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REFLECTIONS ON A SCHOLARLY AGENDA FOR THE BEGINNING LAW PROFESSOR

SHERRI L. BURR*

In August, 1990, I began my third year as an Assistant Professor of Law at the University of New Mexico School of Law. I have been asked to talk about developing a scholarly agenda from the perspective of a recently admitted member of the academy. I think this topic divides very easily into three parts: (1) developing a scholarly agenda; (2) choosing what to write from the agenda; and (3) deciding where to publish the article that you write.

I. DEVELOPING A SCHOLARLY AGENDA

An acquaintance from Yale applauded my decision to become a law professor stating that he felt he would fail in the scholarship sphere of the job because he had no ideas. I have found developing the ideas that form a scholarly agenda to be the easy part. If one thinks of ideas as responses to stimuli, then developing ideas is easy because the law school environment is both stimulating and challenging. I am constantly getting new ideas for articles from issues that arise during the course of classroom teaching, from chatting with my colleagues informally or at faculty colloquia, from reading scholarly articles, and by keeping informed about current events from various media sources.

For one of my areas of interest, international law, keeping abreast of changing world events is particularly important. International legal questions deserving of scholarly attention arise since a great deal of the change in the world is reflected in either: (1) conflict between two or more states or (2) a substantial change within a single state with international implications. Recently, for example, the two separate states of the Democratic Republic of Germany and the Federal Republic of Germany unified. As a student and teacher of international law, I immediately recognized that the act of reunification posed a host of international issues relating to state succession, such as the extent to which the reunified Germany will have responsibility for the treaties, public debt, international delicts, and other international obligations of the predecessor East Germany. Thus, when the two Germanies reunified, I

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could have placed on my agenda a note to do an article or book on the international legal implications of German reunification.

Another recent example is the Iraqi invasion of Kuwait, its subsequent annexation of Kuwait and the war that ensued to liberate Kuwait. This event raised a host of legal issues relating to the use of force in international affairs and the attempt by one state to militarily acquire sovereignty over another. This event could be the subject of a substantial article or book, or both. This conflict is particularly interesting because as the nature of the dispute evolved, it became clear that the nature of a potential article would have to evolve as well. For example, when Iraq first invaded Kuwait it announced that it was merely interested in changing its government. A week later, it announced that it was annexing Kuwait and ordered all diplomatic missions accredited to Kuwait to close. Initially, I thought of writing an article on the incident entitled "International Legal Justifications: The Chickens Come Home to Roost." This article would have compared the before signaling actions and post-event justification words of Iraq with those of the United States when it intervened in Grenada and Panama. However, after Iraq annexed Kuwait and emptied the territory of Kuwaitis while bringing in Iraqis and Palestinians, I realized that I would have to write a totally different article.

Thus, once you place an item on your scholarly agenda, you have to be prepared for the nature of the idea to change. The Iraq/Kuwait incident, therefore, illustrates the proposition that ideas can evolve in response to changing events. Concededly, however, the idea could also have changed in response to research discoveries or from engaging in dialogues about the idea with others.

Ideas can also come from reading about a recent case, from observing that the recent passage of a federal or state statute might need some clarification, or from analogy that an impending bill might do an injustice to the interests of a particular group. As a scholar in the field, you might feel an obligation to comment on the case or the statute. For example, on my current agenda are two ideas I developed after reading a particular case and statute.

In July of 1989, the Supreme Court decided an important copyright case construing the "work made for hire" provisions of the 1976 Copyright Act. The case received some media attention since it involved Mitch Snyder's Group, the Community for Creative Non-Violence, which is dedicated to calling attention to and ultimately eliminating homelessness in the United States. I concluded that the Supreme Court may have created more problems than it resolved by its decision. I placed on my scholarly agenda the idea to write about *Reid v. Community for Creative Non-Violence* and its potential implications for scholarly works by academics.

An example of a new statute creating a scholarly agenda idea was the January 1989 passage of New Mexico's Uniform Trade Secrets

Act. Prior to the passage of that Act, New Mexico had almost no law related to trade secrets. As a teacher of intellectual property law, of which a component is trade secret law, I felt an obligation to comment on this Act. I thus added to my scholarly agenda a note to write an article on New Mexico's Trade Secret Act.

When I have an idea that I think would make a good article, I write it down. I keep a list of issues that I think need to be addressed. This is a derivation of an idea that my high school creative writing teacher shared with my class when he urged us to keep a pocket notebook to jot down ideas, discoveries and observances of human nature that we could use later.

II. CHOOSING A WRITING TOPIC FROM THE AGENDA

Once you have an idea or a list of ideas, you need, in copyright parlance, to decide which of the ideas you wish to express in concrete form. I think many factors can have influence on what you decide to write from your scholarly agenda.

The first influencing factor is *timeliness*. If there is an issue that is really important at the moment because it is being hotly debated around the country or the world, you are compelled to write on it immediately, particularly (1) if you want to influence the course or the outcome of the debate, and (2) if you want to avoid being preempted by other scholars. Just in my limited time as a law professor, I have come to realize that if I am thinking about writing on a topic, someone else is probably also thinking of writing about the same topic.

A word of caution: timely topics may also be controversial and risky. At the outset of my career I was advised to avoid controversial topics, particularly those in which most people may have an opinion—however unreasoned or unprincipled it may be. Examples of controversial topics might be some of those related to race, like affirmative action issues, or, for someone interested in international law, those related to the use of force. The danger is that because some colleagues may have strong opinions on the subject, the discussions about your scholarship could become political.

On the other hand, some scholars have deplored what they view as the subtle censorship of young scholars by the old. In a short article, titled "The Internal Scholarly Jury", Julius Getman, the Earl E. Sheffield Regents Chair and Associate Dean for Faculty Research at the University of Texas School of Law, wrote:

Inevitably junior faculty are compelled to take into account the type of scholarship that they believe the seniors will think worthy of tenure. Not infrequently this means abandoning work that might be too ambitious or intellectually risky. As a result, young scholars produce writing that seems to lack originality. It rarely gives the reader a sense that the person who wrote it enjoyed the experience, or that it

brought out the best aspects of his or her scholarly potential.¹

Getman brings out a good point. As someone interested in becoming a law professor, you should enter the profession prepared to write on topics you enjoy and will give you pleasure by increasing your knowledge about a particular topic and by sharing your ideas with current and future generations of scholars.

A second influencing factor is the extent to which you feel strongly about the issue. If you are very interested in an idea, it is better to write about it at that moment, even if it means writing without footnotes and support because if you wait, you may lose the wonderful thoughts that you have on the topic.

A third influencing factor is deadlines: either deadlines from the publisher or those imposed by your institution for promotion and tenure purposes. The need to write a certain number of articles, or publish an article in a prestigious journal, may necessitate choosing certain topics that are more concrete and defined over those that might require years of investigation. I personally prefer having publication deadlines because a specified date makes the goal of finishing the article more concrete.

A fourth influencing factor may be the order in which you want your articles to appear. I am interested in a variety of topics. Currently, I have articles related to intellectual property, property, art law and international law on my agenda. I chose to finish the intellectual property article first because I had a publisher for it before it was finished and the journal had a deadline for publication. Thus, while I have not chosen a deliberate order of publication, I should mention that Professor Robert Abrams has suggested that new scholars should produce several smaller works that build in scope from the least difficult to the more sophisticated.²

III. DECIDING WHERE TO PUBLISH

With over 400 law journals currently in existence and others constantly forming, the decision on where to publish can be a bit overwhelming. There are several factors to keep in mind. I have been advised that one factor is whether your faculty cares about the prestige of the journal in which you publish. If it does, then you should aim to publish in the principal law journals of the top ten or top twenty-five law schools. If you or your faculty are not overly concerned about prestige, then the operating criteria should be to find the journal that will allow the widest dissemination of your ideas to your target audience. Thus, specialty journals, for example, in international law, or civil

1. Getman, *The Internal Scholarly Jury*, J. Legal Educ. 337, 340 (1989).

2. Abrams, *Sing Muse: Legal Scholarship for New Law Teachers*, 37 J. LEGAL EDUC. 1, 1-2 (1987).

rights, or intellectual property, or constitutional law, might be the best place for an article related to that topic. Another option would be to keep a watchful eye for symposium issues on specified topics. I chose to publish my first article in a symposium issue on intellectual property of the John Marshall Law Review. The John Marshall Law Review sent me a letter in December of 1989, stating they would be publishing this symposium issue in the fall of 1990 and asking whether I could submit an article by a certain date. I had begun thinking about a particular idea the summer before and decided to finish the article. I submitted it and it was accepted.

A caveat on where to publish: some have said that no one reads law reviews and that their decision on the quality of a particular piece is limited to determining where it was published. These skeptics would say that few people will read your piece, and fewer even still will write you to comment on it. Nevertheless, sending reprints to those individuals who you think will be interested in the subject matter improves the odds of your piece being read by providing ready access to your piece. It also increases the likelihood that it will be cited by these individuals when they write on related subject matter.

Finally, there are a few factors that you should consider in deciding whether to publish essays, book reviews, casebooks, or treatises. If you are interested in a particular idea for which one of these forms would be the best vehicle of expression, then you should consider one of these forms. You may want to determine if your school will count the form you choose as one of your scholarly works for tenure and promotion purposes. If they will not and you have limited time, then you may want to limit your work to the more traditional law review articles in the short term and return to one of these forms in the long run.

CONCLUSION

In conclusion, I believe the most important factor in creating a scholarly agenda and in choosing what ideas from the agenda to express in concrete form is to write about what gives you the most satisfaction. For the naturally extroverted, you may find writing to be a lonely experience. Therefore, it is important that you research and write on issues that are important and interesting to you. You are the one that has to live with the work, from creation to birth, through its adolescence, or revisions, to adulthood when the article is complete. Thus, there should be a high pleasure quotient in the initial idea that will last through the various stages of the writing process until the final product appears in print.

