

# TIPS FOR THE PRACTITIONER SEEKING TO RETURN TO THE ACADEMY

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Recently, I made the work status change from practicing corporate attorney (thirty years' worth) to full-time law professor. This article offers a series of tips for practitioners considering such a transition based on my experiences, in the hope that the lessons I learned (some of them painfully) can ease your pain, or dissuade you from such foolishness. While my target audience is the "seasoned" practitioner (older, that is, not to put too fine a point on it), these tips should be useful or of interest to more junior practicing lawyers looking to make a move to teaching. And I hope all who read it will be entertained.

## INTRODUCTION

Virtually all practicing lawyers spend three years studying law in a law school accredited by the American Bar Association (ABA). (For those of you who, like me, have been away from law school for a few years, you should know that the world of legal education is now part of the higher education business, known fondly as "The Academy.") Practitioners are generally familiar with that academic environment.

Law students generally go to law school with four broad objectives in mind: graduating from law school; passing a bar exam; finding a job; and then succeeding, even excelling, at that job (and subsequent positions). That first job may be practicing law (with a firm, in-house, the military or a government agency), clerking for a judge, teaching, or holding another job ancillary or related to law—politics, lobbying, real estate, insurance, etc. (Joint JD/MBA degree-holders may go straight into business positions, and a lucky few make it big on *American Idol*). For the most part, law schools are doing a fine job at the first two objectives; a high percentage of students who matriculate graduate, and a large portion of their graduates passes a bar exam. Not surprisingly, law schools are measured and ranked on those tasks. American law schools also make an effort to help their law students and law graduates meet the third objective of finding jobs although faculty and administration largely delegate this task to placement offices (typically non-law human resource and recruiting

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specialists). As law schools are measured on employment percentages after graduation, attention is paid to this metric.<sup>1</sup>

Finally, we come to the fourth objective: succeeding at a legal job. The record is very mixed here, although many law schools are moving in the direction of providing their students with more practical, skills-oriented courses and training. This objective drove my own reasons for returning to teaching. I want to be part of the growing movement in American law schools that makes graduates more “practice ready.” While there is agreement on the challenge—law schools need to do a better job making their graduates ready for practice—there is no consensus on the solution. The pace of change in training and instruction at American law schools varies widely, and large American law firms, understanding this mixed situation, provide extensive training for their new attorneys. And they might as well provide such training, since many large corporate clients will not pay for the time of junior associates.

Law schools simply cannot prepare each law graduate well for his or her initial job or ultimate career. It is not possible. Predictability of career path is low; I was going to be Atlanta’s next great international lawyer, and spent most of my career doing commercial finance transactions (lending law). In law school, I took Admiralty Law, but not Bankruptcy.<sup>2</sup>

But what do law schools do to prepare law students for practice? In the television program “The Paper Chase,” Professor Kingsfield, played by John Houseman<sup>3</sup>, said in the trailer at the beginning of each new episode: “You enter law school with brains full of mush, and we teach you to think like a lawyer.”<sup>4</sup> Law students learn how to read and digest cases and how to use ‘study aids’ to reduce unnecessary brain cramping; how to cope with final exams, largely essay style (with the occasional “scantron” multiple choice exam or portion thereof), for doctrinal courses; how to prepare legal memos and perhaps a persuasive brief; or maybe even how to argue a motion, or a case on appeal. If a student takes courses such as contract drafting, deal skills, negotiation, trial practice or another clinical course or courses as electives, the student may be exposed to other skills. But it is still quite possible in 2012 for a law student to graduate from an ABA-accredited law school and pass a bar exam without having read a contract, a will, a deed or mortgage, a complaint, or an answer (much less having drafted such a thing); without having counseled a client, or even a faux client; without having negotiated anything; without knowing what an engagement letter is; or how to keep time or bill and collect. A law student is likely to know the rules regarding client

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<sup>1</sup> *But see* “Study: Job Placement Data Raises ‘Red Flag,’” *Fulton County Daily Report*, January 20, 2012.

<sup>2</sup> As Texas Governor Rick Perry famously said, “Oops.”

<sup>3</sup> Born Jacques Haussmann in Romania. I am not making that up. (Apologies to Dave Barry. As D. Robert White reminded us in *The Official Lawyers Handbook* (Simon & Schuster, 1983), “There are no funny lawyers, only funny people who made career mistakes.”)

<sup>4</sup> *The Paper Chase* (20th Century Fox Television broadcast 1978-1986).

conflicts from a course in Professional Responsibility, but not how to avoid client conflicts or what to do if one arises. As I said, while it is not possible to properly prepare each law graduate for his or her initial job or ultimate career, it should be possible (i) at least to expose all law students to rudimentary universal elements of practice, and (ii) for those students who know, for example, that they will be business lawyers of some sort, or litigators of some type, to give those students a running start.<sup>5</sup>

Thankfully, the landscape of legal education is shifting fairly rapidly, and I hope to be a part of it. Here are my suggestions for the practicing lawyer looking to move into teaching.

### **TIP #1: START NOW**

The reasons for this Tip will become more clear as you read on, but suffice it to say, the process may take some time. From the perspective of a practicing lawyer, the process may make little sense, and the qualifications and experience you have to offer may mean little or nothing to those in a position to hire you (or worse than nothing – see the anecdote below.) You should know that the hiring process may vary wildly from school to school and even in the best-run law school process, may be fragmented and confusing. Faculty plays a dominant role in hiring. Law schools typically look for three things from their faculty: scholarship, teaching, and service. They look for those things, in that order, from your background. Notice the absence of the criteria “quality of practice experience” or “practice success” in the list above. At best, absent miraculous circumstances, you should allow 15-18 months to secure a full-time teaching position in an American law school.<sup>6</sup> If you are really serious about teaching, I recommend skipping to Tip #3 regarding scholarship now.<sup>7</sup>

I suggest that you start now because the closer you are to your golden years (“senior attorney,” “senior partner,” “highly experienced,” “of counsel,” “retired”), the more likely it is that those interviewing you will doubt your work ethic and suspect that you are looking for a “cushy” job (the pay as a law professor is likely to be low compared to practicing law, but there is a good deal of time off, some prestige, pretty good benefits, etc.) for a few years prior to full retirement. This is a stereotype, but stereotypes exist for a reason—frequently there is some truth to them.<sup>8</sup> In my case, for most of my 30 years of practice, I invested

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<sup>5</sup> The law school whose faculty I currently serve on has as part of its mission statement, or statement of institutional goals, that we “strive to produce graduates who can be productive lawyers soon after graduating without extensive supervision.” Hear, hear.

<sup>6</sup> While you may find a permanent teaching job in an American law school quickly, more than one law school professional warned that finding such a job might take several years. Such warnings often came in the “ding” or “flush” letters I received.

<sup>7</sup> “Scholarship” means scholarly legal writing, as discussed below.

<sup>8</sup> This distinguishes stereotypes from aphorisms. While there is frequently some degree of truth in a stereotype or generalization, for every aphorism, except this one, there is an equal and opposite aphorism. (i.e., “Look before you leap” versus “He who hesitates is lost”; “Never scratch your eyeball with a fork” versus “Never say never”. See also Tip # 5, “Tend to Your Appearance,” and *nota bene*:

3,000+ hours per year into my law practice (billable hours, marketing and client development, associate training and mentoring, recruiting, billing and collection, civic and bar activities, continuing legal education, law firm administrative duties, etc.), so I figured I could reduce my overall effort somewhat and still keep up pretty well with the rest of the faculty. Nonetheless, in my interviews and other conversations, I heard negative impressions of senior attorneys expressed a dozen times or more, so be aware of it.

Second, there is the “issue” of your successful practice. Towards the end of my job search process, I spoke with a full-time faculty member at a top-thirty law school, and I mentioned my observation that the more highly-ranked a law school was (on the U.S. News and World Report scale or on any other ranking scale), the less credit I got for having had a long and successful career—partnership at Powell Goldstein (now Bryan Cave) and then Paul Hastings, serving as lead counsel for clients on marquis \$1 billion-plus deals, Super Lawyer recognition, AV Martindale Hubbell rating, etc. He corrected me: “Oh no, it’s much worse than that. The longer and more successful your career, the bigger the black mark against you. Academics think that every year in practice makes you less capable of serious scholarly work.”

You should also know that the process really does take a while. Different law schools hire on different time cycles, and there are some very interesting hiring stories out there. One of my friends, a lawyer who at that time had an in-house position, saw an ad for a hiring law school in a part of the country in which she had an interest. She applied to that one school, flew herself out there, was hired, and had a very successful second career teaching. However, most of the United States’ 200 plus ABA-accredited law schools participate in the hiring process organized by the Association of American Law Schools (AALS).

Assuming that you wish to begin teaching in the fall of a particular year (which, oddly enough, in educational circles means “August”), it is advisable to gear up 15-18 months in advance, assuming that you are able to find suitable employment your first time around the block. At this stage, you will want to think about schools, geography and courses. You will want to update and refine your résumé. One step I recommend is to change the order of presentation to make it friendlier for academics. Put the education, teaching, and writing sections up front.<sup>9</sup>

While other reasons for starting sooner rather than later appear in the next section, if you are serious about law school teaching, **START NOW**.

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“You can’t judge a book by its cover” versus “Clothes make the man.”) Wisdom consists not in mouthing the right aphorism, but rather making wise decisions under the circumstances. I realize this has nothing to do with the rest of the article, but I wanted to get that thought off my chest. Brain. Whatever. Thank you.

<sup>9</sup> Per Tip #3, don’t forget to add in the publications section that article just accepted for publication by the *Harvard Law Review*.

**TIP #2: UNDERSTAND THE PROCESS**

The process for the hiring of new faculty by U.S. law schools is NOT intuitive to a practitioner. Unlike a private business, where officers or senior managers would typically do the hiring, or a law firm, where a recruiting committee of partners and associates would collaborate on decision-making, but subject to strong partner input when appropriate, law school faculty very much take a leading role in the faculty recruitment process. They review and sift résumés; decide who will be seen at the annual October Faculty Recruitment Conference in Washington organized by the AALS,<sup>10</sup> otherwise known as the “Meet Market” (alternate spellings available); decide who will be “called back” for an on-campus interview (typically either a half-day or a full day), which includes the candidate’s “job talk”<sup>11</sup>; and then decide who will be hired.

Previously, I identified the fact that your distinguished legal career in the practice of law may not only *not* be a plus, it may be a minus. Here is another fact that will help you understand the process: the median number of years experience in the practice of law, for new faculty hires at America’s top law schools last year, was one.<sup>12</sup> That means half of new teachers at excellent law schools had less than one year’s experience (in my book, that means zero), and half had more than one.<sup>13</sup> These are some of the people who will be evaluating your résumé and making hiring decisions. Frequently, those making hiring decisions are highly qualified to evaluate your academic background, the quality of any clerkships, and your scholarly output, but substantially less qualified to evaluate your law practice.

I asked the Dean of a for-profit school why faculty ran the show on faculty hiring. Particularly in a for-profit school, it would seem that the owners of the school would want a say in the selection of faculty candidates to ensure that new faculty have the skills needed to attract more, and more highly qualified, students to the school. Faculty input might be helpful or welcome, but not dispositive. The answer was “ABA Guidelines.”

Why would it be important to the ABA for accreditation purposes that teachers have a dominant role in faculty hiring? Obviously, the more sway faculty has, the less power and influence over decision-making is available to other constituencies: the owners and their

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<sup>10</sup> There is much helpful information about the process about the AALS website, it is navigable even for some of us who qualify for Senior Citizen movie theater discounts, and (this is a twenty-first century miracle) AALS has a functioning phone system that is tended by people who are helpful.

<sup>11</sup> The “job talk” is an “opportunity” for the candidate to demonstrate his or her teaching ability, scholarship interest and aptitude, or both; typically, all faculty members are invited. The job talk is frequently organized around a larger lunch meeting with faculty. Given the prejudice for “scholarship,” focus on a promising law review article topic makes more sense than demonstrating your in-class teaching skills.

<sup>12</sup> “What They Don’t Teach Law Students: Lawyering,” David Segal, *New York Times*, November 19, 2011.

<sup>13</sup> I know, I know. If ten percent of the sample had exactly one year’s experience, then only forty-five percent had zero years teaching, and forty-five percent had more than one year of teaching.

directors and officers of a for-profit law school, and the directors and trustees of not-for-profit law schools, private or public; the school's administrators (who may be corporate officers of for-profit schools); students (although happily, I met law students at several schools, and students attended my "job talk" at two); law firms, companies and other organizations who hire the graduates of law schools; and parents or others (other than students) who actually pay the costs of law school. Whatever policy arguments can be made in favor of other methods of faculty hiring, or in favor of different allocations of decision-making power and authority, the existing faculty likely has a dominant role in running the show. The Tip is: Understand the Process. (A later tip is: Know the Academy; it is what it is.)

Having identified the likely hiring decision-makers, academically-oriented (not generally practice-oriented) law faculty members, here is some more information about the actual process, which I describe as taking at least 15-18 months.

After you have redone your résumé for the Academy and commenced work on a scholarly law review article (back to Tip #3 again), you will want to register with the AALS for the Faculty Appointments Register (FAR). The initial step is to complete an online one-page form, a summary of your background and qualifications, and pay the \$450 fee. (The fee also entitles you to attend and participate in the Faculty Recruitment Conference, a/k/a the Meet Market.) Once you are registered, and you should target registration by the end of July, the AALS releases all the teaching candidates' FAR pages to all law schools looking to hire. For the 2012-2013 hiring season, those releases occurred on August 16th, September 6 and 27th, 2012 and February 1, 2013. During the same period, the AALS periodically releases bulletins to the law professor candidates, listing the schools that are hiring and what skills and teaching areas each school is seeking. (These bulletins were very helpful to me. Some of the law schools in which I had interest simply had no openings, or no openings in my area of expertise, and this knowledge saved me from wasting time. Other schools I might ordinarily not have applied to had openings right up my alley.) Schools interested in you may contact you directly, seek more information and express a desire to interview you in October in Washington (for the 2012-2013 hiring season it was from October 11-13, 2012) at the Faculty Recruitment Conference. I had some of those. I also contacted directly a number of schools, and those contacts resulted in some interviews. I had a total of seven interviews at the FRC, one quite casual. I had four "call backs," i.e., on-campus interviews, which resulted in several offers of employment. Most law schools do most of their hiring in the fall, for the following school year. Some law schools hire later, and of course there are always personal personnel circumstances that create out-of-cycle hiring needs.

I had expected to be one of the oldest prospective professors at the Meet Market, but in fact I was in good company with other experienced practitioners. I believe more than 150 law schools were there with hiring needs, and approximately 700 would-be professors. (Some of the more senior candidates seemed to be there on a flyer.) I was not

uncomfortable; at a break-out session on the first day for “experienced practitioners,” I am sure at least one-fourth of them were older than I.

So the process for me ended over the Christmas/New Year/Kwanzaa/Hanukah holidays, but I will say that another law school moving at a different pace contacted me in mid-January to interview. And the “ding” letters continued to trickle in for another ten months.<sup>14</sup>

Another “heads up” regarding the process. Your perfect résumé or CV will reflect Harvard/Yale or Yale/Harvard, a clerkship with a Supreme Court justice, a handful of recent scholarly law review articles, toss in an Order of the Coif, and a Masters from the London School of Economics or a Ph.D. in something—anything—from another distinguished university. Throw in a diversity marker, and you are golden. Deans (and not just faculty heads of recruiting committees) will be on you as thick as flies at the “Meet Market.”

Diversity is not to be underestimated as a force in hiring. There may be controversy over the role of diversity in hiring and other employment decisions, but not in the Academy.<sup>15</sup> The process I underwent focused my attention on the negative weight given to my years of successful practice, which I described as strike four. (The first three strikes would be my race (Caucasian), sex (male) and age (I just turned sixty).) I am also a Christian (Roman Catholic!) heterosexual. I am stocky (overweight, but not technically obese), and “folically challenged.” Some (but by no means all) of my political views would be described under current US political standards, accurately, as “conservative.” Finally, at times in my life, I have been part of the “1%.” All the things that used to be given preference are now

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<sup>14</sup> For those of you who want the vicarious pleasure of seeing a rejection letter rejected, here is a clever effort, straight out of Facebook. Don't try this at home.

Dear Professor \_\_\_\_\_,

Thank you for your letter of November 16. After careful consideration, I regret to inform you that I am unable to accept your refusal to offer to me an assistant professor position in your law school.

This year I have been particularly fortunate in receiving an unusually large number of rejection letters. With such a varied and promising field of excellent candidates, it is impossible for me to accept all refusals.

Despite your outstanding qualifications and previous experience in rejecting applicants, I find that your rejection does not meet my needs at this time. Therefore, I will assume the position of assistant professor of law this August. I look forward to seeing you then.

Best of luck in rejecting future applicants.

Sincerely,

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<sup>15</sup> *But see* Fisher v. Univ. of Tex. at Austin, 631 F.3d 213, 213 (5th Cir. 2011), *cert. granted*, 80 U.S.L.W. 3144 (U.S. Feb. 21, 2012) (No. 11-345).

negatives in law school hiring. I think I am up to nine strikes; the side is retired. I say these things not to criticize the focus on diversity but to highlight its importance in law school hiring, and in campus life generally.<sup>16</sup>

Lesser résumés will receive dramatically less attention. I applied to approximately 50 schools. (About a third, all state universities, also required on-line applications, in addition to the application letter and CV to the faculty member heading the recruiting committee required by all law schools.) While I am now, and have always been, impressed by my own résumé<sup>17</sup>, no more than half of the law schools responded to my application, even to acknowledge receipt. I did no better when I had a “hook” or “in” with the law school. As I attended a Jesuit high school and a Jesuit college, I thought I might have an advantage with the dozen-plus Jesuit law schools to which I applied. I did worse than average there.<sup>18</sup> I wrote directly to two different law school deans whom I met in Washington at the home of the Irish Ambassador to the United States (on the first night of the 2011 “Meet Market”) at an event honoring them, and me, as members of *The Irish Voice’s* 2011 “Irish Legal 100.” (Justices Kennedy and Roberts were likewise honored.) I received no response from either. I got no response at all from a Jesuit law school which is part of a Jesuit university from which one of my children had graduated with her BA degree the year before<sup>19</sup>. I could go on.<sup>20</sup> So keep your expectations extremely low, and you will be less disappointed. UNDERSTAND THE PROCESS.

### **TIP #3: WRITE AND PUBLISH A SCHOLARLY LAW REVIEW ARTICLE**

You probably thought I was going to tell you at some point in this article to offer to teach on an adjunct basis. No. If you want to teach on an adjunct basis, do it. Contact a local law school or law schools, and make that offer. Law schools are receptive to such offers. If you don’t know whether you wish to teach full-time, try adjunct teaching. You’ve got nothing to lose but time, and lost opportunity cost. My experience in the Southeast

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<sup>16</sup> I am aware that being born when I was in a New York suburb, healthy, to middle-class parents who loved me and each other, as a white, Christian male, with some intelligence, in many respects, I won the lottery at birth.

<sup>17</sup> Copies available upon request.

<sup>18</sup> That did not shock me, since none of the Jesuit law schools at the Meet Market were represented at an evening reception for religiously-affiliated law schools. There were several non-Jesuit Catholic law schools represented at the reception.

<sup>19</sup> Of course, we only invested \$100,000 or so there. Nonetheless, you know who you are, and please take me off your mailing list.

<sup>20</sup> No one can be expected to respond to all e-mail messages. I, myself, will occasionally fail to respond to e-mail messages. These are typically messages that have the word “orgasm” in the ‘Re’ line, or are messages from women in less-developed countries who have won a lottery or inherited a large amount of money (typically between \$10MM and \$20MM) and are seeking my assistance in moving the money into the United States, in violation of their country’s and our currency exchange and tax laws, in exchange for 25% of the money. Just for the record, if I am going to risk jail time, I need half. Plus, I am retired from law practice.

suggests to me that adjunct teachers are typically paid \$2,500 to \$5,000 per course, which is somewhat low when you consider that full-time law professors typically teach two courses per term and make a living wage (*see* Tip #6). By my reckoning, adjunct teaching pays better than minimum wage, but not by much. Did I mention the benefits?<sup>21</sup> But I am not complaining because I knew the deal before starting. My impression is that most law schools, especially urban law schools, have all the adjuncts they can use (and adjuncts certainly help law school administrators balance their budgets).

You probably thought I would suggest adjunct teaching because you continue to labor under the mistaken impression that a law professor's first responsibility is teaching. It is not. It is *scholarship*. The following story is third-hand, but I was told it by a friend, and I believe it.

A first-year law professor was troubled about the difficulties some of her students were having absorbing the material she was teaching. The professor went to her Dean, explained the situation, and suggested that she expand her office hours to help the struggling students outside class. The Dean replied, "Absolutely not. You need to go home, research and write. You are here for scholarship, not teaching!"

Writing does not mean op-ed pieces, practical articles for trade journals, newsletters for clients, etc. (In other words, this article may not qualify as "scholarship.")<sup>22</sup> Legal writing should be thick, theoretical, footnote-laden, obscure and obtuse—in short, scholarly. But do not call your article, "Why Nonexistent People Do Not Have Zero Well-Being But Rather No Well-Being"—it's taken.<sup>23</sup>

I do not mean to "pile on" to the Academy; others have previously taken law school academics and administrators to task thoroughly and well.<sup>24</sup> But if you are sure you wish to return to the Academy, and I know this may be counter-intuitive, write first, don't teach.

I almost forgot to mention the vanity footnote. As an attention-getter, or a way of demonstrating the author's bona fides (a Latin term for "chops"), writers of law review articles will frequently in the first footnote or the copyright inscription drop the names of the famous, if there is even an arguable connection. For example, at the end of the copyright inscription on page one, a sentence like this might have been added: "The author would like to thank his friend and law school classmate, SEC Commissioner Luis Aguilar,

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<sup>21</sup> Free parking.

<sup>22</sup> But I am hoping.

<sup>23</sup> *See* Segal, *supra* note 14.

<sup>24</sup> *Id.*; *see also* John O. McGinnis & Russell D. Mangas, *First Thing We Do, Let's Kill All the Law Schools*, W.S.J. ONLINE (Jun.17,2012), <http://online.wsj.com/article/SB10001424052970204632204577128443306853890.html>.; *Schools for Misrule: Legal Academia and an Overlanyered America*, Walter Olson (Encounter Books, 2011). Olson writes from a conservative political perspective.

for his support and encouragement for my transition to the Academy over the past several years.”<sup>25</sup>

So, if you are as serious as a heart attack about teaching in law school,<sup>26</sup> let me say again, with emphasis, WRITE AND PUBLISH A SCHOLARLY LAW REVIEW ARTICLE.

#### **TIP #4: KNOW THE ACADEMY**

It is my hope to complete the writing of this section without losing any friends in the Academy. That may be impossible.

As mentioned before, law school recruiters frequently describe what they seek in full-time, tenured law professors as someone who masters the three legs of a “stool”: scholarship, teaching and service. The emphasis on the legs of the stool will vary from school to school, but the more prestigious the school, the more likely the important leg is the writing/scholarship component. The less prestigious the law school, usually newer schools, the principal emphasis is more likely on teaching. Such schools need to focus on preparing their students for the bar exam, and improving their bar passage rates. “Service” seems to have a variable meaning from school to school. At some schools it means active participation in the ABA and other bar organizations, while at other schools it seems to mean more hands-on, practical help in the local community.

Most law school faculty members view themselves as scholars first and teachers second.<sup>27</sup> Thus, the most important task for a law professor is to write scholarly articles; teaching is next. What do law professors view as appropriate teaching?

It is interesting how differently legal education has evolved from medical training and advanced business education. While there are certainly important doctrinal courses in these other lines of study, medicine and business, and, particularly in medical school, much information to be mastered, practice at business school and medical school is emphasized. We would be shocked to go to even a new doctor and find that he or she had no idea what

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<sup>25</sup> Sorry, Luis.

<sup>26</sup> If you are serious as a heart attack about teaching but not wedded to law school, consider being in touch with the Academy of Legal Studies in Business ([www.ALSB.org](http://www.ALSB.org)). This is an association of professors of law at undergraduate and graduate schools of business. While I had a successful career as a business lawyer, my academic background in business was poor (undergraduate major in Religious Studies, minor in Philosophy, a D in statistics and a WF in Accounting), and thus I was a less-than-perfect candidate for a business school. Nonetheless, the members of the ALSB whom I met (all had practiced law) were uniformly friendly, helpful and full of encouragement. ALSB is also much more practice-oriented than, for example, the AALS. I would note, however, a couple of things about teaching law in a business school: the publishing requirement exists; the teaching load is, if anything, heavier than in law school; and the compensation seems to be lower. Still, this might be right for you either as a career or as a “next step.”

<sup>27</sup> See, *Segal, supra* note 8.

to do about a medical problem. And yet, virtually every law practitioner has a story to tell about an episode early on, of cluelessness about a basic aspect of practice, a “deer in headlights” story.

My personal “deer in headlights” story about my introduction to practice is as follows. I had been out of law school for a couple of years. I had worked for several years as a judicial clerk with an excellent federal district judge, and I was just a month or two into private practice in Atlanta when, one late Friday morning, a new partner came into my office and said, “I need you to form a corporation for me this afternoon.” He said, I am sure, several additional sentences, and I am confident I took some notes, but I felt like I had taken a bullet to the brain. The lights went out. I had no clue how to form a corporation. I did not know where to start. I felt like a complete idiot. I did not want to go back to the partner and ask the question, “huh?” Within an hour or two I gathered my wits, spoke with another, more senior associate, learned that the firm had an “incorporation package,” reviewed it, had a couple of additional questions for the partner and, once I figured out how to get the firm to cut checks and use the firm’s “courthouse runner,”<sup>28</sup> I got it done. But it occurred to me then, almost 30 years ago, that there had been something badly missing in my law school education.

Further, several years later (once I generally knew what I was doing), I saw that new attorneys were no different than I had been; that is, they knew little that was useful to law practice and stumbled over simple tasks. That included simple correspondence to clients. So, I began to ask law student recruits, interviewees, the following question: “Have you ever had to draft a contract in law school?” For more than twenty years, until the early years of this century, the answer was uniformly “NO.”

Medical and business school faculties are full of practitioners--experts--with excellent reputations. Many business schools now require that their MBA candidates work for five years before entering business school, so that they will have had some business experience and exposure to an office environment.

Law school teaching is still, substantially, an academic exercise, teaching for the sake of learning and teaching to help students pass the bar exam. As we have seen, many law school teachers have relatively little practice background; in addition to being disinclined to focus on preparing students for the practice of law, more than a few are unqualified to do so. The tenure-track and full-time faculty at American law schools are quite happy to leave legal clinics, legal drafting, deal skills courses and other such offerings to adjunct faculty, clinical specialists and other non-tenure-track faculty (in many law schools, but not all, such faculty

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<sup>28</sup> The author is so old that this anecdote predates electronic filings. In the 1980’s, before electricity and automobiles, articles of incorporation in paper form with blue ink signatures had to be carried to the office of Georgia’s Secretary of State by poorly paid retired men who were forced to run there and were beaten if they fell or missed a deadline.

are second-class citizens), while they focus on doctrinal courses, scholarship and the development of seminars complimentary to their scholarship interests. Those seminars may be useful, and may be useless.

Things are changing, but for now, practical training for future lawyers is not likely to occur at Harvard and Yale; they are cranking out theoretically excellent future law professors (as well as some practitioners, judges, and politicians, including Presidents and Presidential candidates). Look at the bottom half of law schools by ranking, and there you will find law students increasingly made more “practice ready.” Such schools focus intensely on bar exam pass rates, value successful practice experience in their faculty (which is more than one year at Skadden Arps, no matter how good a year it was), and liberally employ practitioners as adjunct professors.

There are some exceptions at the top: Emory University School of Law, for example. The Emory School of Law offers a program for future business lawyers through their Center for Transactional Law & Practice offers a Certificate Program. In order to graduate with this certificate, an Emory law student must complete three series of courses: first, a list of doctrinal courses; second, specific business courses; and third, three specific transaction-oriented courses. The doctrinal courses consist of common business-oriented courses, which also are tested on bar exams: business associations, income tax and corporate income tax; securities regulation is also recommended. The specific business courses include a three-credit Accounting in Action course and Corporate Finance. Finally, the three transaction-oriented courses are Contract Drafting, a course which has come a long way in recent years and for which there are now several good texts<sup>29</sup>, with exercises; Deal Skills, which gives students the opportunity to further their drafting, negotiating, counseling, problem-solving and other skills in a variety of business deal settings; and a “Capstone Course” involving detailed study of a particular type of transaction (a secured loan, an initial public offering, an asset purchase and sale, a stock purchase agreement, a merger, etc.).<sup>30</sup> Adjunct professors are heavily used in this program at Emory.

Much of this section has been devoted to what I have learned about “The Academy” over the past five or six years. Of course, you may be in a different market, a different part of the country, have a different practice background and have a different personality and demographic profile. You may be Order of the Coif and have clerked for a Supreme Court Justice; I was not and did not. This is by way of lead-in to a practical

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<sup>29</sup> Foremost among them are LENNÉ EIDSON ESPENSCHIED, *CONTRACT DRAFTING: POWERFUL PROSE IN TRANSACTIONAL PRACTICE* (2010); GEORGE W. KUNEY, *THE ELEMENTS OF CONTRACT DRAFTING WITH QUESTIONS AND CLAUSES FOR CONSIDERATION* (2006); and TINA L. STARK, *DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO* (2007) (Professor Stark was the founder of Emory’s Transactional Law and Practice Program).

<sup>30</sup> Centers & Clinics: Description of the Certificate Program Curriculum, <http://www.law.emory.edu/centers-clinics/center-for-transactional-law-practice/certificate-program.html>.

suggestion for getting to know “The Academy.” A good way to do this (see my final “thank you” footnote) is to identify, cultivate and spend time with academics, including those whom you have practiced law. I spoke at length with youthful and more senior academics, some new to the Academy and others who were “lifers.” All freely shared their knowledge and experience with me and were extremely helpful.

For those of you who take a keen interest in politics, you may wonder whether the political climate in the legal Academy is as “progressive,” “liberal,” “left-leaning” or Democratic as colleges, universities and graduate schools are reputed to be generally. Yes, it is. While the Academy features diversity of race, sex, age, gender preference, national origin, and even religious choice (or lack thereof), when it comes to diversity of viewpoint, not so much. There are some notable exceptions: schools that are likely not as “progressive” or “liberal” as most (including the law schools at Pepperdine and George Mason), new or for-profit law schools, and some religiously-sponsored law schools.

One final thing to keep in mind is that there is still a litigation slant in law school.<sup>31</sup> Early efforts to bring practicality to legal education focused on brief-writing, legal aid, domestic violence and consumer dispute clinics, moot court courses, counseling clients in a litigation context, etc. Anecdotally, at the Meet Market, I was speaking with the Dean of a law school and a member of her recruiting committee. I asked the Dean whether there were any plans in the works to expand the school’s nascent business law program. She said no, that there were not the funds to do anything new or expand the program for the next several years. Her colleague, the recruiter, chimed in, “Corporate?” He extended his forearms and hands, palms down, and used his hands to brush the thought and suggestion away from the conversation. KNOW THE ACADEMY.

#### **TIP #5: TEND TO YOUR APPEARANCE**

Having gone this far in an explanation of the Academy which may well be viewed as inappropriately critical, I might as well add a “political incorrectness” log to the fire. If you have more chins than a Chinese telephone directory, this would be a good time to lose weight. I’m not recommending liposuction or other plastic surgery, but it wouldn’t hurt for you to look as well, fit and healthy as possible, whether you are 35 or 65 years of age.

I am aware that you shouldn’t judge a book by its cover, and the United States is planted thick with laws from coast to coast (to steal a phrase<sup>32</sup>) to protect people on the receiving end of employment decision-making from discrimination on the basis of religion, sex, race, sexual preference, national origin, age, disability, and others. (I felt like I was missing something as I wrote this the first time, and then I received a memo with the full

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<sup>31</sup> Kenneth N. Klee, *Teaching Transactional Law* (September 4, 2003) (unpublished manuscript) (UCLA School of Law Research Paper No. 03-17), <http://ssrn.com/abstract=445823> or <http://dx.doi.org/10.2139/ssrn.445823>

<sup>32</sup> *A MAN FOR ALL SEASONS* (Highland Films 1962).

list<sup>33</sup>.) Height, weight, hair color, dental and other hygiene are not on the list yet (although Body Mass Index seems to be headed that way). But telling human beings not to judge others by their personal appearance reminds me of something my Evidence professor, the late Vaughn Ball, said one day in class, about curative instructions from the bench: “Telling a group of jurors not to think about something they just heard that was inappropriately introduced into evidence and to disregard it totally is like saying ‘Whatever you do, don’t think about elephants for the next ten minutes.’”<sup>34</sup> The only thing preventing the jury from doing what it is supposed to do, and has been told to do, is human nature. Faculty hiring committees are no different.<sup>35</sup>

Think about whitening your teeth; spend a few bucks on clothes that are appropriate and fit your new (possibly slimmer) physique. I didn’t go as far as to color (or artificially supplement) my hair, but I kept it neatly trimmed; and you don’t get extra points for having eyebrows that rival those of the late Andy Rooney, or ear hair growth reminiscent of Yoda’s. You can’t escape the fact that most people will evaluate you, at least in part, on your appearance. Not on this planet. So TEND TO YOUR APPEARANCE (and your health).

#### **TIP #6: PLAN YOUR EXIT AND PLAN YOUR ENTRANCE**

Your story to law school hiring committees should be, “I have succeeded in practice, but would like to move to (in my case, return to) my real love, teaching.” Being between positions, unemployed, “consulting,” on probation at your current place of employment, special project work or “getting retired”—all of these are less compelling stories than, “I am doing well in practice but want to make a change.” To that end, keep in mind that the necessary prior investments to a teaching career, writing and perhaps adjunct teaching, create demands on your time that may not be creditworthy at your law firm or other place of employment. Adjunct teaching in particular, done properly, has a serious cost in terms of your time. Teaching one adjunct course per semester is half of a full-time

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<sup>33</sup> “[The Employer] will accord equal employment opportunity to qualified individuals in all personnel practices, including recruitment, selection, promotion, training, tuition assistance, compensation, benefits, transfer, layoff, termination, and social and recreational programs. Our policies and practices will be free from unlawful discrimination based upon race, creed, color, religion, sex (including pregnancy, childbirth or related medical conditions), national origin, immigration status, ancestry, age, marital status, veteran status, disability, genetic information, medical condition, sexual orientation, gender identity, or any basis prohibited under federal, state or local law. Our employees, as well as applicants and others with whom we do business, will not be subjected to sexual, racial, religious, ethnic, or any other form of harassment.” The Employer also notes that it accommodates qualified individuals with disabilities under the Americans With Disabilities Act and state and local law, and will not tolerate statements or actions that create a discriminatory or harassing work environment.

<sup>34</sup> Professor Ball had another gem on hearsay evidence, a/k/a the rule of law as Swiss cheese. He said “If hearsay evidence is inherently unreliable, it’s hard to understand how knowledge got started.”

<sup>35</sup> As French philosopher Maurice Merleau-Ponty famously said, “I do not ‘possess’ a body; I am a body. . . .” Citation available on request.

teaching load. If you have not taught before, you should know that preparation time, especially the first time you teach a course, is enormous. The rule of thumb is three hours of preparation for every hour in class, but I would say five hours is more accurate. With the Internet and modern communications, teaching only makes you truly unavailable when you are actually in the classroom, i.e., three hours per week per course. But who hasn't lost or irritated a testy or demanding client by taking an hour or two to return an urgent phone call? For trial lawyers there are trials and hearings, and travel for depositions, etc.; and for business lawyers, closings and other business trips. While more senior attorneys generally have some calendar control, the law is a service profession. Writing an article is less demanding of your time, and more flexible, than adjunct teaching. And it is probably more valuable to your plan to teach.

As you progress in your plans and preparations for teaching, keep up your performance. All law firm lawyer evaluations (partners included) are now performance-based, and while firms will forgive an off year or two, perhaps, the question will remain, "What have you done for me lately?"

Make sure you understand the economics of what you are doing. When I discussed salary at one of the law schools I spoke with, one of the Deans there said, "I hope you managed to salt away a few bucks at Paul Hastings." Starting law professor salaries are in the range of \$80,000 to \$120,000, per Salary.com<sup>36</sup>, substantially below the salaries of first-year associates at large national law firms. Administrative support, benefits, teaching load expectations – all should be discussed and considered as you move forward and consider any offers. In short, PLAN AHEAD!

### CONCLUSION

So, future law professor, in a nutshell, (1) start now; (2) understand the process—it may take several years; (3) write a law review article; (4) begin to grasp what the modern law school environment—the Academy—is like; (5) tend to your appearance, and (6) ready, aim, fire—plan your exit from your current position and your entrance to the academic world.

Some of what is written here will be viewed as critical of the Academy, and it is. Let me assure you that, as a person who does not like to burn bridges, I pulled my punches. Much law faculty and administration have lost sight of their principal task—preparing future lawyers for practice. (Given recent criticisms, I was surprised at how insensitive many law professors and law administrators were to the perceived shortcomings in the Academy with respect to preparing law students for law practice.) Further, many scholars pursue scholarship for the sake of scholarship, not for its usefulness or any benefit that might accrue to practitioners in the bench and bar or the community at large. (Fully half of all law

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<sup>36</sup> See Segal, *supra* note 13. See also [www.salary.com](http://www.salary.com).

review articles are never cited again.<sup>37</sup>) However, I am convinced that over the next several years, change will occur in the Academy, teachers will devote themselves more diligently to their primary task<sup>38</sup>, curricula at law schools will change to incorporate the inculcation of necessary practical legal skills and knowledge, and perhaps even scholarship will change—we could use less of it, and more written with a view to the “real world.” The Chief Justice of the Supreme Court of the United States,<sup>39</sup> at a Fourth Circuit Judicial Conference in 2011, was quoted as saying,

Pick up a copy of any law review that you see, and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th Century Bulgaria, or something which I'm sure was of great interest to the academic that wrote it, but isn't of much help to the bar. . . . [Roberts added that he doesn't necessarily think anything is wrong with such an approach, albeit a relatively irrelevant one.] If the academy wants to deal with the legal issues at a particularly abstract, philosophical level . . . that's great and that's their business, but they shouldn't expect that it would be of any particular help or even interest to the members of the practice of the bar or judges.<sup>40</sup>

Although Chief Justice Roberts' colleagues (particularly the former law professors) are less critical of legal scholarship, that remark has to sting.

I enjoy writing too—I do it a lot—but I really enjoy teaching and look forward to doing more of it this time around.<sup>41</sup> See you in class.<sup>42</sup>

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<sup>37</sup> *Id.*

<sup>38</sup> Teaching.

<sup>39</sup> John Roberts.

<sup>40</sup> *Law Prof. Ifill Challenges Chief Justice Roberts' Take on Academic Scholarship*, AMERICAN CONSTITUTION BLOG (July 5, 2011), <http://www.acslaw.org/acsblog/law-prof-ifill-challenges-chief-justice-roberts?-take-on-academic-scholarship>.

<sup>41</sup> Prior to practicing law, my wife Maureen and I taught for almost two years at a start-up high school for girls in rural Kenya, East Africa.

<sup>42</sup> This is not a proper vanity footnote, but the author would like to thank Prof. John Hollwitz, Professor of Management Systems and University Professor of Psychology and Rhetoric, Fordham University; Anne Tucker, Assistant Professor of Law, and Doug Yarn, Professor of Law and Director, Consortium on Negotiation and Conflict Resolutions, Georgia State University College of Law; Professor Sally Weaver, Visiting Associate Professor of Law, University of Georgia School of Law; Browning Jeffries, Assistant Professor, Atlanta's John Marshall School of Law; and Dean Paul Kurtz, University of Georgia School of Law, Associate Dean, and J. Alton Hosch, Professor of Law. These people helped me in a variety of ways, all very positive, to make the move from practice to teaching. The author also would like to thank Tina Stark for her encouragement and for blazing the path. And, of course, my friend and SEC Commissioner, Luis Aguilar. Most importantly, the author would like to

**POSTSCRIPT AND TIP #7: DO YOUR DUE DILIGENCE**

Shortly after I received the joyous news in November of 2012 that *Transactions: The Tennessee Journal of Business Law* had agreed to publish this article, I received the less joyous news that my employer, Atlanta's John Marshall Law School (AJMLS), determined that because of the precipitous drop in law school applications (and consequently, enrollment), the school had no choice but to tell the six full-time faculty hired for Fall, 2012 and the three full-time faculty hired for Fall, 2011 that their contracts would not be renewed. Of course, yours truly is one of those nine. You might recall that an earlier part of this article mentioned the so-called "Meet Market" for law school faculty applicants, and you might have noticed that November of 2012 came about six weeks too late for those of us affected by the school's decision to participate in this year's event.

Another surprise also befell the affected nine; AJMLS opened a branch in Savannah, Georgia in the fall of 2012. This opening included hiring faculty and enrolling its first class in a new facility four hours away from Atlanta. Because that branch is going from first year students only to first and second year students, the new branch, in fact, needed to hire full-time law professors! You might think that the Atlanta nine would have the opportunity to transfer to the Savannah branch (I stated my interest in teaching at either branch when I was hired), or at least have an interview. However, this is the Academy. I was not interviewed, and my email rejection letter began, "Dear Applicant . . ."

Thus, I must regrettably close with Tip #7: Do Your Due Diligence, both on your potential employer(s) and your market generally. I was treated respectfully, but I was collateral damage at a school that over-hired. I would be teaching still had I taken the other offer.

Postscript aside, I look forward to teaching again soon.

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thank his spouse, Maureen Conboy, for her encouragement and thoughtful comments on an initial draft of this article, which were as follows: "You're not really going to publish this, are you?" "I hope it was therapeutic to write this." "You know, if you publish this article, your career in law school teaching is going to be pretty short." "You are not really going to publish this, are you?" Copies of the original draft are available upon request.