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Brandeis Professor of Law
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Interview by Charles Nesson
Photographs by Seymour Leicher

Q What is the mission of a teacher at Harvard Law School? What are we doing? What is it that you think you're doing? What are you trying to accomplish?

A: You have to start with what we teach, because we are all trying to get our students to understand some subject matter. For most of us, of course, our subject matter is law, in general, since all of us are teaching about the nature of legal ordering, as well a particular subset of ideas and insights about law. This is true of myself as well. I'm interested in student's understanding law practice -- seeing it's complexity, it's nuances, it's contradictions, not in the way one understands practice by filtering it through the rules of professional responsibility, but in the way lawyers come to feel comfortable in legal culture and the complex relationships and human interactions which nullify and alter legal doctrine and legal procedures in the day-to-day handling of legal problems.

So at one level, I'm a subject matter teacher. My subject matter is the practice of law. The difference, I suppose, is that I also want my students to understand law as legal actors, as workers in a legal milieu.

Q: It's real life, how to move in a real life situation in a way that's constructive?

A: Yes. But let me articulate it less instrumentally. When a teacher of literature gives students a book written by James Joyce, the teacher wants the students to appreciate, grasp, and understand what Joyce was doing, whether or not they know how to do the same thing themselves. I want our students to have a rich appreciation of practice as a human enterprise, as a

way of solving problems, as a way of thinking about the world. That's one level of purpose.

At a second level, I want them to be able to work within that culture. This is a separate dimension. Getting students -- helping students to develop the skill needed to work within legal culture involves a set of thoughts and actions -- starting with entry level ideas, and entry level behaviors -- which are needed to do lawyering. Among these are self understanding, a capacity to deal with one's emotions, the ability to project oneself into the life of another, all of which are required of any good lawyer.

How they feel about something becomes part of the subject that they're trying to study.

Q: Do you work with students at the level of emotion?

A: Oh, yes. If you are teaching and studying practice, and studying learning about practice, then feeling and ideas are inevitably connected. Students have emotional reactions to every test they're given, every problem they're presented. How they feel about something becomes part of the subject that we're trying to study.

Mike Meltzer has a very interesting article in the Journal of Legal Education entitled, "Feeling Like a Lawyer," in which he makes the same point -- thinking like a lawyer and feeling like a lawyer are not severable. They are part of every lawyering situation and judgment. Students have to have some purchase on this reality.

We look at the worlds we are creating by the kind of activities we engage in.

Q: Do you aspire to turn out students at the end of your teaching who are, in some sense, better people than they were when they started?

A: That's really an interesting question. It causes me to hesitate. There is a simplistic way of viewing the question. Do I

develop character, or am I trying to inculcate good values. I don't think of myself as acting that way. But there's no doubt that I have a vision of how a good person lives, and how a good person lives as a lawyer, and I try to make that a very real and plausible option for my students.

In that sense, I think I do have an impact on them as people. But I don't have a strategy for changing their values. Rather, I have a way of pointing out -- of making them cognizant of the denials that allow lawyers to so easily become less sensitive to the losses and costs they impose. At every point, we talk about the consequences of their actions. We look at the worlds we are creating by the kind of activities we engage in. The thrust is so consequential and so attuned to the realities we are creating and responsibilities we are undertaking that, I think, the process does have an effect on making students better people. Does that make sense?

I am not talking to my students about "what would you do if." I am talking about "what did you do when?"

Q: I think it makes a lot of sense. Let me see if I understand. You work with students to put them in touch with their feelings as they explore a new problem, so they actually learn something about how they themselves learn and deal. And you offer them your own example of commitment and value, without preaching it, as such, but with the choices exposed, and the example in front of them.

A: Right. And the consequences, of course, are real. Don't forget, I'm working with students who are making decisions that have effects on people's lives. One of the great advantages of the method I'm using -- clinical method -- is I am not talking to my students about "what would you do if." I am talking about "what did you do when?" We are constantly exploring the interplay of choice, action and consequence on a

level that makes value discussion a daily part of understanding and development.

Q: You grade your students?

A: Yes.

Q: What are your criteria for grading?

A: They get graded in a lot of different ways, on a lot of different activities. They're graded for their clinical performance.

Q: Do you measure that in terms of the satisfaction to the client?

A: No, though it's been argued that we should.

Q: Why not? Why isn't that the measure?

A: Because too often the client's satisfaction is capable of being manipulated. Too often it is not a true measure. That doesn't mean dissatisfaction of the client isn't relevant. But I wouldn't use how the client feels about their lawyer, anymore than I would measure teaching by whether the students really like the teacher. We have a set of ideas about what good practice looks like at any particular stage of development. We will grade, not only whether the student has met that standard, but also to what degree they've grown. A student can get a good grade in the course on the clinical side by showing large improvement, or by consistently, over the entire semester, doing a better job than other people do on a variety of tasks and activities. This is all done in consultation with supervisors, as a joint enterprise. The evaluation of student clinical work is complicated and still the subject of a good deal of discussion.

In addition, I give an exam like everyone else. My exam almost always asks them to reflect on their experience, both at the more general level of themes in the course such as responsibility, socialization, legal institution, legal culture, and more concretely, about their actual case experience. In this aspect of evaluation, I'm interested in their capacity to think systematically, and organize intelligently the set of experiences that they've had. This calls for very different skills and performances. Some students are good at reflecting on their

experience, but don't perform that way; some students are the opposite. The grade becomes an amalgam of a lot of different traits and skills.

But one of the things Harvard Law School clearly teaches them is that, good or bad, it's important to be important. That's not the message I want to communicate.

Q: Would you subscribe to a notion of mission that says what we're about is training our students to be great lawyers? Or is that too grand, too ambitious, too goal oriented?

A: It's too loaded with the dominant images at Harvard Law School of what's great. I wouldn't use the term "great" in this environment because great to our students means important and famous.

Q: How about redefining "great", rather than not using the word? How about urging students to aspire to greatness, but leaving it up to them to say what greatness is?

A: All right. But I still don't think we're trying to create great lawyers. Well, I'm not sure. "Great" doesn't capture my own ambitions..

Q: You don't want our students aspiring to greatness as they see it?

A: I don't want our students aspiring to the very other-directed, recognition-oriented models of greatness that we put out.

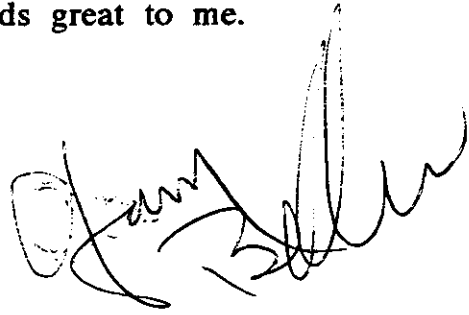
Q: But that's a hollow form of greatness. You wouldn't teach them that that was great?

A: No. But one of the things Harvard Law School clearly teaches them is that, good or bad, it's important to be important. That's not the message I want to communicate. I want them to be learners, thoughtful analyzers of the world., intelligent changers of their own behavior, respectful of the

complexity of the world that they're going to live in, fascinated with what a life of learning in law will involve over an entire life.

The few lawyers I know who have done that all their lives are, by my lights, great lawyers. So, you really have me on the word. If "great" meant that, then I would say, "Yes, I want them to be great lawyers." I want them to be growing, changing, and value-oriented in the roles and professional world which they are entering. The best of those sorts of people rarely think and act in ways that they would characterize as great. But great it might certainly be.

Q Thanks, Gary. Sounds great to me.

A handwritten signature in black ink, appearing to read "Gary", written in a cursive style.