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What I Did Last Summer: A Few Thoughts on Getting Tenure

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What I Did Last Summer:
A Few Thoughts on Getting Tenure

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I believe that the Communications Coordinator of the Cleveland-Marshall College of Law is a remarkable person. Though she is a force behind LAW NOTES, a writer and poet, an advocate ("a woman's place," she told me, "is in her union"), and wit, her presence in LAW NOTES is explicitly visible only in the occasional attribution "LFM." But I believe the very soul of our uncommonly good alumni magazine is in its uncommon editor. I very honestly read every issue, and not only to see my own name in lights or because Louise and her twin sister share a birthday with my one-year-old. So when Ms. Mooney asked me to contribute something to LAW NOTES, I could not say no.

The problem was that she asked me to give my reflections on my recent award of tenure, and worse yet that she hoped they would be "humorous." Now, this could be my insecure inner Iowan talking, but I feared that few LAW NOTES readers would be exactly electrified to learn about the banal administrivia that makes up much of a law professor's daily life (e.g., the process of getting tenure). Also, from my perspective, the actual experience of pursuing tenure was almost precisely as humorous as the typical colonoscopy. Admittedly, there is a humor surrounding the institution of tenure. I have never met an untenured person who was not freaked out by it, no matter how good that person's chances were. That sort of thing breeds a certain humor for the same reason that nervous, shoosh-ified jokes during funeral parlor visitations are extremely funny. (For example, my wife told me she came *this* close to ordering a cake to celebrate my tenure that would say "Fire Me Now, *Biyatch.*") But that kind of humor is only the jittery, mutually supportive commiseration of the untenured. I suppose there is also a darker humor shared behind the closed doors of the tenured, about their junior colleagues' futures. But the experience of the process itself is not very funny. It is lonely.

There was a different reason this seemed like a hard assignment. Though I think it is not likely to be mentioned in LAW NOTES very often, we graduates of law schools all understand the unfortunate and sometimes not very friendly cultural divide between the profession and the academy that enjoys a monopoly on training it. I suspect this may have something to do with the institution of tenure, and I feared that writing about it would focus on me the profession's frustrations with the academy. It may very well be that we in the ivory tower have preserved a system that is too detached from real legal institutions, and it may be that we have failed in many ways to prepare students for real practice. With the luxury of tenure we are very admittedly removed from the pressures that might make us pay more heed to these real world complaints. I will have more to say about that below.

But the thing is, even if tenure is not really all that *funny*, and even if it courts some controversy, it turns out that it is nevertheless *really* interesting.

With what I expect will eventually be an immense sense of relief once it actually sinks in, the Board of Trustees of Cleveland State University earlier this year approved my tenure as an Associate Professor within the law school. Thus ended what really was a process that began probably 12 or 14 years ago, when as a law student with a lot to learn I first thought about an academic future, and when I first got on the basically thankless treadmill that is the effort to get a teaching job. The treadmill starts during your own law school years, when you start trying to publish your first piece or trying to land a judicial clerkship, and when you start talking to sympathetic faculty about what you're supposed to do to get into teaching. For me the bureaucratic part of the process began in about 1999, the year of my first attempt to get through the complex, opaque and

basically pretty icky system through which almost all law professors are hired. The system is an extremely competitive one, culminating every year in a conference known without affection as the "meat market." The conference always takes place in the same gargantuan Washington, D.C., hotel, and for about three days turns it into a seething, dark cave of awkwardness, anxiety and sidelong silent recrimination. Several of the participants each year will have written one or more *books* by the time they get there, and there also will be quite a few Supreme Court clerks, persons with Ph.D.s in cognate disciplines as well as their J.D.s, and *hundreds* of people who have managed to publish one or several law journal articles since graduation from law school. Virtually all of them do these things while also working full-time in law jobs, and occasionally a few of them will combine most or all of these traits in one package. There also happen to be perennially too few jobs available for those who show up to find them. So the meat market ends in failure for most applicants every year, as it did for me two years in a row.

But, fortunately, getting the job turns out to be one of the few genuinely negative parts about it. It turns out that teaching law is simply the best job in the world, and the really good part is definitely not the getting of tenure in itself. The good part starts almost as soon as you start teaching (though in the beginning it can be an amount of work that is just shy of apocalyptic), years before you first meet your own dark self-doubts about losing your job. I will have quite a bit more to say about this, too.

Formally, the grant of tenure at Cleveland-Marshall doesn't require that much, and it doesn't require that much at most law schools. Cleveland-Marshall requires one to teach here for five years, to demonstrate skill as a teacher and commitment to internal "citizenship" within the school, and to produce a certain stated minimum of scholarship. I expect that meeting those objective standards will rarely be the problem for any law professor who is denied tenure, here or elsewhere. The problem will come either from the law professors from other schools who are asked to review the candidate's published work, or from the personal opinions of the candidate held by the tenured faculty (the granting of tenure is first voted upon by all of the candidate's tenured colleagues, and then goes through a few stages of review by the central university administration and the university's overseeing board). Academic bureaucracies are notoriously slow, so the formal process by which tenure is granted takes a *long* time—literally about one calendar year. Anyway, that year pretty much is where the process becomes a lonely one, and can involve certain cold realities also familiar to those who've served in a law firm of any size. It is inevitably a matter of frank criticism among persons who will remain intimate colleagues indefinitely; though Cleveland-Marshall has not denied tenure in many years, *everyone* who goes up for tenure appears to receive at least one negative vote and will never know who the no-voters were.

But, to be honest, none of that seemed to me like what was actually interesting about tenure. Two things seemed much more interesting: What is it about teaching that makes it such a rewarding job, if it isn't the fact that you more or less can count on not being fired, and why, if the job is great aside from the job security, we have tenure at all.

The reason this is the greatest job in the world is not because it is easy work. I was amused by a recent Internet screed entitled "Law School: The Big Lie," posted anonymously by a disgruntled Arizona State University law graduate. Among many other gripes, he said this:

"Law professors earn six figures and only have to work six hours a week. And they get summers off too. How much better can it get? . . . The only time that law professors have to do any real work is when they grade exams. And law school exams are only given once at the end of the semester. So we are talking about two weeks of real work at the end of each semester."

This, I thought, was simply priceless, as I now work harder than I can ever remember working any time since law school. To be sure, it would be possible for a law professor to develop a pretty easy life, if he or she had taught the same classes every year for quite a while, wrote no scholarship, and did no outside consulting or public service work. But that describes almost none of us, at C-M or elsewhere, and indeed most of us seem more or less personally consumed with publication and teaching. Admittedly, law teachers enjoy a few truly exceptional institutional advantages. I run basically my own little fiefdom at the school, as I don't really have a boss; I don't have much of a schedule, I don't have any clients, and instead of co-workers I have the much preferable alternative body of *colleagues*. And let us not forget the summers (I once had a job interview with a senior and gray-haired law professor who said to me, "Chris, I am now going to tell you the three most important things about law teaching"; after I had prepared myself for some truly sage confidence, he said: "June, July and August"), though a real surprise in teaching is how fast the summers go and how much you need them to rest up for another year of classes. But the point is, no one would be well advised to choose law teaching to reduce their work load.

The reason this is the best job is also definitely not the lavish pay, because there isn't any. (I believe the majority of law profs, by the way, do not earn six figures, including me.) I took an honest-to-goodness 50 percent pay cut when I first took this job, and even the best-paid, most senior law profs mostly earn less than first-year associates now make at many large firms.

But still there is something, and again it is not tenure. To some large extent it is the teaching itself; nothing in prior life compares with the experience of teaching students. As an identity, I can't imagine what else would fill me with the pride and satisfaction of my identity as "teacher," with which I would feel comfortable as the inscription on my grave.

Each year the fall semester welcomes the warm, returning familiarity of our buzzing law school atrium, and I look out at

the eager young faces I do not yet know—the new 1Ls and the returning students I haven't met yet—with a peculiar satisfaction. Most of them don't even know I work here (they seem to think I look too young to be a professor, and I wear a suit only rarely and under protest), much less that I will get to know most or all of them personally sooner or later, as their teacher and sometimes as their confidant and advisor. The beginning of each new class each semester is like meeting the cast of a new season of MTV's *The Real World;* there might be the Smart Aleck, the Valley Boy, any number of Book Worms, Gunners, or the Quiet Ones, the young man who begins with long hair and a goatee and slowly morphs into an Alex P. Keaton (that was me back in the day), or what have you. That is fun in its own way, but what is rewarding is to watch those reductive objectifications wear off, as each student's real personality and potential break through and prove to be so different from first impressions. An ultimate reward is knowing long before they will even realize it that their years in our classes will be some of the most significant years of growth and identification of their lives. I also love the students' ignorance of just how much I can see from behind the podium, not only about what they are actually doing and saying during class time,[1] but in the larger sense, about who they are as people. I have now taught upwards of 1,000 students in my classes, and I am continually surprised by how clearly I remember their names and details. Those students are *much* more surprised than I when they realize it too. In a way I even love the naive ingratitude of students like the anonymous Internet poster from Arizona State, since I can hope that with time and more mature reflection it will be replaced. This is like the way parents can love their children for not yet knowing that life isn't fair for *anybody.* In the end, I believe I can honestly point to only one or a few out of all those hundreds and hundreds of students about whom I can't find something to admire and value, and I feel bad about even those few.

Chris, Annie Wu and their son, Jonah

Another aspect of the humane mission of teaching students is sometimes manifested in behaviors we can indulge here that would be out of line in other lawyerly work settings. I deliberately never wear a suit to work unless I have to, and the large window on my office that faces into the hallway is littered with cartoons, fortune cookie fortunes, my own self-consciously politicized palaver and absurd and silly things I've cut out of the paper. A similar purpose is served by the fact that I have never posted the "Safe Space" sticker on my office, which would indicate that I am part of a campus program for faculty sympathetic to the problems of gay and lesbian students. I am *definitely* that and I have always worried that not having the sticker would give GLBT students the wrong idea. The problem is that having the sticker might turn away conservative or religious students; I am not afraid of offending them personally, but of giving them a frightening misperception. I am afraid they will think that a left-leaning professor (which is what students think every one of us is) actually dislikes those who disagree, and that I am not safe for *them.* These things reflect the terrible psychological power that can be abused from the teacher's position and the satisfaction of behaving in ways that convince students they are safe with you in spite of it. Law students are predominantly fresh and untried young people whose hopes can seem very fragile.

But in a way, everything I have said really just begs the question of the existence of that thing about which Ms. Mooney asked me to write. It begs the question why we need tenure. I won't dwell on the common defense of academic freedom, as from my mouth at this time I think it would be self-indulgent and pedantic (though times like these show the value of even clumsy and imperfect institutions to preserve freedom for dissent). I think there are other reasons that tenure and the open dialogue it fosters are really important.

One critical freedom is the luxury of extended self-reflection. Some readers will recall the several years of self-conscious navel gazing touched off by an infamous 1992 MICHIGAN LAW REVIEW article by Judge Harry Edwards of the D.C. Circuit that attacked the academy for its "low regard for the practice of law" and for its focus on theoretical abstraction, which he said had "produced profound and untoward side effects." Another such round may get started by a recent symposium on the value of legal scholarship at the Cardozo Law School. There Second Circuit Judge Sonia Sotomayor accused law professors of believing "that judges are not as capable of creative thought as [they] are . . . ." She ended with this: "My question to academics [is,] do you really think you're serving some function to someone?" On the one hand, this sort of thing is aggravating personally. In the history of academic publishing, no one has ever convened a conference

1 No one in the back row ever appreciates just how clearly they can be seen talking, laughing, or occasionally sleeping. I once had a little fun during class time at the expense of a student whom I saw sleeping in class, though I didn't identify her by name. That evening, I swear to god, I got not one, not two, but three separate emails, from different students, saying roughly the following: "omigod prof. s . . . i'm *so*sorry i was sleeping in ur class."

at which eminent personages consider whether the AMERICAN SOCIOLOGICAL REVIEW or the JOURNAL OF AMERICAN HISTORY deserves to exist on the basis of their usefulness to government officials. No one very often argues that universities should disband their fine arts programs because they are of no service to public policy. An academy of thinkers about law could develop a critical or social scientific perspective on legal phenomena that has its own intrinsic value, even if they don't continue producing the long, dry doctrinal memoranda that once were legal scholarship, and that went almost completely unread by anyone. But on the other hand, it seems incumbent on the academy always to question itself, and also to bear with respect the criticism of third-party observers. The price of freedom, after all, is responsibility. Tenure makes this reflection possible. It would be awkward seriously to question whether your job is worthwhile if you also had to defend its continued existence at taxpayer expense.

The future Professor at his law school graduation from the University of Michigan

In a way, the very existence of tenure raises the same question that Edwards and Sotomayor asked. The problem underlying tenure is the problem of scholarship, and it is also the only real answer to the question I asked before—why we need tenure in the first place. Indeed, if it weren't for scholarship, law teaching probably would be a comparatively easy job, and the complexion of legal education would probably change a lot. So if the price of freedom is responsibility, then the price of tenure is to question the purpose of legal scholarship.

If you asked me, there is a *lot* wrong with legal scholarship as it has existed, and it doesn't seem like anyone actually disagrees. Even as we churn out paper after paper in the traditional mold, one often senses in the academy itself a feeling that we are secretly only playing out a game without much evidence it is worth playing. Much of what is wrong is imposed by the frankly absurd institution of student-edited journals, which must bear some of the blame for the great length of the articles and the huge amount of introductory explanatory material each of them begins with, and which should probably be dramatically overhauled or disbanded. But the blame for it is not with the students, who perform their one or two years of journal service in innocence. The blame is solely with the academy. We've all been talking about doing away with student journals for decades and we haven't done it.

But we also simply don't know quite what we are supposed to be doing just yet. We remain in a state like that of political science at the turn of the 20th century. Until then political scientists wrote almost exclusively about very abstract, metaphysical questions, like how the scope of "government" should be defined. The pursuit came to seem pretty hollow, as nothing ever seemed to get proven, nothing about it seemed especially scientific, and pretty much nobody ever read what was written. Through a process of careful self-reflection about purpose and methodology the discipline changed itself into something quite different, and while the discipline may still have its critics, no one seems to think it was really better in its earlier form.

In fact, in the legal academy, too, waves of methodological debate have come and gone, over and over, and they have done so at least since the early 20th century. We happen to be in one such wave right now, though many legal academics don't seem to know it. There is a movement afoot to make legal research "empirical," and there has also been a large surge of interest in norms and institutions and other non-"legal" phenomena that have traditionally been the concern of sociologists. Admittedly, for some reason our discipline has never quite made the divorce from scholastic metaphysics that the other human sciences did 100 years ago. So these recurrent waves of self examination may be cyclical and ultimately unavailing. But I would still like to believe they have been at least dialectical, especially now that there are plenty of people in the academy paying attention to the whole history of the debate and all that's been said before. (A great example is our next annual Baker-Hostetler Visiting Scholar, who will be with us this fall. Brian Tamanaha is not yet a brand-name law professor, but I expect he will be, for his work in importing insights from the sociology and anthropology of law. Though borrowings from the social sciences have been made before in the familiar "law &" movements, Tamanaha's work has been in the much deeper philosophical and methodological problems associated with making some genuinely new social science of law.)

In short, I think one of the best explanations for tenure at this point in time, and the main thought that came to mind when Louise asked me to write this, is not that legal scholarship is so valuable that it must be protected from the judges, university budget officials, and others who may not like it. It is that it remains so bad—so immature and inchoate—that there should be freedom for those within the academy who want to change it. I think there is promise in the present self-conscious moment, even if it turns out to be only one more in a series of waves. I think it will be very exciting to be part of what comes next, and I think it is absolutely wonderful that we can each be a part of it even it is different from what others have done before. ■