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Law School Teaching Essay

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I have been asked to write a short essay on law education based on what I have learned since my own HLS graduation in 1970. My relevant experience included crucial events starting in 1968, at the end of my first year at the Law School. Ralph Nader had just published "Unsafe at Any Speed," including the designed in dangers of the Corvair automobile, and was beginning a consumer movement to counter corporate abuses and dangers.

I flew down to D.C. with a friend to see if he needed any help over the summer after my first year. I already had a summer job at the State Department but wanted to learn about the consumer movement. We met at O'Donnell's Fish Restaurant, and he skipped the usual introductory niceties (although I knew he was an HLS grad about ten years previously). He told me "There is an agency which has been pulling the wool over the eyes in this town for years, you know which one I am talking about." "Yes," I interjected – the Securities and Exchange Commission. "No" he said. I then suggested 5 others *seriatim* and he replied "no" each time. Then he said, "The Federal Trade Commission." I responded with obvious surprise: "Well, they have a pretty good reputation." "Precisely my point!" he said, with a wry smile.

So we formed a group of 7 – mostly law students from HLS – and led by John Schulz, to investigate the agency's efficacy. We were soon called "Nader's Raiders" and John testified with our critique before the Commission itself and then 3 of us before a Senate Committee. John, Ed Cox and I wrote the book "THE NADER REPORT ON

THE FTC." The contentions received wide publicity, and spawned a Presidential request that the ABA look into the matter. It did so, and largely affirmed our critique. Some of our suggestions were in the FTC Improvements Act, passed shortly thereafter.

While many serious flaws were not effectively addressed by this reform, some were – and I felt gratified that my law school education included a real-world connection and a chance not only to learn the law, but perhaps to contribute to its improvement.

After organizing and working on Nader reform projects as a part of the then nascent consumer movement, I became a state and federal antitrust prosecutor in Southern California, litigating cases in state and federal court. Then I started teaching at the University of San Diego School of Law, soon appointed to a tenured faculty Endowed Chair (the Price Chair in Public Interest Law). We then started the Centers for Public Interest Law at the school in 1981, which has since developed into 3 different entities (all partially endowed). These include The Consumer Protection Policy Center (CPPC) – which has focused on the operations of state regulatory agencies, the Children's Advocacy Institute (CAI) – covering a wide range of child safety, protection and opportunity issues, and the Energy Policy Initiatives Center (EPIC) covering Global Warming issues.

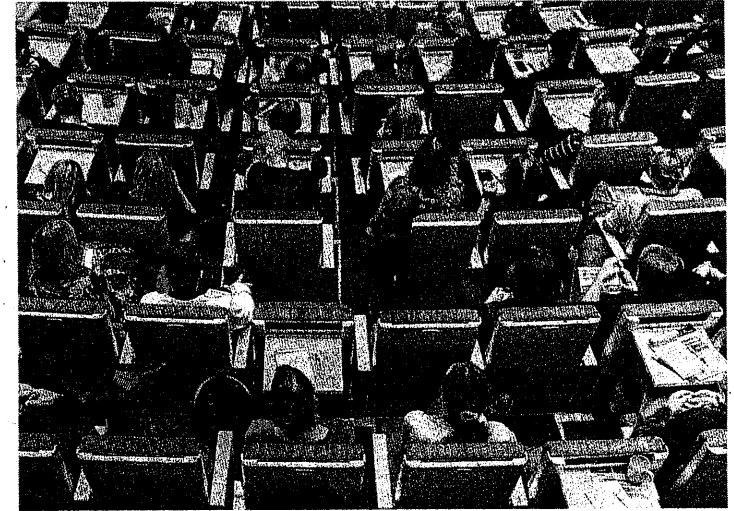
I contend that two aspects of legal education warrant close attention: **What** subjects should we be teaching and **How**?

What: Our three subject territories hardly exhaust warranted coverage, but there are some merits to

consider. First, law schools do NOT generally cover adequately state regulatory agencies. Most administrative law courses focus on the federal Administrative Procedure Act, *et al.* But that is not where most of the action actually occurs – state agencies cover the provision of education, and include the most serious environmental protections. And they regulate insurance, utilities, and 30 to 50 trades and professions from accountants to veterinarians, and including physicians and attorneys.

They are also an area of extraordinary and corruptive anti-democratic abuse. Almost all state boards and commissions are controlled by what SCOTUS terms "active participants" in the commercial area regulated. Trade Associations essentially assume cartel control of the state agency allegedly regulating for the People. The need to learn about these entities is underlined by their importance and their involvement in all three branches of government (legislation authorizing them, administrative rulemaking detailing their operations, and quasi-judicial discipline enforcement).

The other two centers occupy subject matter that does receive some curricular attention. Child related law does have juvenile law courses and some basic coverage – usually in juvenile justice or child abuse proceedings. Our course – Child Rights and Remedies, with a text of the same name – covers a broader subject range, including in respective chapters: 1. Underlying context: Access to Political/Legal Remedies, 2. Reproductive Rights and Responsibilities, 3. Child Poverty, 4. Education Rights, 5.



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Health and Safety, 6. Special Needs, 7. Child Care, 8. Protection from Abuse, 9. Rights as Victims/Witnesses, 10. Juvenile Crime and Delinquency, 11. Child Rights to Custody, Family Support and Emancipation, 12. Rights to Property, Contracts and Tort Recovery, 13. Child Civil Liberties, 14. International Law and Child Rights. The EPIC classes in environmental law cover federal, state and international issues of carbon excess.

How: The courses associated with each of the above 3 centers are taught not merely to regurgitate prior precedents or to debate ethereal macro-concepts, but to connect the subject matter of each to the real world – to not only study what is now happening but to become involved in improvement – following my own experience in my last two years at HLS.

For example, the Consumer Protection Policy Center offers California Regulatory Law and the Public Interest – a year long course. Students are assigned to one of 14 major state agencies regulating trades and professions. But they do not simply attend classes with power points and

perhaps lively classroom discussion. We fly them to the actual meetings of their assigned agency. They review extensive material on prior activities of each (including the work of prior students covering that agency). They see not only the agendas in advance, but all the materials provided to board or commission members. They are often the only attendees without a direct profit interest in the decisions made.

They are encouraged to study the substantive issues before the agency and to suggest areas of coverage that should be included. They operate to expose these normally secretive agencies to broader public exposure by publishing tweets and blogs about current operations and meetings. They study the relevant websites and learn about how the broader public can be involved. They then write a report on the agency for our CALIFORNIA REGULATORY LAW REPORTER – the only publication of its kind, published twice a year. Then at the end of the year, those assigned to

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a particular agency produce a video with special effects proposing an improvement. The use of modern technology as a part of this education is not accidental – today's students and the broader public are using the internet, video and modern technology. Law students should learn from it as well as use it themselves in the here and now. Students today learn from tablets, not paper books. And they need to use modern communications not only to learn effectively themselves, but to educate the public.

And this course is supplemented by subsequent (usually 3d year) clinic courses where they follow up their monitoring of an agency by proposing and advocating for a new rule or statute. Those clinic students have been now involved in over 100 rule or statutory changes covering state regulatory law – from the application of the state's sunshine laws to the State Bar to the reconstitution of the Accountancy Board to a public member majority.

I have served as the State Bar Discipline Monitor and the CPIL administrative director (Julianne D'Angelo Fellmeth) has served as the Medical Board Enforcement Monitor – all with student participation. This includes the creation of the state's unique independent and professional State Bar Court separate from the profession and adjudicating all discipline. We have been a part of the governance of Public Citizen in D.C. for 35 years and interact with counterparts in other states. That real-world involvement also includes impact litigation – with over 40 published decisions relevant to one of the three centers above.

Similarly, the Children's Advocacy Institute interacts with the real world beyond its central Child Rights and Remedies course. Students here take additional clinic units. Among their functions include the certification of students by the State Bar to represent children in both dependency and delinquency courts. While students have supervision from us and assigned attorneys, they are given a wide range of functions, including consultation with clients, discovery, court presentation and cross examination, final arguments, briefs, motions and writs. Then other clinics (as with the CPPC above) work on child related statutes and rules – with over 100 enacted or adopted successfully over the past 40 years. One example is the 1996 CAI California Swimming Pool Safety law – where a recent study attributed a 60% reduction in child drownings to its implementation.

That student clinic work includes interaction with the two major national associations in the field, the National Association of Counsel for Children (NACC) and the Partnership for America's Children (PAC) – with our longstanding involvement on the Boards of both. Students are currently working on the PAC's Policy Committee to create a national web site with the best state statutes on child health and welfare for widespread replication.

And students also work on impact litigation for children, with numerous cases, including the right of children to counsel in dependency court – to an FOIA case on documents pertaining to children separated from parents at the border.

The third entity working on Global Warming (EPIC) also has clinic assignments where students work on assignments for government agencies seeking legal and effective carbon diminution. EPIC convenes a national symposium of experts and officials in the environmental area and helps to publish the first law review on global warming, the San Diego School of Law Journal on Climate and Energy Law.

These activities involve student involvement in current law and litigation. Both are facilitated by a staff that includes counsel and offices in Sacramento and Washington D.C. We know of no other law school with legal activities and education that includes such a state and federal legislative presence. Every law school would be advised to develop it. We are law schools – this is where law is often conceived. And it would be advisable to include the three subjects above in their respective curriculum, and to include clinics that give their students not only the representation of impoverished clients needing representation (which many do) but also a presence in the rulemaking, statutory and litigation experience that create the substance of future law.

Much of the above is related to my own experience at HLS in extending its curriculum to broader and real world issues. But ideally, it does not have to be generated by students outside of a law school, but can be a central part of its direct educational function.

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