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Robert M. Jarvis

Phyllis G. Coleman

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A SURVEY OF HOW LAW SCHOOLS COPE WITH UNEXPECTED FACULTY DEATHS, ILLNESSES, AND RESIGNATIONS

*By Robert M. Jarvis and Phyllis G. Coleman**

I. INTRODUCTION

In the spring of 1997, we polled the 179 J.D.-granting accredited law schools to determine how they cope when a faculty member is suddenly unable to continue teaching. Underscoring the importance of the subject, *every* school answered our survey. Their responses indicate that such occurrences are both more pervasive and more disruptive than previously realized.

II. METHODOLOGY

To conduct our study, we wrote to the academic associate dean at each law school and asked him or her to complete a one-page form. To maximize the number of responses, our initial request contained a stamped, self-addressed return envelope. Our follow-up request, mailed six weeks later to those schools that had not replied, formatted the form as a ready-to-send fax.

The form was purposely kept short. As such, it asked only four questions: a) how many incidents had taken place during the preceding ten years? b) what was the cause of each incident? c) at what point during the term had the incident(s) occurred? and, d) how had the institution responded to each incident?

The form encouraged handwritten (as opposed to typed) responses to minimize the time needed to complete it. The form

* The authors are both professors of law at Nova Southeastern University (Fort Lauderdale). Professor Jarvis holds a B.A. from Northwestern University, a J.D. from the University of Pennsylvania, and an LL.M. from New York University. Professor Coleman holds a B.S., an M.Ed., and a J.D. from the University of Florida.

also explained that most respondents would be done in less than ten minutes.

With respect to the first question, we limited the time period to ten years because we felt more distant incidents would either be forgotten or recalled incorrectly. As we expected, a few responses covered a shorter period.

Respondents were next asked to choose from among the following causes: death, illness, or resignation (whether voluntary or forced). We also gave respondents the opportunity to create their own categories, although none did.

The third question instructed respondents to indicate whether the problem arose before the semester started, during the semester (and if so, at what point), or during exams. If the incident took place during exams, we asked whether it was before or after students had taken the exam.

Lastly, we requested respondents to explain in narrative form how their institutions had coped. While some respondents jotted down just one or two hurried sentences providing only the barest insights, others wrote (and in several cases typed) lengthy replies that went into great detail.

In trying to make the form user-friendly, we gave a certain amount of control to the respondents. Although this was not optimal, we doubt we would have received as many responses had we been more rigid. One effect of our decision to trade control for ease of completion is that schools displayed considerable latitude in deciding who and what to include.

Some schools listed incidents without regard to whether the instructor was a member of the regular or adjunct faculty. Others complied with our request to limit themselves to situations involving full-time teachers. Likewise, while some schools listed every incident, others were more selective and included only incidents in which a significant amount of faculty time was lost.

To encourage participation in the study, respondents were assured that their schools' identities would be kept confidential. Each form was stamped with a two, three, or four digit identification number (so that we would know where to send follow-up letters); no other identifying information appeared on the form. Only the authors possessed the code needed to match identification numbers with schools.

III. RESULTS

A. Frequency

A total of 419 incidents were reported. This represents 2.34 incidents per school or a rate of one incident every 4.27 years.

B. Cause

Of the incidents related to us, 282 (67%) were caused by illness, 72 (17%) by resignation, and 65 (16%) by death. Heart attacks, car accidents, unexpectedly difficult pregnancies, the need to care for a sick relative, and appointments to new positions (usually in the federal government) were the main reasons faculty members suddenly were unable to continue teaching. In contrast, chronic conditions—such as AIDS, cancer, or multiple sclerosis—rarely led to faculty unavailability, presumably because such conditions normally give individuals sufficient time to plan an orderly relinquishment of their teaching duties.

C. Timing

The incidents in our survey occurred at the following times: 147 (35%) prior to the start of the semester, 32 (8%) early in the semester (i.e., the first four weeks), 179 (43%) during the middle of the semester, 42 (10%) at the end of the semester (i.e., the last four weeks), 11 (3%) during the exam period, and 8 (2%) during the grading period.

D. Response

In *Austen v. State of Hawaii*,¹ a college official described how the University of Hawaii copes with sudden faculty unavailability:

[These matters are dealt with] in a relatively informal way which has worked well among congenial colleagues.

One's friends take over one's courses when one is sick, and continue to do so until recovery. . . .

1. 759 F. Supp. 612 (D. Haw. 1991), *aff'd*, 967 F.2d 583 (9th Cir. 1992).

Obviously, if you are ill, the Department and University will do what it can to help you out in every way possible. Your friends may, of course, volunteer to take over your classes, as they always have in every other serious case of illness.²

Schools in our survey similarly relied on a spirit of volunteerism. In 242 (58%) of the reported incidents, other members of the faculty took over for the unavailable professor. As one respondent wrote, "All solutions [at my school] worked well owing to [the] willingness of [the] faculty to step in and take up [the] slack." Another respondent noted, "Faculty good will has been exhausted now on filling in, and it's likely that [the] next event will require a different, costlier solution."

Although some of the good samaritans received extra pay, it appears that most did not. Just 16 (7%) of the responses indicated that the substitute was given a financial bonus. Some, however, were promised a reduced teaching load during a future semester.

Of the remaining incidents, 111 (27%) were dealt with by hiring an adjunct (often at premium prices due to the short notice), 35 (8%) resulted in the class being canceled, 20 (5%) became moot when the original professor was able to alter the class' meeting times to accommodate the emergency, and 11 (3%) were resolved by giving students an automatic pass.

Respondents who gave us only brief comments indicated students were either "satisfied" or "very satisfied" with how the situation had been handled. Respondents who wrote more detailed comments painted a very different picture. They noted students often found it difficult to adjust to a new professor (particularly if the change occurred late in the semester or the new instructor was perceived to be more demanding), felt substantively disadvantaged (especially in "bar" courses), and were convinced their final grades would be lower (leading, in turn, to fewer honors and jobs).

One respondent summed up his experience of having to take over for a faculty member who had resigned by writing: "I have taught the course other times and have never had so many mo-

2. 759 F.Supp. 612 (D. Haw. 1991), *aff'd*, 967 F.2d 583 (9th Cir. 1992).

rare problems with students, especially the bottom 3d of the class. . . . I was very glad that I had tenure, and many years of very good student evaluations." Another respondent noted that despite her school's best efforts (including, in one instance, setting up a special e-mail system so that a professor recovering from surgery could communicate with students from home), "Student satisfaction [was] fairly low in all situations." A third respondent observed that his school had "limped throughout the semester" when a faculty member suddenly left to join the government. A fourth commented, "Students [are] very much thrown off [by such incidents], particularly in first year classes."

IV. CONCLUSION

As our findings make clear, sudden faculty unavailability occurs with some regularity. Nevertheless, all law schools continue to deal with such incidents on an ad hoc basis, and no school has formulated a written policy regarding how such matters should be handled.³ It would seem, therefore, that the time is ripe for the American Bar Association and the Association of American Law Schools to consider addressing the subject in their rules.

3. One respondent did inform us, however, that: "Subsequent to [our third incident, the] faculty [at my school] adopted [a] family leave policy that permits a reduced teaching or committee load for one semester to care for [a] new baby (via birth or adoption) or [an] ill family member. Several faculty have availed themselves of this option."