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# Advice for the Beginning Legal Scholar

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## ADVICE FOR THE BEGINNING LEGAL SCHOLAR

*Alfred C. Yen\**

Advice on how to develop a scholarly agenda begins with a discussion about why you, the new law teacher, would want to write in the first place. Two motivations come to mind. First, your writing advances the state of human knowledge. Second, you must write to keep your job. Most universities consider scholarship a prerequisite for the granting of tenure. Law schools themselves generally set a "tenure standard" of two to three articles.

As a new law teacher, you may find the task of writing imposing. As a tenured faculty member once told me: "It's not easy when they put a blank pad of paper in front of you and tell you to fill it up with interesting ideas." Fortunately, I firmly believe that a little advice can greatly enhance your chances of making a real contribution to knowledge and meeting the standards at your institution. A lot of this advice was given to me by colleagues at my institution who were very supportive of my progression to tenure. The rest comes from personal experience and articles (see why it's important to publish?) I have read about scholarship.<sup>1</sup> I pass this advice on in the hope that you will find it useful.

Let me start with the mundane. The beginning scholar must find time to write. At first blush, this might seem easy. After all, you only have six hours of class to teach each week, and that leaves plenty of time. Unfortunately, things do not always work out this way. Most new law teachers find the first year of teaching very time consuming and burdensome. Issues you dismissed as unimportant in law school become important because you realize that

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1. The article that I have found most helpful is Robert H. Abrams, *Sing Muse: Legal Scholarship for New Law Teachers*, 37 J. LEGAL EDUC. 1 (1987). For other writings on the subject, see Mary Kay Kane, *Some Thoughts on Scholarship for Beginning Teachers*, 37 J. LEGAL EDUC. 14 (1987); Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926 (1990); Aviam Soifer, *MuSings*, 37 J. LEGAL EDUC. 20 (1987); A humorous look at legal academia, including scholarship, is James D. Gordon, III, *How Not to Succeed in Law School*, 100 YALE L.J. 1679 (1991).

your students will ask you about them. Your study time will expand to fill all of the available space. I recommend three strategies for responding to this problem.

First, leave you summers completely free. Do not consult. Limit bar activities. Do not take month-long vacations. Do not teach in summer school.

Second, manage your teaching load wisely. Teach in areas you want to write about and do not change subjects until you have published successfully. New course preparations take an extraordinary amount of time.<sup>2</sup> If possible, take a light teaching load or, preferably, apply for research leaves if they are available at your institution.

Third, watch your committee assignments. You will be asked to join all sorts of committees. Make sure you do your fair share, but resist assignments to more than one extremely busy committee such as appointments, admissions, or educational policy. If you do not politely decline, you may never get a chance to do anything else. Your teaching and your research will both suffer, and they count more for tenure than committee work. When declining, explain why—if your dean is sympathetic and values research.

Having now given yourself the chance to write, you must choose an appropriate project. For purposes of this essay, I will arbitrarily divide the possibilities into four groups, listed below in ascending order of magnitude:

- I. Practice oriented materials for continuing legal education, bar journals, and practice manuals. This may include digests or summaries of recent opinions or cases being litigated.
- II. Academic "short subjects"—essays, book reviews, and casenotes.
- III. Law review articles.
- IV. Books

At the outset, let me say that all of these projects are worthwhile. All could be the start of a productive and enjoyable academic career. Nevertheless, I would advise you to start your scholarly career by producing a law review article of manageable size,

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2. Also, your teaching will get better as you stay with a course. It takes several tries to learn how to teach a course effectively. If you avoid switching classes, your teaching will look better when it is reviewed by your tenure committee.

perhaps 35-60 pages. This is because larger and smaller projects carry substantial risks which may harm your chances for tenure.

As a general rule, smaller projects—particularly practice oriented writing—often do not count for purposes of tenure. Tenure committees generally look for scholarship which is “analytical.” Despite the “I know it when I see it” problem,<sup>3</sup> most faculty think that “analytical” means going beyond a cursory description of cases and how they might affect practice. Instead, they want some attempt to confront a sizeable legal problem, some dissection and synthesis, and some conclusion or recommendation. Many want to see some connection to a broader theme in law.<sup>4</sup> Writings which address the law at this depth are usually large enough that their primary publication occurs in law reviews. Indeed, rightly or wrongly, many faculty members use placement in these journals as a proxy for meeting tenure standards.

On the other side of the spectrum, extremely large law review articles<sup>5</sup> and books certainly count for purposes of tenure, but they carry risks of their own. It can take years to research and write a book. If you start a book as a beginning scholar, you may not finish it within the six or seven year deadline many universities place on untenured faculty. Even if you do finish the book, there is no guarantee that outside reviewers will like it. If they do not, you will not have time to produce additional writings to satisfy tenure requirements. Furthermore, if you fail to publish relatively early in your career, you risk creating the impression that you are not serious about publishing. This can ruin your chances for tenure if the vote becomes close.<sup>6</sup>

The foregoing problems illustrate why I recommend starting with law review articles of moderate length. Since they are analytical and substantial, tenure committees are happy to count them in the tenure equation. Since they are not too long, you can write them in a reasonable amount of time. Writing two or three articles in seven years is easier to do than writing a book in the same

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3. Academics always argue about how best to define “quality” in a work of scholarship. For a recent discussion, see Stephen L. Carter, *Academic Tenure and “White Male” Standards: Some Lessons from the Patent Law*, 100 YALE L.J. 2065 (1991).

4. For a more complete discussion, see *infra*.

5. These are articles the length of books.

6. This is not to say that you should not think about writing books. Writing a book is the logical conclusion of years of research. The problem for the beginning scholar is that she or he may not have the time it takes to write a good book. For this reason, it makes sense to postpone writing books until after you have the security of tenure.

amount of time. Showing your first article to others in your field will give you valuable feedback which will improve your later efforts and increase your chances for a high-quality publication record. Finally, a regular pattern of publication lets people know that you are a serious and active scholar.

If you decide to write a law review article as your first effort at scholarship, your first challenge will be selecting a topic. With luck, you already have topics which you have been interested in researching from the day you decided to apply for a law teaching job. If you are like others, however, you will have to choose your topic from many possibilities. Your inspiration can come from various sources. Ambiguities in teaching materials often suggest good articles. Doctrinal conflicts and policy conflicts often lead to productive areas of inquiry. Newsworthy decisions offer excitement and inspiration, while unsatisfactory explanations in treatises or existing law review articles provide opportunities to join academic conversations about topics of interest. Even unresolved issues you encountered in practice can provide good subject matter for articles. Finally, attending conferences exposes you to topics which are considered "hot" in your field.

As far as choosing among the possibilities you turn up, I have two pieces of advice. First, write about something which genuinely interests you. Do not write about something because you feel obligated to do. For example, minority professors often feel pressured to write about race relations. If you want to write about this topic, and have something to say, do it. On the other hand, if your interest is the effect of capital gains on shareholder behavior, do that instead. Writing out of obligation only compounds the difficulty of turning out successful scholarship and your lack of interest will make writing a chore. Moreover, allowing others to set your topics detracts from your own growth as a scholar.

Second, avoid subjects that your faculty may not count as sufficiently academic. An article about law school admissions may greatly interest you and be of great value, but most faculties would not give such an article great weight in the tenure process.

Now that you have a topic in hand, you can begin the process of researching and writing. I find it difficult to give firm advice on the actual production of your article. Some people keep detailed, organized notes of all the research they do, and every source is kept on an index card with each card residing in an appropriate

stack. Others make notes in the margin of things they read and then throw them into loosely organized piles around their offices for later reference.<sup>7</sup> Similarly, some manage to write footnotes while drafting the text of their works while others can footnote only after writing all of the text.<sup>8</sup> There are, however, a few things you can do while writing your first article that will make it easier for you to write your later ones.

First, your research will undoubtedly spawn a lot of ideas. Analytical problems which affect hearsay may also affect character evidence. An approach which works well in torts might also look very plausible in contracts. In many cases, these ideas will not fit into your present article. Whatever you decide, do not lose these ideas! Write them down, for these ideas can be the subject of future articles.

Second, try to study your subject from non-doctrinal perspectives such as critical race theory, law and economics, critical legal studies, legal history, law and society, and feminism. As noted earlier, most tenure committees want your articles to offer more than a purely doctrinal analysis. Each of these methodologies represents a way of connecting your work to major currents in legal scholarship. Even if you do not become a "convert" to one of these perspectives, the understanding you gain from considering them will enrich your future scholarship. Indeed, non-doctrinal methodologies influence much, if not most, of today's "cutting edge" scholarship.

Finally, remember to have fun. Any essay like this runs the risk of turning scholarship into a chore with mercenary objectives like job retention and scholarly prestige. Without question, these considerations are important, but they should not obscure the fact that many of us entered law teaching because we wanted time to consider and comment on legal issues. It may sound strange, but reminding yourself about why you entered law teaching can help you persevere when the task of writing seems insurmountable. Good luck with your scholarship. May you publish early, often, and successfully.

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7. A visit to my office will confirm that I belong firmly in the latter class.

8. Personally, I write incomplete footnotes as I go along. If I do not leave some record of my sources, I find it difficult to reconstruct my thinking at a later date.

