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DOUG KAHN: CLASS MASTER

*Dennis E. Ross**

I recently re-read a famous old address given by the late Dean William Prosser, which, in a wonderfully wry manner, chronicles the experiences of a young man embarking on a career in law teaching.¹ Although delivered many decades ago, the address is timeless (and only a bit tongue-in-cheek) in capturing what draws people away from practice and into the teaching of law (a “lawyer in practice spends considerable time doing distasteful things for disagreeable people. . . . Students can be as stupid as clients, but they seldom are unpleasant to professors for obvious reasons. . .”).²

Especially resonant to me, and I suspect to a good many others who have taken a shot at law teaching, is Dean Prosser’s description of the young fellow’s experience with his first class. He’s been assigned to teach a course he knows nothing about, and spends countless hours, through long, sleepless nights, reading hundreds of cases in obscure journals in a vain effort to gain command of the subject matter.³ As the big day arrives and he enters the classroom, he’s overwhelmed with “trepidation, . . . dismay and the feeling of helpless inferiority” as he sees the sea of young faces regarding him with “manifest skepticism and disapproval.”⁴ Imagine then his relief—indeed, joy—when the first student he calls on proves remarkably unintelligent, with no knowledge relevant to the question, the course or, for that matter, the law in any aspect.⁵ With triumphant relish and glee, our young professor demolishes his hapless student, reducing him to a “condition of palpitating collapse.”⁶

Dean Prosser’s tale continues across a full career, as his protagonist’s initial experience of triumph in the classroom is short lived, displaced over time by a kind of flummoxed frustration with the teaching end of his chosen profession.⁷ His initial anxiety over having a command of the subject fades, but an uncomfortable gulf with his students remains, in particular as

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1. William T. Prosser, *Lighthouse No Good*, 1 J. LEGAL EDUC. 257 (1948-49).
2. *Id.* at 260.
3. *Id.* at 261–62.
4. *Id.* at 262.
5. *Id.*
6. *Id.*
7. *Id.* at 264–67.

he sees no improvement in the results he is able to draw from his considerable efforts.⁸ Their exams show no progress year to year and may even regress. He pursues a range of strategies and techniques, but nothing shows consistent success. Gradually he becomes resigned to this standoff, recognizing as consolation that his career advancement will in any event depend not on his teaching but on his scholarship and writing. Toward the end of his career, when his publications have positioned him as the “great authority” in his field, he provides the same answer he himself received many years earlier in response to the question ‘how do you teach law’: “I don’t know. None of us knows.”⁹

Now Dean Prosser presents this saga with considerable humor, and with a bemused air that expresses a true fondness for the career path rather than any disappointment or regret. Nevertheless, some sober notes in his story cannot be dismissed as charming foibles. Teaching law is not now and never has been easy, and it’s probably as true today as it was in Dean Prosser’s time that artistry in the classroom is not valued nearly as much as what one puts down on paper. That’s actually quite fortunate for the far too many who, as Prosser puts it, “write well but put all their students to sleep . . .”¹⁰

Readers may by now be asking why I recall this tale of classroom angst and induced narcolepsy in a tribute to Doug Kahn, a man who rivals Al Jolson for visceral enthusiasm when appearing in front of a room of students. (As legend has it, the great Jolson was so eager to find and entertain an audience that, after leaving his hotel for a breath of fresh air on his wedding night, he spent a couple of hours performing before a small group of firemen he had encountered sitting in front of their firehouse. Doug might have understood the urge.) The question is fair—since my point, concededly a roundabout one, is how little Prosser’s charming tale captures the experience of Doug or his students, even as it remains a pretty accurate take on the classroom challenges for much of the profession.

Doug has always been a bit of a departure from the professorial norm. Teaching for Doug was no accommodation to the job, no activity collateral to his true ambition, but rather an openly genuine attempt to engage his students and pull them into a subject that he obviously loved. His evident joy when in front of a class closed any distance with his students, no small feat considering the subject matter. Tax is forbidding territory for many, and Doug was justifiably known for his refusal to dumb the material down. Thus, much of his class may have been there reluctantly, taking the course only because they’d been told “you have to have it.” I won’t claim that Doug reached all or even most of those, but it wasn’t for lack of effort—a fact that I believe all of his students appreciated, even those for whom the subject matter was a bridge too far.

8. *Id.*

9. *Id.* at 267.

10. *Id.* at 265.

Whatever the actual take rate, for a material number of Doug's students, myself most certainly included, his efforts were not only successful but life-altering. Thus, I found Doug's Tax I class an utter revelation, a big-hearted invitation to a topic with unexpected, if challenging, richness. My memory of the first day in that class, where he mused at length about the possible meanings of "income," remains quite vivid, largely because it was so different from what I'd anticipated. Expecting a mirthless emersion in accountancy, I instead found this infectiously energetic fellow prowling the stage, chuckling to himself at times as he played with one thought or another or pulled a student into a discussion. His amusement was so plain that I remember thinking to myself, "jeez, he actually thinks this is fun." It didn't happen all at once, but by the end of the course I was largely persuaded that he was right to think so.

Yes, Doug Kahn was, as I'm sure he remains today, an inspiration. As I reflect back on my career, and his role in it, I've met so many tax lawyers who would have benefited from his tutelage. Tax attorneys suffer from an image problem. While lawyers in other fields can often point to a heroic role model in books, movies, or TV, there's no Perry Mason of the tax bar to lend a warrior's nobility to our craft and no John Grisham hero to attest to our societal role and value. (Perhaps the closest we get is the bit of social cachet that estate lawyers get from the fiction of Louis Auchincloss.) We are left to confront a public that, to the extent it considers us at all, pictures a breed of minutiae-loving super-nerds—highly evolved, but in the wrong direction, with heavy brows, sweaty palms, and a stooped posture, the product of countless hours bent over impenetrable texts mumbling numeric references understandable to no one but ourselves.

As a consequence of this perception, too many who embark on a career as a tax lawyer spend a lifetime softly apologizing for what they do. Not for shaving tax bills and denying the government revenue—though a few perhaps feel queasy about that (not my issue)—but because they absorb the public stereotype and self-identify as boring, or simply strange company, embarrassed to confess outwardly any enthusiasm for the topics that occupy a large portion of their waking thought. Thus, if they are not shunned at social gatherings, they'll nevertheless seek each other out, finding safety, security, and the only community they feel they're entitled to in the company of their fellow tax geeks.

The profound gift that Doug Kahn offered to his students, at least those who took up the cloth, was a vision of tax and its practice that rather differed from the grim, grey, grubby, green eye-shaded activity assumed in the public perception. Now, those who know and love Doug will concede that he doesn't exactly shatter the physical mold of the nerdy tax lawyer. He's short, wears his hair in a perennial crew cut, is utterly indifferent to fashion, and would no doubt wear a pencil case if he saw the functional advantage. Yet if he embraces elements of the physical stereotype, this is as a sheep in wolf's clothing. Wrapped in the nerd veneer is a bubbling

mix of energy and wry humor, fueling an enthusiasm that extends to tax but also well beyond, since tax is but one of his passions.

What jumped out in the classroom was not simply the enthusiasm, since that alone would not have held the interest. It was more the explicitly earnest invitation to follow him into a subject of notorious depth and complexity, coupled with the perhaps subliminal message that there would be some fun along the way. Nor was it just fun, since central to his message was the breadth of tax, its application to the full range of human activity and experience, and thus its appeal and importance as a subject of study. Doug wove those elements together, and as he gradually drew the class deeper into the material over the course of the term, it became not the death march one feared at the start, but something rather playful, if challenging, a journey that left one at times fully engaged, at times frustrated and puzzled, but more often than not intrigued and convinced of the value in going forward.

Again, I won't claim that all of his students made it to this point, but those who stayed with him did. They were left understanding that tax is anything but dry or arcane, that, while on one level it is the most 'codified' of legal subjects, it draws heavily on common law, economic analysis, and philosophic principle, all coarsened by the blunt overlay of a political midwifery. They understood also that this variegated cloth wraps not only the mundane and mercenary in human affairs, but issues core to the proper ordering of a just society. To put it another way, Doug Kahn showed, by example as well as instruction, that tax was a worthy pursuit, offering both challenge and compensation for the mind as well as the spirit, and that for those truly hooked, it was a career choice that would absorb, require, and reward their best energies.

I should be clear here that while my ode is to Doug Kahn in the classroom, this is not to suggest that his special talent as a teacher overshadows his long and distinguished record of scholarly research and writing. Here I rely on other, more qualified contributors to this tribute issue to do justice to Doug Kahn, the legal scholar. I managed to keep pace with Doug's academic productivity for a good many years, but of late it's become clear that my appetite for intellectually rigorous material has faded much faster than his ability to produce it.

In sum, one of the great blessings of my life and career has been that I've had what I'll assert is a special and, indeed, unique relationship with Doug. I can't claim to have been his best student, and I know there are a good number of others who were and remain very close to him, and might reasonably dispute my claim of distinction. But I was both his student and, a bit later, his tax colleague. He's advised me throughout my career, which has had a good number of stops, and I've engaged him professionally as a consultant. My wife Vicky and I have valued Doug and Mary (now sadly passed) as dear social friends for decades. I coached his son Jeff's junior high basketball team. Finally—and this ought to clinch it—we honored our first born with his name.

Through all of that Doug has remained constant, a friend and mentor whose openness and generosity of spirit is unmatched and invaluable. Too often I've drawn on his energy and optimism without being able to return the favor, but I've never found a bottom to it. His joy for life and the pleasure he takes in his students and friends sustains him and the many who have had the good fortune to share his company. For my part I can only say that my life and career would have been much the poorer without him.