

BECOMING A LEGAL SCHOLAR

*Samuel W. Buell**

BECOMING A LAW PROFESSOR: A CANDIDATE'S GUIDE. By *Brannon P. Denning, Marcia L. McCormick, and Jeffrey M. Lipshaw*. Chicago: American Bar Association. 2010. Pp. xv, 145. \$99.95.

INTRODUCTION

What does it take to become a law professor? With the publication of Brannon Denning, Marcia McCormick, and Jeffrey Lipshaw's *Becoming a Law Professor: A Candidate's Guide*,¹ we can now say—as academics do—that there is a literature on this question. Previously, much of the advice on this topic consisted of postings to blogs and other websites, which comprise probably the most detailed set of writings law professors have created in that medium.²

The arrival of a monograph pulls this body of advice together, organizes it, adds substantially to it, and supplies a handy tool for the kit of any aspiring professorial candidate. The guide's authors have performed a service for which the hundreds of teaching aspirants who enter the Association of American Law Schools ("AALS") pool each season will owe them gratitude. Written in the style of a backpacker's guide—with the voice of intrepid reporters whose blisters have turned to calluses—*Becoming a Law Professor* hits the key points one needs to know to pass through the land of hiring in the legal academy without falling victim to common injuries, fatigue, hazards, and mistakes that are easily avoidable with proper preparation and local knowledge.

But *Becoming a Law Professor* and its progenitors in the blogosphere tend to slip much too quickly past a question that must arise well before one begins packing one's bags for this journey. The question of what it takes to become a law professor turns on what kind of law professor one means to be. This prior question extends deeper than the standard formal distinctions among categories of law faculty that the literature does a good job of

* Professor of Law, Duke University. For insightful comments, many thanks to Joseph Blocher, Barry Friedman, Lisa Griffin, Rebecca Hollander-Blumoff, and Kathryn Judge; and special thanks to the gracious authors of the book reviewed here.

1. Brannon P. Denning is a Professor of Law, Cumberland School of Law, Samford University; Marcia L. McCormick is an Associate Professor of Law, Saint Louis University School of Law; and Jeffrey M. Lipshaw is an Associate Professor of Law, Suffolk University Law School.

2. For a fairly comprehensive bibliography of the many (mostly online) resources, see Eric Goldman, *Careers in Law Teaching*, BECOMING A LAW PROFESSOR (Aug. 8, 2008), <http://www.ericgoldman.org/Resources/becomingalawprofessor.htm>.

explaining.³ Even among tenured faculty, there is—if we are honest with ourselves—a distinction between those with the goal of a professorship only and those who strive to become scholars of law. The latter category includes the professor whose work will be read and valued by those who do valuable work in her field and the professor whom other faculties would be eager to have present her work at their schools, perhaps visit for a semester or a year, or even hire laterally. The distinction here has at least a partial connection to quality of law school, but we need not turn to rankings; it is sufficient to agree that the distinction exists.

Becoming a Law Professor crystallizes two related issues that have been bothering me about the emerging literature on how to become a law professor, one having to do with the production of law professors and the other having to do with the American meritocracy more generally.

My first difficulty is that the literature, despite being crammed to the gills with pointers and commands of all sorts—from how to cultivate persuasive recommenders (pp. 34–35, 43–44) to how to navigate the elevators of a particularly crucial hotel in Washington, D.C. (p. 48 n.4)—does not give the poor candidates an answer to their real question: How *does* one become a law professor and preferably one who is a genuine scholar of law?

The answer, as anyone who has been through this market in the last decade or two knows well, can be expressed in a single word: write (before you seek a job). Every bit of guidance to the market emphatically says this, including *Becoming a Law Professor* (p. 28). Of course, “write” is no answer at all. That’s like telling someone who wants to know how to become a pianist, “play.”

Let’s call this deficit in the literature the “Rumpelstiltskin problem.” Like the king in the Grimms’ tale, the existing guidance tells the candidate (the miller’s daughter) what she must do in order to realize her intense desire for a teaching job (keen wish not to be executed): publish serious work (spin straw into gold). And then it reminds her of this at the top of every hour.

The literature does not seem to do a lot more on this front than the fairy tale. It sends the candidate off to, one imagines, a shuttered and perhaps bleak place and tells her to come back with gold. Indeed, reality is worse than the fairy tale. There will be no magical being who appears in the grim chamber to offer the aspiring professor publication in the *Harvard Law Review* in exchange for her firstborn child. (At least I hope there is no such creature, for I have met a few people who I fear might have accepted its bargain.) Thus there is now a literature, but—as the work of only lawyers can do—it explains in painstaking detail how to master procedure while barely addressing matters of substance.

Such advice could be adequate only for those whose ambition is just a professorship—any professorship—and maybe not even then. The literature does not address the question of what sort of job at what sort of school one

3. Pp. 3–11 (describing categories of “doctrinal faculty,” “skills faculty,” clinicians, legal writing faculty, and administrators).

might hope to get if one's plan is simply to publish something, or some several things, in some law journals somewhere. And I wonder how many candidates comprise the audience for such a message: those who enter the market hungry to internalize book-length advice on how to become a law professor but with their sights set low, on a job or school that will expect only the minimum of them.

My second difficulty is that this literature has taken on the qualities of a phenomenon in our meritocracy that seems of questionable value and perhaps even costly. For lack of a better term, let's call this "Kaplanization."⁴

The process goes something like this. At the first stage, there is a credential or position that becomes more comparatively desirable, and thus more competitive, than it used to be. Achieving it involves running some sort of evaluative gauntlet. Many people want to know how to survive that evaluative process in order to acquire the cherished position or credential. A cottage industry sprouts up in instructing people on how to navigate the gauntlet. Typically the industry (as cottage industries go) offers a product that promises not only to help one pass through the gauntlet but also to help one travel it more easily and at less cost in time and effort, suffering fewer wounds along the way. The idea is to simplify the process, to demystify it, to debug it—ultimately, to show the aspirant how to outfox her evaluators.

Then the second stage arrives. The cottage industry's product is widely available and well known. Everyone has access to it.⁵ It becomes not just helpful to be instructed on the process but essential. What used to be a leg up becomes a price of admission, a minimum baseline for entry into the discussion. And, more worrying, the focus seems to grow on all the little tricks and secrets that help one defang a process that is for good reason meant to have a serious set of fangs.

There are not yet (heaven forbid) any marketed programs in preparing for the law teaching market. But the volume and tactical quality of the advice out there is beginning to take on shades of Kaplan. It is a bit worrying, in this regard, that the American Bar Association is charging such a steep price for *Becoming a Law Professor*.

In the end, what is achieved by marketing tactical advice? Is value added in terms of the quality of legal scholars and their scholarship, or do entry costs simply grow and become more systematic? My concern is that all we have done is reinserted the superficiality that spawned the movement to make the process more substantive in the first place.

I thus have two complaints about the process-oriented quality of the literature on becoming a law professor, of which *Becoming a Law Professor* is the current apotheosis. One is that it instructs its readers to spin straw into gold without telling them how such alchemy is possible. The other is that it contributes to a perhaps wasteful or even counterproductive sideshow in

4. I label this phenomenon after the famous preparation conglomerate that expensively trains young people for tests for which we used to prepare by counting and sharpening our no. 2 pencils.

5. Or not everyone has access, and those who do not belong to disadvantaged groups.

which candidates are encouraged to devote energies to dressing themselves up a certain way at the cost of figuring out how to become genuine and original scholars.

It would be an obvious error, of course, to blame the authors of *Becoming a Law Professor* or its genre for creating these problems. Especially with regard to the problem of Kaplanization, the authors have admirably egalitarian ambitions. The book endeavors at some pains to persuade the “nonstandard” candidate for a law teaching position, who has not embraced the Kaplan-type program early and often in her résumé development, that all hope is not lost (pp. 27–38). One can hope the authors’ emphasis on the problems involved in being nonstandard—and what might be needed to overcome them—encourages more people than it discourages.

After all, law faculties are collectively responsible for creating the process that this new guidebook only tries to explain. We are as responsible as the authors of the existing literature for not having published the deeper guidance that aspiring legal scholars need. I thus mean in this Review to be at least as introspective as critical. And I realize this Review cannot help but contribute to the very problem about which I complain by making certain points about credentialing only more explicit.

I will now take up my two related worries in turn. I will spend more time on the first, which is likely to be of more practical use to the reader.

I. STRAW INTO GOLD

A. *The Problem*

When it comes to legal scholarship, how does one get from straw to gold? Maybe the available resources have not answered this question because it is too hard. Like everyone else who has written on this subject, I can certainly reflect on my own experience. When I think back to the straw with which I began, it tends to make me cringe rather painfully. Recalling now what I began to put on the page about seven years ago produces much the same effect on me as thinking about myself in high school—or, more precisely, on stage in high school.⁶

I do know that it was essential advice to be told emphatically from every quarter that, in order to be taken seriously as a candidate, I had to publish legal scholarship posthaste. Of course I knew this already, as much as the next person thinking about this market. But I needed to be really bashed about the skull with it, even more than the average candidate, because I had been practicing law for a length of time that *Becoming a Law Professor* and its fellow sources, from their relentlessly tactical perspective, identify as a

6. Actually, the effect is somewhat worse. The people who knew me in high school are now either comfortably distant or reassuringly forgetful. People with whom I now travel in the same circles have seen my initial writings. And I have the further pain of having to wonder whether, for example, this very piece will make me cringe seven years from now.

serious career obstacle.⁷ The advice to write and publish, however, only gets one into that spinning room and perhaps out the other side with something on paper of reasonable length.

If one's goal is more than to publish something, to get a job somewhere, and to be granted tenure by somebody, then the goal is to produce not just work but good work. I will add that this is true even if one does not possess any deontological commitment to the scholarly enterprise and is purely consequentialist about the job market. (In which case, by the way, please do not seek a job at my school.) No sooner has it become essential to have published or publishable work in order to be hired than it has become essential to have work that will hold up favorably under a hiring committee's review. And, as psychologists tell us, we all hail from Lake Wobegon: almost nobody starts out (or even ends up) thinking she is capable of producing only minimally adequate work.⁸

The literature on entry to law teaching has directed such effort at recognizing how hiring is now structured around actual and potential publications (pp. 27–33) that it has largely missed the point that the moment that candidates began to compete over publications they were competing over quality. Indeed, hasn't that been the whole point of shifting entry-level hiring to a focus on publications: to identify the candidates who will write *well*? We all know there are more than enough law journals to ensure that virtually everyone who can manage to get fingers to keyboard with some measure of discipline will achieve the status of “published.”

Much of the advice in *Becoming a Law Professor* exemplifies this problem. It, like all the resources, rightly highlights the first commandment of the entry-level job market: “Publishing good legal scholarship is one way—we would say *the way*—to distinguish yourself as a candidate. In fact it is becoming essential: Many candidates at the AALS [hiring convention] will have published one post-law school law review article; many hiring committees now expect prior publication.”⁹

A sermon on how to live by this commandment, however, is hard to find in this book or anywhere else.¹⁰ The authors talk about the “real trick” of

7. P. 27 & n.10 (discussing Jeffery M. Lipshaw, *Memo to Lawyers: How Not To Retire and Teach*, 30 N.C. CENT. L. REV. 155 (2008)). Lipshaw practiced for twenty-six years, which more than lapped my ten years, so obstacles clearly can be overcome.

8. See generally Justin Kruger, *Lake Wobegon Be Gone! The “Below-Average Effect” and the Egocentric Nature of Comparative Ability Judgments*, 77 J. PERSONALITY & SOC. PSYCH. 221 (1999).

9. P. 28; see also Brian Leiter, *Paths to Law Teaching: Information and Advice for Persons Interested in Teaching Law*, U. CHI. SCH. L. (Aug. 2009), <http://www.law.uchicago.edu/careerservices/pathstolawteaching> (“Publications make and break candidacies.”); Brad Wendel, *The Big Rock Candy Mountain: How To Get a Job in Law Teaching*, CONSIDERING L. TEACHING (Oct. 8, 2010), <http://ww3.lawschool.cornell.edu/faculty-pages/wendel/teaching.htm> (“[T]he three most important things an aspiring law professor can do is publish, publish, publish.”).

10. Consider, for example, RONALD W. EADES, *HOW TO BE A LAW PROFESSOR GUIDE: FROM GETTING THAT FIRST JOB TO RETIREMENT* (2008). This sounds like a book that would explain how to write scholarship (or, if not, how to be a guide to being a law professor). The

“establishing a unique viewpoint” that will give rise to a good “three-minute summary to a faculty appointments committee” (p. 15). They recommend as follows: “Write a piece for your bar journal, or try to develop some CLE materials into a substantive, scholarly law review article” (p. 20). A sidebar page on “Beginning Law Review Article Ideas” includes short paragraphs on how to do the “note, comment, or seminar paper redux,” the “critical review of doctrine,” the “recent Supreme Court-case article,” and the “book review essay” (p. 31).

There is almost no discussion of the particulars of fields, legal theory, and methodologies, or of their histories and current statuses¹¹—aside from the de rigeur advice, which can only encourage the ruthless tacticians, that tax and commercial law are bull markets in comparison to public law (pp. 15–16). The book includes no bibliography or footnotes full of citations to help aspirants begin to learn these things. The authors do warn that “if you do not have a passionate sense that you have something (several things, in fact) important to say and that you will not be content until you say them in print, writing law review articles will be agony.”¹² But the book gives candidates no directions for how to find such passions, which do not grow abundantly on trees but require years of search and discovery. One might passionately need to say that the Supreme Court’s decision in *Citizens United*¹³ is bad for America, but that is not a law review article—to the contrary, to say that an article has such a thesis is a way to dismiss the work.

The authors briefly insert two major caveats in their guide. First, they say the book is a guide to the job market, not writing legal scholarship.¹⁴ Second, halfway through the book they say their advice mostly does not apply to “elite law schools,” where hiring is “sui generis” and conducted “according to a plan that differs substantially from the one that we’ve described here” (p. 61). Points taken.

If the authors wanted to avoid the perilous enterprise of staking out positions on what makes legal scholarship “good,” that would certainly be understandable. But how far can a guide to the job market go that stresses the importance of writing as a ticket for entry yet does not explain how to become a writer, while attending to matters such as how to travel on airplanes?¹⁵

book contains nothing on the substance of how to produce legal scholarship—though it does include pointers on how to dress. *Id.* at 86–87.

11. The short online resource authored and updated by Brad Wendel, *supra* note 9, has more to say on fields and methodologies than any other source I have seen.

12. P. 15; *see also* p. 29 (“[I]f you do not . . . have a passion for writing and publishing, then you are dooming yourself to a frustrating teaching career.” (quoting Randy Barnett, *Getting a Law Teaching Job*, VOLOKH CONSPIRACY (Mar. 9, 2005, 5:09 PM), http://volokh.com/posts/chain_1110176668.shtml) (internal quotation marks omitted)).

13. *Citizens United v. Fed. Election Comm’n*, 130 S. Ct. 876 (2010).

14. P. 29 (“How to turn an idea into a published article is beyond the scope of this work.”).

15. P. 61 (“Especially if you are flying [to a callback interview], you might consider carrying on essentials that could get you through the next day if your luggage is lost.”).

Furthermore, which law schools follow “elite” hiring practices? I had thought the conventional wisdom these days was that any candidate hoping to be hired by a roughly top-100 school in the *U.S. News & World Report* rankings (or to move laterally within that tier of schools over the course of a career) had better enter the market prepared to persuade people that she is a real scholar in the making. No matter what distinctions one wants to make among law schools, or where one wants to draw lines, there are dozens and dozens of people in the entry-level market each year competing to be designated as something like “a promising new scholar.”

One can see this by employing the Wendel test, the essential tip offered by Brad Wendel of Cornell, an astute purveyor of job market advice. The Wendel test directs potential entrants to the job market as follows:

Go to the Web site of the Association of American Law Schools . . . , specifically their list of member schools. Now, scroll down through that list and find the goofiest-sounding law school you’ve never heard of—the kind of place you’d sort of snicker if you told people you worked there. Go to the page, which they’re sure to have, listing their faculty profiles or bios. Look around until you find a relatively recent hire—they’ll have the title of assistant or associate professor. (More senior faculty may have been hired when the market wasn’t nearly so competitive.) Read his or her bio. I’ll bet you dollars to donuts that their resume resembles the classic pattern [in which the candidate has top grades from a top school, one or more clerkships, publications, and so on] and is probably even scarier.¹⁶

I recommend a modified version of the Wendel test: Go to the list and find not necessarily a “goofy” law school at which others would “snicker,” but one that seems really “regional,” maybe even weak, and for which one could envision oneself being disappointed, maybe even acutely so, in the event that a job offer came one’s way from that school. Then go look for the bios of recent hires. But don’t just read their résumés. Read their most recent work. I’ll bet you dollars to donuts that at least some of that work is going to make you think (maybe even with fright): “How am I going to produce something that insightful and polished?” Reading the substance of work product, rather than looking only at the surface of a résumé, is the path to understanding what might be required to replicate the career of the successful academic.

B. *Solutions?*

Consensus now has it: good writing is the most important prerequisite for obtaining a good job as a law professor. Many appear to believe there is benefit in supplying aspirants to law teaching with written advice on how to obtain good jobs. One might expect therefore to find some written advice on how to produce good writing. It does not yet exist, at least not in a form that speaks informatively to the beginning professional.

16. Wendel, *supra* note 9 (listing the classic criteria for successful teaching applicants).

None of the information in *Becoming a Law Professor* would have helped me get past the dreck I first turned out when I began writing in earnest. What did help me were two pieces of advice. The advice came from a few professors at my old law school whom I was fortunate enough to have rooting for me. It consisted of two points. The first was to read. And then read more. And then, when I felt I was done reading, to keep on reading. The second was to find my voice.

The first bit of advice was easy enough to follow, at least once I understood that the depth of the material relevant to speaking with any scholarly authority on a subject looks unfathomable from the perspective of a newbie, even (or especially) one coming from a career in practicing law that had produced the illusion of relative mastery.

As I kept on reading and reading, I gradually figured out why I had been directed to do so—not just to learn the knowledge and arguments that make up a field but to see that the general belief of lawyers that they can dash off top-notch law review articles if they want to is dead wrong, at least these days. As one becomes immersed in legal theory to the neck, or higher, one realizes that some of it is quite excellent (in its own way!) and that producing something equivalent can be a stiff challenge.

The second tip was much harder to grasp. But it helped immensely to know that it was my object—that it would not be enough to write generically, even once I had figured out the genre. Like any valuable writing, the work would fail to attract readers if it were not both original and genuine.

In retrospect, these points seem so obvious. Know what you are talking about. Have something to say. Be yourself. Write what you know, after all.

The trouble is that these crucial bits of advice can be at war with each other. There is something about the process of reading legal scholarship to the point of total immersion that, though essential, can lead one astray. One is tempted, inexorably and subconsciously, to imitate. And one tends to be distracted by the baubles in other people's work—the clever tricks in presenting ideas that get the hooks into law review editors but that often don't have much at all to do with the ideas themselves. (Don't forget that many aspiring scholars begin learning to read scholarship when serving as student editors.)

I am probably describing a dilemma general to the artistic process. How does one learn from one's forebears by immersing oneself in their work yet manage to produce something original? The process of learning to solve this puzzle is not one that can be set out step-by-step in the style of a "Such-and-Such for Dummies" book or an "Idiot's Guide."

In criticizing resources like *Becoming a Law Professor* for failing to help explain the artistic process of writing I might be doing the same thing as first-year students who come to me asking how to "do" legal analysis. They implicitly seek some kind of shortcut that can be quickly imparted outside of all that roundabout nonsense going on in the classroom. I say to them, of course, that they have to learn by doing. I tell them that there is no substitute for coming to class and engaging with the problem-solving exer-

cise over and over with me and their peers—that there is no shortcut or magic trick.

So too with learning how to produce good legal scholarship. Still, there must be something more useful we could say to aspirants. “You’ll just have to see—it’s kind of like with childbirth or parenting” would be really unsatisfactory given that some do succeed at this process and others do not. Unlike with babies, there are good papers and there are bad ones.

As this is a book review, I get to point out problems without having to solve them. But I want to suggest three directions in which the literature on becoming a legal academic might go to address the question of how to become a legal *scholar*.

First, the advice might focus more on earlier stages of the process. What use is it to know how to find one’s way around that byzantine conference hotel in Washington if one hasn’t, years earlier, found one’s way around the law enough to have discovered a subject about which one has something really interesting and important to say? I doubt that it does any good to teach chapter and verse about the process of getting a law review article published to a person who has not found that *something*.¹⁷

One of my favorite questions for applicants in interviews (have I just doomed it to appear on a list in the next edition of *Becoming a Law Professor*?) is to ask them how and why they became interested in their chosen field of writing. It’s such a straightforward question, but very hard to fake an answer to—especially if the questioner has already read a paper that inevitably reveals, as I believe most legal scholarship does, a good deal about the person who wrote it. Surprisingly, many candidates answer this question in a way that exposes their failure to have located a field of genuine passion in which one would project them to produce abundant, interesting work in the decades ahead. Sometimes one can see in the answer and in the candidate potential to find that field in the near future. Indeed, a sense of awareness at being a bit lost in the forest (not too much, though!) can project a lot of promise. But sometimes one sees only a tactician, perhaps even a careerist, in which case I, for one, tend to recoil.

Of course, the literature on the academic job market cannot write a recipe for how to find a field and develop a research agenda. Such an enterprise would contradict itself. How could one instruct another person, step-by-step, how to find something that is genuinely her own work and her own self? But the literature might emphasize a lot more how essential it is for candidates to have gone through this process—by reading boatloads of stuff, writing (as a student and beyond) for feedback and for practice, practicing law, and generally getting to know how the world works.

And I think we could say more than “just flounder around in it and you’ll find your way.” Floundering (lots of it) is important and unavoidable,

17. In his foreword to *Becoming a Law Professor*, Lawrence Solum says, “[T]he most important task—both for getting your first job and for long-term success in the legal academy—is the acquisition of the tools and knowledge that form the groundwork for excellent legal scholarship.” P. xi. True, but the book Solum introduces does not show how to do that.

to be sure. Even flounders, though, have some sort of goal in mind.¹⁸ Here is one useful goal that can be generalized, I believe, to all forms of legal scholarship, ranging from the deconstructionist to the most quantitative empirical work: find a real problem to think and write about. Another of the now obvious but essential pieces of advice a senior professor gave me early on was, “The best scholarship comes from thinking about real problems.” This might be the legal academy’s equivalent of presidential politics’ mantra, “It’s the economy, stupid.” Some things need constant repetition because bad habits cause them to be forgotten.

What do I mean by “real” problems? A crisp definition is difficult, but the idea is to tackle something that matters a great deal to the world or to the development of important ideas—and ideally to both. In his guide to the practicalities of writing for law journals, Eugene Volokh asserts in his typically clear style, “Good legal scholarship should make (1) a claim that is (2) novel, (3) nonobvious, (4) useful, (5) sound, and (6) seen by the reader to be novel, nonobvious, useful, and sound.”¹⁹ Maybe by “real” I mean something like what Volokh means by “useful.”

But I fear that Volokh’s approach, while serving as a useful checklist for developing drafts and editing, is not the kind of thing that is going to bring superior work to life in the first instance.²⁰ A lot of what Volokh says about the utility of an academic paper has to do with proposals and normative prescriptions,²¹ which are only a small part of what I mean by “real” problems. Indeed, the more important the problems a scholar chooses, the more difficult it will be to solve them with neat proposals that can be taken off to court and shared with judges to help them decide cases.²² In fairness, Volokh’s book is written for law students and does a very good job of steering them away from common mistakes that can make their work not publishable. But

18. Presumably to eat, not be eaten, and reproduce. Who knows—flounders might turn out to be quite efficient at accomplishing these goals. *Cf.* *United States v. Black*, 530 F.3d 596, 604 (7th Cir. 2008) (Posner, J.) (explaining that the “ostrich instruction” in criminal law is “a canard on a very distinguished bird” because ostriches don’t behave at all as the legal expression supposes).

19. EUGENE VOLOKH, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW* 10 (4th ed. 2010).

20. For an in-depth critique of Volokh’s book along these lines, see Andrew Yaphe, *Taking Note of Notes: Student Legal Scholarship in Theory and Practice* (Nov. 18, 2010) (unpublished Note, Stanford Law School), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1711533.

21. *See* VOLOKH, *supra* note 19, at 24–27.

22. Oswald Avery, one of the great pioneers in DNA research, reportedly said that there are two types of researchers:

[Those who] go around picking up surface nuggets, and whenever they can spot a surface nugget of gold they pick it up and add it to their collection. . . . [The other type] is not really interested in the surface nugget. He is much more interested in digging a deep hole in one place, hoping to hit a vein. And of course if he strikes a vein of gold he makes a tremendous advance.

JOHN M. BARRY, *THE GREAT INFLUENZA: THE EPIC STORY OF THE DEADLIEST PLAGUE IN HISTORY* 423 (2005).

his book may be the only substantial resource out there on the general question of how to write legal scholarship, and it is a source that the literature on the law teaching market, including *Becoming a Law Professor*, recommends (p. 20 & n.21).

The tendency of guidance in this area to veer into excessive instrumentality is natural. The advice is sought and offered, after all, in one of life's most vitally instrumental contexts: the pursuit of a job and its permanent retention. But instrumentality can be self-defeating. Another piece of advice—again offered to me by a sage, successful scholar—illustrates this truth. In explaining how to make the pivot from acquiring the entry-level position to working toward tenure (the two career stages are getting ever-harder to distinguish), this professor told me that “you need a gimmick.” This pointer is not quite as flip as it may sound. I understood what he meant, and it has stuck with me. One needs to develop sufficient clarity of vision and voice in one's work, and enough of a common thread, that people will be able to say at some point in roughly three to six years, “She is the one who is doing such-and-such.”

The problem, of course, is that the “such-and-such” must not be gimmicky at all. It must be yours (innovative, not merely borrowed). It must be interesting and important. It must not be facile or sophistic. It must reflect rigorous and sustained attention to a problem or set of problems. In other words, the idea is to produce a line of work that ultimately allows others to say that what you are doing is important, innovative, and describable in simple declarative form (“She does X”), without the work being artificial or superficial. To call this a “gimmick”—perhaps even to foreground the point at all—is to put the cart before the horse, at the possible cost of never harnessing the horse or sending it on its way.

It might be exactly backward, therefore, for a new scholar to sit down in that shuttered room (the one for spinning straw into gold) and ask herself, “What can I write that is novel and useful?” First, she ought to immerse herself deeply in a field—whether that is through practice, graduate study, reading, policy work, or some other method—and then gradually develop a sense for what interests her and what is important. A great question I was asked on the entry-level job market was, “Tell me the one thing that you saw in scholarship when you came out of practice that just made you say: This is totally wrong; they are completely missing the essential point.” As the new scholar finds a problem or question that is highly motivating and really important, *then* she should make sure that what she plans to say about it is “novel and useful.” But, by that point, she will probably know that it is.

In any event, I do not agree with the authors of *Becoming a Law Professor* that “if you never look at a piece of your own writing and wonder if you are not really arguing about the number of angels dancing on the head of pin, it's likely you are not getting close enough to the theoretical line” (p. 15). If the metaphor is meant to portray theory and practice in a relation of steady opposition, it would be a caricature of legal theory—the best of which brings big, difficult concepts to ground in important problems of the world that very much benefit from application of such concepts, and does so

with accessible style and methodology.²³ It is probably true that there is a lot of work out there about angels on pins, but that is not the material to which we ought to direct the attention of new scholars—I daresay maybe not even in jest.

The better advice than looking for something that is novel or catchy or baroque—and I promise this is the last chestnut I will offer on this topic—might be the statement one top scholar made to me that “if you build it, they will come.” Corny, yes. But it captures the point that one might be better off tending one’s own field assiduously than going out and hunting broadly for the attentions of the famous. The legal academy is of course full of unfairness, pettiness, and superficiality—at least as much as in any walk of life—but excellent work has a tendency to attract its own audience. “Worry about yourself,” as we often admonish our small children—in, I suppose, a somewhat weak effort to inculcate habits of self-discipline, self-confidence, and resistance to distraction.

Now to my second suggestion: the literature should be meaner. It is already mean in a certain way. It constantly tells the reader about the infamously terrible odds against winning a job in this market. But that is the wrong way to be mean. In truth, the candidate’s odds go up in proportion to the candidate’s success, through years of work prior to entering the market, at finding fertile territory in which to produce scholarship. For candidates who have such success, the relevant applicant pool when they enter the market is much smaller than the hundreds of filers of “FAR” forms that the literature ominously describes as the competition.

The right way to be mean is to tell the aspirants, when warranted (which for most of us mortals is most of the time), that their work is lousy. I admit that it might be asking a bit much for a guidebook to be capable of reading other people’s work and providing feedback on it. But resources like *Becoming a Law Professor* could do more to stress the necessity of having candid and experienced people read one’s work. These readers must, above all else, be willing to be mean. Of course, sharp, informed criticism of writing is not really mean because it is not personal. But any writer worth her salt knows that such criticism causes pain because the work has one’s self, neurons and all, inside of it.

Third and finally, the literature needs to say more about not just the substance of the market generally but also the substance of its various submarkets. I think everything I have said to this point holds true regardless of how one comes to the academy or the field one chooses. But there are, of course, huge differences in the process of finding an agenda and a voice as a scholar depending on the type of scholarship one does—as any PhDs reading this Review have probably been shouting for several pages by now.

23. For an excellent contemporary example of this point (on a grander scale than even the best entry-level work), see SCOTT J. SHAPIRO, *LEGALITY* (2011). Shapiro elegantly explains, in a style that readers with no legal training can follow, why an allegedly “angels-on-pins” question (“What is law?”) is nothing of the sort.

I will not burden readers with my unschooled thoughts about differences in process for theoretical economists, empiricists, philosophers, historians, commercial lawyers, tax scholars, public law theorists, and so on. I only admonish resources like *Becoming a Law Professor* to warn candidates early and often that formal graduate training beyond the JD degree does not substitute for—or somehow surgically implant—the knack for locating oneself as a scholar. I can think of no worse result from the mass of tactical advice about the law teaching market than for it to send someone off on the monumental task of acquiring a doctorate for instrumental purposes and without a passion to work in her chosen field of inquiry.

II. KAPLANIZATION

The problem with focusing too heavily on process is not just that it leaves out what the candidates really need to know. It can end up leading all of us to pay too much attention to process. We will get the candidates (and therefore the colleagues) we expect to get. As with grade inflation or lingo in letters of recommendation, what used to be exceptional becomes merely expected. And the action shifts to another space—above the new baseline but not different in kind.

By regimenting how aspirants prepare themselves for the teaching market, we may have only moved the baseline. We faculties all are culpable here, more so than any books and other sources that instruct on how to win us over. *Becoming a Law Professor*, in its content and in the authors' labors simply to publish a book on this subject, represents a considered and well-intentioned effort to reduce barriers to entry into law teaching (p. xiii).

I admit to a full share of responsibility in this process of standardizing teaching candidates. Few things irritate me more in the hiring process than candidates who evidence a failure to have consulted the resources on preparing for the law teaching market. If you do not bother to do the basic internet research on the fundamentals of the market in which you hope to compete, how serious can you be about doing the job you are trying to get? (Watch what I do, not what I say: read the literature on how to handle the job market in spite of my criticisms of it.)

My stance is no more irrational than the admissions committees of top undergraduate institutions who expect the kinds of SAT scores that prep classes produce, or the high school basketball coaches who expect players to have started organized play by the fifth grade at the latest, or the orchestras that aim to select players who began the Suzuki method while in diapers.²⁴

But I worry, as do others, about the kind of people our credentialing systems are producing.²⁵ The earlier we impose pressure to check résumé and

24. See Amy Chua, *Why Chinese Mothers Are Superior*, WALL ST. J., Jan. 8, 2011, at C1 (extolling the virtues of forcing one's children to engage in the early and rigorous practice of disciplines).

25. See, for example, Vicki Abeles's recent documentary, *Race to Nowhere*, which questions whether the intense levels of work and competition at secondary schools that focus

development boxes, and the more rigid and unforgiving we make that process, the more we risk producing people who are unhappy, who do not love what they do, who have to commit to life pursuits before any realistic possibility of being able to recognize the difference between a good fit and a bad one.

We perhaps gain some increase in talent standards. We might lose more, however, by snuffing out the possibility of the late bloomer or the diamond in the rough and increasing the incidence of burnout and midlife drift.

Consider the somewhat analogous situation of the market for law clerks. We all have students—one or two more each year, it seems—who failed to land clerkships despite our absolute convictions that they would make outstanding law clerks, superior to many who were hired, because these students' applications lacked a heuristic judges use to sort through the unmanageable and ever-growing crush of clerkship applications. So we try to figure out what those heuristics are and we instruct the students for whom we are rooting about how to get those things—a certain grade, a certain editorial position—onto their résumés. The trouble is that everyone else is doing that too, including the sorts of applicants who locked up all the clerkship positions the last time around. We may have given the students we help a somewhat better shot, but we have not affected the extent to which the market will take into account the *reasons* we assessed those students as excellent candidates in the first place: things like maturity, judgment, treatment of fellow human beings, creativity, fire in the belly, fully formed commitment to a set of core values, work ethic, and so on.

Without question, the entry-level market for law professors does far more than the clerkship market to probe candidates beneath shallow heuristics and on the kinds of “soft” (and arguably more important) qualities I have just described. But certain heuristics still matter enormously, as I am often reminded in those conversations with colleagues about disagreements over entry-level candidates that inevitably conclude with someone remarking, “With entry-levels, it’s fundamentally about prediction, and all of us can be wrong.” I am not sure what the behavioralists would say here, but my hunch is that there is “a story to be told” about how the more those particular heuristics tend to present themselves in a pattern, the more people coalesce around using them in decisions.

One can see the circularity problem. Conventional wisdom says you must have *A*, *B*, and *C* on your résumé because they are perceived to be good proxies for being an *X*—one who has that ability to be a good scholar that we so badly want but which ability cannot be observed directly.²⁶ Candidates who really want to be hired make sure to have *A*, *B*, and *C*. We all see *A*, *B*, and *C* and say, “Look, this person has the proxies, so they are an *X*.” But that person has *A*, *B*, and *C* because she was told to have them, not

primarily on college admissions do more damage than good in the development of young adults. *RACE TO NOWHERE* (Reel Link Films 2010).

26. See Wendel, *supra* note 9 (discussing how law review membership and student publications are sometimes viewed as proxies “for scholarly potential”).

necessarily because she is an *X*. This process only works if *A*, *B*, and *C* necessarily imply being an *X*—which is doubtful because they are merely stand-ins for things we cannot observe. In any event, the less closely aligned *A*, *B*, and *C* are to the qualities we really want but cannot observe directly, the worse the circularity problem becomes. And that underscores the importance of the argument in Part I: the literature on how to become a law professor should do much more to explain how to be an *X* and spend less time explaining how to have *A*, *B*, and *C* on one's résumé.

Faculty too—the employers of new professors—must play their part. We should guard against our human tendencies to fall into lazy or habitual reliance on the heuristics. To my mind, the best relatively recent innovation in the entry-level job market has been the practice of many (most?) appointments committees to read a candidate's papers before even deciding to offer that candidate a first-round interview at the AALS meeting. I don't think any responsible appointments committee can justify failing to do this, at least not at a school that enjoys the ability to be reasonably selective among some group of candidates who all have published or publishable work. We probably should go further. Dare I suggest that faculties should develop norms or rules about declining to accept votes from members who have not really read the candidate's work, or alternatively of delegating the appointments decision almost entirely to a committee of persons who have contributed that labor?

Becoming a Law Professor and its genre are minor players in the story of Kaplanization. I worry about this problem far more in the education and growth of my young daughters than I do in the production of candidates in the market for law professors. But I still read this new book as I sometimes read résumés during recruiting season: with a sense of discomfort about what our process is producing and with a question about whether our efforts to make the hiring of law professors more rigorous are producing a better legal academy.

Martha Nussbaum worried about this when she wrote a piece over a decade ago lamenting, rather sharply, that “a certain type of individual, who combines obsequiousness with glibness and aggressiveness, is disproportionately (and disgustingly) in evidence in the academic hiring process of the legal academy.”²⁷ Her point was to urge a more substantive process focused on quality of ideas, to require more writing from candidates that is the product of sustained and concentrated labor, to focus evaluation on the work more than the person, and to move law schools in the direction of hiring practices in certain other disciplines.

To some extent, the process has moved in Nussbaum's desired direction by sharply bidding up the premium on writing and publication in the entry-level market. This development has no doubt lowered the incidence of bad hiring mistakes, ensuring that most new professors are capable of being productive and will be over the long haul. But has it defeated the superficiality that Nussbaum deplored, or does it promise to do so in the near term?

27. Martha Nussbaum, *Cooking for a Job*, 1 GREEN BAG 2D 253, 259 (1998).

Reading the existing literature on how to become a law professor does not convince me that we have solved the surprisingly tenacious problem of how to put aside superficial metrics and deeply evaluate the core matters of substance most material in hiring deliberations.

CONCLUSION

Suppose someone wants to know how a kid makes it to Wimbledon (the tennis tournament, not the village). One might answer, “Start competing early. Practice a lot. Win some local junior events. Then win some state and regional events. Get the attention of an important coach. If you can get an invitation, leave school to attend that coach’s tennis academy. Compete against better and better players. Eventually, establish a ranking and keep improving it until ranked high enough to be included in the Wimbledon draw.” Another might say, “For about fifteen years, tune one’s body like an utter fanatic while hitting about a billion backhands as someone with a keen aesthetic of the tennis stroke screams at you relentlessly. Someday the backhand might become possibly as good as or better than any that has come before it. If so, you will find yourself on the grass at the All England Club.” The latter answer probably captures the essence of the journey much better.²⁸

Tennis and legal scholarship have almost nothing in common. My point is to draw attention to the difference between an external perspective and an internal perspective on a process of professionalization. The external perspective is far easier to convey, of course, because it is observational and largely two-dimensional. The internal perspective is experiential, intuitive, accretive, deep, even emotional—and, yes, to a great extent individual. The internal perspective is thus much harder to impart to someone outside the process of becoming professionalized. But the budding professional needs to be told that the task before her is not to learn her profession but to *enter* it fully, leaving nothing of herself behind.

The authors of *Becoming a Law Professor* are to be applauded for assembling the conventional wisdom on the job market and organizing it in such an accessible format. Now someone needs to write a book, not about how to credential oneself, but about how to become a legal scholar—an artist at the game with a reliably winning stroke. We need an account of the internal point of view of the scholar of law.

Alas, the book I want might work only as a series of memoirs—and who would want to read *those*? As soon as you start talking about what makes work “good,” you have left the how-to section of the bookstore and entered a widely dreaded place: the faculty meeting on an appointments decision.

28. See ANDRE AGASSI, *OPEN: AN AUTOBIOGRAPHY* 27–103 (2009) (describing the decade of relentless and often miserable training that led former world number one tennis player Andre Agassi to his first appearance at the US Open at the age of sixteen). For a fictional (and more grueling) imagining of the process of junior tennis training, see DAVID FOSTER WALLACE, *INFINITE JEST* (1996).