

ON BECOMING “PROFESSOR”: A SEMI-SERIOUS LOOK IN THE MIRROR†

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I. INTRODUCTION¹

Were this a typical law review article, I would begin by hinting—in less than three sentences—at a broad theory that would revolutionize the field reflected in the article.² What I would actually be doing is attempting to use enough big words to disguise the fact that instead of being a presentation of a transformative idea, the only original thought is contained in two brief paragraphs on page forty-three.³ But law review editors do not like two-paragraph law review articles, so I needed to introduce the original idea with references to

† One might add “A Modest Contribution to [21st] Century Legal Thought,” but doing so risks understatement. See Anthony D’Amato, *Brave New Scholarship*, 49 J. LEGAL EDUC. 143 (1999) (suggesting such a subtitle for brief articles).

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I would like to thank Cass Sunstein, Harold Koh, Richard Posner, Larry Tribe, and Elizabeth Warren, but since they did not actually read this Article, I can only actually thank a former Harvard 3L, Chiraag Bains, who sent me a brief email once, and my wife, Elvia Castro. Earlier versions of this Article have been presented at 8 AM panels of conferences in exotic locations that I wanted to visit and have the school pay the travel costs. Needless to say, aside from other panelists, no one actually heard the presentations.

For more on the “*” footnote, see Charles A. Sullivan, *The Under-Theorized Asterisk Footnote*, 93 GEO. L.J. 1093 (2005).

1. Following the advice of a recent article, I start this Article with a footnote; after all, given that “authors should directly address the issue of footnoting before writing an article,” what could be more appropriate than excessive preliminary footnotes? Shane Tintle, *Citing the Elite: The Burden of Authorial Anxiety*, 57 DUKE L.J. 487, 491 (2007). The formatting of this Article was created by Eugene Volokh, who helpfully posted a downloadable Word article template on his legal writing website. Academic Legal Writing, <http://www.law.ucla.edu/volokh/writing> (last visited Apr. 11, 2009); see also EUGENE VOLOKH, ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW (3d ed. 2007).

2. See generally HARRY G. FRANKFURT, ON BULLSHIT (2005), for excellent coverage of the skill required for most articles. See also *supra* note 1 and *infra* notes 2-56 and accompanying text.

3. As Professor Fred Rodell observed in 1936, “it is in the law reviews that a pennyworth of content is most frequently concealed beneath a pound of so-called style.” Fred Rodell, *Goodbye to Law Reviews*, 23 VA. L. REV. 38, 38 (1936) (arguing additionally that “[t]here are two things wrong with almost all legal writing . . . style . . . [and] content”).

everything that has been ever been written on the subject.⁴ Not that I've read everything that has ever been written on the subject, but by throwing in the citations and an occasional quote, I've at least pretended to have a grasp of the material.⁵ Moreover, by starting out with a *broad* theory or topic, I have expanded the article's potential readership from the two people who care about my topic to many more who after reading the broad thesis will believe that I care about their topics (which I don't, but they will not know that until finishing the article). That is roughly what I would do were this a typical law review article, but as you can probably tell by now, I'm a little too honest. And this isn't your typical law review article.

The above description of most law review thesis paragraphs, of course, holds true only for those law review articles written by junior professors and those articles published by non-Ivy League schools.⁶ If you are distinguished enough or if you are an editor at a top journal, a different sort of thesis paragraph is appropriate. The "elite" thesis paragraph begins with an assertion that none of the field's existing rules matter⁷ and that instead the field ought to change completely in ways that make sense only by adapting the field to a "new" method of analyzing the law.⁸ The clever "elite" author throws in a ref-

4. *But see* Posting of Daniel J. Solove to Concurring Opinions, A Sample Law Review Submission Policy, http://www.concurringopinions.com/archives/2007/08/a_sample_law_re.html (Aug. 22, 2007, 12:02) ("We firmly believe that the ideal length of a law review article is 0 words.").

5. As noted in an article published in a no less prestigious law review than the *Yale Law Journal*, "the contemporary academic world amply demonstrates [that] lack of actual knowledge of the subject matter is no impediment to serious scholarly work." Charles Yablon, *On the Contribution of Baseball to American Legal Theory*, 104 *YALE L.J.* 227, 229 (1994).

6. It has been suggested to me that this category could be further divided between junior professors and professors at schools with less prestige, but I will leave that to subsequent commentators.

7. The notion that none of the existing rules matter because of the malleability of legal rules and the need to transcend particular legal regimes arguably is a product of *U.S. News and World Report's* annual rankings. Unlike most law students, students at elite schools may never be taught black letter law:

Make it clear to your students that they must develop a command of the black-letter rules. All Torts classes must deal in some way with the existing rules (though there is probably a course at some hypothetical school — let's call it Yale — where the tort law system is discussed without reference to any existing rules).

Howard E. Katz & Kevin Francis O'Neill, *Strategies and Techniques of Law School Teaching: A Primer for New (and Not So New) Professors* 9 (Charlotte School of Law & Cleveland-Marshall College of Law, Research Paper No. 07-144, 2007), available at <http://ssrn.com/abstract=982234>. If they never learn the black letter law as 1Ls, when they become law review editors, it is natural that they seek articles unburdened by command of the law.

8. See Arthur Austin, *The Law Academy and the Public Intellectual*, 8 *ROGER WILLIAMS U. L. REV.* 243, 255 (2003) (noting that top law reviews have become "sounding board[s] for 'push the envelope theories'" (citation omitted)).

erence to Cambridge or New Haven so that in case the law review actually does blind readings of submitted articles, the student editor will be able to note the author's credentials despite the author's name being formally extracted. The brilliance behind the elite thesis should not be ignored; it allows the celebrities of the legal academy to gallop across the legal landscape, dropping pearls of wisdom derived from their particular method of analysis rather than their command of the area of law they are writing about.⁹

The final alternative start to a law review article, favored by many professors with name recognition, is to assert in the thesis paragraph that an entire field will be tackled successfully and in an interesting way, in a single law review article.¹⁰ Since I am merely an assistant professor and recently literally had to bear the symbol reserved for the *most* junior member of the faculty,¹¹ in this Article I am going to attempt something far more modest: I am going to un-

9. It is dangerous professionally to pick on particular articles or authors. After writing an article explicitly critiquing a fellow professor, I was advised by senior faculty that it is safer to limit my criticism to dead authors. That may be true, but doing so unfairly limits the exchange. Therefore, I hope all authors will read this Article with the levity it is intended to convey.

For this particular footnote, there is an example of an eminent law professor, Richard Epstein, acknowledging in the first paragraph of an article his own ignorance of the field he is writing about (which, incidentally or not, is my field). Because such humility and forthrightness is uncommon in the profession, and therefore all the more glorious, it is worth highlighting his acknowledgment:

The topic of this evening's talk is the property rights of indigenous populations. At first blush, it seems imprudent to approach this topic without a detailed knowledge of the particulars of indigenous cultures. Yet my initial disclaimer is that any such localized knowledge is beyond my ken. Fortunately, however, a second way in which to approach the topic treats it as yet another arena in which to test general conceptions

Richard A. Epstein, *Property Rights Claims of Indigenous Populations: The View from the Common Law*, 31 U. TOL. L. REV. 1 (1999) (the article is an "edited and expanded" version of a speech given by Professor Epstein).

Since another goal of mine as I write this Article is to increase the number of citations to my prior articles, let me now note that the article I wrote critiquing an article by a living professor is Ezra Rosser, *Caution, Cooperative Agreements, and the Actual State of Things: A Reply to Professor Fletcher*, 42 TULSA L. REV. 57 (2006).

For more on the importance of self-citation, see J.M. Balkin & Sanford Levinson, *How to Win Cites and Influence People*, 71 CHI.-KENT L. REV. 843, 856 (1996) (advising those who want higher citations to "[c]ite yourself, early and often" and to make sure friends provide citation love).

10. Such for example is the case with a recent *Yale Law Journal* article that exhaustively analyzes quite successfully and enjoyably nothing less than "the household." See Robert C. Ellickson, *Unpacking the Household: Informal Property Rights Around the Hearth*, 116 YALE L.J. 226 (2006).

11. The tradition at my own school is to have the most junior faculty member lead the graduating class to their seats bearing a mace. Junior status is defined first according to years until tenure, and if there are more than one of the faculty members in the same stage on the tenure ladder, age is used. There was some speculation prior to graduation by some of my senior colleagues that I might be bumped from this role in favor of another, more photogenic, junior faculty member, but the Dean held to tradition.

burden myself of the guilt I feel at becoming a law professor and hopefully in the process say something about legal academia.

Notice what I did at the end of the last paragraph. I teased the reader with a hint of the big picture and did so in a way that for many readers probably seems narcissistic. What after all could a mere assistant professor have to say about the legal academy that would be worth reading?¹² Not long ago (well before I was born, but not long ago in legal terms), including one's personal story in a law review article was a radical move, attempted only by communists.¹³ Today every school probably still has a few "storyhaters" who despise seeing the personal "I" in law review articles.¹⁴ But the radicals are now "senior" faculty¹⁵ and with that the personal narrative has become ubiquitous.¹⁶ Writing an original "how I became a law professor" article is getting harder now that such tantalizing stories increasingly pop up in law reviews and blogs.¹⁷ We can look forward to the day when a junior professor's chances for tenure depend on how others who previously wrote on how they broke into the academy review the junior professor's most recent contribution to the "I made it" genre.¹⁸

12. Since many law review articles do not include more than two paragraphs that are worth reading, see discussion *supra* note 3 and accompanying text, such a question does not seem overly damning.

13. Or as they are called in the legal academy, critical race theorists and critical legal scholars. For a law review article in a "communist," *dangerously* different form, see Peter Gabel & Duncan Kennedy, *Roll over Beethoven*, 36 STAN. L. REV. 1 (1984), which is presented through a highly theoretical discussion between the authors appearing as themselves.

14. As Professor Robert A. Williams, Jr. explained twelve years ago in a biting law review article: "I know, stories, particularly autobiographical stories, are currently being dissed by some law professors. Raised in an overly obsessive, objectively neutralized cultural style, they are plain and simple Storyhaters." Robert A. Williams, Jr., *Vampires Anonymous and Critical Race Practice*, 95 MICH. L. REV. 741, 741 (1997).

For a reactionary piece against the personal in law review articles, see Arthur Austin, *The Top Ten Politically Correct Law Review Articles*, 27 FLA. ST. U. L. REV. 233, 236 (1999), which criticized "Law Political Correctness" ideology that he claims has, as one of its "more esteemed techniques," "the use of personal experiences to convey the emotion and agony of persevering in an alien environment of patriarchy, hierarchy, and objectification." Author's note: I used Austin's article to locate good law review articles for use in my Article.

15. At least with regard to publication in top law reviews, "[t]he outsiders seem to have become insiders." Dan Subotnik & Glen Lazar, *Deconstructing the Rejection Letter: A Look at Elitism in Article Selection*, 49 J. LEGAL EDUC. 601, 604 (1999) (citation omitted) (writing about critical race theorists).

16. See Kim Lane Scheppele, *Foreward: Telling Stories*, 87 MICH. L. REV. 2073, 2073 (1989) (attempting to answer in her introduction to a symposium issue on legal storytelling why "narrative [has] become such an important and recurring theme in legal scholarship these days").

17. See, e.g., Saul Andrew, *Responding to Socrates: The Thick Skin I Developed at Law School and How It Made Me a Great Professor*, 36 FIFTY-FIRST ST. L. REV. 1 (1985); Monica Castro, *Less Money, More Time: Moving from Partner to Professor*, 1999 ANOTHER N.Y.L. SCH. L. REV. 535; Bob Smith, *How I Overcame My Shyness and Learned to Scream My Own Praises*, 434 J. PERS. DEV. 375 (1973). [In case it is not obvious, you will not find these articles on Lexis or through other searches.]

18. See Anne M. Coughlin, *Regulating the Self: Autobiographical Performances in Outsider Scholarship*, 81 VA. L. REV. 1229, 1232 (1995) ("[T]he outsiders' intention to libe-

I will admit publicly something my family already knows all too well: I am arrogant. Or at least I thought I was until I became a tenure-track professor. Now my own ego competes for space with a lot of other egos.¹⁹ In one of my favorite books of all time, *Custer Died for YOUR Sins*,²⁰ Vine Deloria, Jr. did two things that I love: he criticized "nonsensical scholarly dribble,"²¹ and he highlighted the value of humor, specifically how teasing others and using self-deprecating humor can help individuals and a community.²² I'm convinced the legal academy needs *something*—perhaps teasing—so that it can escape the dry, overintellectualism of *everything*.²³

This Article²⁴ is structured in the same way that I was taught to structure an SAT essay: an introduction, three substantive sections, and a conclusion bringing up a twist on all that was in the three earlier sections that I did not feel like sharing with you until the end of the paper. It should not be surprising that I am using the SAT essay

rate discourse from dogmatic or culture-bound types of objectivity [through autobiographical storytelling] is threatened by the possibility that their works will merely achieve a simple reversal of academic orthodoxy.").

19. See Michael L. Seigel, *On Collegiality*, 54 J. LEGAL EDUC. 406, 414 (2004) (arguing that "academia should . . . be accepting of brilliant teachers and scholars who may be narcissists").

20. VINE DELORIA, JR., *CUSTER DIED FOR YOUR SINS: AN INDIAN MANIFESTO* (Univ. of Okla. Press 1988) (1970) (triple emphasis added).

21. *Id.* at 87.

22. *Id.* at 147.

23. Teasing and parody have a lengthy history in the legal academy, and I have not attempted to find every "funny" law review article, but two series of law review articles stand out. A generation ago, the *University of Pennsylvania Law Review* showed that elite law reviews welcomed parody when they published the anonymous *Aside*, *The Common Law Origins of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975), and since then there have been a number of attempts to build off and respond to this groundbreaking article. See, e.g., Neil B. Cohen & Spencer Weber Waller, *Taking Pop-Ups Seriously: The Jurisprudence of the Infield Fly Rule*, 82 WASH. U. L.Q. 453, 454 (2004) (crediting "Aside" with starting "the Law and Baseball movement"); Anthony D'Amato, *The Contribution of the Infield Fly Rule to Western Civilization (and Vice Versa)*, 100 NW. U. L. REV. 189, 199 (2006) (concluding that "the world and baseball are one and the same"); Yablon, *supra* note 5, at 229 (arguing that "most of the advances in American legal theory have come from lawyers trying to figure out why the real legal system can't be more like baseball"). For an example of the use of baseball analogies by the judiciary, see *Cooper v. Taylor*, 103 F.3d 366, 370 (4th Cir. 1996).

A second series of articles remarkable for their brevity begins with Erik M. Jensen, *The Shortest Article in Law Review History*, 50 J. LEGAL EDUC. 156 (2000) (entire text reads: "This is it."), continues through Grant H. Morris, *The Shortest Article in Law Review History: A Brief Response to Professor Jensen*, 50 J. LEGAL EDUC. 310 (2000) (entire text reads: "Not so!"), and ends with an article that beat them both for brevity and perhaps even clarity, Thomas H. Odom, *A Response to Professors Jensen and Morris*, 50 J. LEGAL EDUC. 311 (2000) (entire text reads: "Why?"). Professor Jensen had nothing to say in response. See Erik M. Jensen, *Comments in Reply*, 50 J. LEGAL EDUC. 312 (2000) (consisting of the title, author's name, and a blank page). Erik M. Jensen's most recent work is a more substantial article that is destined to be a classic in the field of humorous law review articles. See Erik M. Jensen, *Law School Attire: A Call for a Uniform Uniform Code*, 32 OKLA. CITY U. L. REV. 419 (advocating a dress code for professors).

24. By capitalizing "article," it seems more impressive.

format: in order to become a law professor, one talent is more important than all others, namely, an ability to rock standardized tests. I will now tell you what the three substantive sections are, using the same wording I use on my heading titles because I'm afraid that any deviation will confuse you. This Article has three parts. In Part I, I express the loss that comes from my becoming a yuppie ("On Learning to Like Brie"). In Part II, I criticize the legal academy's emphasis on prestige at the expense of meaningful work ("The Never-Ending Pursuit of the Gold Star"). In Part III, I go on a rant that I probably should have kept to myself ("Guilt and Anxiety"). I end the Article with a plan that I think will revolutionize legal education.

II. ON LEARNING TO LIKE BRIE

I am embarrassed to say that I like brie. I like to dip into it with crackers; I like it sliced and served on a baguette with cranberry sauce and bacon; I even like it smothered in fruit preserves. As my wife knows, I suffered what felt like an existential crisis, or at least an identity crisis, when I voluntarily bought brie instead of cottage cheese or a hunk of cheddar. I'm convinced there are few cheeses more pretentious, more obnoxious, than brie (though goat cheese comes close), yet I now like this snotty, purely acquired taste-expensive cheese.

By buying brie, I realized I had become what I despise: a yuppie! All it took to go from white trash to yuppie was four years of prep school (preparing for brie²⁵), four years at Yale (lots of brie), a year at Georgetown (no brie), two more at Harvard (more brie), and a final year at Cambridge (brie on baguettes). And by becoming a yuppie, and yes, by liking brie, I had acquired the most essential character trait for any aspiring law professor: I had become comfortable with wealth and privilege.

My parents had in some ways gone out of their way to become poor. Either that, or they became poor and poverty made them go out of their way in a lot of areas of their lives. They had built the log cabin where I was born in an area of Colorado without running water or electricity and without steady employment. They moved around a lot (by the time I entered high school I had lived in eighteen houses in five states) and they divorced. My brother and I never went without food, but growing up we did put duct tape to the test by using it—despite the considerable teasing from spoiled children—to double the life of our shoes. After he started making money, my dad gave me

25. This is a play on the title of Peter W. Cookson, Jr. and Catherine Hodges Persell's book, *Preparing for Power: America's Elite Boarding Schools* (1985), which described the internalization of success and status by prep school students.

shoes for every birthday and Christmas, until I eventually had to tell him that enough was enough—I was good on shoes.

When I got the chance in ninth grade to leave the poor area where my parents lived at the time,²⁶ I seized it and headed off as a scholarship student to an East Coast boarding school. Though I loved the school (what's not to love: green grass, amazing teachers, and a campus that rivals many colleges), I spent a lot of time being angry about the wealth of the other students, particularly day students. Walking to class every morning, I confronted wave after wave of Mercedes and BMW parents dropping off their little darlings; it took great self-control not to throw rocks. Why am I telling you this? Because I think anger at the rich is a natural and appropriate response to inequality, making it all the more disorienting to me that I now like brie.

By the time I entered Yale, I had grown more used to the wealth of my peer group, but I had not yet acquired the set of experiences that is the backdrop for conversations among the elite. I needed to go to Europe, or so everyone said. Like all other financial aid students, I bit my tongue and refrained from saying where I thought they needed to go. I learned that girlfriends do not like it if you call them "spoiled" and that polite friends do not discuss money. I even learned—and believe me this seemed counterintuitive—that it can be "cool" to be poor.

Money was still an object for me throughout law school and Cambridge, though my own cheapness helped me get better grades. In December of both my 1L and 2L years, there was no heat in the houses I rented, which was the price I paid for having picked absolute dumps because I refused to spend more on rent than my parents had ever paid. By this point I was clinging to the image I had of myself, a white-trash scholarship student, and deliberately trying to disregard the fact that my experiences with poverty were only going to be a part of my memory, not my life going forward.

Those I encountered seemed intent on subtly and not so subtly changing me, in ways that will seem natural to those with privileged backgrounds. Here are the first words spoken to me on Yale's campus: "By the time you graduate, you will learn not to do that." I had apparently disturbed the social universe by reaching down to grab a muffin without using the available tongs. Later: "You didn't go to the Corcoran while you lived in D.C.?" I was asked by a member of a hiring committee incredulously before she reacted by turning away from me with seeming disinterest in my candidacy. Or, similarly: "Did you make it into the Wren library?"—a conversation starter that con-

26. The Navajo Nation, which is the area I still consider home and where my dad lives with his wife.

sumed half my interview with a school that offered me a teaching position a week later. While each of these quotes seems innocuous, they each also reflect the operation of class as the educational gatekeeper. While high grades and strong recommenders are prerequisites for all faculty candidates, the ability to carry on “worldly” conversation is an unacknowledged part of the academic job market.

Though I am not aware of any studies on the class makeup of law faculties—my suggestion for such a study was shot down by a book publisher—I suspect, as Robert A. Williams, Jr. does, that most law professors come from money.²⁷ Privilege is infused in every conversation and is an understood shared reference, yet is never acknowledged. Students seem aware of faculty privilege: it is hard to take seriously “criticisms of Mercedes-Benz goals coming from Volvo-driving professors.”²⁸ Privilege explains a lot: the play-dead approach of faculty across law schools to the problematic aspects of on-campus recruiting at law schools; the limited faculty support at all but the wealthiest schools for meaningful loan repayment assistance programs; and even the narrowing of scholarly purpose and evaluation. I said earlier that I have become comfortable with wealth and privilege. Perhaps that was an overstatement. But I am ashamed of how comfortable I have become living with and among wealth and privilege.

III. THE NEVER-ENDING PURSUIT OF THE GOLD STAR

The narrator in T.S. Eliot’s *The Love Song of J. Alfred Prufrock* uncourageously and famously asks: “Do I dare to eat a peach?”²⁹ Across the legal academy, countless professors are essentially asking themselves the same question. Rather than affirmatively rising to the challenge of an earlier question in the same poem—“Do I dare / Disturb the universe?”³⁰—professors seem to be asking themselves, “What can I do to seem smart?” My impression of the academy as I begin my scholarly career surrounded by smart people is that “seeming smart” has overtaken “doing good” as the rallying cry of the professoriate.

While it was news to me, it has been known for a long time that no one cares what law professors write, and recently this has become

27. Williams, *supra* note 14, at 741. As with most generalizations, there are exceptions; the late Jerome McCristal Culp, Jr. began many of his law school classes by introducing himself as “the son of a poor coal miner.” Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539, 539 (1991).

28. Thomas E. Baker, *A Law Student’s Responsibility for a Liberal Education*, 20 TEX. TECH L. REV. 1153, 1158 (1989).

29. T.S. ELIOT, *The Love Song of J. Alfred Prufrock*, in PRUFROCK AND OTHER OBSERVATIONS (1917), available at <http://www.bartleby.com/198/1.html>.

30. *Id.*

even more the case.³¹ Judges, law clerks, practitioners, policymakers, students, other faculty, and even family members do not read or care about law review articles.³² Nevertheless, there is something noble—at least I hope there is—about the delusional search for truth or an idea that would help the world in some small way. I think students to some degree view their professors this way; when they see us in the library checking out a book or straining over a computer with hair on edge from deadline stress, I almost hear them whisper the dreaded words: “How cute!” Yet, “cute” does not seem appropriate if, rather than truth, professors are merely seeking academic glory.³³ Too strong? Perhaps, but in many ways the professoriate seems to be nothing more than a gathering of nerds who believe that life is about accumulating gold stars.³⁴

The gold star is not a literal gold star. Instead, it is the intangible quality of “being or seeming smart.” Law review articles strain toward high theory for its own sake;³⁵ tenure pieces are judged by comprehensiveness rather than insight; and *where* something is published seems to trump consideration of *what* is published.³⁶ Law pro-

31. Based on preliminary data, Professor Thomas A. Smith calculates that roughly forty percent of law review articles have no citations to them and almost eighty percent have fewer than ten citations to them. Posting of Tom Smith to Right Coast Blog, A Voice, Crying in the Wilderness, and Then Just Crying, <http://therightcoast.blogspot.com/2005/07/voice-crying-in-wilderness-and-then.html> (July 13, 2005, 02:52).

32. Judge Harry T. Edwards famously described law professors as “ivory tower dilettantes” producing “mediocre interdisciplinary articles.” Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 36 (1992).

33. According to a recent *New York Times* article, while faculty used to be “portrayed . . . in fiction and film as bumbling bookworms, today’s professors are more likely to be seen as jet-setting self-promoters.” Andrew Delbanco, *Academic Business*, N.Y. TIMES MAG., Sep. 30, 2007, at 25.

34. Worse, professors from this perspective are nerds unable to recognize what one law student noted: “getting gold stars and becoming the person I wanted to be” might come into conflict. Kristina Brittenham, *In Pursuit of the Gold Star: Diary of a Law Student*, 1 UNBOUND 15, 23 (2005), <http://legaleft.org/wp-content/uploads/2008/04/1unb015-brittenham.pdf>.

35. Writing about practical topics identifies scholars as having “insufficient desire to become well known or move ‘up’ in the pecking order of the contemporary *theory-intoxicated* legal academy.” Balkin & Levinson, *supra* note 9, at 845 (emphasis added).

36. Two law professors tellingly end their brief introspective article on law review submissions with the following prayer:

Editor-in-Chief of the Universe,

Grant me the serenity to accept the things I cannot change—

like the *U.S. News* rankings of the law reviews that give me offers, the public law bias of law review editors, the idiosyncratic article selection processes of the elite law reviews, the fact that article selection editors don’t appreciate how important my topic is, and the timing of law review editorial board elections;

the courage to change things I can—

like tailoring my articles to the latest academic fad no matter how tenuous the connection, using cutesy titles for articles, and staggering my submissions in order to get expedited review from a highly-ranked law review;

fessors engage in self-study to determine who others acknowledge to be smart³⁷ or to see which journals publish more prominent authors.³⁸ Blogs on professor gossip such as lateral moves are checked regularly so that everyone can keep track of who seems the smartest.³⁹ Internal law school hierarchies reinforce the idea that some professors “possess more valuable knowledge” than others in the same institutions.⁴⁰ At conferences, the *U.S. News* ranking of each academic’s school determines whether people introduce themselves to one another.⁴¹

Outside of the academy, I believe it is admirable for people to be able to know where one stands on issues. Inside the academy, a surprising number of faculty members are a mystery in that regard, not because of their complexity but because their being is consumed by trying to seem smart.⁴² I do not mean to suggest that the people in the academy are not actually smart; rather, my concern is with how the quest to be recognized as smart can redirect normal conversations and scholarship. I fear that as I move forward in the profession,

and wisdom to know whether it is better to accept an offer from an elite school’s specialty journal, as opposed to the general journal of a lower-ranked school, or vice versa.

Brannon P. Denning & Miriam A. Cherry, *The Five Stages of Law Review Submission* (Sept. 1, 2005) (unpublished working paper), available at <http://ssrn.com/abstract=796264> (modeled on the five stages of grief).

Lacking a generally accepted framework within the legal academy for judging article quality, placement in top law reviews stamps an article as a “quality” piece. See Subotnik & Lazar, *supra* note 15, at 605. Importantly, law review editors recognize their role in “policing the borders of legal academic discourse.” Jocelyn Simonson, *Foreword: Breaking the Silence: Legal Scholarship as Social Change*, 41 HARV. C.R.-C.L. L. REV. 289, 295 (2006).

37. See, e.g., Fred R. Shapiro, *The Most-Cited Law Review Articles*, 73 CAL. L. REV. 1540, 1540-44, 1549-54 (1985) (justifying the study of citation counts and listing the most cited law review articles); Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751, 767-77 (1996) (providing a more up-to-date citation count).

38. Professors Robert M. Jarvis and Phyllis Coleman break down law professor prominence according to categories of professors from top 25 schools, from top 50 schools, from top 100 schools, from third tier schools, and from fourth tier schools; city mayors are, for example, given a higher author prominence score than fourth tier professors but lower than third tier professors. Robert M. Jarvis & Phyllis Coleman, *Ranking Law Reviews by Author Prominence—Ten Years Later*, 99 LAW LIBR. J. 573, 575-76 (2007). Surely, such distinctions are worth losing sleep over.

39. For the 2009 list of lateral moves, see Posting of Dan Filler to The Faculty Lounge, *Law Faculty Lateral Moves List - 2009*, <http://www.thefacultyloounge.org/2009/01/law-faculty-lateral-moves-list-2009.html> (Jan. 15, 2009, 21:28).

40. Morris A. Fred, *Yerwal Religion*, 48 J. LEGAL EDUC. 140, 142 (1998) (describing law school in mock anthropology).

41. See Eric L. Muller, *What’s in a Name(tag)?*, 52 J. LEGAL EDUC. 314, 315-16 (2002) (suggesting that AALS name tags be color-coded according to school ranking). We subject ourselves to this because annual meetings of professional associations and presentations at the same are institutionally applauded despite the often limited audiences and their relative disutility compared with field-specific gatherings.

42. A response to this charge from the right may be that, given the ideological homogeneity of most professors when it comes to politics, where professors stand is mostly a given and therefore of less significance in the academy. To which, as a loyal leftward leaning faculty member, I have to respond: psshaw.

I will learn to tailor my words—spoken and written—not so they better express my ideas but so that others will view me as being smart. I already feel I am guilty of this prestige and ego-driven cheapening of myself.⁴³

The finer points of the Taco Bell menu—a favorite topic of mine—have little place at the faculty lunch table.⁴⁴ Conversations that touch on the inane are quickly redirected towards the intellectual. Don’t get me wrong, I enjoy some intellectual conversations, but when they degrade to “let me show you how smart I am” contests, I begin to yearn for more nonacademic friends. Trivia replaces depth, and privilege-laced references overwhelm most everything else, except with the members of the faculty who have already concluded that they are smarter than you. Personally, I look forward to the day when everyone knows that they are smarter than me.⁴⁵ Then maybe we could all eat peaches together.

IV. GUILT AND ANXIETY

I love my job. I even love my students. Let me clarify: like all professors, I love 1Ls, I tolerate 2Ls, and I fear 3Ls. Okay, more clarification is needed: I like 1Ls. Except Bob Johnson, I cannot stand him. But as innumerable law review articles and blog entries state, getting hired by a law school is like winning the lottery and finishing a big race all at once.⁴⁶ Just to be a candidate for a teaching position generally requires doing well at college, scoring well on standardized tests,⁴⁷ doing well in law school,⁴⁸ being on a journal and maybe doing

43. I find myself wondering both in class and in my writing if I am “*performing* an argument rather than *believing* it.” Zinaida Miller & Brishen Rogers, *Radicalism and Responsibility: An Introduction to Unbound*, 1 UNBOUND i, iii (2005), http://legalleft.org/wp-content/uploads/2008/04/1unb_i-introduction.pdf (writing about law students).

44. Since sharing drafts of this Article with other professors, I have been bombarded by professors who desire to discuss Taco Bell with me. It is unclear to me whether this is inspired more by (1) an effort to express disagreement that inane conversations are rare (which would tend to prove my point just as the exception proves the rule) or (2) a pent-up need to have such conversations that my Article suggests I would happily engage in with other professors.

45. Or, smarter than *I*. That is the advantage of being a student or a nontenure track faculty member; the regular faculty members “know” they are smarter.

46. See, e.g., Denise C. Morgan, *Advice for Law Professor Wannabes*, 1 MICH. J. RACE & L. 552, 552 (1996) (“I was not very far into my law school experience when I realized that my professors had the best job in town . . .”).

47. For a critique of the use of standardized tests, see Richard Delgado, *Rodrigo’s Chronicle*, 101 YALE L.J. 1357, 1360 (1992) (reviewing DINESH D’SOUZA, *ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS* (1991)).

48. When they were students, law professors sat in the front row. See Richard A. Ippolito, *Performance in Law School: What Matters in the End?*, 54 J. LEGAL EDUC. 459, 459 (2004) (reporting that back-benching and absenteeism is correlated with lower grades).

a clerkship, and having faculty members give their highest praise of the candidate.⁴⁹

In keeping with humility rampant in the profession, the recommendation—“they remind me of a younger version of myself”—I fear is accepted as meaningful praise for separating successful candidates from unsuccessful candidates. This process allows appointment committees to get beyond superficial differences between candidates, such as whether they studied law at Yale or Georgetown, and really pick out the person who promises to be the best future professor and scholar.⁵⁰ Personally, I got my job the old fashioned way: I begged. Having already been through the hiring fair process two times trying to get an Indian law position, I was not going to take no for an answer. After the callback interview, I initiated a barrage of phone calls to the unfortunate member of one particular appointment committee who had been designated my contact person. Though I tried to make sure each call had a purpose—“I will be traveling, but can be reached at this number,” “I really enjoyed the interview,” “Should I send you my newest publication?”—with each call I begged a little more for the job. When I finally got the welcome call from the Dean asking me if I wanted the job,⁵¹ I said yes. The Dean said he would call back in a week to negotiate the contract, and I spent a week trying to figure out how I could possibly negotiate anything after months of telling the committee how much I wanted the job. Let’s just say the negotiations were brief and one-sided (though despite all that, happily quite fair).

Despite having begged for my job and having no experience as a lawyer,⁵² I am arrogant enough not to experience feelings of inade-

49. See Luz E. Herrera, *Challenging a Tradition of Exclusion: The History of an Unheard Story at Harvard Law School*, 5 HARV. LATINO L. REV. 51, 124 (2002) (describing the typical qualifications of Harvard faculty).

50. But see Richard E. Redding, “Where Did You Go to Law School?” *Gatekeeping for the Professoriate and Its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 596, 599 (2003) (reporting that in a study of new faculty from 1996 through 2000, only fourteen percent of new hires graduated from a school not ranked in *U.S. News and World Report’s* top twenty-five, and fully one-third of new hires came from Yale or Harvard); Legal Theory Blog, 2009 Entry Level Hiring Report, <http://lsolum.typepad.com/legaltheory/2009/03/2009-entry-level-hiring-report.html> (Mar. 8, 2009, 13:54) (reporting the first round of results of the 2009 hiring season’s “JD Placement tournament”—Harvard is winning, by five new faculty members over, drumroll . . . Yale); Brian R. Leiter, Placement in Law Teaching, 2006, Brian Leiter’s Law School Rankings, May 25, 2006, http://www.leiterrankings.com/jobs/2006job_teaching.shtml (breaking down feeder schools into five categories according to 2006 placement of graduates at “top” law schools).

51. As Professor Richard Delgado notes of faculty hiring, while schools search for “mythic figures” that have the perfect combination of credentials, “they obviously lower their standards at some point.” Delgado, *supra* note 47, at 1362. It still is a GREAT job, so thank you hiring committee! See also Ezra Rosser, *Obligations of Privilege*, 32 N.Y.U. REV. L. & SOC. CHANGE 1, 48 n.261 (2007) (stating that I “sincerely thank” my employer’s 2005-2006 hiring committee).

52. The profession’s all too frequent requirement that one abandon one’s moral values frankly scares me and severely limited my job search. For more on the disdain of the legal

quacy. What I do feel is guilt. Some of my guilt is personal, some is more general. The personal guilt is the most painful but also probably not very interesting to others. I feel guilty that I, an Anglo, teach Federal Indian Law, a class best taught by a Native American. I feel guilt when, in living up to my professorial role, I create boundaries between me and my students—boundaries that arguably are the pedagogical equivalent to serving students brie. And I feel guilty that I am not doing more with all that I have been given. Few people with my background have had the same opportunities, and I constantly wonder if I am doing the right thing.

The challenge of scholarly work is that gratification is rare and is rarely immediate. You know if your work helped improve the world only well after you publish, if then. My own guilt for choosing the scholarly path stems from insecurity regarding my intelligence (not to mention the more arrogant concern that my ideas, while intelligent, may fall on deaf ears). I'm trying to be patient with my own mind, but it has yet to produce a truly brilliant idea.

V. CONCLUSION

I am very happy to be a professor, but I cannot help but mourn the loss as I have transitioned from Ezra Rosser to "Professor" Rosser. Perhaps the most frequent advice given to new professors is to "be yourself," which sounds nice; however, the job changes what it means to "be yourself." You come to expect a salary that far exceeds median income in the United States,⁵³ you think it is "normal" to have independence in what you do and to have a great boss,⁵⁴ you even expect an endless number of functions with free food,⁵⁵ and at some level you even like being called "Professor."⁵⁶ When I assure students that

profession by legal academics, see Edwards, *supra* note 32, at 35. *I am not the only one who has struggled with the profession's moral values.* "[T]here is a significant percentage of 'ethical graduates,' who find it difficult or impossible to realize their ethical ideals in private practice." *Id.* at 71.

53. Law professor salary information can be hard to obtain (further weakening my negotiating position when I got my law teaching job). The Society of American Law Teachers (SALT), the law professor "union," publishes an annual survey of salary information. See SALT, Salary Survey, <http://www.saltlaw.org/salary-survey> (last visited Apr. 11, 2009). However, many schools choose not to report their salaries to SALT, limiting the utility of the survey. For more on law professor salaries, see Goldman's Observations, Law Professor Salaries 2006-07, http://blog.ericgoldman.org/personal/archives/2007/04/law_professor_s.html (Apr. 7, 2007, 22:52), and Leiter Reports: A Philosophy Blog, How Much Money Do Law Professors Make?, http://leiterreports.typepad.com/blog/2003/10/how_much_money_.html (Oct. 11, 2003, 16:47).

54. I have had two absolutely amazing deans in my two law teaching positions, for which I am, quite sincerely, eternally grateful.

55. In a mock memo entitled "*Alarming Drop in Food Functions*," the author asks in the context of the fictional dean's choice to spend less on food, "does the library really need more books?" Robert M. Jarvis, *W(h)ine and Roses*, 54 J. LEGAL EDUC. 465, 467 (2004).

56. Though focusing on class and the legal profession in general rather than only on legal academics, there is evidence supporting the idea that expectations based on "particu-

it is okay to call me Ezra, the message does not get across. Students insist on calling me “Professor,” and by doing so, they insist that I am no longer “Ezra”; I have become “Professor” Rosser. And personally this transition is felt as simultaneous guilt, anger, and (most ego-crushingly) happiness about joining the hierarchy.

This Article is framed as a personal narrative, and in it I perhaps laid bare my own anxieties too openly. Readers may rightly question if in so doing the Article lived up to the teaser that it would “say something about legal academia.” Yet as I advance in my career, I am nervous about the way that being a professor may skew personal commitments and values, and I cannot help but imagine that others may be struggling with similar concerns. Professors who feel hemmed in by the profession’s ever-present emphasis on seeming smart and on prestige are likely to produce scholarship that is similarly confined. The post-tenure period might provide the intellectual space for unencumbered scholarly freedom (and I hope to have such a period in my own career despite the fact that I have been told countless times that this Article will not help my tenure prospects). But with additional gold stars out there—visitorships, lateral positions, awards, citation counts, better parking—such future freedom might be illusory or come too late. Without offering resolution (getting people to read an article is infinitely more important than leaving readers satisfied), I only hope that the concerns identified herein are overstated. And I ironically hope that I will get the gold star of positive professorial notice when and if a journal agrees to publish this . . . ⁵⁷

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lar positions within social space” explain job satisfaction more than actual work conditions. Ronit Dinovitzer & Bryant G. Garth, *Lawyer Satisfaction in the Process of Structuring Legal Careers*, 41 LAW & SOC’Y REV. 1, 29 (2007).

57. [Editor’s Note: Due to recently imposed article length limitations, we had no choice but to cut off Professor Rosser’s article at this point. For more information on revisions in law review article length policies, see Joint Statement Regarding Articles Length, available at http://www.harvardlawreview.org/PDF/articles_length_policy.pdf (last visited Apr. 11, 2009), which states the commitment of eleven leading law reviews to move toward shorter articles. See also Law Review Usage Survey Results (July 2005), http://www.harvardlawreview.org/faculty_survey.ppt (reporting that law professors do not like doing as much reading as they had been doing).]