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”Dog Days in the Law Library”: Philosophical, Financial, and Administrative Issues Raised by Faculty Summer Grant Programs

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“DOG DAYS IN THE LAW LIBRARY”: PHILOSOPHICAL, FINANCIAL, AND ADMINISTRATIVE ISSUES RAISED BY FACULTY SUMMER GRANT PROGRAMS

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I. INTRODUCTION

Our law school has a faculty summer grant program,¹ as do most law schools.² Our program’s rules, set out in the appendix to this article, are

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1. Our law school was founded in 1974 and began its summer grant program in 1982 after a faculty member, who had recently returned from a visit at Southwestern Law School, reported on its system to our dean. The first work funded was a book about the nation’s drug epidemic. *See* STEVEN WISOTSKY, *BREAKING THE IMPASSE IN THE WAR ON DRUGS* xxi (1986) (“Former Dean Ovid Lewis . . . selected my book proposal in a competition for a summer research grant, liberating me from the financial necessity of teaching summer school to pay the mortgage. That support conferred upon me an exceptional opportunity to read and think about my subject free of mundane distractions.”).

2. Officially, it is unclear just how many law schools have faculty summer grant programs. Anecdotally, however, it appears only a few do not have them. *See, e.g.*, ASSOCIATION OF LEGAL WRITING DIRECTORS & LEGAL WRITING INSTITUTE, 2012 SURVEY REPORT xii, *available at* <http://www.lwionline.org/uploads/FileUpload/2012Survey.pdf> [hereinafter 2012 ALWD-LWI Survey] (reporting that of the 153 law schools fully completing the survey, 147 had summer grant programs).

It is also unclear exactly when law schools first started offering summer grants. However, in a 1961 study, “two institutions reported the availability of summer research grants which relieve the faculty member from the pressure of having to engage in other money-producing pursuits in summer months.” ASSOCIATION OF AMERICAN LAW SCHOOLS—

simple in theory: interested professors submit applications in January, get funded in June, and are expected to have a completed manuscript sometime thereafter. In practice, however, the program has raised a host of knotty philosophical, financial, and administrative issues. Because these issues have also bedeviled other law schools,³ and as almost nothing has been written about summer grant programs for law professors,⁴ we examine the subject in greater detail below.

SPECIAL COMMITTEE ON LAW SCHOOL ADMINISTRATION AND UNIVERSITY RELATIONS, ANATOMY OF MODERN LEGAL EDUCATION: AN INQUIRY INTO THE ADEQUACY AND MOBILIZATION OF CERTAIN RESOURCES IN AMERICAN LAW SCHOOLS 389 (1961) (the study does not reveal the identity of either school). The earliest law review article that we have been able to find that specifically mentions being funded by a summer grant is Rodolfo Bati-za, *The Unity of Private Law in Louisiana Under the Spanish Rule*, 4 INTER-AM. L. REV. 139, 139 n.* (1962) (“The writer expresses deep appreciation to the Council of Research, the School of Law and the Institute of Comparative Law, Tulane University, for a Summer grant which made it possible to undertake research in the General Archives of the Indies, Seville, Spain on which the present article is principally based.”).

3. See, e.g., Erik Gerding, *Summer Research Policies*, THE CONGLOMERATE, May 31, 2011, at <http://www.theconglomerate.org/2011/05/summer-research-policies.html> (asking readers “are summer research [grants at your law school] given on merit or are they treated as essentially a salary supplement? If they are given on merit, how is merit measured? Based on whether past grants have yielded scholarship? Based on the placement success of past law review articles? Are the untenured given any preference? What accountability is required after the summer is over? Do recipients have to submit their work to the administration? Present at a faculty colloquium?”).

4. We are surprised that no previous article has focused on such grants, given that the subject is among the ones that regularly preoccupy law school faculties:

Another cause for decanal celebration is finding a faculty member who can disagree with his or her colleagues—and the dean—without being disagreeable during the often heated annual debates in faculty meetings over such issues as faculty class schedules, teaching loads, first year class size, admission standards, faculty and student diversity matters, summer research grants, resources devoted to clinical programs, and the ever-present discussions about how the school can best move up in the *U.S. News & World Report* rankings of law schools.

James K. Robinson, *Tribute to Joseph D. Grano*, 46 WAYNE L. REV. 1289, 1295 (2000). See also Clark Freshman, *Lie Detection and the Negotiation Within*, 16 HARV. NEGOT. L. REV. 263, 265 (2011) (“I asked [the dean] again about how he considered . . . ‘pay’ and how it might include other items like ‘summer salary’ or ‘grants’ or ‘bonuses[.]’”); Paul M. Secunda, *Tales of a Law Professor Lateral Nothing*, 39 U. MEM. L. REV. 125, 147 (2008) (“[T]he sweetness of [a lateral] offer can be made especially sweet if summer grants and travel budgets are not only generous, but guaranteed for a few years after your arrival . . .”).

Apparently, summer grants also preoccupy other types of academicians:

[While serving as the dean of the law school,] I once attended a glamorous dinner, at the residence of [the] university president, to honor a [non-law school] professor who was retiring. The food was excellent, the speeches and tributes moving, and the recognition of a life’s work impressive. But the professor, enjoying the moment, still confessed to me his deepest reaction: fury at having been denied a summer grant by an administrator more than a decade before. Academic institutions, law schools included, inspire long memories and injured egos more than most other workplaces.

Kent Syverud, *Three Principles of Effective Deaning*, 31 U. TOL. L. REV. 751, 752 (2000).

II. PURPOSE

According to our law school's rules, summer grants "provide financial support for research projects."⁵ This somewhat ambiguous statement has led to four competing views as to the program's purpose.

Because we are on nine-month contracts,⁶ some faculty members see the program as largely a salary supplement. As such, they believe that all professors who want a summer grant should receive one. They also feel that just about any project will do and are not terribly concerned with the finished product. Thus, surveys, chapter updates, and the like are all acceptable.

Other faculty members regard the program as a home for "big ideas." To them, only truly groundbreaking proposals should be funded (with a strong preference given to books), even if they turn out to be so grand, or so complex, that they never come to fruition.⁷

The third group considers the program a way to enhance the reputation of the law school. These folks, with their sights set firmly on moving up in

5. See Appendix at VI.B.1.

Although we have never done it, we know of at least one law school that has considered the idea of setting aside summer grants for specific types of research. See *SMU School of Law, Centre for NAFTA and Latin American Legal Studies—Background Information*, 4 *NAFTA: L. & BUS. REV. AM.* 23, 26 (Winter 1998) (discussing the possibility of setting aside funds for summer grants "into NAFTA, Latin American and Caribbean related subject matters[.]").

6. The majority of law professors, of course, are on nine-month contracts:

The traditional period for most law faculty appointments is nine months. At many schools, particularly those giving faculty summer research grants, a tenure-track teacher will devote at least part of the three remaining months to scholarly pursuits; the normative expectations are that a teacher will be prepared, regardless of how the summer is spent, to teach his or her courses once the academic year begins.

Jan M. Levine, "You Can't Please Everyone, So You'd Better Please Yourself": *Directing (or Teaching in) a First-Year Legal Writing Program*, 29 *VAL. U. L. REV.* 611, 632 n.68 (1995).

Interestingly, a law professor's nine-month contract proved crucial to the plot of the 1942 film *The Talk of the Town* (Columbia Pictures). As the movie opens, Michael Lightcap (played by Ronald Colman), a faculty member at Boston's Commonwealth Law School, is seen arriving in the small town of Lochester. Upon meeting his new landlady Nora Shelley (Jean Arthur), he tells her, "I've just finished teaching, for nine months 400 weary young men the rudiments of law, Miss Shelley." *ARK TV, Talk of the Town—Transcript*, at 00:03:48, available at [http://livedash.ark.com/transcript/according_to_jim-\(the_stick\)/13/KOFY/Monday_April_12_2010/190281/](http://livedash.ark.com/transcript/according_to_jim-(the_stick)/13/KOFY/Monday_April_12_2010/190281/). The next morning Shelley turns away various visitors by explaining, "Professor Lightcap came here for a quiet summer. He wants to write a book." *Id.* at 00:21:46-00:21:48. Lightcap's plans went awry, however, after he became involved in a local murder trial and a love triangle with Shelley and the accused, a political activist named Leopold Dilg (Cary Grant).

7. In defending this view, one of our colleagues once remarked (as best as we can now recall), "After you finish the great American novel, stick it in a desk drawer. After all, the challenge is in the writing—not the publishing."

the *U.S. News & World Report* rankings, prefer to fund articles that are likely to be completed in a timely fashion and have a realistic chance of appearing in a top law review.⁸

The final faction looks at the program as a way to help faculty members who do not have time to write during the school year⁹ or are new to the academy and just beginning to write. Like the salary supplementers, this wing is not terribly concerned with what is produced but does hope that by having a block of time to devote to scholarship the recipients will catch “the writing bug” and be eager to tackle future projects.¹⁰

One point on which all four groups agree is that summer grants are only available for projects that will produce a tangible work product.¹¹ As a re-

8. This is probably the view held by most law professors. See Edward Gordon, *Roundtable on Prospects for Publishing in International Law*, 85 AM. SOC'Y INT'L L. PROC. 522, 533 (1991) (“If you are in academic life and are going for tenure, or if you already have tenure but have a summer grant that you need to justify, you are going to be somewhat limited in your choice of journals in which to publish and formats to use. So far as I am aware, doing short, pithy case notes, intellectually stimulating or not, gives you no professional credit whatsoever.”). See also Bridget Crawford, *If Steve Jobs Had Been a Law School Dean*, THE FACULTY LOUNGE, July 26, 2012, at <http://www.thefacultylounge.org/2012/07/if-steve-jobs-had-been-a-law-school-dean.html> (quiz involving a fictional law school dean who refuses “to give Professor X a summer research grant to support yet another bar magazine publication”).

9. Because of the nature of their jobs, legal research and writing teachers rarely find it possible to write during the year. See Susan P. Liemer, *The Quest for Scholarship: The Legal Writing Professor's Paradox*, 80 OR. L. REV. 1007, 1008 n.2 (2001) (“I would like to thank Southern Illinois University School of Law for providing the summer grant that made it possible for me to have time to write this summer. Without that grant it is likely I still would not have had the time to write about finding the time to write.”).

10. At least some faculty members do catch the writing bug. After one of our colleagues published her first article with the help of a summer grant, she exclaimed (as we remember it), “Once you see your name in print, you just can't wait to get started on the next article.”

Admittedly, there is a danger in giving summer grants to faculty members early in their careers, as they may become crutches. Although we have worried about this possibility, we have accepted the risk. Other law schools have done likewise. See, e.g., James Lindgren, *Fifty Ways to Promote Scholarship*, 49 J. LEGAL EDUC. 126, 135 (1999) (“New faculty should receive grants automatically their first summer—like a smart drug dealer, you want to get them hooked.”); Ruth Fleet Thurman, *A Remembrance of Dean W. Gary Vause*, 33 STETSON L. REV. 89, 89 (2003) (“I mention my assignments—all of which I vividly remember and loved—as an example of the heavy demands on teachers in the mid-1970s. These were the days before new teachers were given lighter teaching loads and summer research grants. Most of us taught summer school to make ends meet.”).

11. See Appendix at VI.B.1. This is true elsewhere. See, e.g., Frederick M. Lawrence, *Jack Friedenthal: A Scholar, a Teacher, and a Dean's Dean*, 78 GEO. WASH. L. REV. 3, 5 (2009) (“Jack's signature program[,] designed to enhance the scholarly life of the school and the productivity of the faculty[,] was the institution of summer research grants, a program that still exists at the Law School today. These grants are contingent on the production of a manuscript of a law review article, a book chapter, or the like.”).

sult, our rules state that the following activities do *not* qualify for summer grants: “(1) attendance or participation in summer conferences; (2) advanced academic study; (3) teaching; (4) working in clinical programs; (5) activity or travel as a director, reporter, advisor or consultant to a professional project, publication or conference; (6) programs of summer reading or “enrichment”; and (7) class preparation.”¹²

One issue we have only begun to face is whether summer grants are available for works that will appear only in blogs. We have had just one such application, and it was approved and funded. Of course, law schools have been struggling for some time over whether such works constitute scholarship. For an examination of the issue from multiple perspectives, see Symposium, *Bloggership: How Blogs Are Transforming Legal Scholarship*, 84 WASH. U. L. REV. 1025 (2006). See also Steven Keslowitz, *The Transformative Nature of Blogs and Their Effects on Legal Scholarship*, 2009 CARDOZO L. REV. DE NOVO 252 (2009).

12. See Appendix at VI.B.1. Faculty members at our law school who are interested in these activities can use their individual faculty development allotments (currently \$1,850 a year) or seek funding from our dean’s office.

Other law schools’ summer grant programs similarly favor scholarship over teaching. See, e.g., Gordon A. Christenson, *Scholarship and Teaching After 175 Years*, 76 U. CIN. L. REV. 1, 11 (2007) (“One of the strongest signals of dedication to faculty scholarship was [my] controversial decision [while serving as dean of the University of Cincinnati law school in the 1980s] to eliminate summer classes in favor of summer faculty research grants with funded student assistants. Some excellent teachers who taught summer classes for extra compensation were upset. But it gave the scholars good incentives to finish works in progress and begin new ones.”).

The notion that summer grants should be available only for scholarship is not universally-shared. See, e.g., Donald B. King, *Commercial Law: Times of Change and Expansion*, in COMMERCIAL AND CONSUMER LAW: NATIONAL AND INTERNATIONAL DIMENSIONS 121, 145 (Ross Cranston & Royston Miles Goode eds. 1993) (“Law schools should also consider giving commercial-law professors summer grants, not with the requirement of researching and writing an article or book, but for the study and learning of their greatly changing and expanding subject.”); Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 99 (2010) (“In addition, law schools should provide summer ‘teaching grants’ that provide the same level of compensation as summer research grants. This would permit teachers to develop effective assessment programs that can become an integral part of their teaching.”); Lea B. Vaughn, *Integrating Alternative Dispute Resolution (ADR) Into the Curriculum at the University of Washington School of Law: A Report and Reflections*, 50 FLA. L. REV. 679, 690 n.31 (1998) (“In most law schools, summer stipends or grants are to be used solely for research. Law schools may want to reconsider this policy. In the current period of curricular upheaval, it may be well worth temporarily, if not permanently, diverting some research dollars to funding efforts that improve teaching and curriculum.”). See also Christian C. Day, *The Case for Professionally-Edited Law Reviews*, 33 OHIO N.U. L. REV. 563, 586 (2007) (suggesting that a portion of the money currently used for summer grants be redirected to faculty who serve as law review advisors); Michael Millemann, *The Institutional Barriers and Advantages Panel*, 39 WM. & MARY L. REV. 489, 502 (1998) (discussing the possibility of using summer grants “to support teachers who agree[] to develop and teach . . . new ethics units.”).

III. ELIGIBILITY

All faculty members are eligible for summer grants at our law school. But because our rules do not clearly define the word “faculty,” questions have arisen with respect to: (a) adjuncts; (b) visitors; (c) administrators; (d) legal research and writing teachers; (e) clinicians; (f) academic support instructors; and, (g) departing faculty members.¹³

We do not allow adjuncts to apply for summer grants. However, our dean recently began holding talks with an individual who is interested in funding adjuncts who want to conduct research. It is too early to know what will become of this idea.¹⁴

We likewise do not give summer grants to visitors, although we are occasionally asked. It has been our feeling that visitors should receive grants from their home institutions.

At one time, faculty members serving as administrators on 12-month contracts were assumed to be ineligible for summer grants, inasmuch as our grant rules require recipients to devote a minimum of eight weeks to their projects.¹⁵ However, when the issue was actually raised, we decided that applicants should not be penalized for their administrative service.¹⁶

13. Because we are still a relatively young law school, we have not faced the question of whether emeritus faculty members are eligible for summer grants. For an example of a law school funding such a professor, see Ludwik A. Teclaff, *The River Basin Concept and Global Climate Change*, 8 PACE ENVTL. L. REV. 355, 355 n.* (1991) (“Professor of Law Emeritus, Fordham University School of Law. The author wishes to acknowledge receipt of a summer research grant from Fordham University School of Law which aided in the writing of this article.”).

14. Providing support for practitioners who want to write would help, at least in a small way, bridge the gap between the academy and the bar. Cf. Yale Kamisar, *Why I Write (and Why I Think Law Professors Generally Should Write)*, 41 SAN DIEGO L. REV. 1747, 1756 (2004) (“The distance between professors and practitioners grows still wider when one remembers that practicing lawyers are not awarded research leave or summer grants in order to write.”).

15. See Appendix at VI.B.3 ¶ 1.

At other law schools, it appears that administrators are still prohibited from receiving summer grants. While discussing his book *The Vanderbilt Law School: Aspirations and Realities*, Associate Dean D. Don Welch noted, “Then there is the question of pay. For me, this was my scholarly activity, so I continued to draw my regular salary and did not expect any additional pay. Those of you who are on nine-month appointments, however, should arrange to get a summer research grant so you are not forced to teach while trying to work on your book.” *Law School Histories: A Panel Discussion*, 32 CAMPBELL L. REV. 311, 319 (2010).

16. We currently have six faculty members serving in the following 12-month positions: dean; associate dean—academic affairs; associate dean—international programs; associate dean—critical skills program; associate dean for AAMPLE and online programs; and assistant dean—law library and technology center.

Like most law schools, our legal research and writing teachers are eligible for summer grants.¹⁷ Our clinicians are also eligible.¹⁸ However, our academic support instructors are not.

In a few instances, we have awarded grants to faculty members who later announced that they would be leaving us for one reason or another. Except in unusual circumstances, we have required them to forfeit their grants.

IV. APPLICATION

At our law school, summer grant applications are initially handled by the Faculty Development Committee ("FDC").¹⁹ Early in the fall semester, the FDC asks for non-binding "expressions of interest."²⁰ In addition to getting a sense of who might be interested in a summer grant,²¹ the FDC's inquiry gets folks to start thinking seriously about their projects.²²

17. According to the ALWD-LWI, legal research and writing teachers are eligible for summer grants at 104 law schools. See 2012 ALWD-LWI Survey, *supra* note 2, at xii.

18. Like legal research and writing teachers, clinicians have sought to be included in summer grant programs. See, e.g., Douglas L. Colbert, *Broadening Scholarship: Embracing Law Reform and Justice*, 52 J. LEGAL EDUC. 540, 541 (2002) ("We view institutional support, such as summer research grants, as an important affirmation of our scholarship."). But as they have pointed out, to achieve maximum effectiveness such programs need to take into account their specific circumstances:

Every spring, the dean circulates a notice to the faculty regarding applying for summer research grants. Funding is set aside for this purpose in order to encourage scholarship. Faculty may also teach in the six-week summer program for additional pay. Although the clinic faculty are free to teach summer school or to apply for research grants, neither option is particularly attractive to those of us who are already working full-time during summers . . . managing continuing case loads[,] including some big cases, while also overseeing clinic grant-mandated community service and training activities. Albany appears to be typical of other law schools in this regard. Perhaps the summer stipend should be made available, by application, to clinic faculty for significant summer clinical work or "clinical scholarship." Such scholarship could include significant case activity, the development of new clinical courses or programs, or other major clinic projects.

Nancy M. Maurer, *Handling Big Cases in Law School Clinics, or Lessons From My Clinic Sabbatical*, 9 CLINICAL L. REV. 879, 897-98 (2003) (footnotes omitted).

19. The FDC is one of our nine standing faculty committees. Its composition changes annually and all faculty members are eligible to sit on it (and are limited to three years of consecutive service).

20. See Appendix at VI.B.2 ¶ 1.

21. Because who writes affects who is available to teach summer school, the FDC works closely with the associate dean for academic affairs during this phase of the application process. The importance of maintaining a good balance is clearly illustrated by what happened at the University of San Diego. Its in-house criminal clinic folded in 1995 when it became impossible to find enough faculty members to act as supervisors, in part because of summer grants:

Even with only three students per instructor, supervision of the in-house clinic was enormously time-consuming. Given the demands of tenure and various pay incentives (including merit pay

Completed applications are due by January 31.²³ Pursuant to our rules, an applicant is expected to describe his or her project; explain what type of tangible work product will be produced; indicate when the project will be finished; and list all prior grants (and their outcomes).²⁴

At one time, we permitted both “alternative projects” and “multiple projects” applications. Now, however, we insist that applicants pick a single project.²⁵ Somewhat surprisingly, our rules do not require applicants to list any potential conflicts of interest.²⁶

The FDC typically meets in February to review and vote on the applications.²⁷ Although our rules do not contain express guidelines, over the years the FDC has developed a three-part test: 1) does the project appear to have

increases and summer research grants), instructors became more interested in producing scholarship than cooling their heels in courtroom hallways.

Jean Montoya, *The University of San Diego Criminal Clinic: It's All in the Mix*, 74 MISS. L.J. 1021, 1025 n.11 (2005).

22. It appears that more advanced planning is necessary at some law schools: “Eligibility for summer research grants [at the University of Illinois College of Law], for example, is tied to demonstrated research productivity during the prior two academic years.” Thomas M. Mengler, *Celebrating the Multiple Missions of a Research I University-Based Law School*, 31 U. TOL. L. REV. 681, 682 n.4 (2000).

23. See Appendix at VI.B.2 ¶ 2. If January 31 falls on a Saturday, Sunday, or holiday, applications are due on the next business day.

Our rules do not indicate what penalty, if any, attaches to a late application. By longstanding practice, the FDC accepts late applications but places them “at the back of the line” for funding priority purposes.

24. See *id.* Similar requirements are in place at other law schools. See, e.g., Richard C. Boldt, *Public Education as Public Space: Some Reflections on the Unfinished Work of Marc Feldman*, 61 MD. L. REV. 13, 18 n.26 (2002).

25. Other law schools, however, allow such applications. See, e.g., Gordon G. Young, *Federal Maritime Commission v. South Carolina State Ports Authority: Small Iceberg or Just the Tip?*, 47 ST. LOUIS U. L.J. 971, 971 n.* (2003) (“Special thanks are due . . . the Dean of the [University of Maryland] School of Law for a summer grant that funded, among other research, work on this article.”); Steven H. Resnicoff, *The Attorney-Client Relationship: A Jewish Law Perspective*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 349, 349 n.* (2000) (“I express my gratitude to the DePaul University College of Law for the 1999 summer research grant that enabled me to write this and other articles about Jewish law.”).

26. Thus, for example, we do not require applicants to disclose that they plan to use their grant to write an article to help a law firm that has retained them as an expert witness. However, such a conflict might have to be disclosed when filling out our university’s annual employee conflicts form. See Nova Southeastern University, *Conflicts of Interest Declaration & Disclosure Statement*, available at http://www.nova.edu/cwis/hrd/orientation/forms/conflicts_interest.pdf. For a further discussion of the issue, see, e.g., Shireen A. Barday, Note, *Punitive Damages, Remunerated Research, and the Legal Profession*, 61 STAN. L. REV. 711 (2008).

27. It frequently happens that a committee member is also a grant applicant. In such cases, the person is excused from the room when his or her application is being considered.

“scholarly promise”?; 2) will the project require at least eight weeks of sustained effort?; and, 3) is the project capable of completion in a reasonable amount of time?²⁸

Projects approved by the FDC are sent to the dean with a recommendation that they be funded.²⁹ Although our rules do not address the issue, pro-

28. While individual faculty members can and do interpret this test differently, there have been only a handful of instances when the FDC has been split over a project’s merit.

There is, of course, always the concern that applications will be voted up or down based on personalities or politics. *See, e.g.,* ALLIANCE FOR JUSTICE, JUSTICE FOR SALE: SHORTCHANGING THE PUBLIC INTEREST FOR PRIVATE GAIN 33 (1993), available at <http://www.afj.org/assets/resources/resources2/Justice-for-Sale.pdf> (“[A Harvard Law School] professor, who describes himself as liberal, requested a summer research grant [from a fund linked to the John M. Olin Program in Law and Economics]. Although the subject of the research was ‘squarely within the law and economics field,’ he was denied the grant because, he believes, he was not of the correct, i.e. conservative, philosophical orientation.”).

At some law schools, it has been alleged that race has been used against summer grant candidates:

A [minority law] professor moved from his previous position to one at a large research university. Once there, to his surprise he found his requests for research assistance, a computer grant, and summer stipends regularly rejected. This happened even though the professor’s writing record was at least as good as that of majority race colleagues who received funding. Among the proposals rejected was one requesting support for an article the professor subsequently had accepted in a highly-ranked law review. The next year, the professor requested support for an article that, unknown to the research committee, had already been accepted by an even more highly ranked review. This proposal was also rejected.

Richard Delgado & Derrick Bell, *Minority Law Professors’ Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349, 363 (1989).

In her autobiography, Anita Hill feared she would be victimized in a similar way: “I questioned my own decision to return to the University of Oklahoma in the fall of 1995. I was certain that my participation in the normal campus activities would never be the same. The activities in whose involvement I had been welcomed—faculty committees, faculty awards and recognition, university projects, summer research grants—may in fact be off limits, judged by a standard and procedure limited to me. . . .” ANITA HILL, SPEAKING TRUTH TO POWER 340 (1997).

The possibility of racial discrimination is not, of course, limited to minority law professors. In summarizing his summer grants experience, a white law professor wrote:

I first considered writing about Stetson’s racist past in the Spring of 2000. My thought at the time was to include it in the upcoming *Stetson Law Review* symposium issue celebrating the College [of Law]’s centennial. Per my usual practice, I applied to the College for a grant that summer to finance the research. My application stated: “I plan on writing about the College’s history of racial exclusion. A recent article came out in the *Florida Law Review* chronicling Virgil Hawkins’s failed attempt at integrating UF. I want to explore Stetson’s history.” Because I had received a dozen grants for previous summer projects, (indeed, I had never been turned down) I assumed that I would receive one again. The College denied my application.

Mark R. Brown, *Affirmative Inaction: Stories From a Small Southern School*, 75 TEMP. L. REV. 201, 229 n.204 (2002).

29. For much of its existence, the FDC felt that its job was done once all the applications had been reviewed and forwarded with a cover note to the dean. Nowadays, however, the FDC is taking a much more active role in mentoring applicants (particularly junior faculty

posals that fail to win the committee's support are returned to the applicant, who is normally given 7-10 days to submit an amended application. Applicants have generally been limited to one revision.

While this process has worked well, a number of questions have arisen over the years. First, some faculty members find the January 31 deadline off-putting. They would prefer that all interested faculty members be given "conditional grants," without the need to specify a topic or commit to a particular schedule. Under this system, payment would be made only after the project was completed.

A second question has involved the necessary level of detail. While some submissions include lengthy descriptions, extensive bibliographies, and even partial drafts, others are little more than bare-bones summaries. These latter applications have caused the FDC some difficulty. Of course, this is a chicken-and-egg problem, because until faculty members do preliminary research, they cannot say what they will be able to accomplish. Yet what is the point of having the program if applicants must devote time during the school year to a summer project that might not be approved?

A third question concerns the appropriate burden of proof. Some faculty members believe that applications should be deemed "presumptively approved," and thus rejected only if they are seriously deficient. In contrast, a different wing of the faculty believes that the burden of proof rests with the applicant, who should have to demonstrate that his or her project is both academically worthwhile and technically feasible. This division has led to the closely related issue of whether the FDC should send applications (either all or just the questionable ones) to outside experts. Of course, adding an external review component would greatly increase the time and money needed to administer the program.

A final question has concerned co-authored projects. Our rules do not say whether they are permitted, but the FDC has generally allowed them if they otherwise meet our criteria.³⁰

The FDC only has advisory powers; under our rules the final decision on whether to fund a particular application rests with the dean.³¹ With a sin-

members) and helping them turn their ideas into published works. In addition, we recently named our first director of faculty development. This position's duties include assisting professors with their scholarship.

30. The same appears to be true elsewhere. *See, e.g.*, H. Mitchell Caldwell et al., *The Art and Architecture of Closing Argument*, 76 TUL. L. REV. 961, 961 n.*** (2002) ("The authors are grateful to Pepperdine University School of Law for its funding of this Article through summer research grants.").

31. *See* Appendix at VI.B.4. At other law schools, summer grants are often the responsibility of an associate dean. *See, e.g.*, Linda Crane, *Accepting the Job and First Key Steps*, 31 SEATTLE U. L. REV. 847, 850 (2008) (explaining that after she became John Marshall Law

gle exception, deans have accepted the FDC's recommendations. In the one instance where the dean did not go along with the FDC, he funded a project that the committee felt was submitted by an ineligible applicant.³²

School's first associate dean for faculty development, "we sort of had a ping-pong thing going with [respect to who should oversee] summer research grants[.]").

32. As with everything else they do, deans can be praised or scorned for how they handle summer grants. Those who start or enlarge summer grant programs are hailed as heroes. *See, e.g.,* Michael C. Blumm, *The Bow-Tie Era of Lewis and Clark Law School: Dean Jim Huffman, 1993-2006*, 37 ENVTL. L. v, vi (2007) ("Huffman dramatically expanded summer research grants for faculty as well as research assistant positions for students. The result was an unprecedented outpouring of scholarship[.]"); Harvey Gelb, *Tribute to Peter C. Maxfield*, 34 LAND & WATER L. REV. ix, x (1999) ("[As dean of the University of Wyoming law school, Maxfield] worked to provide summer research grants for faculty and other incentives for meritorious performance as teachers and scholars."); Shirley A. Wiegand, *In Memoriam—Howard B. Eisenberg*, 86 MARQ. L. REV. 348, 351 (2002) ("Faculty were awarded substantial summer research grants and professional development funds, fulfilling [Dean Howard B. Eisenberg's] goal of encouraging [Marquette's] faculty to produce more and better scholarship and rewarding them when they did so."). *See also* Thomas C. Galligan, Jr., *The View From the Podium*, 31 U. TOL. L. REV. 593, 594 (2000) (presenting a hypothetical conversation between a law professor and a dean in which the former asks the latter what she has accomplished during her first two years as dean and then suggests as a possible answer: "Increase summer research grants[.]").

Conversely, deans who have to cut summer grants are viewed as ogres and can lose their jobs:

The profit from [the Law and Economics] Center programs helped to provide summer research grants to members of the faculty. Faculty members had great confidence in [Henry G.] Manne's ability to raise funds for the law school, and they believed that with sufficient effort he could raise the funds the school needed. Their expectations were probably unrealistically high, and when the profit from the Center's programs decreased and funds for summer faculty grants had to be cut, Manne got the blame. The personal loss of expected research funds coupled with the resentment that members of the faculty had accumulated over several years sparked the faculty revolt that ultimately led to Manne's resignation.

William H. Adams, III, *The George Mason Experience*, 50 CASE W. RES. L. REV. 431, 442-43 (1999) (footnote omitted). Although bad, Manne's experience was not the worst:

In a recent dean search at a law school, a background search was conducted on all candidates. One of the candidates had, at least once during his service as a dean, refused to give a summer research grant to a faculty member who was black. This event was reported to several people who then evidently reported it to the people conducting the background check. The description of the candidate eventually evolved to "He has a problem with race," or "He is insensitive to issues of race." His candidacy was dead. Further investigation revealed that, due in large measure to his efforts, minority enrollment at his law school had increased substantially as had involvement of the local minority bar.

Jeffrey L. Harrison, *Race Lines: Immunities and Bonuses . . . and Readers' Response*, 48 FLA. L. REV. 419, 427 n.27 (1996).

Of course, the street runs both ways, inasmuch as deans can use summer grants to reward or punish faculty members:

The fact is, absent a specific policy or law to the contrary, the school retains a wide array of possible negative actions. Most commonly, we can refuse to give a salary increase. We can reassign teaching responsibility. We can deny summer research grants and sabbaticals. We could, I suppose, reduce a faculty member's salary.

In our program's early years it was not possible for the dean to fund all of the projects recommended by the FDC. In recent times, we have had enough money to fund every approved application.³³

V. COMPENSATION

During our program's early years, summer grants equaled 22% of a recipient's regular salary.³⁴ Today, the figure is fixed at \$12,000 (the same as a

Thomas F. Guernsey, *Continuing Professional Development in Law Schools*, 41 U. TOL. L. REV. 291, 303-04 n.49 (2010). See also Martin H. Belsky, *Law Schools as Legal Education Centers*, 34 U. TOL. L. REV. 1, 17 n.126 (2002) ("Faculty now receive compensation from commercial bar review courses. Having law schools provide this compensation [by moving the courses in-house] means that academic administrators have one more quiver—in addition to summer teaching, summer research grants, faculty travel, etc.—that they can use."). As a result, one commentator has argued that summer grant decisions should never be placed solely in the hands of the dean:

One difference I've noticed from school to school is the manner in which the summer research grant is awarded. At some institutions the process is purely a matter of decanal discretion, at others it is a committee consisting of the dean and others. . . .

I think the best model is a committee model. . . . [L]eaving all the power for scholarly awards in the hands of the Dean can lead to favoritism or an unwillingness on the part of a faculty member to rock the boat on an issue because it may come back to bite them when summer grant time comes around.

Greg McNeal, *Comment*, THE FACULTY LOUNGE, Dec. 30, 2009 (2:11 p.m.), at <http://www.thefacultylounge.org/2009/12/encouragingfacilitatingrecognizingrewarding-faculty-scholarship.html> (responding to Jacqueline Lipton, *Encouraging/Facilitating/Recognizing/Rewarding Faculty Scholarship*).

33. We consider ourselves quite fortunate in this regard. Compare, e.g., Jayne W. Barnard, *Reflections on Britain's Research Assessment Exercise*, 48 J. LEGAL EDUC. 467, 483 (1998) ("Certainly many [law] schools (including my own [William and Mary]) with competitive programs for faculty summer research grants already make distinctions between fundable scholarship and other scholarly activities that will need to seek funding elsewhere."); Clifford Larsen, *The Future of Comparative Law: Public Legal Systems*, 21 HASTINGS INT'L & COMP. L. REV. 847, 862 (1998) ("[F]aculty may run into constraints, such as the limitation on summer research grants that makes them available for research that leads to publication of an article but not for research that leads to the publication of a book."). See also Allan W. Vestal, "A River to My People . . ." *Notes From My Fifth Year as Dean*, 37 U. TOL. L. REV. 179, 185 (2005) (observing that in tough economic times, "salary increases may be lower than expected; the number of staff assistants may shrink. In truly dire circumstances, the amount of Xeroxing may go down, summer research grants may become tight, or travel budgets may disappear.").

34. This put us in the middle of the pack. See Manuel R. Ramos, *Legal and Law School Malpractice: Confessions of a Lawyer's Lawyer and Law Professor*, 57 OHIO ST. L.J. 863, 909 n.121 (1996) ("[L]aw professors usually are entitled to summer teaching or summer writing grants that are anywhere between 10% and 30% of their base salaries.").

three-credit summer school course).³⁵ From what little information is publicly available, this appears to be about average.³⁶

Our law school generally awards 25 grants each summer,³⁷ meaning that our program costs \$300,000. This is just a bit more than 1% of our law

35. Because it is treated as an "overload," this amount does not qualify for our university's 401(k) retirement match. And, of course, under the IRS's rules it is fully taxable. See Marci Kelly, *Financing Higher Education: Federal Income-Tax Consequences*, 17 J.C. & U.L. 307, 315 n.48 (1991).

Under our university's rules, faculty members hold the rights to their writings. See Nova Southeastern University, *Copyright and Patent – Policy Number 9* (revised Oct. 2004), available at <http://www.nova.edu/cwis/hrd/orientation/forms/copyright.pdf> ("All copyrights on Works will be reserved by the Staff Member. . ."). Where this is not the case, the potential exists for a law school to argue that a grant-funded project constitutes a "work made for hire":

A more difficult issue may arise in the context of the summer research grant or sabbatical leave, whereby the university compensates the faculty member for devoting a summer, semester or year to producing a scholarly work. The summer grant or sabbatical leave is usually provided after a letter or memorandum outlining the research project is submitted to the dean or department head. The dean or department head usually issues the grant, or permits the sabbatical leave, with a note to the faculty member that the time is to be spent working on the agreed upon project and not on consulting or similar activities. Thus, this factor has equities on both sides because the faculty member's remuneration could be considered a salary or a contract price for a specified job.

Sherri L. Burr, *A Critical Assessment of Reid's Work for Hire Framework and Its Potential Impact on the Marketplace for Scholarly Works*, 24 J. MARSHALL L. REV. 119, 135 (1990).

36. See 2011-12 SALT Salary Survey, SALT EQUALIZER, May 2012, at 1 (listing amounts ranging from \$5,000 to \$25,000). Because only 66 law schools were willing to participate in this survey, see *Survey Information and Methodology*, SALT EQUALIZER, May 2012, at 1, it is hard to draw definite conclusions. See also *Fruehwald v. Hofstra University*, 2010 WL 1980810, at *1 (N.Y. Sup. Ct. Apr. 12, 2010), *aff'd*, 920 N.Y.S.2d 183 (App. Div. 2011) (legal writing professor whose contract was not renewed sought reinstatement, back pay, and "a summer research grant of \$12,000 for the summer of 2009."). The much-larger AWLD-LWI Survey reports that the average grant is \$8,897. See 2012 ALWD-LWI Survey, *supra* note 2, at xii.

Even when law schools do report on their summer grants, how they report can make comparisons very difficult:

For instance, although the University of Virginia publicly reports faculty salaries . . . those results may be distorted by the inclusion or exclusion of certain benefits, depending on whether they are paid out of private or state funds. As a result, two professors with the same salary and summer research grant may be reported as having vastly different salaries if the first receives a summer research grant from private funds that are not reported and the second from public funds that are.

Clayton P. Gillette, *Law School Faculty as Free Agents*, 17 J. CONTEMP. LEGAL ISSUES 213, 222 n.24 (2008).

37. This covers 45% of our full-time faculty. The remainder either teach summer school (35%) or engage in activities that are not compensated by the law school (20%).

school's total annual revenues.³⁸ As such, the program's impact on student tuition is negligible.³⁹

38. Because the money for our summer grants comes from law school revenues, our university does not play any role in how we operate our program. Where this is not the case, things can become very difficult:

Every year the law school gets \$100,000 in enhancement funding. This is essentially non-recurring but annually awarded money that the law school has used for travel, speakers, and the like. [One year, when] my budget officer sought to have the funds transferred to help fund summer research grants, we were told that the funds had been transferred earlier by the President's office to the capital projects division. . . .

Allan W. Vestal, "Today the Administration Building Burned Down . . ." *Notes From My First Year as Dean*, 33 U. TOL. L. REV. 251, 254 (2001). See also David L. Gregory, *The Assault on Scholarship*, 32 WM. & MARY L. REV. 993, 1002 (1991) ("University bureaucrats, unfamiliar with the norms of legal scholarship, may deliberately devalue the scholarship that is produced. They may fail to provide sufficient incentives and supports for scholarship, such as merit-based salary increases, summer research grants, or sabbatical leaves.").

In August 2012, Saint Louis University Dean Annette Clark resigned. In a letter to the faculty and staff, she explained that the "last straw" involved a dispute with the university over the funding of summer grants:

I dealt for months with convincing the university leadership to permit the law school to continue to provide summer research support to the faculty, finally reaching agreement on a process and working with the faculty to follow all of the prescribed steps, only to be told by the vice president in May that the president would not permit the funding of any summer research stipends in the law school. When I objected and took the issue to the faculty, I received a peremptory letter from the vice president informing me that further opposition to the president's or vice president's decisions would not be tolerated.

I could go on, but the last straw, the one that tipped the balance for me in deciding to resign, is the president's flagrant violation of an agreement he made just six weeks previously, an act that took from the law school over a quarter of a million dollars raised from our alumni.

A little over two weeks ago, one of my staff members discovered that on June 30, the last day of the fiscal year, \$260,000 was transferred without our knowledge or agreement from the law school's annual fund to the President's Opportunity Fund. If you do the math, you'll see that \$260,000 equals 20 summer research stipends at \$13,000 each. In other words, despite the president's agreement at the May 19th meeting with five faculty members and me that we could fund 20 summer research stipends from the law school operating budget, he purposefully undid that agreement a little more than two weeks after being embarrassed by the article that appeared in the Missouri Lawyers Weekly.

In a phone call, the vice president confirmed my suspicions, admitting that the withdrawal from the annual fund was for the summer research stipends. When I challenged him that this went against the prior agreement, he then claimed that the withdrawal was justified by the law school's revenue shortfall. However, in truth there was no substantial change in the enrollment/tuition revenue picture between May 19th when the president made the commitment and June 30th when this withdrawal occurred. In addition, an ordinary budget cut would not come from the annual funds contributed by our donors, it would come from specified lines in the operating budget, plus there is no apparent reason why the amount would be exactly equal to 20 summer research stipends. I am thus firmly convinced that the president's withdrawing \$260,000 from the School of Law's annual fund was in retaliation for the truthful and accurate emails I sent to the faculty and the article that appeared in the Missouri Lawyers Weekly. . . .

So, now we are left in a position where the president first authorized us to use our operating budget to pay for the summer stipends and, then, after we made legally binding commitments to the faculty, he unilaterally withdrew the amount of the summer stipends from the law

The entire grant is paid in one lump sum on June 15 (i.e., one month into the grant period). Although we would prefer it to be otherwise (so as to increase recipient accountability), we are unable to change the lump sum policy because: 1) any funds not expended by June 30 revert to our university; and, 2) most faculty members have their paychecks "direct deposited."⁴⁰

school's annual fund, putting us in a far worse financial position than if he had simply disapproved the summer stipends. The vice president's response to the concerns I raised was to shrug his shoulders and to tell me to start making cuts in discretionary expenditures. He also told me specifically, when I asked what to tell the faculty, that I was not to say that this "budget cut" was related to the summer stipends.

I am appalled and shocked by the president's and vice president's actions surrounding the summer research stipends generally, but especially by this most recent withdrawal from the annual fund. I am telling you what has occurred, even though doing so is in clear contravention of the orders I received from the vice president, because I believe I have an ethical obligation to disclose this conduct, which I view to be immoral, in violation of an express commitment made by the president, and harmful to the law school. I do not wish to be complicit in, or provide cover for, these actions.

Letter from Annette Clark, Dean—Saint Louis University School of Law, to her Faculty and Staff (dated Aug. 8, 2012), *available at* <http://www.scribd.com/doc/102368276/SLU-Law-Dean-Annette-Clark-Resignation-Announcement-to-Faculty-Staff-8-8-2012>.

39. Eliminating the summer grant program would save each of our 1,000 students approximately \$300 a year in tuition. While this amount is nothing to sneeze at, we believe that the scholarship produced by our grantees has at least an equal amount of intrinsic value. When one couples this with how much the recipients grow as experts in their field; the publicity their work generates; and the overall burnishing of the law school's reputation, we view the program as a bargain.

Unfortunately, because of the on-going collapse in student enrollment, summer grants are definitely on the chopping block, both at our law school and elsewhere. *See, e.g.*, Jack Crittenden, *How to Cut Tuition*, NAT'L JURIST, Mar. 2013, at 22, 26 (quoting Gene Nichol, a professor of law at the University of North Carolina, as saying "schools should consider eliminating sabbaticals, trimming travel and reducing summer research grants."). Of course, in an ideal world we would not have to tap tuition dollars at all. *Cf.* Kenneth C. Randall, *The Dean as Fundraiser*, 33 U. TOL. L. REV. 149, 150 (2001) (exhorting law school deans to "be active in . . . fundraising [to] endow chairs[,] fund professorships . . . [and] provide support funds for faculty travel, research assistance, and summer research grants."); Charles Silver, *The Lost World: Of Politics and Getting the Law Right*, 26 HOFSTRA L. REV. 773, 774 (1998) ("In the summer of 1994, Kent Syverud and I received a grant from the International Association of Defense Counsel . . . and the Defense Research Institute . . . to undertake the first comprehensive academic study of the professional responsibilities of insurance defense lawyers. . . . The grant replaced summer research funds that we would have received in any event from our law schools."). As explained *supra* note 26, one has to be careful that outside donors do not end up controlling what is researched or published.

40. Other law schools, however, have found a way around these problems. *See* Barnard, *supra* note 33, at 492 (observing that "some universities pay out summer research grants as 'progress payments' to ensure that the project is completed.").

Our program does not pay for travel and other out-of-pocket costs.⁴¹ However, such money is potentially available through our President's Faculty Research and Development Grant program.⁴²

VI. DUTIES

Under our law school's rules, "[t]he grant period consists of not less than eight weeks of full time work."⁴³ Because our summers run from May 15 to August 15, this means that recipients are expected to spend the bulk of their summers working on their projects.

In the past, some recipients also taught. Eventually, this became a problem, and so we amended our rules to prohibit grantees from teaching "summer school at NSU or any other school."⁴⁴

Despite the seeming clarity of this portion of our rules, there are a number of open issues. First, does work done on the grant either before or after the summer count towards the "eight weeks of full time work"? In other words, could a recipient spend eight weeks on his or her project in, say, March and April and take the summer off? Alternatively, could he or she do nothing during the summer and then spend eight weeks on the project in September and October? And what if a recipient, although intending to use all of June and July for his or her grant, is forced at the last moment to use those months to care for a sick relative? We have had colleagues fall into each of these categories, and to date have always looked the other way.

A second issue stems from our use of the phrase "eight weeks." Is this shorthand for the standard 35-hour work week? If so, recipients would need to spend a minimum of 280 hours on their projects. Of course, the typical law professor works closer to 50 hours per week,⁴⁵ which would boost the required number to 400 hours.

41. Some law schools do pay for such expenses. See, e.g., Richard H. Chused, Saunders (a.k.a. Javins) v. First National Realty Corporation, 11 GEO. J. ON POVERTY L. & POL'Y 191, 191 n.** (2004) ("Georgetown University Law Center provided me with a summer writer's grant in 2002 as well as funds to gather a large collection of legal documents in the *Javins* case.").

42. For a description of this program, see Nova Southeastern University, *President's Faculty R & D Grant*, available at <http://www.nova.edu/cwis/vpaa/facscholar/index.html>.

43. See Appendix at VI.B.3 ¶ 1.

44. *Id.* We do permit recipients to teach in our on-line and intensive trial advocacy programs. *Id.*

45. See Laura T. Kessler, *Paid Family Leave in American Law Schools: Findings and Open Questions*, 38 ARIZ. ST. L.J. 661, 683 (2006) ("Even if many law professors generally work fewer hours than lawyers in private firms, many law professors do work fifty to sixty hours a week; these time demands can be quite unbounded."); Patrick E. Longan, *The Law and Economics of Aging and the Aged*, 26 STETSON L. REV. 667, 674 n.22 (1996) ("A law

Assuming that one picks the latter figure, what should be done with the highly-efficient (or perhaps merely insomniac) law professor who works 100 hours per week? Would he or she be done after four weeks? To date, this problem has been more theoretical than real, inasmuch as most recipients have needed more than 400 hours to complete their projects. In those few instances in which recipients have finished with time to spare, they have usually worked on a second project.

A third issue has to do with grant recipients who simultaneously serve as expert witnesses, bar review lecturers, and the like. As explained above, our rules only ban summer school teaching. Accordingly, many of our grantees have earned outside money while collecting their stipends, although this does not appear to have kept any recipient from completing his or her grant project.⁴⁶

A final issue concerns the role of student research assistants. Relying on such help is always tricky.⁴⁷ But a summer grant, which commits the

professor who is doing his or her job responsibly, however, will spend many more hours than [what is required by the accreditation rules]. Preparing for class, meeting with students, assisting with the governance of the law school and the University, participating in bar association activities, and conducting scholarship are just a few of the duties that keep law professors working happily for more than forty hours per week.”).

46. What should be done with the faculty member who, having been paid by a law firm to be an expert witness, later requests a grant to turn his or her research into an article or book? Our rules do not address such “double dipping,” which also raises the conflict of interest problem discussed *supra* note 26.

A more common form of double dipping involves a faculty member who gets a raise (or promotion) based on a piece for which he or she previously received a summer grant. The inequity is heightened if professors who spent their summers teaching (because they did not get a grant) are passed over at raise (or promotion) time. Of course, one way to fix this is to give “summer teaching grants,” as some commentators have suggested, see *supra* note 12, and then value teaching more at raise (and promotion) time. See further Brent E. Newton, *Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105 (2010) (arguing that law schools focus too much on scholarship and not enough on teaching).

Because our sabbaticals only last a semester, we do encourage applicants to tack on a summer grant whenever possible. Other law schools appear to do likewise. See, e.g., Pedro A. Malavet, *LatCritical Encounters with Culture, in North-South Frameworks*, 55 FLA. L. REV. 1, 1 n.* (2003) (“I am grateful to the Levin College of Law [at the University of Florida] for allowing me to use a Summer Research Grant and part of a sabbatical to work on this project.”); Spencer Weber Waller, *The Internationalization of Antitrust Enforcement*, 77 B.U. L. REV. 343, 343 n.* (1997) (“The preparation of this article was greatly aided by the grant of a summer research stipend and a sabbatical leave from Brooklyn Law School in the Fall of 1996.”).

47. Law professors face a host of ethical issues when they use student research assistants: Some law professors use lengthy tracts written by their research assistants in their own books or articles, representing that they wrote the work themselves. Some acknowledge the “able as-

recipient to producing a specific piece of writing in a relatively short period, exacerbates the difficulties.

VII. COMPLETION

When an applicant receives a summer grant, he or she is expected to see the project through to the end.⁴⁸ Occasionally, however, a grantee will want (or need) to change topics.⁴⁹ After years without a formal mechanism, we recently adopted a specific rule to deal with such situations.⁵⁰ It provides that substitution requests are to be made to the associate dean for academic affairs, with a right of appeal to the dean.⁵¹

sistance” of research assistants in footnotes. Very few explain that “sections II and III of this article were drafted by X.” Even fewer make the research assistant a co-author or put quotation marks around the section written by the student.

Law professors—who, like practicing lawyers, are experts in rationalization—offer many justifications for the use of the written work of research assistants without attribution. They might say:

◆ The research assistant is “just a law student;” he was just doing the drudge work. All the ideas in the piece were mine.

◆ All law professors use the written work of research assistants without listing them as co-authors. Everyone understands that my work may include some writing by a research assistant.

◆ The research assistant is getting paid. His work is a “work for hire.” It belongs to me.

All of these explanations sidestep the moral questions. One moral question is whether the professor is or is not being truthful in representing that he or she is the author of the work. Another moral question is whether the appropriation of the work of a research assistant is an abuse of power, whether it is wrong because it is disrespectful or exploitative of the research assistant.

Lisa G. Lerman, *Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship*, 42 S. TEX. L. REV. 467, 471-72 (2001) (footnotes omitted).

48. See Appendix at VI.B.5 ¶ 1.

49. Professors at other law schools have encountered the same situation. See, e.g., Vernellia R. Randall & Vincene Verdun, *Two Black Women Talking About the Promotion, Retention, and Tenure Process in Law Schools*, in BLACK WOMEN IN THE ACADEMY: PROMISES AND PERILS 213, 214 (Lois Benjamin ed. 1997) (“Last summer I [University of Dayton law professor Vernellia Randall] . . . received a summer research grant to write an article on fetal alcohol syndrome. But you know how things go. At the very beginning of the summer I got involved in the health care reform issue. So I went to the dean and told him I wanted to change the topic for my summer research. He agreed to the switch.”).

50. See Appendix at VI.B.5. In the years before the rule, some recipients decided they were stuck with their topic and unhappily soldiered on; others sought out the chair (or, if he or she was unavailable, a member) of the FDC and asked for permission to change topics; still others went to the dean or associate dean for academic affairs; and a few simply switched topics on their own.

51. See Appendix at VI.B.5 ¶ 2.

In drafting this rule we thought about having the recipient go back to the FDC. However, because substitution requests are likely to occur during the summer, this was impractical

Recipients must report on their progress to the FDC every six months, and this obligation continues until the project is done.⁵² Once it is accepted for publication, the recipient is eligible to apply for a new grant.⁵³

Generally speaking, recipients cannot receive a second grant for the same project.⁵⁴ We have two exceptions to this rule. First, those writing books (or the equivalent) can apply for a second grant.⁵⁵ Second, junior faculty members who have never published a scholarly work are entitled to a second grant if they can demonstrate "substantial progress."⁵⁶

Although suggestions have sometimes been made that they should, neither the FDC nor the dean reviews a recipient's final work product.⁵⁷ Nor are

for two reasons: 1) most faculty are not around during the summer, making it difficult to convene a meeting; 2) our faculty committees change personnel on July 1, meaning that the recipient would in all likelihood be speaking to a different committee than the one that approved the original topic. By putting the decision in the hands of the administration, the first problem is avoided (because administrators are on 12-month contracts) and the second problem is largely (although not entirely) eliminated.

52. See Appendix at VI.B.3 ¶ 2. Fall reports are due by October 15 and spring reports are due by April 15. *Id.* To facilitate the process, the FDC sends an e-mail to each recipient prior to these dates requesting a status report. The responses are then compiled by the FDC and circulated by e-mail to the entire faculty and posted on a secure intranet page. Grantees are on their honor with respect to what they report.

53. *Id.* A faculty member whose project is "substantially completed" is also eligible for future grants. *Id.*

Although becoming eligible for future grants is certainly important, there are many other financial reasons for wanting to get a piece finished. As has been explained elsewhere:

[V]irtually all the material rewards that tenured faculty members receive, other than basic job security, depend on their research production[:] salary raises, their summer grants, their supplementary expense funding, and their access to funds for organizing conferences or speaker series that are of interest to them. It also determines whether they receive competing offers from other law schools, which not only provide the psychic reward of recognition, but also generally include a salary increase, and even if not accepted, can be used to extract further salary increases from their home institution.

Edward Rubin, *Should Law Schools Support Faculty Research?*, 17 J. CONTEMP. LEGAL ISSUES 139, 141-42 (2008) (footnote omitted).

54. See Appendix at VI.B.3 ¶ 2.

55. *Id.* Other law schools also recognize that book-length projects will often need multiple grants. See, e.g., Judith Kilpatrick, *Wiley Austin Branton: A Role Model for All Times*, 48 How. L.J. 827, 827 n.* (2005) ("The University of Arkansas School of Law has supported the research with summer grants in 2001, 2002, and 2004. This Article will become part of a more complete biography of Mr. Branton.").

56. See Appendix at VI.B.3 ¶ 2.

57. At one time, we required summer grant recipients to present a talk about their research findings to the faculty (and held weekly luncheons for this purpose). As explained *supra* note 52, we instead now circulate by e-mail the various progress reports. There is much to be said, however, for oral presentations:

A related suggestion is that those of us who benefit in any way from support for research, such as the recipients of summer research grants, should be expected to give a public lecture thereafter (that is, during the following school year) on some aspect of the matters researched.

bonuses awarded for pieces that are accepted by top-tier publishers. As a result, there is a natural temptation to pick easy topics (especially because future eligibility depends on completing one's existing project). The FDC and the dean are expected to serve as a check against proposals that try to game the system.

Occasionally, a grantee is unable to finish his or her project. This is usually caused by some combination of writer's block, boredom, and exhaustion, although the fault sometimes lies with a recalcitrant co-author. Similarly, we have had instances in which grantees discovered, just as they were finishing their project, that they either had been preempted by another author or an unexpected development had rendered their piece unpublishable. While our rules do not address such situations, the dean has sometimes given such individuals "amnesty," thereby making them again eligible for future grants.

VIII. CONCLUSION

In his recent book attacking legal education, Professor Brian Tamanaha harshly criticizes the practice of paying law professors to write in the summer:

The proliferation of summer research grants at law schools in the past several decades is indicative of the enhanced flow of money to law professors. Professors are paid for thirty-nine weeks a year; classes range from twenty-six to twenty-eight weeks; and the teaching load is six hours or less each week. There is ample already-compensated time within this schedule to produce scholarship. Yet schools now also provide additional money to professors to write during the summer.

A mercenary pay-me-to-write quality attaches to these grants. One school, for example, offers a base summer grant of \$8000, plus a \$6000 bonus for placement in a second- or third-tier journal (journals outside the top 50 schools in *US News*), a \$10,000 bonus for placement in a first-tier journal, or a \$15,000 bonus for a top-twenty placement or for producing two separate articles in first- or second-tier or peer-reviewed journals. A more common practice is to offer a standard amount, say \$15,000 or \$20,000, half up front

As it is now, it is hard for others to discover what any particular recipient might have done and learned with the aid provided. These public lectures, too, should help students appreciate what truly matters to the faculty.

George Anastaplo, *Legal Education, Economics, and Law School Governance: Explorations*, 46 S.D. L. REV. 102, 122 (2001).

and half after the article is done. At top schools the summer research stipend runs in the tens of thousands of dollars (twenty-eight professors at Texas law school received summer stipends above \$60,000). Schools justify this as a way to boost compensation to meet the competition, to reward active writers, and to motivate people who might not otherwise write. One must wonder whether scholarship motivated in this way suffers in quality or value owing to the lack of an intrinsic desire on the part of the scholar to write.⁵⁸

Because Professor Tamanaha does not provide any evidence for his assertion that summer-funded scholarship suffers in comparison to regular-funded scholarship, it is difficult to comment on his position, other than to say that at our law school we have not detected any difference between the two types of scholarship.⁵⁹ Indeed, we have found that some of our law school's best writing has been produced precisely because we have a summer grant program.⁶⁰

APPENDIX

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FACULTY HANDBOOK 24-25 (rev. ed. 2011)*

58. BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 50 (2012) (footnotes omitted). See also Steven Hetcher, *Desire Without Hierarchy: The Behavioral Economics of Copyright Incentives*, 48 U. LOUISVILLE L. REV. 817, 823 (2010) ("All a law school has to do if it wants to insure some desired level of faculty output is to give summer grants contingent on production of publishable work. We see then that money can indeed incentivize creativity.").

59. Of course, some question the value of all legal scholarship. See, e.g., Kenneth Lason, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, 103 HARV. L. REV. 926, 950 (1990) ("True, I like to think I have had something original to say (and have guiltlessly accepted remuneration via research grant or summer stipend). Yet all of my 'scholarship'—as that of most others—must be viewed as exceedingly modest when compared to that of a true scholar.").

60. For those who have made it this far and may be wondering, we wrote this essay while taking a break from the projects for which we *did* receive Summer 2012 grants (respectively, a biography of an Indiana lawyer and a family law book).

VI. COMPENSATION/COURSES, GRANTS, SABBATICALS

B. *SUMMER RESEARCH GRANTS*

1. Purpose.

Summer research grants provide financial support for research projects. The proposed project should be designed to produce scholarship such as (1) traditional research articles, (2) book chapters, (3) monographs or books, and (4) innovative teaching materials. Proposals that would not be considered for summer research grant support include: (1) attendance or participation in summer conferences; (2) advanced academic study; (3) teaching; (4) working in clinical programs; (5) activity or travel as a director, reporter, advisor or consultant to a professional project, publication or conference; (6) programs of summer reading or “enrichment”; and (7) class preparation.

2. Procedures.

The Faculty Development Committee will administer summer research grant proposals pursuant to the following procedures. Early in the fall semester, faculty members requesting a summer research grant will be required to notify the committee of such intent. This notification serves as a general commitment by the faculty member that the administration will utilize for planning purposes, including scheduling summer school classes.

All faculty members seeking a grant must submit a detailed proposal summarizing their intended research project by January 31. The proposal should also include the following elements:

- a. Synopsis and statement of purpose: What is the thesis and general subject matter of the proposed research? Why does the faculty member want to undertake the project and what does he or she hope to accomplish?
- b. A description of format, i.e., book, research monograph, book chapter, law review article, innovative teaching materials, etc.;
- c. A timetable for completion;
- d. A statement of prior grants the applicant has received and a list of all publications that resulted from grant-funded projects. If the applicant has previously received a grant that did not result in a publication, or innovative teaching materials, he or she shall pro-

vide a detailed explanation, which must include any unfinished work product.

3. Grant Requirements.

The grant period consists of not less than eight weeks of full time work. Because the grantee should devote eight consecutive weeks to the project, he or she is not permitted to teach in summer school at NSU or any other school. This limitation does not apply to AAMPLE™ online, MHL, other NSU non-law Master's programs, and Intensive Trial Advocacy.

Each faculty member receiving a research grant of any type will be required to submit a detailed report to the committee and to the Dean on the use of funds and the projects undertaken. This report shall be updated every Oct. 15 and April 15 until the project is completed. Faculty members are generally ineligible to receive subsequent grants until their previous grant work product has been accepted for publication. However, applicants whose previous grant work is substantially completed, but has not yet been accepted for publication, and those who are working on longer term substantial projects such as book length manuscripts, may be awarded a second grant upon review and approval of their work progress by the committee. In addition, recognizing the difficulty of publishing the first traditional law review article, new faculty members who have never published a scholarly work who received a grant to write this type of piece may apply for another grant to complete their project if they can demonstrate "substantial progress" after the first summer. The committee must evaluate the draft or other work submitted, as well as reasons for failure to finish, in determining whether to award a second grant.

4. Award of Grants.

The Dean retains final authority to award grants and determine funding.

5. Project Substitution.

Once a project has been approved, it is expected that the faculty member will complete it. If a faculty member wishes to change his or her project, a written request to do so must be made to the Associate Dean for Academic Affairs ("ADAA") at the earliest possible moment. Ordinarily, requests will be granted if: (a) there is a compelling reason for the change; (b) the substituted project is meritorious; and, (c) the substituted project would most likely have been approved by the Faculty Development Committee.

The ADAA will give the faculty member a written decision in as timely a manner as possible, and will advise the faculty by e-mail of the decision. If the ADAA rejects the request, the faculty member may appeal to the Dean. Except in highly unusual circumstances, the Dean will not reverse the decision of the ADAA.