



## EX ANTE

### DEADWOOD REPORT UPDATE: PAPERWEIGHT

When we introduced the *Deadwood Report* in our Winter 2008 issue, we staked out two main positions on what we would treat as scholarship when assessing faculty productivity. *Fair Warning to Law Schools* . . . , 11 GREEN BAG 2D 139, 144. We are standing by one of those positions and abandoning the other, at least for now.

First we said, “*Not all writing is scholarship and not all scholarship is the same*” – a position we still like. As we explained,

We will be taking account of scholarly books and articles in scholarly journals. Not novels. Nor editorials . . . . Editing a book is not the same as writing a book, just as editing a journal is not the same as writing all the articles in it; “forthcoming” publications do not count until they actually arrive; and so on and so on.

To be sure, all of these activities can be symptomatic of a scholarly mind at work (as can others – blogging, book-reviewing, briefing, and speechifying come to mind). But we have not seen evidence of consensus in the legal academy that anything other than a book or article necessarily requires all three of the conventional essentials of good scholarship: originality, substantiality, and verifiability. Some reviews, posts, etc. are in fact original, substantial, and well-supported, but distinguishing those that are from those that are not presents line-drawing problems that exceed our resources, and probably our competence. And as we have said before, we are going to keep the *Deadwood Report* simple at the start.

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For now we plan to proceed with a simple independent-sufficiency-for-tenure standard: We know that a professor can satisfy the scholarship requirement for tenure with a record consisting exclusively of articles in scholarly journals or exclusively of books. We know of no law school that grants tenure based on a record consisting exclusively of any other form of publication – not newspaper editorials or blog posts or book reviews. Are such publications relevant to a tenure decision? Of course. Are they sufficient? Not to the best of our knowledge.\* But the *Green Bag* is not all-knowing, and so, as we said in our Winter 2008 issue, we will make exceptions:

If we find on your web site official regulations indicating that for tenure purposes your law school equates works of fiction, letters to the editor, and the like with conventional works of scholarship, and if further inquiry reveals that your school has actually awarded tenure on the basis of such publications, then we will take account of them . . . .

But everyone knows that not all books and articles are original (or even free of plagiarism), substantial (or even non-trivial), and well-supported (or even free of fraud). So why count them? Because there seems to be a widely held view in the academy that books and articles are the best vehicles for presenting original, substantial, verifiable scholarship. Recall the tenure practices noted above. In this context there is nothing to be gained by pitting the good against the perfect, absent evidence of what the perfect looks like.

We do hope to provide some insight into one touchy area: the relative worth of student, faculty, and practitioner judgments about scholarly value. As with the weighting of teaching, we will be asking deans for help. See *Deadwood Report Update: Pick Your Own Weight*, 11 GREEN BAG 2D 275. The draft survey on page 414 below invites deans to assign weights to a variety of scholarly products, including articles appearing in journals edited by students, professors, and practitioners. As before, we welcome your comments on the draft.

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\* Cf. Jodi Kantor, *Teaching Law, Testing Ideas, Obama Stood Slightly Apart*, N.Y. TIMES, July 30, 2008 (reporting that the University of Chicago offered Barack Obama tenure based on a publication record consisting of nothing at all).

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Second we said, “*Inbreeding is bad policy*” – a position we cannot justify now. In our Winter 2008 issue, we declared that

Works appearing in organs published by your school or your students, or on which a member of your faculty serves as an editor or in some similar capacity, do not count.

When we made this claim, it was based on the supposition that

The pressure to make publication decisions on grounds other than scholarly merit is too great, especially when relationships between students and teachers (and writers of reference letters) are in play.

A similar assumption about pressures relating to collegiality and career opportunities animated our intention to ignore articles published in colleague-edited journals.

But we have embarrassingly little in the way of evidence to support our assumptions, plausible as we might think them to be. We confess that we know of no testable evidence that editors of law journals do in fact base their decisions on scholarly merit. Nor do we have much in the way of evidence that any particular journal (including the *Green Bag*) is better than any other at identifying and editing good scholarship. And evidence that editors play favorites with submissions from their own teachers or colleagues is slim as well.

Moreover, even if our assumptions are correct, our conclusions could be wrong. Consider the student-edited journal. Some scholars blame well-intentioned but ignorant student editors for the many overlong, unreadable, and substantively weak articles in law reviews. If it is true that professors have leverage – control or influence over student editors’ grades, clerkship and other job references, reputations – when dealing with hometown journals, then a professor working with such a journal has great power to do good. The professor can wield that power to overcome the errors of student editors by insisting they (a) select only that professor’s best work and (b) leave unmolested the professor’s clear, compact, thoroughly researched, and fully supported scholarship. This dynamic also means that such a professor really is solely responsible for all errors and imperfections. A nice incentive, perhaps.

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Finally, localism has a good pedigree in the legal academy. For example, the *Harvard Law Review*, the New York Yankees of law reviews, got its start in the late 19th century publishing mostly home-grown material. Its prestige remains unmatched today, even as it continues to publish many articles by Harvard faculty members.

For all these reasons, works appearing in organs published by your school or your students, or on which a member of your faculty serves as an editor or in some similar capacity, do count.

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### GREEN BAG PUBLICATION WEIGHTING SURVEY (draft)

For the *Deadwood Report* we plan to vary the weight given to different kinds of scholarly publications based on their relative utility and difficulty. That is, a professor will receive more credit for working relatively hard on relatively worthwhile projects than for working on easier, less important things. In other words, how does your school value the following forms of scholarship? Please feel free to allocate points among the books and articles as you see fit, so long as the total equals 48.

Books	Points
Monograph .....	_____
Treatise volume.....	_____
Casebook.....	_____
Supplement to, or new edition of, any of the above .....	_____
Chapter.....	_____
Journal articles	
Article in student-edited journal .....	_____
Article in faculty-edited journal .....	_____
Article in practitioner-edited journal .....	_____
Total points .....	48

We also welcome your thoughts on the wisdom of weighting publications as we propose, and on the *Deadwood Report* in general. When you have completed this form – supplemented by any comments you are willing to share with us – please mail it to The Green Bag, 6600 Barnaby Street NW, Washington, DC 20015, or email it to [editors@greenbag.org](mailto:editors@greenbag.org). Thank you.

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