

CELEBRATING THE MULTIPLE MISSIONS OF A RESEARCH I UNIVERSITY-BASED LAW SCHOOL

*Thomas M. Mengler**

AT salary time five years ago (two years into my deanship), John Colombo, our Associate Dean for Academic Affairs, cooked up a numerical system for evaluating our tenure-line faculty. Prior to that time, the process we used for determining salaries was one that might generously be described as an exercise in *gestalt* psychology. The Dean and Executive Committee (composed of the Associate Dean and four elected members of the faculty) would peruse each faculty member's curriculum vitae and annual report of activities and then collectively decide—based on their feelings about a colleague's overall contributions to the law school—whether he or she deserved an above-average raise, average raise, or below-average raise.

Under the numerical system that John Colombo created five years ago and that we continue to employ, we assign points ranging between 1 (for poor performance) and 5 (for superior performance) to each faculty member under the three core categories of faculty responsibility: teaching, research, and service. The numbers are totaled and serve as a starting basis for weighing the worth of a colleague's contributions and assigning a salary. My colleagues and I have viewed this number-crunching not as the end of a salary discussion, but as a useful beginning. Indeed, salary decisions have never been, and I believe never should be, strictly formulaic.¹ But this numerical process has served to focus us in every case on each of the three areas that research-based public and private universities (and law schools) appropriately consider relevant to performance.

The most significant feature of the numerical system, perhaps surprisingly, is that it gives equal weight, roughly a third, to teaching, research, and service. Surprisingly, because my guess is that deans, department heads and faculty in most other units on a university campus like ours at Illinois—one of the finest research institutions in the country—would be aghast, perhaps even appalled, at this valuing.²

* Dean and Professor of Law, University of Illinois College of Law. Copyright © 2000 by Thomas M. Mengler.

1. Each year, for example, we evaluate faculty members whose numbers do not adequately measure our sense of their importance to the health and excellence of the institution. In those circumstances, after some discussion, we typically act in accord with our instincts by giving those colleagues more than the numbers might otherwise warrant. It is probably fair to say that we shade slightly in favor of research, then teaching, with service last.

At the same time, I believe very strongly that an institution must expect some minimum level of dedication and ability in each of the three core categories of faculty responsibility. So the colleague who does not write may not deserve any-raise, even if he otherwise performs his teaching and service duties. The colleague who sleep-walks through his classes may not deserve any raise, even if she is a productive scholar. The colleague who takes a pass on service to the law school—i.e., simply refuses to accept the responsibilities of shared governance—may not deserve any raise.

2. Indeed, I do not have to undertake much guessing. For a brief time in 1998, about six months, I served as Interim Provost and came to understand and appreciate more completely the academic values of the best graduate research and teaching units at Illinois. Sometime before that, one of my campus assignments was to chair a "Best Practices" Committee. One of our tasks was to find out how some of the best departments on campus evaluated faculty for salary purposes. We discovered

It has surprised me and the Executive Committee a little too. Each year when we begin our consideration of salaries, the Executive Committee and I have debated whether that weighting sets the right balance. Frequently, one or more of us express the view that at a national law school like ours, which is continually seeking to enhance its visibility and scholarly reputation, should be placing a higher value—perhaps 50%, perhaps more—on the research contributions of our colleagues.

And truth be told, even (or perhaps especially) among the 160 law deans who each year sign a letter castigating rankings in general, and the *U.S. News & World Report* rankings in particular, law schools are all striving to be more highly regarded in the same way for the same reason—by achieving national recognition through scholarly renown.³ Every American law school dean, each of us, appreciates the predominance of scholarly recognition in measuring our law school's self-worth. Each year, however, after much discussion, the Executive Committee and I have chosen to follow the system of assigning one-third weight to research, as well as to teaching and service.

Let me advance a few explanations why, seemingly against all reason, we have been sticking to our guns. For one, at the University of Illinois and the College of Law, the dominant criterion for a faculty member's eligibility to hold an endowed chair is his or her national or international scholarly reputation. As the law school's fundraising efforts continue to bear fruit by landing these endowed positions, faculty members know that if they want to become a named chairholder—and receive both the recognition and financial reward accompanying the honor—they must distinguish themselves in the research arena. This reward for a record of scholarly distinction, along with credit (albeit one-third worth) at the annual salary deliberation and a few other financial incentives,⁴ is thought to be sufficient to encourage faculty to strive for excellence in scholarship throughout their careers. Additionally, non-financial rewards, such as peer recognition, frequent citation in court cases, law reviews and books, and invitations to present papers at select conferences, play a significant role in promoting research excellence among law faculty.

A second explanation is in our experience, that it all comes out in the wash anyway. Our truly outstanding faculty members who are most deserving of substantial raises—those folks who make the greatest contributions to the law school—do everything quite well. The true leaders of our faculty, those who command the most respect, lead by their excellent example. They are among our very finest scholars; they work hard and conscientiously in the classroom; and their service—within the law building, the University, nationally and internationally—is exceptional too. It really is true that strongly engaged individuals tend to be

that many of these departments had a numerical system not unlike the law school's, but that they weighed much more heavily research over teaching and service. Typically, research achievement received the lion's share of the valuing (usually between 50% and 75%), followed by teaching excellence (usually between 20% and 40%), and service (usually between 5% and 10%).

3. If one needs footnote support for this proposition, observe the lateral hiring practices of virtually every law school in the country.

4. Eligibility for summer research grants, for example, is tied to demonstrated research productivity during the prior two academic years.

engaged in everything they set out to do. Those individuals engaged in a life-long dedication to discovery and inquiry—our top scholars—usually bring that energy and insight to the classroom, and they are sought after for law school and campus committee projects and national and international law reform efforts. Our leaders are not necessarily our naturally most gifted teachers, but they take this task seriously and provide a strong classroom experience.

Not everyone, of course, is outstanding in all aspects of his or her professional life. Therefore, the principal justification for our numerical system might best be expressed by borrowing a phrase from a New York senatorial candidate—it takes a village. There are a lot of things that must be accomplished within and outside the walls of a law school to make it function well and flourish. Not everyone does everything equally well. There are notable exceptions; for example, the leaders I mentioned in the paragraph above. Unfortunately, there are also a few exceptions on the other side of the ledger. But most of us, if we have gotten this far in life, do some things exceptionally well, others pretty well, and a few things only slightly better than the average duck. Yet, everything essential to the short- and long-term well-being of a law school has to get done. Somebody has to do it, and it is the dean's job to make certain that the main objectives of the law school, all of them, are being met. Hence, I believe a sound reward system is one that really considers the strengths and achievements of the faculty in light of the multiple missions of the program, a system that seeks to recognize and thank people for their different contributions.

I do not mean to suggest that financial incentives sensibly targeted to advance the most important objectives of a law school are its salvation. Reward systems have their limits, and I do not want to overstate their importance. While I believe that one significant role of the dean is to provide financial incentives that promote institutionally valued behavior, I am under no illusion that a financial reward system can generally be effective in turning non-performers in any area into valued colleagues. The principal objectives of financial incentives are to reward institutionally valued behavior in hopes that (1) such behavior will continue among those faculty who have already demonstrated it; (2) the institution will be able to retain those faculty who perform their duties so superbly; and (3) an academic culture will develop within the law school that values such behavior virtually independent of any reward system. As an example, the culture of dedicated teaching and high research productivity is a strong one that has existed at the University of Illinois College of Law, quite frankly, for generations. It clearly existed among senior faculty when I arrived as an assistant professor in 1985 and led those of us who were junior faculty to follow their leadership example. Thus, rewarding both good teaching and research productivity in 2000, I believe, helps to maintain an academic culture of excellence that might otherwise wither away over time.

I would also add that I believe maintaining a healthy academic culture is much more dependent on hiring faculty of strong ambition and character and on peer pressure than on financial incentives. In good or bad economic times, it is primarily the heart and soul of the academic community and its collective values, not the salary levels of its faculty, that are key to promoting the excellence of the institution.

Having said that, nevertheless money matters; it helps us to recruit and retain our best faculty, and it reinforces valued activity, if we spend our bucks wisely. So why

is the law school different than the other academic units at a Research I University?⁵ Why are law schools so different that we should be compensating research, teaching and service in roughly equal measure, while the rest of the campus, through their salary decisions, should be signaling that research is king, teaching is acceptable labor, and outstanding service is worthy of chump change?

One answer is that law schools may not be so different. Perhaps those academic units that are compensating only outstanding scholarship should be taking a more balanced approach. A perennial issue at most Research I Universities, and more so in recent years, is the challenge of fulfilling one of the core missions—undergraduate teaching—in a satisfactory manner. Particularly, though not exclusively at the public research university, legislators, the public, and parents are demanding more and better education for their students. For example, the last decade, and particularly the last five years, at the University of Illinois have been marked by greater dedication of resources and of tenure-line faculty to undergraduate education. A First-Year Discovery program has been established to provide small enrollment seminar experiences for freshman undergraduates, taught exclusively by tenure-line faculty. To sustain this redirection will require significant financial incentives. Yet, because of campus budgetary limitations and priorities, the financial incentives for teaching these courses have been modest. Faculty teach these courses as overloads and receive only \$4,000 to teach a two-hour seminar and \$9,000 to teach a three-hour seminar. One might reasonably surmise that this program will eventually die if it remains an add-on with only modest financial rewards.

In the same vein, universities have also become more focused on fulfilling their service mission, again particularly at the public university. At the University of Illinois, for example, a campus-wide service initiative, Partnership Illinois, was begun five years ago. Partnership Illinois is a program designed to publicize the many existing services faculty provide for citizens of the State of Illinois, as well as to increase visible service activity by tenure-line faculty. It is fair to say (perhaps as an executive officer of this university, I should not admit this) that Partnership Illinois is struggling. Discussions continue about how best to make public service activity a more vital part of the life of the university; Partnership Illinois is likely doomed to fail as long as it continues its practice of operating as a source of funding for relatively modest seed grants to individual or small groups of faculty for their project expenses, rather than seeking ways to compensate (with salary supplements) those faculty whose service activities already bring credit to and visibility for the University, as well as value to the State of Illinois. If public service is treated and compensated as a diversion, only the noble, selfless servants or the dull-witted will do it with any enthusiasm and energy.

5. Apparently in a surely futile effort to discourage rankings of colleges and universities, the Carnegie Foundation for the Advancement of Teaching has just revised its classification by eliminating the term "Research I," and creating a much larger group of "Doctoral Extensive" schools, which includes universities previously classified as Research II, Doctoral I and II, as well as Research I. See Julianne Basinger, *A New Way of Classifying Colleges Elates Some and Perturbs Others*, CHRON. HIGHER EDUC., Aug. 11, 2000, at A31-A42. Because the revised terminology is so new, I have employed the prior well-known term "Research I."

Another answer, however, is that law schools do differ somewhat in the complexity of their missions from most, if not all, other academic units at a Research I University. Only other professional schools may face the same powerful pull in two directions that a law school faces. Others have commented on the American law school's schizophrenic challenge of acting both as a professional school serving the best interests of the legal profession and as a serious academic unit serving the best interests of the university.⁶ On the one hand, law schools and their faculties have obligations to participate in the improvement of the legal system and profession. Our missions should include participating in significant international and national law reform projects; a law professor is uniquely positioned to bring his or her expansive understanding of an entire field to improvement of our justice system. It is also our responsibility, I believe, to participate in local or regional activities in some modest measure as well. With few exceptions, American law schools, even those that can rightly claim to be national programs, are regional in scope. Most of their students come from a particular region (in the case of public schools, most come from a single state). Most of their graduates live and work in the same region. Prudence alone (from an alumni affairs and development perspective) counsels in favor of some modest amount of regional, state, or local public service activity. For state schools, another rationale is good citizenship, especially when that service has close links to the state legislature or executive branch.⁷

There is, of course, a lot more to our service responsibilities than the greater prospect of development bucks. Our profession at its finest *is* a service profession, but it does not always live up to the billing. Law faculty are often inclined to lead the charge in deriding private practitioners for their money-grubbing ways and lack of pro bono activity. Yet, law school faculty are themselves on the front line; we are the first legal professionals whom our students encounter. Our example, in the form of the level of our participation to public service, is noticed by our students.

As a professional school, we also have a special obligation to teach our students well and for a particular professional purpose. I am constantly reminded of that obligation each spring when I am called on to certify for the various state boards of law examiners that our graduates are fit to practice law. As members of the bar, we owe this duty as well—to discharge our responsibilities in the classroom with energy, relevance, and excellence. Of course, here also, prudence alone counsels in favor of law deans keeping their eyes on the teaching front. The high cost of a legal education should lead us to think of our paying customers as clients, not simply as students. As all of us who have labored in the fundraising vineyards know, a

6. See, e.g., Graham C. Lilly, *Law Schools Without Lawyers? Winds of Change in Legal Education*, 81 VA. L. REV. 1421 (1995).

7. I have used the phrase "modest" amount of regional service activity because any significant dedication of faculty energy at a law school that is part of a Research I university is a frolic and detour from its goal of national impact and recognition. My own experience is that a visible presence in state or regional public service should not exhaust a great deal of faculty resources. In our own case, modest participation in a few continuing education programs each year and in a few important state bar and legal service commissions has provided high visibility for the University of Illinois College of Law. Occasionally, for example, one of our faculty members will get involved in a law reform commission established by the Governor, Attorney General, or state bar.

graduate's gift to the law school is frequently an expression of gratitude for the kindness or care that a now long-retired teacher showed to the donor many years before.

These are some of the challenges that a law school confronts as a participant in the legal profession, and they should lead a healthy law school to prize good teaching and visible public service, as well as outstanding scholarship. As I noted, the law school is not simply part of the legal profession; it frequently is part of a great research university, and this presents special challenges. I am not simply thinking of the very real challenges law deans confront every year during campus tenure and promotion deliberations: (1) that law faculty are considered for promotion earlier than the rest of campus; (2) that most of our law reviews are not peer-reviewed; and (3) that new law faculty usually begin their academic careers without a research agenda (except for those new faculty, now in greater numbers, who have a Ph.D., as well as a J.D.). These are sticky wickets, I admit.

Rather, I am thinking principally of the challenge of the law school's programmatic location as peripheral to the core missions of the university. Law schools lack mission centrality. We lack undergraduate programs (teaching a few or handful of undergraduate classes to hundreds of students, in order to generate a stream of revenue, doesn't count). The law school typically is not a doctorate-conferring program. Law faculty rarely generate large (or even modest) government or foundation grants. In essence, we do nothing that contributes to the criteria for membership in the Association of American Universities, an elite association of the 60 most research intensive universities in the country, membership in which all Research I and II universities aspire.

At bottom, there is nothing really that law schools can do to alter these facts; we are programmatically on the fringe, and appointing more Ph.D.s to our faculties will not change the programmatic deficiencies I have identified above. But what can we do to be important, albeit peripheral, players on a Research I campus? Most importantly, we can be as good as we can at what we define as our own strategic objectives: the law school's faculty can excel at research, as we define excellent research;⁸ the faculty can teach ably, energized by the fruits of their research discoveries; and they can participate in professional activity with distinction and national visibility. I believe it is a mistake to try to be like every other academic unit on a Research I campus, when we are not. Good campus leadership usually is sensitive to differences in academic cultures, and good campus leadership values excellence as those cultures define it.

A second thing we can do is to build interdisciplinary ties to the strengths of our Research I campus. In any institution, it only makes sense to build on one's strengths, and those strengths include the strengths of the greater campus. If the business school is the crown jewel of the campus, then loading up on joint programs

8. I do not want here to engage in the debate over whether law school faculty are too little or too greatly engaged in theoretical scholarship, and too little or too greatly engaged in doctrinal scholarship. It is obvious to me, having been a law school dean for 7 years and Interim Provost for 6 months, that excellent legal scholarship is what law faculty across the country (the community of external reviewers) say it is, unless your campus happens to have a former law school dean as its provost. If the legal academic community continues to value both types of scholarship (as I think we should), so will the rest of the academic community.

and faculty with interests in entrepreneurship and organizational systems would seem the right long-term strategy. If the campus is a center for science and technology, as, for example, at the University of Illinois, then the law school should be a center for the intersection of law and technology and intellectual property. Making more of one's self, by being part of the best the University can offer, also brings the law school slightly closer to the University's center.

Finally, I really believe, as small as law school faculties typically are on a Research I campus—about the size of an average department on a campus of 75 or 100 such units—we can and should have enormous influence on the governance of the campus. Law professors are well-skilled, if not uniquely skilled, to lead the most vital campus committees or special task forces. We typically know how to run meetings; have you noticed that faculty at other units frequently do not? We are trained to cut to core issues. And, for the most part, we discharge these tasks in an articulate and diplomatic way. A few well-placed law faculty on major campus committees—*quintessentially service activity*—can capture the attention and admiration of campus leaders. It is essential, hence, for the law school dean to view campus committee work as a piece of the law school's bridge-building to the core of the University, and to value those faculty who assist effectively in the effort.

The point I wish to press here is that excellent legal research, good law teaching and visible public service (on, as well as off, campus)—all three—are important to the leadership of a Research I University, just as they are important to the leaders of the legal profession. Our missions, therefore, as we define them, should be as important to the legal profession and to the Research I campus as they are to us. Thus, if the law school is to do all these things well, we need to value them by crediting our faculty accordingly.