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The Requirement of Full-Time Faculty in American Legal Education: Responsibilities and Expectations

Mary Kay Kane

One characteristic of American legal education is that U.S. law schools are required to have a sufficient number of full-time faculty to ensure the quality of their educational programs. This requirement is found in both the ABA Standards for Accreditation and the Bylaws of the Association of American Law Schools.¹ The underlying theory is that it is important to the quality of the education that the program of instruction be constructed and governed by people whose primary, if not sole, focus is on the education of the students in the law school and on helping to promote the development of the law through their scholarly efforts.² Members of the practicing bar and the judiciary also are part of the teaching faculty of most American law schools, bringing specialized expertise to the classroom that the pure academic may not possess. Nonethe-

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1. See ABA Standard 402(a); Association of American Law Schools Bylaws, Section 6-5d-e.
2. Full-time faculty are defined by ABA Standard 402(c) as follows:

A full-time faculty member is one who during the academic year devotes substantially all working time to teaching and legal scholarship, participates in law school governance and service, has no outside office or business activities, and whose outside professional activities, if any, are limited to those that relate to major academic interests or enrich the faculty member's capacity as scholar and teacher, are of service to the legal profession and the public generally, and do not unduly interfere with one's responsibility as a faculty member.

Compare the definition in the AALS Bylaws, Section 6-5f:

"Full-time teacher" means a teacher who devotes substantially the entire time to the responsibilities of teacher, scholar and educator. Professional activities outside the law school are not precluded if so limited as not to divert the teacher from the primary interest and duty as a legal educator. To determine whether outside professional activities are properly limited, the following factors should be considered: (i) The extent to which the outside activity coincides with the full-time teacher's major fields of interest as a teacher and scholar; (ii) The character of the professional activity as a source of novel and enriching experience that can be directly utilized in the person's capacity as teacher and scholar; (iii) The degree to which the demands of the outside activity interfere with the teacher's regular presence in the law school and availability for consultation and interchange with students and colleagues; and (iv) The extent to which the outside activity may properly be characterized as public service, as distinct from the pursuit of private purposes.

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less, it is believed that the other professional demands in their careers generally prevent part-time faculty from devoting substantial attention to meeting with students outside the classroom, and to participating in the development of the curriculum and other matters typically governed by the faculty, as well as completing serious scholarly agendas to advance the law. Hence the emphasis on full-time faculty as an important quality-control measure.

There are certain general responsibilities imposed on all full-time faculty. They fall into three categories: teaching, scholarship, and public service.

First, as to teaching, although there are some variations between law schools, commonly each faculty member is required to teach a certain minimum number of courses each year, typically three or four. These may be large courses taught either in lecture or in the Socratic format, smaller specialized seminars in which students develop research papers under the teacher's direction, or skills-training courses in which students work on problems of either live or hypothetical clients and learn how to develop a case and present it for resolution through that experience. In each of these settings the teacher is expected to select the materials for the students to study and to develop a plan of how to present that material, to write and grade any examination or seminar paper that is involved and to provide a final evaluation of each student's performance at the conclusion, to be available to students outside of the classroom for questions and consultation, and to be available to students to explain the basis of any grade they receive.

Full-time faculty also have an obligation to produce scholarship. Although there is considerable debate in the academy and in the legal profession generally about what constitutes legal scholarship and, more particularly, excellent or useful scholarship, the role of faculty researching and writing in ways that advance the law or our understanding of the law, legal institutions, and the profession is deemed an important contribution of legal education to the profession. The obligation to make that contribution falls on full-time faculty because they are deemed both by inclination (having selected an academic career) and by the time afforded to them by the law school to be in the best position to fulfill that role.

Finally, full-time faculty are required to devote some of their time and attention to public service. This may take several forms. It usually includes service to the law school itself on various internal committees that work on matters dealing with the development of the law school, such as the curriculum, faculty appointments, and admissions, or on similar committees within the university generally. It may involve service in other professional organizations (such as the AALS, the ABA Section of Legal Education and Admissions to the Bar, or the Law School Admissions Council) or in local or state bar associations. Providing pro bono services to other community-based organizations also may satisfy the requirement. In each of these settings faculty are not paid for their work, but contribute their time and skill to help foster the organization involved.

It generally is accepted in American legal education that law schools have an obligation to provide a wide range of institutional support for their full-time faculty to allow them to fulfill these three responsibilities. This support

takes several forms, including a reasonable salary, the opportunity for sabbatical or other paid research leaves, the provision of funds for student research assistants and travel to various professional meetings, and access to computers and library resources. More generally, it is expected that the assignment of teaching and internal committee responsibilities will be done in a way that helps the faculty maximize their individual potential and expertise while still fulfilling the school's needs. Obviously, the level of resources devoted to these matters and the relative flexibility in teaching or other law school assignments varies between institutions. But each of these support items can be found in all law schools in differing degrees. Finally, in most institutions it is accepted that a faculty member who fulfills all of the required duties competently during the first several years in teaching (anywhere from three to seven) will receive tenure, guaranteeing a lifetime appointment unless financial exigencies at the institution or the person's later misconduct results in dismissal.

This general description of the responsibilities and expectations of full-time faculty would not be complete without acknowledging that there are some serious challenges in the United States today to this traditional model. At one extreme, recognizing that there are large institutional costs related to providing the necessary support for full-time faculty, some argue that we would achieve greater access to a legal education at a reduced cost by abandoning the requirement altogether. Questions also have been raised about the need or propriety of providing lifetime tenure. Technological developments that suggest the possibility of delivering long-distance legal education through the Internet also present challenges to the traditional model of classroom instruction and the duties associated with it. For law schools based on the full-time-faculty model, finding the necessary resources to support the faculty adequately poses some serious problems. In an era of rising living costs and fast-growing salaries for practicing lawyers in the private sector, there are concerns about the failure of the law schools to provide sufficient faculty compensation. As a result, many law teachers are spending significant time serving as paid consultants to lawyers or corporations, reducing their formerly exclusive commitment to teaching, scholarship, and public service. At present there are no answers to these tensions; I mention them simply to acknowledge that the full-time-faculty model, while offering many benefits, brings with it some inherent problems.