ESSAY

Constitutional Conflicts: The Perils and Rewards of Pioneering in the Law School Classroom

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Education must begin with the solution of the teacher-student contradiction, by reconciling the poles of the contradiction so that both are simultaneously teachers and *students.*

Paulo Freire[1]

I. THE CHALLENGE IN TEACHING CONSTITUTIONAL LAW

In *Hopwood v. Texas*, a panel of the Fifth Circuit found that considering race or ethnicity in admissions decisions is always unconstitutional, even when intended to combat perceived effects of a hostile environment, or to remedy past discrimination, or to promote diversity.[2] In effect, the court of appeals ignored the Supreme Court's *Bakke*[3] decision approving the use of race in admissions to promote diversity.[4] In an article commenting on the *Hopwood* case, retired Court of Appeals Judge, A. Leon Higginbotham, Jr., noted that the three judges who ruled were all appointed by Presidents Reagan and Bush, and that all nine judges who rejected the petition for a rehearing en banc were appointed by Reagan and Bush, while six of the seven judges who voted for rehearing were Carter and Clinton appointees.[5] The *Hopwood* decision was far from the first time that politics and ideology heavily influenced the decision in a case involving constitutional rights. Indeed, a strong argument can be made that a great

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1. PEDAGOGY OF THE OPPRESSED 59 (Continuum ed. 1989).

2. 78 F.3d 932 (5th Cir. 1996), *cert. denied*, Thurgood Marshall Legal Soc'y v. Hopwood, 116 S. Ct. 2580 (1996).

3. University of California Regents v. Bakke, 438 U.S. 265 (1978).

4. *See generally Hopwood*, 78 F.3d 932.

5. A. Leon Higginbotham, Jr., *Breaking Thurgood Marshall's Promise*, N.Y. TIMES, Jan. 18, 1998, § 6 (Magazine), at 28.

many decisions are so influenced, despite the ever-lengthening opinions seeking to justify results by interpreting constitutional provisions and their doctrinal progeny.

The challenge in teaching Constitutional Law is to teach the doctrine while puncturing the myths. It is not an easy task. Americans treat the Constitution as a hallowed document created by men so divinely inspired that the document they produced in 1787 has been amended less than three dozen times. They might add that because of a number of factors, including those amendments, there are now only about 300 operative words in the Constitution, and that most litigation has centered about the meaning of a dozen or so terms: "due process," "cruel and unusual punishment," "commerce," "free exercise," "commander-in-chief," "free speech," and "equal protection." Whether or not intended by the Framers, these phrases have been rendered abstract, inscrutable, and ultimately indeterminate by generations of conflicting judicial interpretation.

Quite literally, the Constitution means what any particular Supreme Court or, more accurately, the majority of a particular Court, decides that it means. "Meaning" in its constitutional sense, though, is seldom a matter of personal whim or ideological eccentricity. The Court is moved by a myriad of factors, often in quite rational though hard to predict directions. Gaining a sense of those movements and their motivations is an essential skill for the constitutional law advocate. It is a skill more easily described than acquired.

During my close to four decades as lawyer and law teacher, I have witnessed changes in constitutional law that defy even the most skilled efforts to explain or harmonize as neutral, objective, interpretations of the Constitutional text. For example, as a law student in the mid-1950s, I learned that the Equal Protection Clause of the Fourteenth Amendment was adopted to provide the former slaves with all the indicia of citizenship as a means of protecting them from invidious discrimination from the vanquished but still vengeful whites in the Southern states. I learned, as well, that after the Reconstruction period, the nation's interest turned to growth and away from the earlier commitment to the now free but still vulnerable former slaves. The protective potential of the Clause was diluted by restrictive decisions, and for the better part of the next century, it was utilized to nurture "railroads, utility companies, banks, employers of child labor, chain stores, money lenders, aliens, and a host of other groups and institu-

tions . . . , leaving so little room for the Negro that he seemed to be the fourteenth amendment's forgotten man."[6]

In the wake of economic reforms required by the Great Depression and a more egalitarian outlook prompted by the nation's victory in World War II, the Supreme Court's view of the Fourteenth Amendment refocused on its original purpose. The "strict scrutiny" standard in equal protection analysis became the great safeguard of "discrete and insular minorities" against majoritarian hostility. In the last decade, the Court has again weakened the Fourteenth Amendment's shield by applying the strictures of strict scrutiny to the most modest efforts to remedy generations of racial discrimination, much of it continuing in more subtle forms. The right of individuals to enjoy privacy in the areas of sex and family life free from state interference—a long struggle—culminated with the Supreme Court's recognition of a limited right to abortion.[7] That right continues to exist despite a generation of attacks, but in very diluted form. The First Amendment's "free exercise" clause, so often in tension with the "no establishment" clause, has produced conflicting decisions that can charitably be described as a series of *ad hoc* results adhering closely to the facts of each case and providing little of precedential value for even experts attempting to explain or predict the law in this muddled field.

Nor is the confusion limited to the individual rights area. The Tenth Amendment, only recently laid to rest as an impossible measure of what, if any, limits the Constitution imposes on the federal government's policies that interfere with basic state functioning, has evidently been given a new life.[8] And, on their part, it is far from clear whether the states in this modern, complex and increasingly interrelated age, can still legitimately engage in functions that interfere with the policies or interests of other states without running afoul of the Commerce Clause. Must we await a modern-day Solomon to distinguish the ever-more complicated relationships between the Executive, Legislative, and Judicial branches of the federal government?

These questions, only a sampling of those that assert themselves after even a cursory survey of current precedent, raise a more troubling question for the law school course. How does one teach materials that seem to fit so comfortably into the Critical Legal Studies critique of

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6. Boris I. Bittker, *The Case of the Checkerboard Ordinance: An Experiment in Race Relations*, 71 YALE L. REV. 1387, 1393 (1962).

7. Roe v. Wade, 410 U.S. 959 (1973).

8. *See, e.g.*, Lopez v. U.S., 514 U.S. 540 (1995).

law? As interpreted by Professor Stanley Fish, judicial decision-making is not

> a formal mechanism for determining outcomes in a neutral fashion as traditional legal scholars maintain—but is rather a ramshackle ad hoc affair whose ill-fitting joints are soldered together by suspect rhetorical gestures, leaps of illogic, and special pleading tricked up as general rules, all in the service of a decidedly partisan agenda that wants to wrap itself in the mantle and majesty of THE law.[9]

But the challenge of law teaching, and the particular challenge of Constitutional Law, is less to harmonize the inherently dissonant, than to convey to students an understanding of the wide-ranging economic, social, and political influences that play a mostly unacknowledged but substantial role in constitutional decision-making. We know that the Framers who gathered in Philadelphia were moved by the political theories of John Locke and Montesquieu, but their presence was mandated by concern that their property as well as their liberty, threatened under the unworkable Articles of Confederation, might be placed at even greater risk under a strong, central government.

They were, as Charles Beard reminds us in his classic 1913 study, *An Economic Interpretation of the Constitution of the United States*, men of wealth with investments in land, slaves, manufacturing, and shipping.[10] The Constitution they adopted served their primary interests.[11] It created a strong federal government that balanced authority with the states.[12] By recognizing specific rights in the individual, the Constitution enabled the wealthy a measure of protection against both government and uprisings by dissident groups of citizens as had happened the year before in Shay's Rebellion. The wealthy continue to enjoy influence in government policy-making based on that wealth rather than on either their numbers or the wisdom and worth of the policies they support. And yet, precisely because they lack wealth and influence, the poor and working classes, minorities and those with unpopular views, beliefs, or causes look to the Constitution as the primary source of protection, fairness, and

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9. STANLEY FISH, THERE'S NO SUCH THING AS FREE SPEECH . . . AND IT'S A GOOD THING TOO 21 (1994).

10. CHARLES A. BEARD, AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES, 149-51 (1929). *See generally* Pope McCorkle, *The Historian as Intellectual: Charles Beard and the Constitution Reconsidered*, 28 AM. J. LEGAL HIST. 314 (1984) (reviewing the criticism of Beard's work and finding validity in his thesis that the Framers primarily sought to advance the property interests of the wealthy).

11. BEARD, *supra* note 10, at 151.

12. *Id.* at 159-63.

reform. Whether such efforts can bring about substantive, as opposed to merely symbolic, improvement for the disadvantaged and a measure of equality for long-time victims of discrimination, is a question that can be raised again and again throughout the course.

II. MEETING THE CHALLENGE

The starting point for the teaching of any law course is, I believe, to identify the pedagogical goal: what should each student who enters a particular course of study retain long after completing the course? What should that student understand, have accomplished, be able to do, and have made his or her "own" from that class? Long after completing their legal education, today's students, who will be tomorrow's lawyers, should of course retain key concepts of constitutional law as they inform every lawyer's practice, and an understanding of the framework of the structure of government. More importantly, each student should understand that Supreme Court decisions are particular to specific periods, with broad factual settings that really include all of society. The singular and key understanding at which I would hope every student arrives is that rather than a revered relic bequeathed by the Founding Fathers, to be kept under glass and occasionally dusted, the Constitution is a living document, one locus of battle over the shape of our society, where differing visions of what should be, compete to become what is, and what will be.

More than in other areas of the law, constitutional law requires that provisions and precedents be used as aids in decision-making, not directives. Understanding in this area is furthered by actually working with the materials, rather than simply discussing them in the abstract or examining how the Court has used them over time. This is not easy given the continuing commitment to the passive classroom, a vice to which almost all law schools seem passionately committed, and despite the move to make clinical courses available, in most law schools they are limited in duration to a single course or year, and are not necessarily available to every student wishing to enroll in them. The subject-range of full-fledged clinical courses is typically constrained as well. Most tellingly, the core courses of the traditional legal curriculum are rarely if ever taught via a participatory, or experiential, methodology. Moot Court is not a universal requirement, and thus learning-by-doing is an oddity. Students scarcely are permitted to spend the majority of their classroom time debating contested issues of law, in Constitutional Law or any other area. If never required to use the concepts they encounter, the course material passes by like scenery through an airplane window: remote and inaccessible. Thus students

seldom experience the fierce energies of these controversies, even though the embalmed results of such contests are the exact subject matter of their readings. When teaching methods reverse the relative weights of the traditions of legal pedagogy, the available texts, with their common problems, tend to make only the most approximate of "fits" with a participatory structure for Constitutional Law. The traditional casebook quietly encourages the repetition of the traditional lecture course by assuming that the classroom will be run on the passive model: it is not structured to support a participatory course, making it difficult for the professor to organize one, and difficult for the student to learn by doing or, better, by teaching.

Over the years, I have found that student interest and learning is enhanced if they are actively engaged in the learning and teaching process. An analogy to driving a car, or riding a bicycle, may not be exact, but as with skills requiring coordination of many faculties, understanding, much less advocacy of constitutional issues, is facilitated greatly by practice. Student understanding of the precedents and, more importantly, the economic and political pressures that underlie the ebb and flow of doctrine increase when they utilize these precedents to support arguments they are making as advocates in front of their peers, or when, as justices, they seek to find flaws in those arguments. While the cases they argue and decide are hypothetical, they provide effective training for those who will become advocates tomorrow.

The design of Constitutional Law, as I teach it, is the antithesis of the traditional inculcation of "passivity as the norm" so common in legal education. In my experience—and as my students frequently have told me—students do vastly more work, and learn more from, an engaged teaching methodology, one which requires that they perform very much like the lawyers they will soon become. The demands on individual students mimic, in many ways, the world of practice, and require that they assume substantial personal responsibility for their professional education. Law students gracefully rise to the challenge and meet it with a competence that might surprise some educators.

By departing from the norm in constitutional casebooks and giving priority to "learning by doing" simulations, students mimic the kind of process that an attorney, researching an unfamiliar area of law, might utilize to investigate prior decisions. In practice, lawyers are called to research and to write; to comprehend legal arguments; to guess at the probable effect of and interaction between judicial, statutory, legal and policy arguments in court; to argue, persuade and debate; to work cooperatively with colleagues; and for some, to judge

those arguments and decide cases and issues of law. This is as true in the practice of constitutional law as in any other. Once their research skills are in place, most students are aware that they have the capacity to learn, relatively quickly, whatever they need or want to know regarding any legal question.

To this end, I have organized my courses so as to involve maximum feasible student participation. This was difficult during the many years when I used one or another of the existing constitutional law casebooks designed for courses where the teacher, using methods of lecture and discussion, would lead the class through the labyrinth of edited opinions and writings toward the end-of-term final exam. Opening typically with *Marbury v. Madison* introducing judicial review in greater or lesser detail, these texts proceed to examine national powers, commencing with the commerce power and continuing with the enumerated powers of Congress, the powers of the other branches of government and the separation of powers. Newer efforts begin the text with recent and controversial cases, seeking to stimulate students' attention early in the course, which is then presumed to continue at a high level thereafter. The existing texts, which from one viewpoint differ considerably in the number of major cases covered, order of presentation, note materials on lesser cases and the secondary literature were, from my perspective, all quite similar variations on a theme.

III. TRANSLATING THE PARTICIPATORY TEACHING THEORY INTO PRACTICE

As much out of frustration as a desire to add one more constitutional law text to a well-filled field, I assembled with the help of a devoted former student, Deborah Creane (J.D. '95), and a host of students whom she supervised, *Constitutional Conflicts*, a book intended to support a participatory approach to teaching Constitutional Law.[13] I tried to de-emphasize the theoretical questions that so attract constitutional scholars, but serve as impediments to the immediacy that should characterize students' encounter with the Supreme Court's decisions.

Constitutional Conflicts is in two parts. Part I is a hardback volume of 550 pages and it divides the course into 31 chapters.[14] Each chapter contains a hypothetical case, followed by a list of applicable case citations, and a summary review of the law. Part II consists of two computer diskettes containing roughly eighteen hundred

13. DERRICK A. BELL JR., CONSTITUTIONAL CONFLICTS (1997).
14. *Id.*

edited or summarized Supreme Court decisions.[15] These are intended to be loaded on the students' computer hard drives. The cases can then be read or printed out as needed to prepare for class.[16]

Anderson Publishing published *Constitutional Conflicts* in May, 1997, and I used it in the Fall Semester of that year. The class contained 103 students and met for three hours, twice a week for 14 weeks.[17] Except the first and the final class, one hypothetical case was presented at each class and, in five days, we heard and decided two cases. In preparation for the first class, students read all the hypotheticals and filled out a form indicating their first, second, and third choices for either advocate or chief justice. In the process, of course, students peruse the text fairly carefully before making their choices. At the first class, I reviewed the course structure and students received a docket based on their selections. In addition, my two teaching assistants, Lisa D'Agular (J.D. '98) and Beth Taylor, (L.L.M. '99), presented a sample argument of the affirmative action case, *Taxman v. Board of Education of Piscataway*.[18]

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15. *Id.*

16. This is somewhat inconvenient, but far easier than downloading and wading through full opinions, or lugging around a five-pound casebook of edited opinions. Or, so I thought. I underestimated the difficulties students would experience in the downloading process. The range of computer hardware and software students own or have access to is quite wide and their level of knowledge ranges from that of a computer programmer down to neophyte. Moreover, my idea of organizing the cases in chronological rather than subject matter order, while a worthwhile means of enabling students to view the cases in the context of the time of their decision, required searching through several computer files to locate the cases on any particular subject matter.

In short, my initial attempt to utilize computer technology in the course left students begging me to simply print out the cases so they could have them copied. Two students in the class, David Cohen and Alexander Shapiro, came to my rescue volunteering to reorganize the cases by subject matter and to place them on my web page in rich text format. Students could then download them regardless of their computer or software. The complaints decreased after this, but some students continued urging that I print out Volume II, despite the weight and cost. The publisher finally did make Part II available in shrink-wrapped, printed pages.

17. Ideally, the course should be limited to 50 to 60 students to give students more opportunity to take part in class discussion and to ease the task of reading and commenting on student papers. I initially set a limit of 60 students, but when I learned that there were almost 90 students on the wait list, my proselytizing ego overcame my good judgment and I almost doubled the class size. The system can work with a large class, but handling the sea of student papers can be daunting.

18. 91 F.3d 1547 (3d Cir. 1996), *cert. dismissed*, 118 S. Ct. 595 (1997). The school board's appeal challenged court findings that the board's retention of a black teacher to promote faculty diversity over an equally qualified white teacher violated Title VII of the Civil Rights Act of 1964. *Id.* While the issue directly involves statutory construction, recent decisions that greatly alter the interpretation of the Equal Protection Clause in race cases heavily influence that construction. Certiori was dismissed when the case was settled. Piscataway Bd. of Educ. v. Taxman, 118 S. Ct. 595 (1997).

Advocates and Chief Justices. Each student served either as an advocate or a chief justice. The chief justice and the advocates for each hypothetical served as a team for that hypothetical. Each advocate briefed and argued one case. While styled briefs, they are really "Points and Authorities," three or four page outlines of the arguments and the authorities that support those arguments. Deborah Creane served as an associate teacher for the course. She met with the student groups and helped them focus on the issues and organize their presentations.[19] Each argument was scheduled to last approximately one hour. Each advocate (there were usually two for each side of the case) was given five to ten minutes to summarize, rather than read, his or her position in a conversational style. The advocates then responded to questions posed by the chief justice and the class serving as the "court."

Op-ed Reflection. In addition to being prepared, present, and participating in the argument of the cases, each student was asked to prepare and submit a one to two-page, single-spaced "op-ed reflection" for at least 15 of the 31 hypos. These essays, due on the class day following the one in which the subject hypo case was presented, were to be well written comments on the applicable law and policies involved in the case. Like the op-ed pieces published in many newspapers, they were to be short and to express a point of view with support and consideration for that view, as well as to include reasons for rejecting contrary views. Students were encouraged to bring a unique or personal perspective to their writing, one they would not mind having published in a daily paper.

Chief justices presided over the case arguments and initiated the discussion by directing one question to each pair of advocates. Following the argument, the chief justice reviewed the op-ed reflections written for the case and prepared a five to six-page summary of the views expressed for distribution to the class. The chief justices were also responsible for writing a final exam question covering the subject matter of the case presided over. Advocates provided assistance and support in the exam-writing process. The thirty-one exam questions were copied and distributed to each student in the class.

Final Exam. On the final class day, each student was given one of the 31 exam questions prepared by the chief justices, except the one they argued or wrote. Students had one hour to write an answer to the

19. In past years, students have done a good job writing their briefs and preparing their arguments without much assistance, but both briefs and arguments clearly benefited this year because the students were able to spend time with Ms. Creane.

question, discussing applicable law and policy and suggesting an approach designed to resolve the issues involved. At the end of the hour, the exam answers were collected and redistributed to the team of chief justice and advocates who wrote the question. These teams each received and read the answers on three or four exams, and wrote comments as well as a tentative grade: excellent, very good, O.K., or inadequate.

Grades. As to final exams, I have always believed that much of the learning potential in law school final exams is wasted on the teacher. The real learning comes in writing the exam questions. Indeed, it is impossible to write a decent question without a fairly good knowledge of the material. Students studying to take exams written by the teacher certainly hone their knowledge of the subject, but it is a passive-defensive process (what is the s.o.b. going to hit us with?). When, on the other hand, the student, working with others, writes an exam question, he or she is actively involved in shaping the facts and the issues. They are motivated to do their best in formulating a question that some of their classmates must answer. They realize that while they will grade the answers, their classmates will be judging them as well. Taking responsibility for a job well-done can take precedence over grades when we provide a structure that makes this possible.

Students grading other students is seldom done at the law school level. Competition for good grades, it is assumed, will overpower honesty and integrity. That has not been my experience. Student teams discuss seriously the relative merits of the answers they are grading. Their comments are usually right on target and far more detailed than students usually receive from even the most conscientious teacher. In my overall grading, I usually comment on the comments, but I seldom have to correct statements that are either wrong or wrong-headed. They are also a bit astounded to find that they cannot bring themselves to recommend an undeserved "A" for an exam paper: they prepared the question, have an idea of what would comprise an excellent response, and differentiate between better and worse with sudden understanding that grading, while no science, is also not entirely random.

NYU Law School has a "suggested grade curve" for upper-level courses and I have had only limited success pointing out to school administrators that my course is taught more like a seminar and it is unfair to limit my students who are graded on a number of course exercises on the same curve as courses where grades are based almost entirely on one final exam. As a result, I live with a continuing and

likely unresolvable tension between the effort to reward my students' work and keep within hailing distance of the school's suggested grade curve.

That tension is heightened by my desire to move away from the "crap shoot" of final exam grades where students seldom know how they have done until they receive their grades. I think students should be able to determine their grades based on the amount and quality of the work they do. Thus, for the Fall Semester, I told students at the outset that those who performed at the "very good" level in completing their briefs, arguments, 15 op-ed essays, and final exams, and who are generally present, prepared, and participate in class discussion, would be considered for a B+ grade. Those students who, in addition to meeting the B+ requirements, submit op-ed reflections for at least 25 cases, would be considered for an A- grade. Those students who in addition to meeting the requirements for an A- grade, submit a 12 to 15 page paper that builds on the comments in their hypo reflections to reach conclusions and recommendations about the direction of constitutional law, particularly its potential as an instrument of social reform, or its propensity for protecting the status quo, would be considered for an A grade.

I also promised to consider for an A level grade students who devise a substitute hypo for one in the text that is more up-to-date and better presents the relevant issues for discussion and argument. Many of the hypos in the text are based on ideas submitted by students in previous versions of this course. Consistently thoughtful and insightful contributions to class discussions, and introduction of relevant outside materials that enhance understanding of the subject matter, will also be considered for grade enhancement. At the end of the course, I review the files containing all the work each student has completed during the course. I then write a memo to each student regarding the work and assign a final grade. This is a lengthy and time-consuming process, but it provides a level of feedback that students seldom receive during their law school careers. As a dividend, the memoranda provide a wealth of information, even years later, for letters of recommendation.

IV. CONCLUSION

The process I utilize in the classroom is a model rather than a rigid formula. It can be altered to fit class size and student and teacher inclination. The key is to replace a basically passive procedure, consisting of assigned reading and lecture listening, with one requiring active involvement, similar to the multiple aspects of practice, teaching, and judicial functions. For all the pressures of the legal curriculum,

students give every indication of welcoming responsibility, opportunity and challenge. For myself, I find that I learn from my students' fresh encounters with the Constitution, as we look at new questions and question old answers. Potentially, such a procedure allows us to approach the Paulo Freire ideal: that students become teachers and teachers become learners.

I do not expect that *Constitutional Conflicts*, a text designed to support a participatory learning approach, will become an immediate best seller. The course procedure I use deviates rather severely from a number of law school teaching norms. It does not assume that the teacher is all-knowing and thus should occupy center stage in the classroom. Rather, by decoupling several traditional aspects of legal instruction, it frees the student to learn to analyze and perform independently. The teacher can guide students through the precedential confusion, but primarily must impart, through experience, the knowledge that each student is competent to do so. I find that this guidance is most effective as the students seek to find their own way through the thicket of conflicting rules and multiopinioned decisions.

As I teach Constitutional Law, students spend long hours haggling over the facts in cases they are writing and practicing the arguments that they must present before their peers. The quality of case presentation varies, but my classes are far more exciting when students are involved in this way then when I stand before them and try to "convey the word" through lectures on subjects that do not always evoke the desired questions and discussion. In fact, students are far more ready to listen to my views after they have struggled with their own cases. Certainly, whether they adopt or reject my positions, they are deeply engaged: they have experienced the Constitution as a living document, one with contested meaning, greatly influenced by historical context, a vehicle capable of conveying and sustaining a moral vision.

For most students—alas, not all—grades become a secondary consideration to the benefits they gain from learning constitutional law on a participatory basis. It is said of a great teacher that "he taught as a learner, led as a follower, and so set the feet of many in the way of life." That is quite a model. It moves me to close with the admission that more important than teaching structure, technique, writing style or jurisprudential philosophy, is the effort of all successful teachers who succeed in communicating not only subject but self.

We all know that the memorable teachers in our lives hold that status even though we do not recall a single thing they taught us. Rather, we remember them as enviable individuals who spurred us to

learn on our own, both the subject matter and ourselves. In the law school curriculum, there are few courses that are better suited than Constitutional Law as vehicles for the accomplishment of this transference.

V. A FINAL WORD

My participatory learning method was put to a severe test when midway through the semester, I was hospitalized for three weeks with a severe case of pneumonia. As a result, I missed the final 10 class sessions. In my absence, the class continued with my teaching associate, Deborah Creane, serving my oversight role in keeping the arguments on track and supervising the flow of briefs, op-eds, and final exam questions. The students seemed to take a great deal of pride in carrying on in my absence. Two NYU faculty members, Larry Sager and Bert Neuborne, made guest appearances but, as I would have done, injected comments and questions rather than lecture. It was not a welcome but a very gratifying indication that, given an adequate structure, students can teach one another.

Actually, this should not be a surprise. Law schools look to their law reviews and other student publications as a major exemplar of their intellectual strength. It is taken for granted that these publications will be run by students who solicit or write the manuscripts, perform the substantive and technical editing, and oversee production and distribution tasks, all with little or no faculty input or supervision. And students who serve on law reviews virtually always count their labors as among their most rewarding law school experiences. The challenge for teachers is to emulate in the classroom the law review experience so that all students, rather than a selected few, can gain the many benefits of participatory learning.