

## **REVISITING THE NUTS AND BOLTS OF SCHOLARSHIP:**

### **SOME NEW “NEW RULES” FOR LEGAL SCHOLARS**

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### **THINGS BOTH CHANGE AND STAY THE SAME**

In 2001, I wrote the initial draft of *The Nuts and Bolts of Scholarship: The “New” Rules for Legal Scholars* (available at <http://www.aals.org/nlt2004/hanna.pdf>). The piece was intended to inspire new law teachers to pursue and publish their work and I hope that it has been helpful for folks in the early stages of their careers. All of what is in that piece remains relevant, and I encourage anyone thinking about law teaching and how to publish to read it. Since 2001, however, some of the “rules” have changed, mostly because of technology and the internet. Thus, this little article is a follow-up to that first piece, and highlights some of the changes that have taken place in legal scholarship and publishing, as well as some other issues new scholars may find of concern. Despite any changes in technology, the basic advice I wrote almost a decade ago remains true: A legal scholar needs love, realism, and commitment to succeed.

### **LESS IS MORE**

Back in the dark ages, new scholars were advised to first write larger pieces that showed depth and mastery of a subject. Thus, back in 2000, I suggested that early pieces be somewhere around 60 – 80 law review pages – or what I sometimes referred to as a “battleship” within your life-long fleet of scholarship. However, since that time, some law reviews surveyed the profession, asking what kind of scholarship was most valuable and the answer was less is more. Both academics and practitioners say they prefer shorter pieces. Thus, many law reviews now give preference to those articles less than 50 law review pages, about 25,000 words, including footnotes and text. Some reviews will not publish pieces over 35,000 words except in extraordinary circumstances. Thus, it is important that, in order to maximize your placement potential, that you keep your articles within these guidelines. Too short, you say. You need more words to make the point. Then break your longer piece into two shorter articles! You get two publications for the work of one!

Even though law review articles are getting shorter, it is still important for a young scholar to develop some mastery and depth in a particular area of the law. While it is great to publish a few very short pieces, like book reviews or comments on recent cases, in the early years of your career, you must undertake some major works. New scholars don’t gain confidence in their abilities or intellectual maturity until they have reached a

level of mastery in a topic. So really think about a series of articles within recommended length guidelines as your goal in the tenure process.

### **MORE IS MORE**

New scholars, anxious about the tenure process always ask, “How many articles should I have before requesting tenure?” (This question suggests something a friend and now law school dean once told me: legal academics can count, but it is questionable that they read.) This is an important question that you should ask your mentor and the chair of the tenure committee. Some schools have specific guidelines about the minimum amount they expect to see at each stage of the review process. Others have vague standards that focus on quality, not quantity, providing little guidance to the anxious assistant professor who wants a clear assignment. Some people give the advice that you should look at how many articles the last person who received tenure wrote, and then do that number, plus one more. Of course, if everyone followed this advice, the arms race would get out of control!

Certainly make sure you know what the last few tenured faculty members accomplished and use that as your guide. But also set some realistic goals for yourself. At most schools, there is the expectation that in your first year, you will be busy getting used to the classroom. But by the August submission cycle, you should be ready to send out your first article. It’s fine if this article isn’t your magnum opus. Just get something off your desk. This will give you the confidence to keep writing and will hush any concerns that you are too focused on your teaching to write. Then, in your second and third years, commit to doing at least two more articles – one a year. That is a reasonable and likely doable amount of work and will demonstrate a sustained commitment to writing. At your midway review, explicitly ask if you are on track. If you do sustained writing from the beginning of the process, you won’t feel pressure at the end to write just for the sake of writing and won’t be wondering if your last minute articles meet the standards.

Another word of advice: Never say to your colleagues that you haven’t had time to write because you are too busy teaching. For many of us, especially in the early years, the emotional and intellectual demands of teaching can make it hard for us to block out the time and reserve the energy to write. After all, who want to look incompetent in a class of 80 first year students, and who can resist the love and affection we get from those students when we spend hours with them at office hours and student-sponsored social events? Yet, beware of immediate emotional gratification. You are in this for the long haul. Teaching well and spending time with students is important, but should never come at the expense of your scholarship. The job requires us to both teach and write. So work on finding the right balance. Maybe that means setting aside a day or two to write at home, or have your assistant block out the early morning hours for writing. (Farmers in Vermont say an hour in the morning is worth two in the afternoon.) Do whatever works for you, but do it! The sooner you establish a commitment to writing, the happier and more productive you will be.

### **MATCH.COM FOR LAW PROFESSORS**

When submitting your law review articles for publication (remember – March and August – timing matters) few people submit via the U.S. mail. Rather, you should plan on submitting your article to law reviews electronically. There are a few ways to do this. First, you can go to the law review website directly and follow the instructions. Most

now have a clear protocol for on-line submissions. Or, you can use ExpressO <http://law.bepress.com/expresso/>. ExpressO is an on-line submission service for legal scholarship that is becoming increasingly popular at law reviews and among law faculty. Most law schools already have an account for you to use, so check with your Dean for Scholarship. Rather than visit each law review website, you upload your manuscript, cover letter and resume and check off the schools that you want the piece sent to. The law reviews can use other tools on ExpressO to manage the submission process, including tracking expedited reviews and sending messages to authors that submissions are no longer being accepted. I know of no research comparing the acceptance rate and success of using ExpressO v. direct submission, and I suspect that the process continues to be fluid and dynamic.

And ExpressO now has competition. Washington and Lee University maintains an outstanding website listing law reviews and their rankings; <http://lawlib.wlu.edu/LJ/>. It also now offers a service called LexOpus that allows you to either submit articles directly to law reviews, or, in the alternative, post the piece and say that you are open to offers.

For up-to-date information on the law review submission process, see [http://www.concurringopinions.com/archives/2007/08/law\\_review\\_arti\\_6.html](http://www.concurringopinions.com/archives/2007/08/law_review_arti_6.html) and <http://www.law.emory.edu/index.php?id=4801>

Talk to colleagues and friends about whether they use ExpressO, LexOpus, or submit directly (and if anyone is looking for an empirical research project on law review submissions, there might just be an article in this question for you). Currently, ExpressO seems to be the favorite, but this could easily change. Regardless of whether you submit directly or use a service, it is increasingly the case that all correspondence with the law reviews will be electronic. Many now have clear guidelines for requesting expedited review on-line, and you are also likely to get any acceptance or rejection via email.

### **TO BLOG OR NOT TO BLOG: THAT IS THE QUESTION**

With the advent of legal blogs and other opportunities to share one's ideas immediately with the world, many new scholars find themselves in a quandary about how much time to spend on writing for new media. (To find legal blogs, check out the following sites: <http://www.blawg.com/>, [http://legalblogwatch.typepad.com/legal\\_blog\\_watch/](http://legalblogwatch.typepad.com/legal_blog_watch/), <http://avvoblog.com/top-legal-blogs/>, [http://abajournal.com/magazine/blawg\\_100\\_2008](http://abajournal.com/magazine/blawg_100_2008))

Many new scholars have already spent a considerable time blogging already, which I think, actually helps people be prolific because they are used to writing daily. If you can write for an hour a day on blogs, most certainly you can write an hour a day on scholarship. Also, blogging gives a writer immediate feedback on ideas and the instant gratification of publishing to the web. Blogging allows the scholar to respond to real-time issues. Thus, spending time blogging or posting to websites can have enormous positive benefit. Many new faculty members start their own blogs as a way to get their ideas to a broader audience.

Yet, for many legal writers, blogs are like crack – highly addictive, they can give a momentary great high, but ultimately they can lead to despair because they drain the

time needed for your long-term scholarship. Many of your law colleagues (and the university that ultimately grants tenure) will not likely count your blog posts as scholarship. So make sure that you aren't using up your writing time and energy on blogging to the detriment of demonstrating scholarly proficiency and depth in your emerging area of expertise. (If you find yourself becoming a blog addict at the expense of your scholarship – get help! Call me! I can put you in touch with folks in blog recovery.)

The future of legal scholarship will require the scholar to be able to both immediately weigh in on issues via the web and develop the depth and expertise that only comes by engaging in the slow and painful process of researching and writing of articles and books. Your goal should be to master both, prioritizing the latter first on your road to tenure.

### **ON-LINE COMPANIONS: SHORT AND SWEET**

Many law reviews now have on-line companions to their main law journals. For example, Yale Law Review has The Pocket Part, which provides short (1000 – 1500 word) essays and legal commentary on current topics as well as commentary on articles in the journal itself. Harvard, Texas, Michigan and Columbia have similar sites. The list of law schools hosting these on-line companions grows every year, and I suspect within the next five years, most law reviews will have one. Submitting a piece to one of these reviews can be a good way to get an idea out quickly, get immediate feedback, and begin to develop a reputation in your field and in the broader community. Again, while most law schools are unlikely to count such pieces as “scholarship” for the purposes of tenure, the trend is to look favorably on faculty who are engaged in the scholarly debates of our day on many levels. And you can put a highly ranked journal on your list of publication as placement is often less competitive.

### **SSRN: CHANGING RULES OF THE GAME**

Social Science Research Network (SSRN) [www.ssrn.com](http://www.ssrn.com) is, in many ways, changing the nature of legal publication and scholarship. In case you don't know, SSRN is a privately operated website that allows scholars to post their articles in PDF form, creating an open source and rapid dissemination of scholarship in the social sciences and humanities, including the law. SSRN allows any user to search and download papers. SSRN also ranks articles and institutions based on downloads. It further disseminates articles via on-line compilations in different subject areas. Most law schools also disseminate their scholarship through working paper series send out via SSRN. SSRN is linked to Google Scholar, so folks that do not have access to Westlaw or Lexis can easily find legal scholarship through an SSRN.

The important question for new scholars is not IF I should post on SSRN. Rather, you should ask WHEN to post on SSRN. Answer: Post early and often!!! You can post abstracts, working papers and accepted papers. Increasingly, scholars are posting abstracts on SSRN to “stake-out” a topic. Once you develop an abstract idea for a working paper, conventional wisdom is that you should post on SSRN. Then, once you get a good working draft, upload it in the working paper series. You will start to see action. People will download it. Many will give you comments in law and also from other disciplines. You will begin to obsessively check your download tally and author rank. (This, too, is like crack for law scholars.) Many law reviews look at the SSRN to assess author influence, so it helps to get material up sooner than later to establish your

SSRN profile. Then, once you have a final paper for publication, post that as well under the accepted paper series.

When negotiating your copyright agreement, you should be able to demand from any American law review that you can post a PDF of the final version of the paper directly to SSRN with proper attribution to the law review. Some social science journals do not all SSRN postings of final papers for financial reasons. You should always try to demand SSRN postings in the copyright agreement regardless of the publisher.

You can also post links to blog posts, op-ed pieces, and other “opinion” (as opposed to scholarly) pieces on SSRN. You can also use the SSRN website URL’s to link and discuss your papers on your own blog.

In the signature block on your email and on your Facebook, MySpace and personal webpages, include a link to your SSRN papers. This will greatly impress your family and friends, as well as quickly give your colleagues a link to all of your outstanding scholarship.

There are very good reasons to post to SSRN beyond shameless self-promotion. SSRN helps law teachers connect to academics in other disciplines, which not only offers a larger and more diverse audience than law-related readers, but also might develop opportunities for interdisciplinary work and co-authoring with other types of academics. Further, SSRN helps law teachers connect to members of the media, some of whom are unaccustomed, or unable, to access legal scholarship on Lexis or Westlaw. By developing contacts with media, a law teacher is more likely to have his or work discussed in public forums, including traditional media and also new media, like blogs and message boards. Finally, SSRN helps law teachers reach law students and prospective law students, who typically do not have access to Lexis or Westlaw. It is possible that prospective law students may be more likely to apply to a particular law school because of familiarity with an individual law teacher's work.