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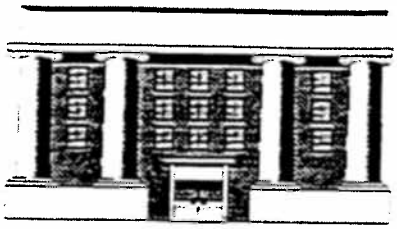

FROM THE TOWER

MAKING THE MOVE FROM LAW PRACTITIONER TO LAW PROFESSOR, OR HOW *NOT* TO SIMPLIFY YOUR LIFE

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My five years as a litigator with a major international law firm were spent in typical practitioner turmoil. I galloped from one discovery battle to the next, engaging in hand-to-hand (well, okay, word-processor-to-word-processor) combat with adversaries armed with a thousand different ways to deflect every legitimate discovery request I fired at them. Brief respites from the front lines were punctuated by calls from clients demanding to know why the case filed against them last week was not yet dismissed or by spending endless hours slogging through the library trenches, vainly researching some obscure point of law that the partner who assigned the task at 5 p.m. Friday night would decide was no longer needed when my definitive memo on the topic appeared on his desk at 8 a.m. the following Monday.

It's hard to believe that I now sometimes think of my years at the firm as the good old days.

Now that I have been teaching law for more years than I spent in full-time practice, I realize that I was quite naive about what law professors actually do for a living. Gone are my visions of cozy winter afternoons spent with my feet propped up on my desk while I pontificated about the law to five or six adoring students, or of sunny summer afternoons sauntering through 18 holes at my favorite golf course. The reality that replaced those idyllic visions consists of long hours, hard work, and a never ending stream of new challenges.

During my recent stint as chair of my law school's faculty hiring committee, I realized that many practitioners embrace the same serene mirage of a law professor's life that I once envisioned. In fact, the mythology is so widespread that hundreds of practicing lawyers submit their resumes to law schools each year in anticipation of making a transition to a less stressful position. While this move might not quite merit a "from the frying pan into the fire" analogy, it warrants at least two "from the frying pan into another frying pan" warnings.

The first caveat for practitioners contemplating a career change is that the market for law professorships is every bit as competitive as the market for positions with prestigious law firms or corporate counsel's offices. Last year, for example, more than 1,000 persons seeking law school teaching jobs submitted resumes to the Association of American Law Schools (AALS). Pursuant to a process which is followed every fall, the AALS forwarded the information to law school hiring committees.

The law school committees waded through this deluge of data to select 15 to 25 applicants for short screening interviews at the AALS's annual two-day hiring conference in Washington D.C.; the handful of persons who successfully ran that gauntlet were invited back to law school campuses for exhaustive interviews and presentations to the full faculty. In what was considered to be a good hiring year for candidates, only about 10% of the AALS registrants secured teaching positions.

Of course, participation in the AALS hiring process is not mandatory; indeed, most law schools received an additional hundred or so non-AALS applications last year which they also review. Law schools handle the screening and interviews of these direct applicants in a variety of ways, but again the reality is that there are significantly more applicants than teaching positions every year. And unfortunately, practitioners are frequently at a disadvantage because they rarely have had the opportunity to amass the "demonstrated record of scholarship" that so many schools use as a benchmark for hiring new faculty.

The second caveat is that teaching in a law school today is at best only slightly less hectic than practicing law. In fact, law teachers and litigators face many similar challenges.

For example, I spend a considerable portion of each work day responding to discovery-type requests which have some vague relationship to the courses I teach (civil procedure, remedies, contracts, and pretrial practice) or my administrative duties at the law school (helping to run the student externship and pro bono programs and chairing a number of committees). Such requests are served by a wide variety of constituents including my dean and other law school and university administrators, colleagues at my school, professors and administrators from other schools,

current students, former students, local practitioners, and even judges.

Questions in the following genre are relatively easy to handle: What are you teaching next semester? How do I find a copy of the most recent amendments to Rule 23? When can I meet with you to discuss my midterm exam? Would you help plan a continuing education program for next spring on recent amendments to the Federal Rules of Civil Procedure? And, my personal favorite, why aren't there any rest rooms in the law school library?

Formulating responses to other requests are much more complicated. Within the last month, for example, I spent more than an hour completing a survey on identifying the areas I cover in my civ pro class and explaining why I don't cover other topics; almost two weeks (off and on, of course) tracking down information about our grading policies to respond to a 7-page survey which demanded a very sophisticated statistical analysis of our grading data and copies of all written policies pertaining to grades; and more time than I care to disclose trying to outline my teaching, sabbatical, scholarship, and other professional plans for the next three years to respond to a questionnaire sent out by the dean.

Answering these types of requests is, on the one hand, easier than trying to wrestle information needed for discovery responses from a geographically remote and/or recalcitrant client. On the other hand, the objections to discovery requests which I used frequently in practice -- work product, privileged, not in the personal knowledge of the respondent, and the like -- are simply unavailable to me now.

Another significant similarity between practicing law and teaching it is the volume of demands made by clients today. As a litigator, I spent a considerable amount of time and energy explaining to clients why I spent 38.5 hours researching and writing a motion for summary judgment or 1.2 hours preparing a letter to opposing counsel outlining the deficiencies in her client's responses to my discovery requests.

As a law professor, my clients are my students. And, unlike past generations who were thrilled just to be admitted to law school and therefore willing to accept whatever the school provided for them, today's law students are sophisticated consumers. Like my clients in practice, my students want to know exactly what they are getting for their money. If we don't make good on our promise of a quality education at a reasonable price, they will go elsewhere. With applications for law schools diminishing, very few law schools can afford to rest on reputation; rather, each one has to take a serious look at the courses they offer, their bar passage rates, the effectiveness of their placement office, and a multitude of other issues related to recruiting and retaining a quality student base.

Some schools, for example, are seriously considering down-sizing -- a business-based solution embraced by many law firms during the past decade -- and trying to deal with the many ramifications of becoming a smaller operation. Regardless of the approach the law school takes, this current period of self-reflection and study involves and ultimately impacts every aspect of a law school, including the composition of entering classes, the curriculum offered, and the school's overall reputation in the law school community and legal profession.

One might reasonably ask: What effect does this trend have on the life of the average law professor? Certainly, the answer varies greatly depending on the school. But like many law firms, most law schools do not have a huge administrative staff. Thus, much of the work done at the schools -- such as the development of criteria governing admission of students and the overall design of the curriculum -- falls to faculty members. Many schools have a significant number of standing committees appointed by the dean to carry out the business of the law school. Areas as diverse as determining which health insurance policies are best to deciding what courses should be required for graduation are investigated by committee members. Special committees also are set up to deal with various issues as they arise, such as the reductions in the number of applications and the change in the job market mentioned above. In short, faculty members often shoulder significant administrative burdens along with their other responsibilities.

The final similarity I see between teaching and practicing law is the sheer volume of legal research and writing one must produce. I constantly am reviewing slip opinions, proposed amendments to rules, law review articles, ABA and other professional publications, and diving into electronic databases in an effort to stay current with the developments in my subject areas. At times this alone seems like a full-time job.

In my opinion, however, the mandate that a law professor produce a certain quality and quantity of scholarship is the most difficult transition for someone coming out of practice.

The first question, of course, is "what is scholarship?" This is an area of much debate among law professors. Do practice-oriented articles written for publications like this newsletter constitute scholarship? What about case books, course materials, or hornbooks? Materials produced for continuing legal education programs?

Somewhat to my dismay, the answer to all the previous questions is generally "no." Scholarship, in its classic form, consists of the 120-page, 486-footnote articles routinely published by law schools in their law reviews and law journals. The process generally involves spending a year or two researching and writing on a topic, sending it out to 100 or so law reviews for consideration, having it read by teams of third year law students, and receiving rejection slips from about 99 of those schools. The process is deemed a success if at least one school agrees to publish it.

But my argument is not so much of the process which one endures to finally get a "scholarly" publication on her resume, but rather the content of much of the scholarly work today. Whether writing a motion to compel for an Ohio trial court or a petition for certiorari to the U.S. Supreme Court, my goal in practice was to advocate my client's position by presenting the material as clearly and concisely as possible while also illuminating the court on the practical ramifications of rejecting my client's position (the so-called "parade of horribles"). After several years of reading and producing legal scholarship, however, I am convinced that the more esoteric, abstract and poorly written an article is, the greater its chances for publication in an elite law review. If you think this is too harsh a characterization, I urge you to pick up a few recent law reviews and just scan the table of contents.

While the scholarship challenge is significant, it is hardly insurmountable. A person coming out of practice to teach law can write articles of use and interest to practitioners which also have a scholarly gloss. For example, I devoted a significant part of an article on discovery of former employees to discussing the policy and philosophies underlying the rules and cases which served as the framework of the article. The article certainly would be of more use to practitioners if I had skipped these lofty asides, but it did get into print and was deemed sufficient "scholarship" during my tenure evaluation process.

In addition to fulfilling administrative tasks and producing scholarship, of course, is the primary job of the law professor: teaching law students about the law. Most litigators are skilled in organizing and simplifying complex material, preparing presentations for judges and juries, and thinking quickly on their feet. Accordingly, the teaching aspect of being a law professor is not as new to practitioners as other aspects may be. Anyone considering a teaching career, however, is well advised to spend some time in the law school environment, preferably teaching a course as an adjunct instructor or at least guest lecturing in a few classes, before deciding that teaching is the "easy" part of this job.

In sum, there are three discrete yet connected components of a law professor's job which closely parallel that of a litigator: teaching, administrative service, and scholarship. Being a law professor is not necessarily less stressful or easier than being a litigator, but there is significantly more flexibility in terms of the order and timing in which you accomplish your work. I urge anyone considering this change to investigate it seriously, but like any good lawyer, only make a decision once you have considered all the ramifications of your choice.