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## Advice to the Untenured

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## **Abstract**

When offered the opportunity to comment on Professor Byse's remarks, I was in the process of thinking through an analogy involving Super Mario brothers and the many roads to success in law school teaching.

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When offered the opportunity to comment on Professor Byse's remarks, I was in the process of thinking through an analogy involving Super Mario Brothers<sup>1</sup> and the many roads to success in law school teaching. The analogy perished during the revision process, but several of its premises survived. The comments that follow reflect my feelings about faculty success. Because these are my personal comments, I begin with background information about myself.

I have spent the past sixteen years as a law school professor, the last seven of them as an Associate Dean for Academic Affairs. In the latter capacity, I have counseled many entry-level faculty members on course selection, committee assignments, and research assistance. I believe that each faculty member's obligations extend to teaching, scholarship, and service to the community and that a law school's administration should provide support for each.

Many of the thoughts which follow reflect advice I have offered various junior colleagues.<sup>2</sup> Other statements reflect advice I would give if asked the right question. I have grouped my thoughts into brief sections on teaching, scholarship, and service followed by some concluding general rules. Although these are my personal beliefs, they have been molded by my experience at this and other law schools.

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1. In late spring I began investing a half hour (sometimes more) daily in the challenge of Nintendo's Super Mario Brothers game. Now I am the champion of the household, having bested an eleven-year-old boy who can conquer any video game ever devised. What have I learned from Super Mario Brothers, other than the time span needed to generate stiff fingers and an aching back? Which of its mysteries can I share with the new law professor? Much of this essay reflects insights I probably already had but which took on new clarity during my as yet fruitless endeavors to rescue the princess.

2. Junior faculty members bring varying strengths to the law school. Some of them need (or want) minimal advice; others are less secure (or perhaps more willing to indulge an opinionated colleague).



## I. Teaching

It is easy to spend too much time on the teaching function.<sup>3</sup> We respond to instant gratification (or mortification), and teaching provides early feedback in ways that scholarship cannot. First, *you* know whether the class went as you had planned. This differs from whether it went well, but you will also have an idea about that. Second, students give you immediate feedback with their after-class questions and comments, both at the podium and during office hours.<sup>4</sup> Finally, colleagues will visit and critique your classes in years when you are being reviewed for retention, promotion, and tenure. By contrast, your first article may take a year or more to complete and still longer to be read and generate public comment.

The teaching function is critical to your self-worth at an institution. Your students rarely care what you have written lately, and most of them do not check up on your community service. You "perform" for them in the classroom, and that is where your perceived inadequacies are first revealed. It is therefore necessary to respond to institutional needs in a manner that enhances your growth as a teacher.

### A. Course Selection Begins at Your First Interview

Never tell a hiring committee that you are willing (worse yet, eager) to teach anything the school needs<sup>5</sup> unless you mean it. Since this discussion is more likely to be read by current faculty members than by individuals aspiring to academic life, a further thought is in order. If you made the mistake of saying that you would indeed teach anything asked, keep your word. There are institutional reasons to follow the above principle. The most important of these is the implied promise that courses will be staffed. This promise is made to students as well as to your colleagues on the faculty. Other faculty members, particularly those on the preceding year's recruitment committee who promoted your candidacy, may forgive your lapse in judgment. That does not

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3. Given that your early reputation as a teacher may follow you for the rest of your career at that law school, spending too much time is better than spending too little time.

4. They also provide you with evaluation forms to peruse after the semester is over. Depending on the size of the class and the time during which these are garnered, sensory bombardment may be their best description.

5. A variant of this approach is "I'll teach anything but . . ." (Tax is frequently the course forsworn.)



mean they will forget it.

## B. Don't Abandon the Ship Too Soon—It Might Not Sink

Even a rank amateur knows where most courses fit into student and faculty desirability rankings. After all, virtually every new faculty member graduated from law school—and not that long ago. You might group courses into the following categories:

### 1. Attractive to Both Faculty Members and Students.

Some courses are fun to take as well as to teach. Torts is probably one of these. Indeed, many of us would include any substantive first year course in this category.

### 2. Attractive to Faculty Members.

"If you are planning to write in an area, why not teach in that area?"

### 3. Attractive to Students.

Bar courses omitted from the first category fill this group, as do many litigation-oriented offerings. "If it can put bread on the table, it must be important."

### 4. Attractive to No One.

The last group involves the least positive feedback. Students resent these courses, and so do many faculty members who are asked to teach them. They are generally not on the bar examination, hence the student disinterest, and may not engage a faculty member's scholarly interests. Courses frequently relegated to this status include Legal Accounting and Legal Research.<sup>6</sup>

Ideally, a faculty member will teach only category 1 and 2 courses. In fact, to the extent you can do so while honoring your pre-contract promises, try to teach as many of these as you can. Do not, however, despair if you are assigned category 3 and 4 courses. While a

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6. In an earlier era, Professional Responsibility joined this group at many law schools.



category 3 course may not initially excite you, significant, positive feedback is likely to change your early assessment.

If you have been assigned a category 4 course, your first reaction may be to teach it for one year and then request reassignment to a course further up the hierarchy. If you brought me such a request, I would try to dissuade you from switching so quickly.<sup>7</sup> Switching courses in your early years of teaching can detract from your progress as an academician. Teaching a course well involves an enormous time investment. The first few times are particularly difficult; switching merely starts the cycle all over again.<sup>8</sup> Perhaps you would be better served to give the course another chance at transformation into a swan.

### C. Courses Are Not Appetizers (or Beware the Chinese Menu)

To the extent you can choose your ideal teaching package, try to inject some coherence into your course load. If your courses have little in common with each other, your early preparation for each will take even longer. More important, if you are not teaching at least one basic/advanced course progression, you lose the opportunity to follow your students through their own journey toward enlightenment.<sup>9</sup>

Conversely, try to avoid being locked too tightly into a niche housing only specialized upper class courses. Most faculty members enjoy teaching first year students, whose ideas are relatively malleable. In addition, your efforts with this group will inure to the benefit of your upper class enrollment. If you are perceived as having valuable knowledge to communicate, students will follow you to Comparative Law or even to Legal Accounting.

### D. Be Honest with Yourself and Your Class

Even if every one of your colleagues is a true believer in the So-

7. I would make an exception to this rule if all your courses fell into category 4, as no one wants to assist in academic suicide.

8. Even the "born" or "intuitive" teacher must read the casebook and other materials and keep up with recent developments in the area.

9. Instead of a basic/advanced course progression, you might wish to teach a group of related courses, such as Sales and Bankruptcy. Relatedness is, of course, a subjective judgment. I have watched colleagues successfully interrelate Contracts with Family Law and Corporations with Labor Law. I don't believe that I could do so, but that is my failing. In my worst nightmares I visualize myself teaching Jurisprudence, Medical Malpractice, Labor Law, and Admiralty in the same academic year.



cratic method (although each of them probably utilizes it differently), do not adopt it or any other method unless you are comfortable with it.<sup>10</sup> In addition, be honest with your students about what you expect from them and from yourself. If you are currently engaged in scholarly research that bears on material to be covered in class, bring your insights with you. But if the research has only peripheral significance, let the class know you are investigating a tangent.<sup>11</sup>

## II. The Scholarship Function

### A. Never Put Off for Tomorrow . . .

Writing is solitary work. It lacks the immediate feedback of the classroom or even the committee room. If asked by a new faculty member when he should begin scholarly production, I would urge him to follow two rules: Write early and write often.

#### 1. The First Article Is the Hardest

Early writing is just that. But if you never begin the process, you never reach perfection or even acceptability.

#### 2. Learn When to Let Go

Most parents are more protective of their first children; the ability to let go inures to the second (or later) child's benefit. The same is true for scholarship. There is always one more source to consult, one more tangent to explore.<sup>12</sup> Too many faculty members follow these tangents, accumulating footnotes but never reaching the end. Meanwhile the clock ticks on; while you are exploring, another faculty member is publishing "your" article.

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10. Comfort is a relative term in your early years in teaching. Four years of high school debate did nothing to prepare me for the terror of the classroom.

11. As your proficiency increases, you will see interrelationships you missed the first few times you taught the course. A major risk is that you will want to introduce each of these at the earliest possible time in the course, so that the hour becomes a series of tangents. While upper class students may appreciate these insights, first semester freshmen require more foundation than this approach provides.

12. See Schulberg, *Why Write It When You Can't Sell It to the Pictures?* Sat. Rev., Sept. 3, 1955, at 5, for an exposition on the joys of tangents.



### 3. Never Bite Off More Than You Can Chew Before the Meal Ends

If you are at a school where there is a mandatory up or out promotion or tenure date, you cannot delay scholarship indefinitely. If you have trouble getting started, select a book review as your maiden venture to be followed by one or more articles before the end of the contract period. A book review<sup>13</sup> or other short essay can be written and rewritten, thus allowing you to polish your writing. It also can be finished and let go in a reasonable time span. Once you have written something and let it go, a longer piece will be less formidable.

#### B. Excuses, Excuses, Excuses

A junior faculty member may instead ask why he should write at all. Faculty members raising this question generally fall into two groups: those who believe oral communication is as valuable as written; and those who don't wish to write unless they are at some mythical "cutting edge."

##### 1. Talk Is Cheaper than Postage

To those in the first group, I might glibly respond to this effect: The thought that is unexamined (by our peers) is not worth thinking. While our students frequently are excellent sounding boards for our theories, they rarely provide as critical an evaluation of our ideas as would other members of our profession.

The classroom is simply not the ideal place for contemplative evaluation. Students respond under pressure and within the temporal confines of a particular class. Moreover, while being trained to think like lawyers, they do not necessarily master this skill before graduation.

##### 2. The Quality Goes in Before the Name Goes On

The more difficult faculty member is the one who wants his name associated only with scholarship that is at the cutting edge. Unless he can write the most important article dealing with a topic, he would rather not write at all. This same faculty member would never dream

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13. Book reviews are not effortless meanderings. It may be harder to criticize a "fellow scholar's" work product than it is to ridicule a Supreme Court opinion.



of cancelling class if he could not offer the most meaningful class ever taught on that day's topic. Why, then, should he hesitate to write?

If you are a gifted teacher, I would urge you to generate an article or other publication from your classroom insights. Some of your colleagues will value this less than a more traditional law reform piece, but my own preference is to get you writing and count on the more traditional material following in due course.<sup>14</sup>

### C. Be a Pack Rat

Never discard unused research. Every author reaches a point where the words stop flowing. Perhaps the article was not worth writing; perhaps you simply were not ready to write it. Until you are absolutely certain you will not return to the topic, retain your notes and drafts. A week from now, or even several years from now, they may yield the originally envisioned article or one that is a good deal better.

## III. Service

A faculty member can serve on law school and university-wide committees or participate in a host of bar or community groups. Each of these opportunities carries with it a time commitment that must be balanced against teaching and scholarship as well as time spent with family members.

### A. Give at the Office

Law school governance is the joint responsibility of its faculty and administration.<sup>15</sup> While administrators carry out policy, they cannot do so in a vacuum. Someone has to interview faculty candidates, evaluate

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14. Moreover, teaching materials are valuable in their own right. There are a number of fine teaching materials I wish I had written. In addition to various casebooks, these include a classic student aid: M. CHIRELSTEIN, *FEDERAL INCOME TAXATION: A LAW STUDENT'S GUIDE TO THE LEADING CASES AND CONCEPTS* (5th ed. 1988).

15. "[T]he dean and faculty of the law school shall have the responsibility for formulating and administering the program of the school, including such matters as faculty selection, retention, promotion and tenure; curriculum; methods of instruction; admission policies; and academic standards for retention, advancement, and graduation of students." American Bar Association, *Standards for Approval of Law Schools* Number 205.



existing faculty, and read admissions applications. That someone is you.

### 1. Be There

Committees are teams. Their size is determined by the number of faculty members necessary to accomplish the task. If a committee member fails to carry his share of the load, the other members have their workload increased or the committee doesn't function efficiently.

### 2. Learn to Say No

Every law school has several committees that involve significantly more work than others. Every law school has faculty members who do more than their fair share of work on the time-consuming committees. Read each committee's charge to determine those that appeal to you, but don't agree to serve on more than one in the time-consuming category. Your colleagues may be grateful if you do, but their gratitude will not get you tenure.

### 3. Fools Rush In

Some of you will find committee work addictive. You are beyond saying no; you actually volunteer before being asked. Committees get things done, just as you did when you practiced law. Eventually, you will tell me that administration is your goal. That is fine, but don't assume administrative tasks will relieve you from your other duties.

### B. How the Other Half Lives

In a university setting, law school faculties are among the haves; faculty in other departments may consider you pampered and over-paid.<sup>16</sup> Remember this when you serve on university-wide committees whose decisions will affect your faculty, staff, and students.<sup>17</sup>

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16. If your university has a medical school, its faculty may be even less popular than yours (unless, of course, the doctors are treating the rest of the faculty at the university's medical center).

17. This is also important to remember if you are engaging in interdisciplinary research with a faculty member from another department.



### C. Get Out of the Ivory Tower

Teaching by example includes transmitting the concept of service to the public. I do not accept the argument that a law professor renders pro bono service by taking a substantial pay cut throughout his professional career. At the same time, I would caution junior faculty that the time available for community service does expand as one becomes more proficient as a teacher and scholar; this is an area that can be postponed for a few years.

## IV. Basic Rules

### A. Get Acquainted with Yourself

Few pursuits are less rewarding than trying to be someone you are not. Each of us has different talents. Few, if any, brand new faculty members are capable of teaching the perfect class, writing the most significant article of the year, performing extraordinary community service, and giving our families quality time. With any luck, you can do one of these now. Eventually, you may be able to do them all (but not necessarily at the same time).

It is important for a faculty member to determine who he or she is and what strengths and weaknesses he exhibits. Self assessment is an ongoing process. Review your findings at regular intervals; you may be pleasantly surprised by your growth.

Teaching is hard work, but it should also be fun. If you are not enjoying yourself, perhaps this is not the career for you. Don't make this decision rashly, however, and don't confuse frustration at not being perfect with true unhappiness. If simply being an attorney made you a star performer, law schools would replace their faculties every year or two.

### B. Your Colleagues Are Usually Not the Enemy

Mandatory retirement may be history, and the era of law school expansion may have past, but you can still obtain tenure without upstaging other junior faculty members. They are struggling through the same process as you are; think of them as a surrogate for your law school study group.<sup>18</sup>

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18. If you did not participate in a study group, consider your reasons for that omission. Did you prefer to work in solitude, or did you think of your classmates as



Although senior faculty will ultimately review your progress as an academician, they have no rational stake in your failure. These individuals have invested years in teaching, scholarship, and service and once were junior faculty themselves. They received assistance in achieving their goals, and it is time for them to return that favor.<sup>19</sup>

My favorite picture in our law school's catalog is a photograph of the faculty football team in uniform. The faculty is indeed a team, and each of us contributes to its success or failure. Despite this overriding mutuality of purpose, you must recognize that institutional values can differ from your goals. This is particularly likely to be a problem for anyone straying too far from the "appropriate" balance between teaching, scholarship, and service. Straying generally involves using teaching or service as an excuse for minimizing the time spent on scholarship. If you fall into this category, determine why that is the case before you fall victim to its consequences.<sup>20</sup>

### C. Go Home While You Still Have One

Read on only if you are as bad a workaholic as I am. This is the do as I say, not as I do section.

At your initial interview you said that practice was interfering with your family life, and that the pressure of being in the office twelve hours a day, six or seven days a week was not worth the lofty salary you received. Why, then, do I find you at the law school working those same hours? Break the "office as home" habit now and buy a home computer.<sup>21</sup> Better yet, find a hobby that suits your personality and has nothing whatsoever to do with the law. I hear tennis is in vogue, and I may try it someday, but right now I have to clarify a few more insights on the Super Mario Brothers screen.

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competitors?

19. See McGough, *Staying Alive*, 10 NOVA L.J. 671 (1986), for excellent advice about the teaching function.

20. I cannot emphasize too strongly Professor Bye's comments: "[S]uch a decision casts a huge burden on the decider. The burden is to face up to the decision and make sure that it is the product of reason and not the result of slothful avoidance of conscious decisionmaking." Bye, *Legal Scholarship, Legal Realism and the Law Teacher's Intellectual Schizophrenia*, 13 NOVA L. REV. 9 (1988).

21. Once I get my laptop, I'll even be able to break the back seat driver habit.