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Jeffrey M. Lipshaw

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MEMO TO LAWYERS: HOW NOT TO “RETIRE AND TEACH”

JEFFREY M. LIPSHAW*

“I think I would like to retire and teach.”

For all of the thinking and writing on the real or perceived gap¹ between the legal academy and the legal profession, there is perhaps no more galvanizing or polarizing phrase. To the long-time practitioner, it is something of a fantasy: a full-time teaching job will consist at most of two courses a semester, constituting around six to eight hours of class time, and the job pays enough, at least, to be sustaining if not enriching, particularly for one who has salted away a couple dollars over the course of a career. It promises the luxury of thought, intelligent colleagues, energetic and eager students, the chance to share some of the wisdom accumulated along the way, leafy environs, tweed sport coats (with or without elbow patches), and the absence of either billable hours or the corporate equivalent of accountability.

To the long-time law professor, that phrase, uttered from time to time in one form or another by those aspiring to enter the academy, is the ultimate disrespect, but one with a rich if not proud history. Ours

* Associate Professor, Suffolk University Law School. As my few friends will attest, my ego is sufficiently bloated as to believe that my story is interesting on its own merits, and I never tire of talking about myself. But the real reason for writing this article is to provide a service. I had jokingly jotted down about twenty “dos and don’ts” for those contemplating a late-career move from the practice into academia. One day I suggested to Andy Klein, then the academic dean and still professor at Indiana University School of Law – Indianapolis, I was thinking about whether to make an article out of it. He immediately endorsed the idea, if for no other reason than to have a piece he could refer to the many practicing lawyers who would say to him “I’ve been thinking about getting into teaching.” So law professors reading this may find it unduly elementary, particularly as it describes the hiring process. Law professors, however much amusement they may find or umbrage they may take here, are not my intended audience. I also want to thank Brad Wendel for his iconic piece on surviving the law school hiring process, as well as his suggestions for this. Alan Childress, Andy Perlman, Larry Solum, Frank Snyder, Bill Henderson, and Bryan Camp also provided helpful comments. And I’m able to write the six words at the beginning of this note because of my new colleagues at Suffolk, whose offer it was an honor to accept. But this is, in the end, a personal reflection, and I am completely responsible for its errors. Most importantly, I dedicate this to my long-suffering wife and best friend, Alene, who has gone along with this despite significant reservations and complete bafflement about why an otherwise sane and responsible person would make the decisions I have.

1. See *Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, American Bar Association Section of Legal Education and Admissions to the Bar (1992).

is a discipline that has evolved out of a trade (my wife's grandfather received an LL.B. from Wayne University in Detroit in the late 1920s, when it truly was a bachelor's degree). Although, in recent years, more law professors have Ph.D.s to go along with their J.D.s., the teaching degree for lawyers has been the same as the practice degree. To take my undergraduate major as an example, graduate schools in the humanities do not turn out professional history practitioners like, say, Doris Kearns Goodwin or David McCullough or Steven Ambrose. Historians, by and large, are scholars, and don't "practice" history. Academic historians don't have to worry about highly paid "tradespeople" invading their turf. At the other extreme, while academic physicians often don't make what their private practice counterparts make, universities run big teaching hospitals in which academics teach, research, and still practice medicine. (Law schools, on the other hand, have the occasional low-income law clinic.)

Second, from Holmes' Path of the Law² on, the inclination to see law organically with other disciplines (as an academic matter) has pushed against the way we (particularly practitioners) talk about law as a self-contained system in which rules established in prior cases may be induced to new facts.³ How many legal scholars are still toiling merely in the explication of the self-contained system? Not many, I think. Skim through SSRN for more than a few minutes.⁴ To the contrary, almost all of us are bringing "law and . . ." insights to this discipline. Had I been in the academy for twenty-five or thirty years, working to develop a scholarly framework for the law, I would be upset if a practitioner, no matter how bright, thought he or she could simply pick up (or retire on) the product of my long, hard and far less remunerative struggle, as if it were akin to teaching a CLE course on trial tactics or how to negotiate a merger. I am not sure whether the foregoing casual social psychology is accurate, but it is simply to say it is no surprise and eminently understandable that academics would have a reason to resent a practitioner arrogantly storming the academic citadel late in one's career.

The numbers show that very few lawyers in fact do "retire and teach," at least in the way that is offensive to the academic lawyer. Very few professors resent the idea of a practitioner teaching as an

2. Oliver Wendell Holmes, *The Path of the Law After One Hundred Years: The Path of the Law*, 110 HARV. L. REV. 991, 998 (1997), originally published, 10 HARV. L. REV. 457 (1897).

3. STEVEN D. SMITH, *LAW'S QUANDARY* (Harvard Univ. Press 2004).

4. SSRN, the Social Science Research Network, is a data base of thousands of articles posted in real-time by legal and finance scholars all over the world. If you have never looked at it, type the URL <http://ssrn.com> into the address bar of your browser. If you have never read a law professor blog, start doing it now. If you think there is an AALS listserv in your area, try to get on it. If you don't know what a listserv is, find out. If you don't know what a URL or address bar or browser is, stop reading this article and go speak to your children.

adjunct; it is the tenure-track that is the professional path of the legal academic. At the age of fifty-two, as a 1979 law school graduate with over twenty-five years of practice in law firms and corporations, I was hired onto the tenure-track of a law school for the 2007-08 academic year. As I had no problem getting interviews, and ultimately received an offer, I have no basis for complaint about the system. Moreover, my natural skepticism about the existence of conspiracies caused me to discount the possibilities that there was any patent or latent age discrimination going on. But a professor on the faculty of my alma mater told me, almost two years before I was hired, that it was almost impossible for a practitioner of my vintage to be hired as a tenure-track law professor.⁵

I do not have a Ph.D. Until 2004, my publications consisted of an article for a state bar journal in 1985, a commissioned “survey” article (commonly done by practitioners) of antitrust decisions in the Sixth Circuit in 1981, and a brief I filed in the Michigan Supreme Court which was recognized by the Cooley Law School. In other words, I was just as unqualified to be a tenure-track law professor as any other long-time practitioner who might have fantasized about the possibility of teaching. My purpose here is to record what I did in the meantime, to offer some thoughts to others who are considering plying the same road, and to demonstrate, once and for all, that you cannot “retire and teach.”⁶

5. I am discussing here only the jump to non-clinical, non-legal research and writing legal academia. The terminology and the practice can be a little confusing. Sometimes traditional faculty are distinguished as the “doctrinal” faculty, even though, as discussed below, the use of the term “doctrinal” is an anachronism, and not really accurate anymore. Often times (and I have done it here) the traditional law faculty is referred to as tenure-track, but even that is not always accurate. Many schools now have clinical professors, whose jobs are to run clinics, and perhaps to teach. At some schools, clinical professors are eligible for tenure (NYU is an example); at others they are not, but are eligible for long-term contracts that, to some extent, replicate tenure (Indiana University is an example). Finally, although some schools use fellowship programs or teaching fellows for legal writing and research, others have permanent, but non-tenure track, LRW professors (Wake Forest is an example). The critical distinction arises in the traditional tripartite duties of a professor: research, teaching, and service. I think it is a fair generalization that the jobs not considered core faculty eliminate research as one of the duties. Hence, a clinical professor, LRW professor, or adjunct professor, whether or not entitled to tenure or its contractual equivalent, would not be expected to produce scholarship.

6. For a general discussion of entry into law teaching, there is nothing better than Brad Wendel’s *The Big Rock Candy Mountain: How to Get a Job in Law Teaching*, <http://ww3.law.school.cornell.edu/faculty-pages/wendel/teaching.htm>. Professor Wendel has a compendium of much of the commentary on getting into the law teaching business, but a good start is simply to type the words “AALS meat market” into a search engine and review the results. For a funny personal account of twelve years of perseverance, see David W. Case, *The Pedagogical Don Quixote de la Mississippi*, 33 U. MEM. L. REV. 529 (2003).

“SO, WHAT MADE YOU DECIDE YOU WANTED TO DO THIS?”

Because I expect law professors to recommend this article to their lawyer friends who want to “teach,” I need to say just a few words about the process by which one generally gets hired. This is the path for ordinary people like you and me, not the prototypical entry level superstar: a graduate of one of a small group of super-elite law schools - Harvard, Yale, Stanford, Chicago, Columbia, NYU, Michigan, and a few others - generally at the top of the class academically, and a senior editor on the school’s law review, having clerked for a federal appeals judge and a justice of the Supreme Court of the United States, and then worked for two years or so in a large financial center law firm. I understand that these candidates may well be directly recruited by law schools outside of the process I am about to describe. For the rest of us, the Association of American Law Schools (AALS) acts as an intermediary between schools and candidates. By August of the year before the applicable academic year, the aspiring teacher should have paid the fee and supplied the necessary information to be included in the AALS’s Faculty Appointment Register (FAR). The legal blogosphere is replete with suggestions on how best to game the form; I won’t repeat it here, except insofar as it impacts the “well-seasoned” candidate.⁷ The AALS will collect almost 1,000 of these profiles, and beginning in August, will circulate them to the faculty appointments committee (FAC) of the almost 200 American law schools. That committee is generally chaired by a tenured faculty member other than one of the deans and usually has four to six additional members consisting of both tenured and untenured faculty. The FACs cull the “stack” (literally – it is usually bound in something that looks like the Manhattan phone book) and invite, usually by phone call, about thirty candidates to thirty minute screening interviews at a convention held in late October or early November, usually at the massive Marriott Wardman Park Hotel in Washington, D.C.⁸ The convention, officially the Faculty Recruitment Conference, is known universally to its participants as “the meat market.” Each law school takes a stab at its hiring needs, reserves a suite, sends its FAC members, sees one candidate every thirty minutes for two days, winnows the group down to just a few who will come back to campus for a

7. One of the more significant limiting factors on the FAR for the “seasoned” candidate is the section on geographic preference. Relocation may be an issue for you. So the inclination is to be selective on *where* you are willing to go. This is a mistake for two reasons: (a) it reduces the size of the pool – this is a buck shot, not a rifle shot, process – and (b) it may say something about your willingness to do whatever it takes to become a professor (this from a faculty appointments chair with whom I happened to be having lunch one day).

8. For an analysis of some of the statistics on this, see Jeffrey M. Lipshaw, *Screed or Scholarship: The Days of Whine and Roses*, 9 LEGAL ETHICS 233 (2007).

day of interviews and a "job talk," and finally extends offers to one or two of the candidates.

I am told there are hundreds of wholly unqualified profiles in the FAR, and they never get called for interviews at the FRC. The data on how many FAR registrants get interviews is not available, so it is difficult to say beyond mere supposition what didn't work.⁹ Moreover, the general rule of thumb is that you are supposed to get a callback for each six or seven screening interviews, and an offer for each three callbacks.¹⁰ The AALS itself advises you not to come to the FRC if you only have one or two screening interviews. I went through the AALS Faculty Recruitment Conference twice, in 2005 and 2006. I had about ten screening interviews the first time, and about thirteen the second. So I was a moderately successful "first round" candidate.

If you manage to get an interview, it is because there is something intriguing or unusual about you, but it is barely a commitment on the school's part. I had a hard time believing this until I had done it a couple times, but almost nothing that you would normally correlate with a successful job application means anything in this process, whether it is the friendliness of the FAC member who calls you, the fact that the committee was doing early reference checks, or just about anything else. I believe there were four things about my profile that made me a curiosity, and they offset the one generally disqualifying factor. That factor was my year of graduation – 1979 – and again, for reasons I will get into below, I don't think it's an issue of age but of scholarly orientation. Weighing against that were (a) I in fact graduated from one of the elite schools, (b) I had taken a visiting professorship at Wake Forest, (c) I could list three recent publications in reputable law reviews (Temple, DePaul, and Wayne), and (d) I had in fact been the senior vice president and general counsel of a large publicly-held company, and still managed to write those articles.

"So what made you decide you wanted to do this?" may have been the most common lead-off question, and I feel sure that the typical candidate did not get it.¹¹ I bombed out in 2005, and did not get a single callback; in 2006, I was running at a callback rate of just about fifty percent. I can only come up with three differences between the two years: (a) by 2006, I had committed to another full-year of being

9. The AALS does, however, publish historical statistics on the overall success rate, which averaged 12% between 1991 and 2005. See AALS.org, 13A Fourteen-Year Comparison: Success Rates of FAR Candidates, <http://www.aals.org/statistics/0506/index.html>.

10. Your mileage may vary. In other words, this is the grossest kind of heuristic. If you do not know what a heuristic is, learn.

11. As with the FAR form, the blogosphere is also replete with advice on how the typical candidate should deal with the thirty-minute interview.

a visiting professor, this time at Tulane, (b) I had written and published several more articles, and (c) I had figured out the right way to respond to the lead-off question.¹² The lesson was that in 2005, I wasted most of my precious thirty minutes with the FAC actually answering the question. By 2006, I had come up with a thirty second response that perhaps led to another three or four minutes about my career change, but after that we were on to what the FACs really expect to discuss: your scholarly work.¹³

Now we reach the nub of the matter. Everything in that thirty minute interview, assuming it goes well, is about whether you show the predictors of being a productive scholar. Having said much about what the process *is*, the remainder of my advice consists of three categories about what it is most decidedly *not*.

IT'S NOT ABOUT TEACHING

There is a strange irony in law school hiring. While the overall needs tend to be generated by teaching coverage (“we need a commercial law/bankruptcy person” or, as one school made it clear to me, “the sine qua non of an offer to join our faculty is that you teach property”), there is very little about teaching that makes a difference in the hiring process.¹⁴ You may get a question or two, but that’s all you will get. So here are some things to know other than about teaching.¹⁵

◆ *The interdisciplinary approach to legal scholarship.* If you are “well-seasoned,” you may have thought legal scholarship was about law. After all, we litigators all used Wright and Miller (they were professors, weren’t they?), the oil and gas lawyers turned to Williams

12. I also eliminated the geographic limitation in 2006, which may have had an effect. See *supra* note 7.

13. Q: “So what made you decide to get into academia after all these years?”

A: “I really always was an academic, and should have been from the get-go, but my career got in the way for twenty-six years.”

14. For example, don’t even think about negotiating the courses you will teach. For most schools, the first priority in hiring is all about teaching, in the sense that filling holes is everything. The “top of the charts” schools perhaps do not hire for teaching needs, but if you are actually reading this essay to get advice you don’t need to worry about that. Moreover, the holes are rarely constitutional law, jurisprudence, advanced legal ethics, law and religion, and trial practice seminars. More likely, and whether or not you think you are qualified, the needs will be staple courses like sales, civil procedure, business associations, payment systems, and bankruptcy. Do not get sucked into this diversion. From the interviewee’s standpoint, as Brad Wendel points out, it’s really a writing job, not a teaching job.

15. I may be fairly criticized for painting all schools with a broad brush. There are many fine schools whose focus is on teaching, and it is entirely possible the resume of an experienced practitioner will find greater favor there. Indeed, I am aware of one school that appeared to be militant on that score. At one of my 2005 FRC screening interviews, the committee members made this point early in the half-hour. I, completely oblivious to the nuance, kept coming back to the issue of scholarship. It was the only time I felt active hostility during an interview.

and Meyer, and everybody read Williston, Corbin, and Prosser on Torts. You may even, at this moment, be ruminating about that knotty little problem in *mens rea*, the rule in Shelley's case, the dead man's statute, the business judgment rule, promissory estoppel, or something like that. For the last twenty-five years or so, legal scholarship has moved to "law and [something]." If you are not at all familiar with a single one of the following terms, grab any recent bound law review volume, open it at random, and begin reading: availability heuristic, Nash equilibrium, corrective justice, virtue jurisprudence, bounded rationality, consequentialism, relational contracts, soft positivism, heteroscedascity (and its counterpart, homoscedascity).

◆ *The decline of doctrine.* Quantitative empirical study trumps theory.¹⁶ Theory trumps doctrine. Doctrine does not mean practice-oriented learning. Which leads to. . . .

◆ *The edgy position of practice-oriented learning.* Everybody worries about the gap between the legal academy and the practice. Law reviews bemoan that their subscriptions are declining. Important judges look at academic writing as irrelevant to their decision-making.¹⁷ Schools change their curricula. So you look at yourself, a practitioner of many years' experience, and note some particularly unusual things about yourself. In addition to your highly successful practice, you have written at least an article a year for the state bar journal, you have been an adjunct professor at the local law school for a number of years, and you care about teaching and mentoring young people. You may be doing that on a regular basis for the young lawyers in your firm or law department.

Notwithstanding all of that, it's unlikely that the legal academy is going to look at you, smack its collective forehead and say "there is the embodiment of the solution to bridging the academy-practice divide."¹⁸ I used to make the argument, when I was a general counsel to a large manufacturing business, that law and business could be represented by overlapping circles in a Venn diagram. Either the lawyers or the business people had to take ownership of the overlap and become conversant in the language and mental models of the other side, lest the lawyers and business people be talking past each other. In my

16. If you know what this means, you do not need me to give you advice about entering the academy. For two different, but highly respected, approaches to empirical work closely related to the actual practice of law, see the writings of Professor William D. Henderson of the Indiana University School of Law – Bloomington, http://ssrn.com/author=http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=337548, and Professor Steven Schwarcz of the Duke Law School, http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=33796.

17. See, e.g., Richard A. Posner, *Legal Scholarship Today*, 115 HARV. L. REV. 1314 (2002); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

18. I kept operating under the delusion that I was.

view, this was the responsibility of the lawyers. Unless you could put what you knew about the law into the framework of the business world, everything you knew approached uselessness. It was wonderful to watch a lawyer engage deeply with the operations people on Six Sigma techniques, failure mode analysis, design for manufacture and assembly, and just when the business people loosened up, thinking this person was one of them, slip in a little antitrust compliance training.

The same applies to the language and mental models of practice, on one hand, and the language and mental models of scholarship, on the other. The great advantage of many years of practice is that you have rich soil from which theoretical ideas may sprout. But if you stick to the language of practice, and never move into the other circle of theory, you will not be effective in persuading a FAC that you are ever going to deserve to be a tenure-track faculty member. Indeed, if you never look at a piece of your own writing, and wonder if you are not really arguing about the number of angels dancing on the head of a pin, it's likely you are not getting close enough to the theoretical line.¹⁹

◆ *How to have something to say.* A long time tax practitioner with a substantial publication record, including some law reviews, recently asked me for advice in approaching the law school hiring process. I looked quickly at one of the published articles and, among other things, said this to him:

I am not sanguine that the mere volume of writing will establish the “chops,” particularly in tax, and particularly if the writing has been practitioner-oriented, even if in general law reviews.

Research agendas are a coin of the realm for brand new entry level profs, but I don't think that's as important as establishing, particularly at your level of experience, a particular viewpoint that you are bringing to bear. Is there a theme that runs through your work as to which you can give the three minute summary to a faculty appointments committee of non-tax people?

I wrote out a “research agenda,” but I don't know if anybody ever looked at it. There is going to be a question at some point in the hiring process, it seems to me, that is the sine qua non of your entry into academia after all those years of practice that goes something like this: “So, what is it about your scholarship and writing that is fresh and exciting, will draw attention to you, and in the process, distinguish

19. I may be giving empirical research short shrift here. I cannot overstate the extent to which empirical scholarship is the hot area in the legal academy. If you have a substantial resume of experience in collecting data and doing statistical analysis on it, and can find an interesting subject on which to write and publish, my sense is that you would be well along in the game.

our faculty and our school?” And there must be an answer that is meaningful in the academic, not the practice, Venn diagram circle.²⁰

It seems like the vast majority of young law professors want to talk and write about the burning constitutional, political, and rights issues of the day. It’s an advantage to want to teach and write in a niche that may be considered more mundane (somebody has to think about employee benefits, for example).²¹ But merely writing in the niche is not enough; you need to have something scholarly to say about it.

IT’S NOT ABOUT RETIRING

◆ *The ironic detriment of real-world experience.* There are a good number of academics who will admire your years of service in practice. They will tell you that it’s crazy that the academy doesn’t value practical experience more. You won’t hear from the ones who don’t believe that, but there are plenty.

There is an irony going on here. If you don’t have academic chops, your years of expertise go into the liability column. The reason, I believe, is the general sense within the academy that extended practice diminishes one’s ability to think like a scholar. It’s good to have had a couple years “out there” (usually as an associate in a big financial center or Washington firm), but a ten-year lawyer first looking for a law professor job sticks out like a female gymnast in her mid-twenties. Twenty-five years of practice is debilitating, so it is thought, to the academic cranial synapses, and almost disqualifying. Adjunct teaching along the way doesn’t help.

My take, however, is that once you have independently established academic chops – in my case by writing and publishing a lot, and by showing a significant commitment to a scholarly life by acting as a visiting professor for the better part of two years – the experience immediately transforms from liability to asset.

20. Here’s one answer, but beware that it has already been used: “After twenty-five years in law and business, I picked up the scholarly literature about what I did, and was astounded to find that various models of economic analysis, rational actor and behavioral primarily, had come to dominate the theoretical thinking about what I did. It is a consequential, utilitarian way of modeling the world, requiring in many ways oversimplification to the point that it was wholly unhelpful as a predictor, or on the other hand, tried to explain too much as a theory of everything. I want to think deeply about that as a purely intellectual exercise. But it has a pragmatic element as well. Law as Langdellian science or law as social science tinges, I think, how we teach lawyers to make sense of the world, and that argumentation or instrumentality to a consequential end is at odds with the sense of duty or responsibility that many people feel exists apart from the mere consequence of a decision. In short, is it legal or is it right or is it both? I think it’s important to incorporate that, but not so much in the teaching of doctrine as in the modeling of appropriate behavior.”

21. But teaching the niche subject, as opposed to writing about the niche subject, should not be the focus. See *supra* note 11.

◆ *Working the figurative room – the “schmooze” factor.* Here is a lesson in speaking the language of academia. You have a shot at making the jump because of the *disintermediation* of scholarship.²² I had dozens of colleagues, and perhaps as important, friends, in legal academia across the world long before I met any of them physically, all courtesy of the remarkable technology residing in my Dell Latitude 600 laptop computer. There is no virtual silver bullet: perseverance regardless of the medium is good advice. But where to make a name for yourself even ten or fifteen years ago would have required the intervention of a law review editor or a publisher or the organizer of a symposium (i.e. intermediation), you can be “out there” in less time than it took me to type this paragraph.

Disintermediation is relative, and perhaps it would be easiest to tell my own story of getting involved in the virtual world. I had an idea about Sarbanes-Oxley that sprang from my practice as the counselor to a public company board of directors. I had no way of knowing whether the idea was “scholarly” so I wrote a précis of it and sent it to a law school friend who is a successful academic. He gave me some pointers on style and substance, and I soldiered on. Once you have a product, getting it to the law reviews is astoundingly easy (even easier now than a couple of years ago), but getting it accepted is another matter.²³ I sent my article to about thirty law reviews, and it was accepted by one of them about thirty days later. Only then did I post the article on SSRN (having just learned about its existence). SSRN tells you exactly how many times someone has clicked on your abstract, and more importantly, how many times someone has actually downloaded your article. My articles have now been downloaded hundreds of times, but it was a strange sensation in the first couple days after I posted it to see the seven or eight downloads and think, “Wow, somebody’s actually reading it.”

One day, I noticed that the download count jumped from nine or ten to almost one hundred. I didn’t know why. Another old friend who is a professor sent me an e-mail note that my article “had been featured on Larry Solum’s influential blog.” I didn’t know who Larry

22. See Lawrence B. Solum, *Download It While Its Hot: Open Access and Legal Scholarship*, 10 LEWIS & CLARK L. REV. 841, 858 (2006).

23. The art and science of getting articles published in student-edited law reviews is the subject of thousands of words, and beyond the scope of my discussion here. You should be aware that one of the reasons you have any shot at all of being a university professor is that a J.D. on its own is still a teaching degree, lots of students still want to become lawyers, and publishing in legal academia is far easier than in other disciplines because of the quantity of student-edited law reviews. Indeed, academics in other disciplines whose writing requires significant peer-review before publication are often astounded that second and third year law students actually do the selecting and editing of their professors’ work and, accordingly, can have a significant impact on their careers.

Solum was, nor did I know what a blog was. (And, as Larry tells it, it wasn't a long time before that even Larry didn't know what a blog was.) The lesson, of course, is that disintermediation has not completely gone the way of all things. People still rely on intermediates to coordinate for them. It turns out that one of the engines for generating downloads (assuming you are not already a famous author) is being intermediated by somebody on the internet.

So I started exploring the law professor blog world – PrawfsBlawg, Concurring Opinions, Conglomerate, Ideoblog, Tax Prof Blog, Contract Prof Blog, Legal Theory Blog (that's Larry Solum's). Many blogs have comment features, and I started to write comments. From the blogs (I think) I discovered there was a listserv administered by the AALS Contract Law section, and I got myself on it. The listserv is a database of e-mail addresses of (you guessed it) professors with an interest in contract law, and it functions as a virtual discussion group. I started to write comments on the listserv. I started to exchange e-mail notes with other law professors. Sometimes when I read an article, I would send the author an e-mail with my reaction to it. Sometimes the author responded, and sometimes not. (See below on chutzpah.)

I commented so much on one of the blogs that its proprietor asked me if I was willing to consider being a "guest blogger," and I did it for a month in the summer of 2006. That led to my being invited to establish my own blog in one of the established networks.²⁴ When I finally showed up in the flesh at two large academic conferences, I knew people, and they knew me.

The point is that it would be wonderful to say that jumping back into academia is the result wholly of my inordinate scholarly talent, and the moment I started writing, the academic world began beating a path to my door. It's still far from doing that, but the fact is that you cannot do it alone. The network is crucial.²⁵

◆ *Ageism and Proving Yourself.* You hear the whisper of "age discrimination" in law professor hiring, and I cannot speak to it. I have never been in an appointments committee meeting, and have never heard anyone say that a candidate was rejected for being too old. I

24. Alan Childress, Mike Frisch and I co-edit *Legal Profession Blog*, part of the Law Professor Blog Network, available at http://lawprofessors.typepad.com/legal_profession/.

25. Here is a concrete example. I had prepared my resume in the "corporate" way, following the best advice from some of the best people in the corporate executive search firms. A law professor friend (one I had first met in an exchange of e-mails) asked if I might be interested in a visitorship at a well-regarded school. I said "yes," and he asked for my resume. I sent it to him, and got it back later, completely gutted and redrafted. What he taught me was that there is an academic style resume and a corporate style resume, and using the latter is like advertising you are not really part of the club.

think there is a connection between long experience as a practitioner and the qualities that might make one attractive as a faculty colleague, but there doesn't seem to be any way out of getting long experience without at the same time getting older.

It comes back to Brad Wendel's imperative: "repeat after me, it's a *writing* job." I think there may well be a presumption that a lawyer of twenty-five or thirty years' experience, wholly apart from capability, is not inclined to want to do the reading, data-crunching, footnoting, and cite-checking that comes with the job of being a faculty member. Having published a single scholarly article may establish capability, but I am not sure that it establishes credibility. The calculation runs like this. Individual faculty members bask in the reflected glory of their colleagues. In whatever ranking system you'd like to choose, faculty peer reputation is a factor to a greater or lesser extent, and showing yourself as a member of that faculty means something.²⁶ Most faculty members get tenure eventually, which means that the hiring decision is critical. The bane of academia is the non-productive but otherwise capable *tenured* faculty member. So when you are looking for that entry-level professorship at age fifty-five, and may not have tenure until you are sixty-one, the burden is on you to prove your will to continue producing fifty to seventy page articles with between one hundred fifty and four hundred footnotes at a pace of at least one per year, of sufficient quality (whatever that means) to be accepted for publication in a relatively well-regarded law review or peer-reviewed journal, for the indefinite future.²⁷

As I said, it's not about retiring.

◆ *Adjunct Teaching, Visitorships, and Proving Yourself.* Being an adjunct professor on top of a full-time job feels like (and is) a substantial commitment. But as a law professor put it to me bluntly early on in the game, "your adjunct chops will not mean anything." I suspect there's less unique about the culture of the faculty hallway than life-long academics believe, but perception here may be more important than reality. Adjunct teaching is certainly not the same thing as being a full-time tenure-track professor, and it's not even the same thing as being a visiting professor. And unless your adjunct experience is unusual, you have probably never done the following things: sat through (or, better yet, been a presenter at) a faculty brown bag or work-

26. This is also a heuristic.

27. A former appointments committee chair had this observation: "My experience is that we are just as quick to reject a young candidate who says the equivalent of 'I want to retire into teaching' as we are an old one. I have done so many times. It may be that the older ones give that answer more unabashedly and thus disproportionately reject themselves. But I have heard it from young ones and they are not hired no matter how much youth and vigor they display. The disqualifying statement is 'the hours at my law firm are too long.'"

shop;²⁸ attended a student-faculty mixer; had dinner at the dean's house; kibitzed in a monthly "book club" with several other members of the family; shared doorpost consultation with a colleague; had breakfast with an emeritus member of the faculty in the lounge one morning; and commiserated about a class that just ended and may have been the low point of your pedagogical experience.

To put it more positively, more and more entry level professors are coming out of what are known as visiting assistant professor, "VAP" programs.²⁹ Having done a visit, you look more like a typical candidate. If you can find a way to visit full time for a semester or a year, it goes a long way to proving your commitment to the quest, gets you a cadre of friends in the academy, and inculcates you in the lore and folkways. Perhaps as important, you get a sense of what matters to professors, and a chance to decide if this really was the right decision after all.³⁰

"TOTO, WE'RE NOT IN PRACTICE ANYMORE!"

There are many similarities between practice, the business world, and legal academia. If you have been a partner in a law firm, you may have a sense of some of the dynamics of a faculty – lots of smart people, each of whom thinks he or she is right, significant ability to make argument, huge egos, and leaders and administrators who view their jobs as herding cats. But there are significant differences, not the least of which is a regular encounter with naïveté or ignorance about the workings of the real world. I conclude with several random thoughts about stepping off the cliff from the real world into academia.

28. The primary difference between a "brown bag" and a "workshop" has to do with lunch and formality. At a workshop, the dean has authorized the expenditure of funds for lunch, and this usually ensures good attendance. The article idea is fairly far along, and may be accompanied by some kind of multi-media. The talk usually runs for twenty-five minutes, and if it is successful, it will generate at least another thirty minutes of questions. Workshops are important for advancement, but even more important because they are the format of the "job talk" you will have to give to get a job. A "brown bag" means you bring your own lunch. The substance could be as sketchy as an interesting thesis you want to brainstorm. Chances are that only your friends will come.

29. Visitorships come in several varieties. For entry-level professor wannabes, there are the formal "visiting assistant professor" programs. For established faculty, visitorships are common, and fall into two major categories: the "podium" visit, in which the visitor is doing nothing more than filling a curricular need at the visited school, and the "look-see" visit, which is serious business, because it means the visitor is under consideration for a permanent appointment. Don't worry about these distinctions because the chances that you are going to have a "look-see" visit are small. There are also differences in the way FACs and deans interact, both generally and from school to school, in the hiring of visitors, but that is too much detail for this essay.

30. I had a chance to do my "job talk" as a presentation to the Tulane faculty before I went on the road with it. One of my good friends on the faculty, Jancy Hoeffel, listened to me do a dry run of it the week before and had invaluable suggestions, not the least of which was to scrap the PowerPoint presentation I had made.

◆ *The competition for jobs is unbelievably strong.* I refer the reader again to Brad Wendel, and his “Wendel Test.” Look up the credentials of the youngest faculty members on what you would think are the law schools at the very bottom of the charts. Those professors are, almost uniformly, among the elite law schools’ elite former students. I had the good fortune of going to a law school that is considered “elite” and regularly sends a disproportionate number of its alumni into the academy (although I think, like many approaching their thirtieth reunion, that I could never possibly have gotten in under today’s standards and competition). The school “helps” its alums by sending a package of the resumes of its candidate alumni to every appointments committee chair, with a copy to the candidates themselves. One of the more discouraging moments in the process came when I compared my own credentials to these Ph.D.s, Supreme Court clerks, and Order of the Coif honorees, carrying references from the most distinguished law faculty in the country.

◆ *The opacity and randomness of the process.* The philosopher David Hume insisted there was no a priori principle of causation, only a learned expectation of consequences. We predict the billiard ball will ricochet in a particular direction, not because of some unseen law, but because that is what they always seem to do. After twenty-five or thirty years in practice or in business, we learn expectations from certain kinds of personal interactions. Friendliness and interest in an interview session, much less in the collegiality of a semester or year-long visitorship, impute hope of a continued relationship.

My far more experienced academic friends told me not to draw any conclusions about the hiring process on the basis of previous experience, and I continued stubbornly not to believe them until I experienced it myself. Nothing in your experience of hiring or firing or making business decisions will prepare you for being on the outside of the black box that is the faculty hiring process. Do not take anything at face value, and do not presume that you have a job until you have a phone call from the dean, after a faculty vote, informing you that you are being invited to join the faculty.

There are from five to ten faculty members in the room at the meat market interviewing you. Nothing is correlated to a call-back. Do not mistake vigorous interaction, smiles and nods, or a detailed discussion of how well your qualifications fit the school’s needs for anything other than what they are.³¹

31. I have partially theorized this as the “Bingo Illusion.” If you have ever played bingo in a large group, you may have this sense that you are likely to win because you have a number of lines with four spaces covered. But you are looking at it only from your own perspective. The game follows a normal distribution. The longer it has been in progress, the more people there are in the room who also have four spaces covered and are just as likely to win as you. It is the

I offer two personal self-deception anecdotes. I had become a cyber-friend of a very accomplished professor at a particular school, who, as it turned out, happened also to be the chair of the appointments committee for the 2005 FRC. About ten days before the FRC, she called to tell me that in fact the committee was interested in seeing me. The problem was that the committee only had time slots left at 8:30 a.m. and 3:30 p.m. on Saturday. Timing your interviews is the subject of much lore. Some people insist Friday afternoons and Saturday mornings are the best. Many people consider Saturday afternoon the death zone, on the theory that everybody is burned out at that point.³² My friend offered me these two times, and I already had an interview booked in the morning. So I said, "I will take the afternoon interview, but on the condition that I promise to supply the energy." We chuckled together about that.

I thought the interview went swimmingly. People complimented my work. People smiled and nodded. But I did not hear back from my friend. That is, I learned, customary. Rarely does anybody get back to you for anything other than a callback. In many cases, you missed the first cut, but the committee doesn't want to let you go in case it needs to go to the B team, and it doesn't want to tell you that you are on the B team, even though it's clear that if you don't get called in the first week after the FRC, you are either out of the game or on the B team. Some weeks later, I called her. After an uncomfortable moment, she said, "it really didn't go well at all. A number of the committee members thought you were hyper and unfocused."

In 2006, I had a callback to a well-regarded school that came by way of a phone call from the committee chair as I was sitting in the departure area at Dulles the very afternoon of the FRC screening interview. The committee chair, a couple other people, and I had hung out in the bar at the Wardman Park Marriott the night before the interview. I had the sense I was actively being recruited. The school was adamant that I show up for the callback in the next week so that it could vote at its faculty meeting in the day or two after that. Again, the callback went swimmingly. One of the assistant deans drove me around residential neighborhoods. As I was leaving, the academic dean all but told me I was the perfect person to fill the school's needs. And then there was silence for a week. I got an ambiguous handwritten note from the committee chair telling me how much the school had enjoyed my visit. But there was still silence. I learned later that a lateral can-

same in the interviewing process. The school is talking to thirty people. At least twenty of them are getting the same smiles, nods, and vigorous interaction you are.

32. Just to prove that none of these rules are worth much, my successful interview process with Suffolk began with an interview at 2:30 p.m. on Saturday.

didate had entered the game on short notice, interviewed the day after me, got the first offer, and ultimately took it.

As I said, it's likely, in the course of a long career, that you have formed a sense of expectation based on certain kinds of social signals. Nothing in the collective process by which a faculty, as the committee of the whole, decides on new faculty, resembles the orderly way you are used to seeing hiring decisions get made. Deal with it.

◆ *The power of chutzpah.* I have made several career changes along the way, some bigger and some smaller. In each case, early in the transition, it seems like everything you say or ask is going to sound naïve or stupid. For example, having spent the first ten years of my career as a litigator, and then switching cold turkey to mergers and acquisitions, the first time I encountered the negotiation of legal opinions in a transaction, I hesitated before asking the "stupid" question: "Why in God's name would you ever agree to do this?" When I left the law firm and joined a manufacturing corporation, I barely understood the jargon. It took a while to discover that very few of my stupid questions were as stupid as I thought they would be. In making the jump from legal practice to legal academia, that feeling exists as though it were enhanced by steroids.

Given the hurdles and the odds against success, I don't see any alternative to sucking up one's courage and chutzpah, closing one's eyes, and jumping in. If your questions, comments, and viewpoints are interesting and meaningful, people will respond. If they aren't, it probably wasn't meant to be. Don't be inhibited by credentials or book jackets. The academic world divides into two groups: those who will give you the courtesy of a response to your e-mail and those who won't. Most law review articles don't get read. People like praise and attention. If you read a book or an article, and have a viewpoint (it helps to start with some praise and to suggest how you have learned from it), send the author a note. You have nothing to lose but your anonymity.

THE BOTTOM LINE

It's hard to be encouraging about this. The odds of success are far higher if you look to satisfy the urge to teach as an adjunct professor or as a clinician. I have an inordinately healthy ego and experienced some of my lowest lows along the way. (After the "hyper and unfocused" phone call, which I happened to take on my cell phone in the lobby of the Indiana University Law School in Bloomington, I looked for an isolated spot in the library where I could quietly curl into the fetal position.) And most of the highs are illusions.

As I write this, I am exactly one week short of my fifty-third birthday, and I still steel myself for the most difficult thing for me: getting feedback that conflicts with the illusion that I am a perfect person. One of the wonderful things, I would guess, about retiring, particularly for us Type-As, is that we would no longer have to deal with that sinking feeling in the pit of our stomach when the negative evaluations come. And they will. Students will spot that you are a rookie teacher, despite your real-world experience, and reflect it in your evaluations. You will receive fifty rejections from law reviews for each article you place. You will be ignored in the recruiting process by the vast majority of law schools. And that is the exciting part. You will work long, hard hours slogging through class prep, sitting in faculty meetings, serving on committees, and worst of all, grading.³³ At this point in one's life, who needs it?

The answer is: not a retiree. The work is too hard and too personal. You must create a track record of a commitment to writing and a commitment, whether by taking a visitorship or otherwise, to earning the respect, if not the comradeship, of those who followed the road you chose not to take many years ago. But if you have a burning need to write something important, if you have the gumption to insert yourself into a world where every person's qualifications will seem superior to your own, if you have an ego that is sufficiently resilient to rebound from repeated rejections, and the time and financial resources to prove that being a law professor is the most important thing you could do: the rest of your career stretches ahead of you.

33. I can no longer attribute the source of this quote: "Law professors work for free, and get paid for grading."