The Public Service Proposal: Educating Lawyers and Lawyers Educating

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LEGAL EDUCATION
FOR THE 21ST CENTURY

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To
My Colleagues in Legal Education
Throughout the Country and the World
Who Have Made My Career
a Most Satisfying and Interesting One
and
The Central-States Law School Association
for its Role in Promoting Collegiality
and Improving Legal Education

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In concluding this sermonette, I feel the need for a benediction or at least a closing verse. Nothing summarizes my message better than David Barnhizer's introductory words from a very important seminar entitled, "The Justice Mission of American Law Schools." Professor Barnhizer argued that:

American law faculty are a unique resource for American society. Law faculty are one of the few groups with the ability and the opportunity to challenge the rising bitterness and confusion in society. Few other academics possess the ability or the opportunity to address fundamental issues in the way that can be done by law faculty... [w]e have not yet begun to fulfill that responsibility.¹

Chapter Thirty-Six

THE PUBLIC SERVICE PROPOSAL:
EDUCATING LAWYERS AND LAWYERS EDUCATING

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I want to make several comments about Dean Strickland's chapter¹ and also to say a very few other things. I shall pretend that these latter things relate to his chapter.

The basic theme in Rennard Strickland's chapter is that law schools need to do more of what they traditionally have done in the realm of public service. And, of course, they need to create some new traditions along these lines as well. Interestingly, the title itself, "Public Service Beyond the Law School Classroom," suggests that what we do as law teachers inside the classroom—and perhaps inside the journals as well—genuinely is public service. So too does Dean Strickland's nearly synonymous use of the terms "public service" and "public policy." Most of us, I think, would like to believe that we at least, by dint of vocation, engage in public service. We also should not underestimate the power of what we do in class. Our students turn out to be influential members of their communities. In a real sense we are, in the words of 19th century reformer Dorothea Dix, "Teacher[s] of Teachers."

Dean Strickland is discussing, in large part and in a number of different ways, about the education of the public. He speaks of going into public school classrooms, for example, and talking about law and its missions. He

¹. Chapter Thirty-Five, "Public Service Beyond the Law School Classroom: Some Thoughts on Professing, Couch-Potato Scholarship, and Educating the Public about the American Legal System," by Rennard M. Strickland.
also discusses appearing on television and talking about the law. So the idea
is to move beyond the things that we seem to do naturally (public service in
the classroom) and to do more than we currently do both in the legal and,
particularly, the nonlegal communities. He points with some interest to pro-
grams around the country where, for example, law faculty do things like go
to kindergarten classrooms and try to say things that are meaningful to
kindergartners. While this sort of responsibility strikes some horror in my
own mind, accepting it really could be a rich and challenging experience (and
could prepare one for forays in the electronic and print news media).

There are other types of public service, of course, and Dean Strickland
points as an example to some Indian law developments around the country
and attributes them quite reasonably to public service work that has been
done by legal academics. Scholarship, clinics, pro bono litigation, all these
and more have had an effect here. Dean Strickland encourages us to do more
of the same.

But he has something else in mind, too, I think; something that focuses
on our status as lawyer-professors, but perhaps a bit more on the "professor"
half of this job title, the role of the public intellectual. The image, I know,
is a dicey one. For one thing, outside of France I'm not sure there has been
much field work in this area. Maybe A. J. Ayer in England; I suppose
Bertrand Russell too. In our own country one thinks of, well, who? Will and
Ariel Durant and fellow historians Charles and Mary Beard; Mortimer Adler;
Williams James, maybe John Dewey? Further, the phrase conjures up, I sus-
pect, images of dilettantes and popularizers. Even William James was seen
as pragmatism's public relations man. Be that as it may, there clearly is
something gutsy and even noble in the notion of the public intellectual—
one might almost say something positively Socratic.

Rennard Strickland hardly is apologetic about this idea. Indeed, he
speaks of it not in the imploring tones of an anxious supplicant (I know
Rennard pretty well; I don't think he ever speaks in that tone), but instead
in the imperious voice of command, the voice of duty. This may have some-
ting to do with his roots, and to explain this I'll have to take a brief geo-
graphic detour where I'll end up claiming that every place is Oklahoma.

Dean Strickland is, of course, an Okie (self-confessedly from Muskegee,
no less). But he is an Okie by accident, in the sense that he couldn't help it.
I, on the other hand, am an Okie by choice, having elected to live there
more than fifteen years ago. I mention this because it may allow me to
understand the passion with which Dean Strickland discusses his public
service, outreach, and even "couch potato" ideas. Like every place else these
days, Oklahoma needs public intellectuals.

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2. Chapter Twenty-One, "Perspective of a Campus Minister," by Reverend Robert
Phillips.
meaningful communication in classrooms outside our typical classrooms, then we might import some of these ideas or approaches to the latter from the former. And lest we mistake change for improvement, we should keep an eye out for new ideas useful in our day-to-day pedagogy and simultaneously be wary of marginalizing excellence, of validating, and so encouraging, incompetence. We might not want to create a world where athletes feel bound to higher standards of professional conduct than lawyers. This is a long way of saying that if we can talk to the public effectively and meaningfully maybe we can talk to our students on occasion more effectively and meaningfully than we do. And perhaps we can do so without making our law students fear that they have absolutely no tools with which to comprehend the mystical legal beast. Perhaps we can keep in mind that at least part of legal education is communication.

Dean Strickland suggests another forum for the law teacher as public educator. He indicates that one of the things we might want to do actually is to appear on television, because it is through television that many people seem to learn whatever lessons they have learned about the law. Many of us have been asked to comment about the O.J. Simpson case. Tom Greaney and I had agreed that appearing on television about such matters proves to our kids that we have real jobs. Are there any lessons for us in doing the television thing? What sort of public service is it to enter the eight-word sound-bite world of television? Most of us have heard legal commentators from academe saying things like the Simpson trial is not representative of the American criminal justice system. This might be called the "legal denial" theory of commentary. It might be worthwhile to have a commentator or two stress the similarities between the Simpson trial and the average, everyday trial, because real similarities and harmonies are there. One might claim, for example, that one of those similarities is the seemingly shameless stories told (or facilitated) by lawyers in courtrooms, the types of stories that would enrage us if told by our children. But the lawyer is paid to tell these stories. How come? That sort of balanced or forthright commentary ultimately might pay some real benefits in terms of public good. My suggestion simply is that it might be worthwhile to have a richer cluster of perspectives address a case like the O.J. Simpson case. Commentary thus far seems to have been captured by a conservative ethic of apology; don't worry about the Simpson trial, it is unique, nothing like it has ever happened before. This is to say, among other things, that the Rodney King case never happened. Think of what multiple perspectives can do in coverage of a case like Mr. Simpson's (and we have seen some such coverage). Trial practice perspectives focus on the pragmatics of litigation strategies, feminist perspectives raise important questions about "public" complicity in "private" acts of violence, and racial perspectives challenge easy assumptions about authority and community.

Legal academics can help shape understanding of issues large and small. Who responded to Dirty Harry's portrayal of the California law professor and the state appellate judge as liberals who interfered unjustifiably with the criminal justice system and who raised frivolous claims of individual rights? We need more law professors in the public sphere than Harry's nemesis and Professor Kingsfield.

The increased involvement of law faculty in the sorts of public service activities advocated by Dean Strickland will have positive consequences for the public, for law schools, and for faculty. Assuming that law faculty are faculty for a reason, that is, that they have specialized worthwhile thoughts about law issues, it can only benefit the public to hear them. Secondly, the more faculty members there are who do this work, the greater the number of perspectives (whether they're analytic, moral, or political) that will be shared with the public. Law schools will benefit from such service because these activities will help to inform schools' constituencies about the work of faculty. The interaction of the professorate and members of the public will have naturally salutary consequences and may help (along with the perspectivity matter already mentioned) militate against the impression of law as an insulated and self-protective guild. Finally, as I have suggested, law faculty may benefit from the "public education" kind of public service discussed by Dean Strickland in a fairly direct way.

Rennard Strickland's basic view is that speaking to the public, in fact to different publics, is a way to advance the traditional public service mission that law faculty do, and should, have. The claim—or better, the question—is, if we don't do this, who will? If we don't have the capacity to do this, who does? This and other kinds of public service are consequences of what we traditionally do as legal academics. As Professor Ali Khan has said we want to explore, to discover, to reform. One of the things we should seek to do as legal academics is to explain recent events in the public legal sphere. This is a far greater task than many of us realize; and, it would seem, we have a lot of explaining to do. Along the way we just might make a discovery or two about who the public is, what the nature of service is, and how we fit in.