director of one of the largest sexually transmitted disease clinic systems in the country and I was her de facto counsel. By the time she left public health practice some 15 years later, I had worked on most of the problems that arise in public health. I also had the opportunity to be a special advisor to the Colorado Department of Health on the drafting and passage of the first comprehensive state HIV control bill. In the process, I began to see how little most persons, including lawyers, legislators, and physicians, actually know about public health.

A telling example was that the members of the Colorado legislative committee reviewing the HIV control bill did not know that health departments require the reporting of approximately 50 communicable and occupational diseases. If your child gets the measles, your physician must report this to the health department. The same with syphilis, tuberculosis, meningitis, and a long list of other diseases. This allows the department to investigate the spread of the disease and take measures to control it.

Not knowing that disease reporting was a core health department function, many of the legislators were opposed to reporting, believing that it was intended to harass gay men. Once they understood that the bill treated HIV the same as other communicable diseases, while strengthening the privacy protections on all public health records, they passed the bill with only minimal amendments.

These experiences convinced me of two things. First, whether you are teaching public health law to lawyers, doctors, or even law students, you must teach them what public health is and how it is practiced. Second, you should use a disease such as tuberculosis to explain disease control; discuss AIDS/HIV only after the background information has been presented.

## Planning the Course

The idea for teaching this course came from Terry O'Brien, an assistant attorney general for Minnesota. O'Brien is one of the few attorneys who has made a career in public health and is one of the most knowledgeable public health attorneys.

O'Brien was invited to be a visiting professor at the University of Minnesota School of Law to teach a one-semester course in public health law. He called me to brainstorm how to structure a course for law students since

there is no useful public health law text for law school use. We decided that the objective in teaching public health law should not be to make students into public health attorneys. Instead, our aim

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*Whether you are teaching public health law to lawyers, doctors, or even law students, you must teach them first what public health is and how it is practiced.*

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was to make them better able to participate in the critical debates over public health resources and decision-making. We also realized that the students would come into the course with preconceived notions about public health that would be informed only by the issues surrounding AIDS/HIV. We would have to get their attention in such a way as to make them see public health as more than just AIDS law.

We designed a course that started with articles from the *Journal of Emerging Infectious Diseases* introducing the problem of fighting new epidemics. O'Brien then discussed a frightening outbreak of meningitis that had been written up extensively in the Minnesota papers. This was especially effective because he had been involved with investigating the epidemic and could provide the sort of detail that gives a story life.

The strategy worked. The students were so engrossed in the story of the outbreak and the horror that it spread throughout the community—one that was not that far from the law school—that they were able to put aside their preconceived notions about public health law. The course then led them through the constitutional law cases on the police powers and articles on balancing community and individual rights. It concluded with a discussion of AIDS and other unresolved issues. (I have put the syllabus on my WWW site: <http://plague.law.umkc.edu>.)

## My Course

For my course, I wanted to expand on the idea of teaching the students enough public health practice that they really understand what the law must accomplish. I use this approach in my torts and products liability classes, explaining the underlying engineering or medicine or other technical area in detail, then asking the students to figure out how the accident happened and how to prevent it, in some cases by designing labels or writing instructions.

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# Faculty development kit now available

The Institute has produced a faculty development kit designed to help law teachers improve the learning of all of their students. The training packet, titled *Teach to the Whole Class: Barriers and Pathways to Learning*, is the result of a collaboration among Laurie Zimet (Hastings), Paula Lustbader (Seattle University), and Gerald Hess (Gonzaga). The training packet consists of a videotape and a facilitator's notebook.

The centerpiece of the kit is a 32-minute videotape of law students discussing their learning experiences. The tape was developed from 16 hours of interviews with students at six law schools: Brooklyn, Hastings, Iowa, New Mexico, North Carolina, and Seattle University. These schools were selected to provide a cross-section (geographic, public/private, demographic, size, rank) of legal education. A faculty member from each institution selected a variety of students in terms of race, gender, socio-economic status, sexual orientation, disability, cultural background, year in school, and class rank. Sixty-seven students participated. On the videotape, the students describe the behaviors and methods that enhanced and hindered their learning. This powerful videotape was well received by over 300 legal educators during its premiere at the Teaching Methods Section program at the 1998 AALS Annual Meeting.

The videotape is accompanied by a 73-page notebook designed to help facilitators plan and deliver a faculty colloquium based on the videotape. The notebook presents a choice of eight plans for using the videotape depending on the purpose of the faculty development session. The notebook also includes handouts, overheads, discussion questions, and suggested activities that can be used during the faculty development session. Finally, the notebook contains a primer on teaching and learning principles and an annotated bibliography on diversity, learning, and teaching methods.

The Institute believes that *Teach to the Whole Class: Barriers and Pathways to Learning* is an outstanding resource for law faculties to use to improve the effectiveness of their teaching. The kit provides a number of incentives and suggestions on ways to incorporate a variety of teaching methods in the law classroom. The Institute hopes that as law teachers increase their understanding of student learning and expand their pedagogy the learning of all students will be enhanced.

*Teach to the Whole Class: Barriers and Pathways to Learning* is available now at a cost of \$199. Contact the Institute for more information or to place an order.

## Public Health

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I began with a reading of the first chapter of the *Hot Zone*, by Richard Preston. It is very powerful. (I censor some of the more graphic parts because law students tend to have weak stomachs.) Next, I told the story of Ebola, which rivets the students' attention on the social and medical impact of a serious disease outbreak. The students then read most of an introductory text on public health practice and administration that was written for Masters of Public Health students, as well as part of the *Public Health Law Manual* by Frank Grad, a book on public health practice. I supplemented these with key constitutional law cases on the police powers. The students were also required to find out how the health departments were organized in surrounding communities.

The class was a success, although not everything worked. The readings in the public health text were too foreign for the students to follow without extensive explanation in class. They loved the police power cases, especially the more modern ones such as *Reynolds v. McNichols*, 488 F.2d 1378 (10th Cir. 1973), since these are generally ignored in constitutional law. It was useful for them to talk to people at the various health departments and see what they do. Yet the students' lack of detailed public health knowledge, and their lack of time, made it difficult for them to evaluate how effectively the departments were providing public health services.

By the end of the course, I was impressed with how much more sophisticated the students had become in evaluating public health policy. They began to see that protecting

individual privacy sometimes comes at the cost of societal safety. In the process, they began to gain a more fundamental understanding of how the political process drives all public health policy decision-making. They saw how much more difficult it is for a local government agency to resist political manipulation than it is for the large and powerful federal agencies that law students usually study.

### Conclusions

Public health law is a useful vehicle for introducing law students to several areas that are absent from most law school curricula, including: 1) the difference between a local government agency and a federal agency; 2) the broad scope of the police powers; 3) the legal dilemmas presented by innocent persons who pose a threat to the public health and whose freedom must be restricted. Public health law requires the professor to spend a lot of class time teaching non-legal materials. The reward is you can change the way students see a very important area of law.

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# Briefing results in better learning

By Andrew Beckerman-Rodau

As a law student in the 1970s, I was told by my professors to brief each case. I dutifully toiled over difficult appellate decisions, struggling to do as my professors had directed. My early briefs sometimes exceeded the length of the cases on which I was working. Eventually, after diligent practice, I was able to be more concise. By the end of the first semester, however, I noticed that many classmates had stopped briefing cases. At the end of the first year it sometimes seemed as if I were the only one still doing so. Most of my classmates preferred to book-brief by color highlighting relevant passages.

As a law professor, I now preach the importance of briefing cases. The legal research and writing teachers at my university spend the first week of each new school year discussing and practicing the best ways to do it. Even so, by year's end most students have abandoned written briefs just as my classmates did years ago. This scenario is a familiar one at many, if not all, American law schools.

Part of the problem is that in their attempts to convince students to brief cases, law teachers fail to act like lawyers. A noted jurist once defined a lawyer's job as convincing someone to do something they do not want to do. A lawyer utilizes well-reasoned, persuasive arguments to convince a party to undertake desired conduct. Law professors should adopt the same method with our students. When I was in law school, I was told that briefing cases would help me prepare for class discussion. Yet this was not a compelling argument. Because the majority of law teachers gives either minimal or no credit for class participation, there is little incentive for students to brief for the purpose of facilitating class discussion.

A more persuasive reason for briefing cases is that it helps develop much-needed analytical skills. Written briefs force a student to extract important aspects from an opinion. This is a skill that practicing lawyers need since clients often present disputes that involve numerous parties, documents, and facts. A skilled advocate must be able to extract and rank the relevant material from this mass of information. It is critical to identify key facts before choosing a strategy or cause of action to pursue, and knowledge of the facts helps to determine what additional inquiries need to be made. These same skills are directly applicable to the law school exam process. The smart law student identifies and ranks the relevant information before even beginning to answer an exam question.

Students often suggest that they can develop these analytical skills merely by making margin notes. They overlook the fact that our minds often mislead us. It's not uncommon for anyone, law professors and students alike, to read something and believe that we understand it better than we actually do. Reducing our understanding of a case to a written brief forces us to crystallize our understanding in the same way that explaining a difficult concept helps us clarify the issue in our own minds.

Analytical speed also is enhanced by briefing cases. This is particularly important for exams since most law school exams, and the various bar exams, have time

limitations. Speed is likewise critical in practice, where the ability to work efficiently often relates directly to income. The marketplace typically puts limits on client fees. In any event, clients are not likely to pay unlimited amounts for legal services. A slower attorney may simply have to write off some of the time spent working for a client.

Briefs also are useful in developing an understanding of the fundamental policies underlying a particular area of law. I tell students when they have completed studying a particular area such as inter vivos gifts or consideration they should attempt to analyze all of the cases in this area as a group. First, they should consider whether the cases are consistent with each other. This exercise forces them to examine the underlying policies in a specific area of law since often this is the only level on which the cases are consistent. Then I tell them to attempt to distinguish the results in all of the cases. This forces students to focus on the specific facts of the different cases. Next, I tell students to determine what can be extrapolated about the subject area from the group of cases studied. Finally, I advise students to think about how this learning fits into the larger subject area. This analytical exercise is facilitated by written briefs, which allow students to quickly review the various cases. Without briefs, students would have to rely on memory, which is fallible, or they would have to re-read the cases, which is time-consuming.

By explaining to students how briefing cases helps foster the development of their analytical skill, law professors can persuade students that the task is worth the added time and effort. Once students understand that improved analytical skill directly improves exam performance, and that it will enhance their subsequent ability to practice law, they should be more willing to consider this time-honored practice.

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