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A Dean's Letter to New Law Faculty About Scholarship

Donald J. Weidner

Several developments, some national and some local, have moved me to reduce to writing a few thoughts on legal scholarship for new law teachers. These developments have coalesced to discourage legal scholarship or trivialize its importance. The purpose of this letter is to state a case for legal scholarship and suggest a way to proceed.

Nationally, the MacCrate Report has focused a great deal of attention on the urgency (perceived by some) to enhance the professional skills training of law students in the United States. Taken at its extreme, the report can be viewed as a plea to legal academics to set aside their traditional scholarly mission and replace it with clinical legal education. The report has more or less coincided with a somewhat broader national debate on whether legal scholarship has gotten too esoteric. There is entirely too much talking among academics in arcane terms that are inaccessible to others, say the critics.

The debate about legal scholarship also can be seen as part of the broader national debate about faculty productivity, particularly at graduate research universities. Nationally, the American professoriate has come under criticism for its "irrelevant" scholarship; scholarship has been discussed as if it were the self-indulgent activity of the least caring and least productive members of university faculties. Productive scholars have been characterized as lazy and overprotected employees who put self-promotion through scholarship ahead of the needs of their students. State legislatures have attempted to redirect the efforts at public graduate research universities away from scholarship and graduate teaching and toward the teaching of undergraduates.¹

I am sympathetic both with some of the points made in the MacCrate Report and with the perception that legal scholarship is often too arcane. And I believe that higher education in general and law schools in particular

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1. For example, beginning in 1993, the Florida legislature appropriated substantial salary increases to faculty who are outstanding teachers of undergraduate courses. Scholarly productivity is to have no part in allocating these funds. In 1994-95, the program was extended to faculty teaching graduate and professional courses.

present troublesome productivity issues. Nevertheless, I believe that scholar bashing has gone too far and may be influencing new faculty to shy away from the scholarly path. Faculty producing scholarship are not what is wrong with legal education; rather, they are its great strength.

Even without the national debate, scholarly expectations for faculty could be expected to be a controversial issue at many relatively young law schools. There are quite a few senior faculty who were hired in the early years of their law school, when publication was not expected. Indeed, when I was first hired, the tenure rules stated that the faculty were so busy establishing a new law school that we could not reasonably be expected to publish. Given both the national debate and (often) local history, why, then, should the newest law teachers be expected to publish?

I write to give you my own short *why* and to move on to what I think is the most important issue—the *how* and *when* of it. As I write, summer is approaching. Most narrowly, I have watched too many faculty waste their summers. More broadly, I believe that we have been too timid about stating our scholarly expectations. We have tried too hard to avoid hurting anyone's feelings. We have tried to be welcoming, not harsh (or hierocratic), to new faculty, and we have tried to avoid ever saying anything that might indicate, however indirectly, any disappointment with more senior faculty. We have wanted to avoid offending those senior faculty who have never published with any regularity. The productive scholars meet, almost in secret, forming a counterculture that is all too self-conscious. Far from being strident, they are almost sadly self-effacing. In short, we have failed to develop a clear scholarly expectation or culture.

Recognizing that the matter must ultimately be addressed by a faculty as a whole, let me simply offer my own personal expectations with respect to scholarship. If you will, I offer a short credo, along with some specific suggestions which you may find helpful but from which you will surely develop your own variations.

Being a scholar is part of the job. You will not be a complete person as an academic unless you produce, on a regular basis, scholarship that is read and relied on by people who work in your area. Most basically, each academic lawyer should become a guardian of some area of the law. This means that you should be involved in the accurate statement and analysis of the development of the law, whether the development process be one that takes place primarily through judges, legislators, or administrators, or in the private sector. Involvement as a productive scholar will enable you to better serve your students, your colleagues, and the public.

What is the goal of this scholarship and its inevitable involvement in development of the law? I think there are several goals. First, I believe that your classes will be enriched immeasurably. You don't fully understand something until you write about it. You will give your students a much better sense of history—a better sense of the ebb and flow of the law and the forces that influence it. You will be able to share a greater understanding of both substance and process. You will appreciate more fully the different interests and

values in the applied life of the law. Your scholarship will simply give you more to share with your students.

You will also give your students a sense of commitment and involvement. They will recognize and appreciate it if you are an influential figure in the development of the law. You will set an example for them and will be able to present them with examples of the many nonacademic lawyers who strive to improve the law. You will be in a better position to give them the confidence they need to assume leadership in the proper development of the law. You will also be able to demonstrate that helping in the proper development of the law is a great public service that can be an immensely satisfying part of their future.

Second, I think you will be a stronger person if you are a consistently productive scholar. I believe that the process of personal growth is most likely to continue if you engage in the process of producing scholarship and exercise the opportunities that scholarship will open up. In addition to law reform projects of various sorts, those opportunities will include teaching at other law schools, speaking before university and other professional groups, and yes, even occasional consulting. If you are engaged in a process of personal growth, you are far more likely to engage your students in a process of personal growth. Your teaching, both inside and outside the classroom, will be better.

If you develop the work habits of the consistently productive scholar, you will avoid what I believe is the biggest pitfall of academia: spending the bulk of your professional life interacting almost exclusively with novices in your areas of expertise. The more years you spend as a legal academic, the less satisfying it will be to have something to say only to your students, who as a group tend to know relatively little about the area that you are teaching them. I understand that it is fashionable to say that you learn something new from your students every time you teach a class. Nevertheless, I believe that full satisfaction as a legal academic is likely to come only from productive interactions with experts in your area. Without that interaction with equals, you will run the risk of becoming isolated and embittered.

Third, I think any law school as a whole will be better off if it has a faculty of individual persons who are leaders in the law. Its student-run scholarly journals will be the most immediate beneficiaries. The productive scholars are the ones who know how many areas are crying out for analysis and comment. They are the ones who know how many improvements could be made to the law, if only people focused on them. They are the ones who can guide the students to topics and shepherd their efforts to completion.

We will have more respect for one another as colleagues and for our law school as a whole if we become more active in the national marketplace of ideas. The pride is palpable whenever students read citations to the work of their teachers or to their own or other work appearing in one of their school's student-run journals. The value of a law degree from your school will be enhanced significantly if the depth of faculty expertise is made known. Potential employers and others will look to the school as a source of young lawyers who have been trained to be productive at the cutting edge of the law.

In specific terms, what does this mean for you at this stage in your career? I think it means that you should begin your research in earnest at the beginning of the summer following your first year in teaching. You may have the benefit of a *research assignment*, which I prefer to the term *research leave*. You are not on leave: you are on the payroll with the expectation that you will spend your full time on research. In particular, if you have not already done so, you should select a topic *before the summer begins*. When the summer arrives, immediately begin working on your article. You should not waste the summer looking for a topic. If you do not have a topic, ask someone to help you select one.

About time wasted in topic selection, I speak from experience. I wasted my first year in law teaching in quest of the ideal topic. I wanted to work on a topic that would inform me about some of the tax issues in the real estate course I was teaching, and I wanted to get my scholarship under way. Because I knew so little about tax, I didn't have the confidence to select a tax topic. Eventually, I simply asked the people at the law firm I had worked with to give me a tax topic in an area that had practical significance *and* suffered from a paucity of scholarly examination. I accepted the topic they recommended and began what was a wonderful learning process. There were many false starts and blind alleys, but I no longer wasted time second-guessing the task before me. My recommendation for you is to call a mentor—at a firm, on the bench, or in the academy—and ask your mentor to recommend a topic. Then just start researching and writing. It matters less where you start your scholarship than that you start early and develop good work habits.

My timetable would be that you should aim, at the very least, to have one major manuscript off to the printer by the end of the summer following your second year of teaching. Take the time to do a major piece, and make it good. Then, as soon as you mail it off, start your next major piece. My own sense is that, by the end of the summer following your third year in teaching, you should have a second major manuscript completed. When that is completed, you should start immediately your third major manuscript.

If you follow this timetable, you will exceed minimum promotion and tenure standards for scholarship. More important, this timetable will get you into the work habits of a productive scholar, and those habits will serve you well throughout your career. If you think this timetable is too demanding, ask a mentor whether the timetable sounds too stiff. You may well hear that, if anything, it sets an expectation that is too low.

I would say that there are two major risks to be avoided as you address the task of writing your first manuscript. The first is what I call the Moby Dick syndrome, the tendency to assume that your first article must be of monumental length and significance. Avoid this assumption. Your first piece does not have to be the definitive work of all time in your area. It simply has to reflect a good job of research, thought, and writing. It does not have to be published in the *Harvard Law Review* to make a contribution to the literature. It does not have to be metaphysical. We have room for and will applaud traditional doctrinal policy analysis just as we have room for and will applaud abstract legal philosophy. Different scholars write for different audiences, and scholars

grow and change over time. No one expects that your first effort will be as good as your fifth or your tenth. You have to learn to walk before you can run. And you have to learn to enjoy it.

The second risk is that you put off writing too long. I have heard too many people say, in summarizing a summer's research assignment, that they got a lot read. You do not write articles by reading. You write articles by writing. The hardest thing about writing is to start putting words on paper (or screen) and calling them your own. Once you type your first words, other words will follow. Your goal should be to have a substantial draft of a manuscript written by the end of the summer following your first year in teaching. Take the next year to make it better, but begin your second academic year with a draft that you can make better. It is critical to end your life as a mere consumer of manuscripts and begin the business of being a producer of manuscripts.

Make writing a part of your daily life. Spend as many hours as you can this summer working toward a draft of your manuscript. Then, after school starts in the fall, you will have something to edit. My specific suggestion for the fall is to schedule at least one hour each day to write. Over the years, I have found that, for me, the first hour in the morning is the best. I tend to avoid teaching before mid-morning; I come in early and, before the building starts hopping, get at least one hour of solid research in. On some days, this is all I get. On others, the one hour expands naturally to two or three. At times, the additional hours will flow spontaneously, but only if you commit to that first hour. The additional hours will never materialize if you never sit down to write. No amount of index cards, outlines, or subfiles will result in an article. You cannot write simply by reading and thinking great thoughts. You cannot simply get it done over the summer. You cannot get it done by taking three full vacations a year. Words must be strung together. In sum, begin your manuscript, make major advances on it during the summer and in December, and fine-tune it throughout the academic year.

In addition to your distant, senior scholarly mentor, get a buddy. Identify someone with a strong track record and ask for counsel on your work habits. Ask this or another person to talk through your topic with you and read your early manuscript. The person can be on your own faculty or at another law school. You might even ask your dean to serve as an editor.²

If you need additional secretarial, financial, or other support, I suggest you talk to your dean. My guess is your dean will do everything possible to get you extra allowance for research assistance, if that will help, or extra money to attend a conference or to meet with an editor. It is the dean's job to try to get you the support. It is your job to sit down and write.

I offer you this letter for your own good, for the good of your students, and for the good of your school. If my expectations are too modest, please forgive me. Are these expectations too high? No. A number of senior members of my

2. Your dean would probably not see such a request as a burden. Sooner or later, I read everything that my colleagues write, and it is my honor to do so. That is the best part of the dean's job.

own faculty have met them—even before there were summer research assignments or liberal research leaves. What has gone wrong is that we have gotten too laid back in our scholarship. And we are all the poorer for it. Your academic credentials are no doubt superb. Now is the time to use them on your first major manuscript as a law professor.