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Newsletter
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From the Section Chair

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I've learned a good deal over the last three weeks. Following the death of Justice Scalia, the media rush to assess his impact on the U.S. Supreme Court and the consequences of a vacancy on the Court has provided an opportunity for a number of our colleagues to offer scholarly perspective on a variety of interesting questions. I have been impressed, not only by the quality of the insights that political scientists have offered but also by the keen interest of the media in what political scientists have to say on these matters.



Not so long ago, a vacancy on the Supreme Court would have produced news stories informed largely by historians and law professors. To be sure, our friends in these disciplines have important ideas to contribute to the popular understanding of the Court, and there is little doubt that they have provided (and indeed continue to provide) interesting views on the interplay of law and politics surrounding a justice's departure from the bench. Still, political scientists who engage in systematic inquiry into the very issues that most interest news outlets have not typically been among the principal resources upon which reporters rely when a vacancy on the Court occurs. My sense is that the death of Justice Scalia has produced something new — a general recognition that political scientists have conducted research that is worth sharing with the public.

In some ways, this willingness to turn to scholars of law and courts is representative of the media's broader comfort with data and statistical analysis. As news outlets become more sophisticated consumers of the social sciences, it should not be surprising that our subfield is included in their embrace. Whatever the reason for this interest, it has been refreshing to see so much credit given to our colleagues and their research.

I was particularly grateful for that media attention when I was invited by the School of Journalism here at the University of North Carolina to give a talk on the impact of Justice Scalia. Like a lot of political scientists who are

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General Information

Law and Courts publishes articles, notes, news items, announcements, commentaries, and features of interest to members of the Law and Courts Section of the APSA. **Law and Courts** publishes three editions a year (Fall, Summer, and Spring). Deadlines for submission of materials are: February 1 (Spring), June 1 (Summer), and October 1 (Fall). Contributions to **Law and Courts** should be sent to the Editor:

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Instructions to
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Articles, Notes, and Commentary

We will be glad to consider articles and notes concerning matters of interest to readers of **Law and Courts**. Research findings, teaching innovations, release of original data, or commentary on developments in the field are encouraged.

Footnote and reference style should follow that of the *American Political Science Review*. Please submit your manuscript electronically in MS Word (.doc) or compatible software and provide a “head shot” photo. In addition to bibliography and notes, a listing of website addresses cited in the article with the accompanying page number should be included.

Symposia

Collections of related articles or notes are especially welcome. Please contact the Editor if you have ideas for symposia or if you are interested in editing a collection of common articles. Symposia submissions should follow the guidelines for other manuscripts.

Announcements

Announcements and section news will be included in **Law and Courts**, as well as information regarding upcoming conferences. Organizers of panels are encouraged to inform the Editor so that papers and participants may be reported. Developments in the field such as fellowships, grants, and awards will be announced when possible. Finally, authors should notify **BOOKS TO WATCH FOR EDITOR**, *Drew Lanier*, of publication of manuscripts or works that are soon to be completed.

interested in the Supreme Court, I mostly think about the Court as an institution or as a collection of individuals; I do not, as a rule, study particular justices. So, it was not immediately obvious to me how to approach a discussion of Scalia's unique contributions. My job was made much easier precisely because so much of the news coverage of the role of Justice Scalia had been informed by people within our discipline.

I cannot do justice to the full range of political scientists who have contributed to the reporting on Justice Scalia in national and local media outlets. I can, however, offer my congratulations to those members of our subfield by highlighting a few of the exemplary scholars whose insights have been prominently featured.

Much of the discussion, for example, has addressed Justice Scalia's conservatism and his role on the Court. Andrew Martin and Kevin Quinn discussed how their measures — which have been cited by various news sources, as well — show that, despite his reputation, Scalia was not the most conservative justice during his tenure on the Court. Mike Bailey, who has generated alternative measures of the justices' preferences, highlighted some of the practical difficulties associated with estimating the preferences of Scalia and his colleagues, especially over time.

What impact did Scalia have on the law? Rogers Smith assessed Scalia's legal legacy and his particular brand of constitutional interpretation, and Deborah Beim used some theories about opinion coalitions to speculate on the impact of Scalia's dissents. Barbara Perry drew in part from her personal acquaintance with Justice Scalia to describe his approach to judging.

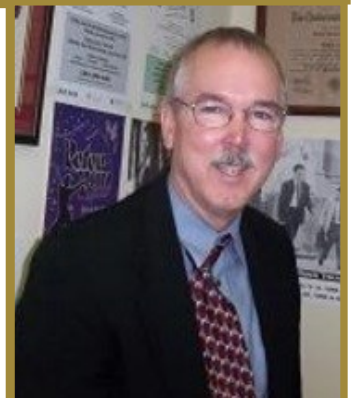
What of the politics of President Obama appointing a replacement in the waning days of his administration and in the face of an ideologically opposed Senate? Scholars such as Tim Johnson and John Maltese offered some predictions on the types of candidates that are likely to be on the president's short list. Matt Streb and Art Ward commented on the strategies that the president might follow in making an appointment, and Hans Hacker and William Blake presented a possible path for presidential success, at least in the short term. Jennifer Bowie, Mark Hurwitz, and Mark Miller assessed how various candidates for the Court might be received in the Senate. And the research of Elliot Slotnick, Shelly Goldman, and Sara Schiavoni has been usefully cited to provide some context on President Obama's judicial appointees more generally.

Another obvious topic is the likely consequences of a replacement for Scalia. In doctrinal terms, Lee Epstein offered her perspective on how various precedents may change once a new justice is on the Court. Observing the considerable ideological distance that separates the liberal and conservative wings of the Court, David Cottrell and Chuck Shipan emphasized that a liberal appointee could move the Court's median a good deal further to the left than where it presently sits. In a similar vein, Brandon Bartels underscored the potentially significant changes that can be wrought by replacing a justice on such a highly polarized Court. And what if Scalia is not soon replaced? John Dinan detailed some of the consequences for pending litigation.

I could go on, obviously. I simply wanted to take the opportunity to call attention to some of the scholars in our section whose views and research are finding an audience outside of our journals, our conferences, and the classroom.

In Memoriam: Four Former Students Reflect on the Contributions of Donald Songer (1945–2015)

Upon the passing of Professor Donald Songer in November, several of his former students (and exceptional scholars in their own rights) have contributed their thoughts on his life and contributions to the discipline. These four former "Songer students" represent the spectrum of his career at the University of South Carolina, from some of his first students to a recent graduate. What you will not see (and is not needed as they are well-known to most in our field) are references to his countless top journal articles, his highly influential books, or his numerous grant awards. What you will see on the pages that follow are excellent personal reflections about a compassionate mentor and (as each puts it in their own way) a lifelong "friend."





I would like to begin by thanking Todd Collins for asking me to write a tribute to Don, although I must confess that it was a more difficult task than I imagined. I have written parts of it in my head many times over the past couple months, but actually sitting down to write it seemed daunting. I think on some level, writing these words created a finality that Don is really gone and I am not quite ready to process that fact yet...

I became a student of Don's in the Fall of 1996. When I enrolled, I joined Ashlyn Kuersten who was finishing her dissertation and Kirk Randazzo who was completing his masters before going to Michigan State. My primary cohort included Tammy Sarver, Erin Kaheny, and John Szmer. Tajuana Massey and Susan Johnson joined us towards the end of our time at USC. There were other students before and after and the fact that we did not attend classes at the same time was largely irrelevant because we were all part of this fellowship held together by the shared experience of being a "Songer student." A number of us met for lunch at Fuddruckers before Don's funeral to celebrate his life and legacy. In the reminiscing, we discussed how Don wanted us all to call him Don, but many of us were uncomfortable doing so while we were still students. I remember him insisting that Tammy and I call him Don instead of Dr. Songer but we were reluctant so we began brainstorming other alternatives. When we learned his middle name was Raymond, Tammy decided we would call him Donnie Ray. He was not a fan of his new nickname, so we finally agreed to call him simply Songer minus the Dr. I will confess that Tammy and I continued to call him Donnie Ray often and he would just shake his head at our silliness.

Unlike many of Don's students, I did not come to South Carolina to study under him, rather I became one of his students serendipitously. I chose USC to be close to my family and I, like many undergraduate students in political science, was debating between law school and graduate school. In complete candor, I chose grad school because I found that application process less tedious than law school. While my GPA was impressive, my GRE scores were merely satisfactory, so I began on a partial assistantship. At our departmental orientation, Don introduced himself and invited me to work on the update to the Courts of Appeals database, a position that would allow me to receive a full assis-

tantship. I said yes immediately and that single decision dramatically changed my life for the better. In addition to working on the database, I took Don's class that fall and he immediately began socializing me on how to be a successful political scientist. By the third week of class, I was writing and submitting a paper proposal for APSA. The idea for our co-authored piece in *The Journal of Politics* was also developed in this class. Don never believed in starting out slowly with graduate students, rather it was a jump in feet first from the high dive approach. He was always there cheering you on, but also ready to give you the shove you needed to take the plunge when you were afraid you were not ready yet.

Those of us who were close to our mentors and dissertation advisors often come to view these individuals like additional parental figures. But to say Don was like a father to me would not do our relationship justice because Don was another father to me in every sense of the word. Don believed in me and my intellectual abilities in a way that I had never experienced before or since. He often gently scolded me for not having enough confidence in my ideas or abilities. He dried my tears when I came to him devastated that I got a B+ in the constitutional law class I had taken at the law school. I was worried I had disappointed him by not earning an A, but he laughed and explained to me how relatively little that grade would matter in my future career, and as always, he was right. We ate lunch together at least weekly for five years, either at his beloved Fuddruckers or at the school cafeteria with Steve Hays and Harvey Starr. Before and after lunch we were frequently hunkered down in his windowless office going through lines of SAS commands looking for that one error that was hindering our progress. Don was at my wedding and kept the picture of us together there on his desk for almost 15 years. When I decided to leave my appointment at UCONN because a long distance marriage was not working for me, I was reluctant to tell Don because I was afraid I had disappointed him. Instead, he was incredibly supportive and told me what he cared about most was that I was happy. He was at the hospital when my son was born and then visited me when we moved to DC and later to Augusta. When I returned to academia and was eventually tenured and promoted, it was Don that I was most excited to tell my news! All the major milestones in my adult life, Don was there. His absence now is heartbreaking to me, just like losing one of my own biological parents.

As we reflect over Don's life and his legacy, I think we can all agree that Don was most certainly a successful political scientist. He was one of the great ones in our field. However, his legacy is so much more than the grants and publications on his vita. I am reminded of the distinction former USC football coach Lou Holtz makes between being successful and being significant. While Holtz wanted to be successful in coaching, he cared more about being significant. Holtz believes the difference between the two is that when you die, the success comes to an end. But when you are signifi-

cant, you continue to help others be successful long after you are gone. Thus, significance lasts many lifetimes.

Don was not just successful in our field, he was extremely significant. One of the most significant people in my life has been Donald Raymond Songer and I know I am not alone.

Stefanie A. Lindquist (sl@uga.edu)

Dean and Arch Professor of Public and International Affairs, University of Georgia



In 1991, I had completed a clerkship at the US Court of Appeals, was practicing law in Washington DC, and was preparing to follow my husband, a Marine Corps Officer, to a new duty station in California or North Carolina. My plan was to attend graduate school in one of those states, and we were awaiting word regarding the military base to

which we would be assigned.

Much to our surprise, we received word from the Marine Corps that we would be transferred, not to North Carolina or California, but to Beaufort, South Carolina! I quickly scrambled to apply to the graduate program at the University of South Carolina. At the time I did not know Donald Songer, did not know about his NSF grant to study the US Courts of Appeals, and did not know about USC's excellent Department of Government. In short, I had no idea how the Marine Corps' choice of duty station would have a profound impact on my life by enabling me to meet and to study under one of the most productive, collaborative, supportive, and kind PhD advisors any student could ever have. Don Songer was a mentor of the highest order.

Don was special for a number of reasons. First, as an eternal optimist and dedicated mentor, Don refused to see limitations in his students' professional trajectories or allow us to harbor doubts about our futures. Don had more faith in me than I ever had in myself, and through his confidence I developed my own.

Second, Don was deeply loyal to his students, with a dedication to us that formed a familial bond. Like a parent, he never lost interest in our careers, our well-being, and our scholarship. Conference dinners with Don were

always well attended by current and former graduate students, with Don jovially sharing his latest research enterprise and encouraging us to join him on his scholarly adventure, wherever it was headed

Third, Don had an incredibly keen intellectual curiosity about the field of law and courts, and a boundless energy for research. Don's mind was constantly on the move, traversing the existing scholarly terrain with a flashlight at the ready to illuminate some unseen pattern in the data or unexplored theoretical idea. His curiosity and energy were contagious, leading his students and collaborators to greater achievement and deeper commitment to the academic enterprise.

Finally, regardless of his many achievements, Don was truly unpretentious, and that lack of pretense and ego made the world of academia seem far more accessible to his students. Don didn't care much about worldly things such as fancy cars, big houses or vintage wine (to my eternal amazement, he drank very sweet white zinfandel—one glass only). In fact, I don't think he cared about material possessions at all. Don cared about his family, about his students (his second family), and about scholarly inquiry, in that order. (He did love community theatre too, and the Democratic Party.)

In everything he did, Don acted with great kindness, sincerity and good nature. He had a profoundly positive impact on my life and on the lives of many others—and I am grateful to the Marine Corps for leading me to USC so many years ago. I miss Don greatly. The world is a lesser place without him in it.



People who are really good at what they do can make difficult and laborious tasks look easy and effortless. Don Songer made being an academic seem like a walk in the park. Strike that. He made being a *great* academic look like a

walk in the park, and that was just one of the many things that he did with dedication and passion. He was a proud father and husband, enthusiastic amateur thespian, and committed to his community, teaching political science to adults on Sundays and volunteering for a program that helps elementary school children learn to read.

The first time I met him, he was sitting behind a desk in his (back then) tiny, windowless office at USC. The walls were covered with pictures that his kids had drawn years ago, with photographs and posters of him in theater plays, pictures of his son at soccer practice (that he coached, despite, as the minister suggested in his memorial service, never having heard of soccer prior to volunteering) and his daughter at graduation. I think his PhD diploma from North Carolina was somewhere on that wall, too, but I know that his Tar Heel cap was sitting on a table, waiting to be used. I was completely ignorant of his stature and many achievements at that point, and so did not even appreciate the fact that he was approachable. His accomplishments were never something he wore as a badge. I am sure this echoes throughout these essays on Don by his former students: he was a scientist who was driven by curiosity and not ego, and a teacher who cared about the people around him, remaining a friend and mentor to all his students after we graduated.

In my first year as a PhD student, some fellow students in my cohort and I decided to join an intramural softball tournament. Half of us were non-American baseball ignorants and, with the exception of one or two, we all were wise to choose academia over a profession requiring exertion, considering our physical condition. Even with these odds, Don agreed to help out by coaching us. He coached us as though our stipends depended on it (in fact, I think the poor volunteer referees may still have bad dreams about his laundry list of objections each game). The thing is, we never had a shot at winning the tournament. In fact, we ended up winning only one game throughout the entire semester (by forfeiture). That did not matter, though, and that is something I learned over

the years as Don's student: he did not do things half way. If it was important enough to be done, it was important enough to be done right. It always felt as though whatever Don was doing at any particular moment was exactly the thing he wanted to do. Whenever I entered his office (and he was usually hunched over his keyboard, writing), he dropped what he was doing and gave me all his attention.

Don had a talent for separating the wheat from the chaff and for coming up with creative research designs to test the empirical implications of theories. I remember Don telling me one day that he started college as a math major. A fellow math major was explaining a concept to him, telling him to just imagine five dimensions. Don said that was the day he changed to political science. It was clear to him that his friend had an instinctive knowledge of math that he lacked and would never have. He could not imagine five dimensions. What ever he may have thought he lacked in math, he clearly had in political science. If you ran an idea by him, he could see the empirical implications play out immediately. His were the questions to look out for at job talks—regardless of whether the talk was on judicial politics or not.

Don mentored by involving students in his research right away and by involving himself in theirs. I was coding data, running models, writing drafts for (and presenting findings at) conferences early on—and I had to keep up. The ball seemed to always be in my court. I would work for days or weeks on models and drafts before sending them to him, breathing a sigh of relief as I hit the send button. In what seemed like seconds (and really was usually less than 24 hours), I would find detailed feedback that sometimes sent me back to the start (do not collect \$200!).

I have countless emails in my inbox containing thoughtful and thorough feedback on research and teaching. I remember sending a paper I was working on with Kirk Randazzo to Don for feedback. A day later, we received a several page long, single spaced critique of it. Not satisfied with the written response (probably because his brain kept working on it), he took me out to lunch and lectured me on the faults of the paper for about 2 hours—and then proceeded to do the same with Kirk the next day. I remember Kirk and I sitting down that week in his office, begrudgingly acknowledging that perhaps Don had a point (or several, really). That paper is still a work in progress.

I am not sure how he did it, but Don would provide ample feedback without micromanaging. Much of his feedback consisted of questions rather than straightforward directions. He cared about what I wrote more than how I wrote it, giving me the freedom of writing (and submitting) papers we coauthored without rewriting the prose. Had he done so, the papers would no doubt have been better. Of course, that is not the point in mentoring, and he knew that. I am sure that such a hands-off approach is not the easiest thing to do. After all, his name was right there on that manuscript with mine.

Don continued to teach his classes through chemotherapy and operations. Teaching was not a nuisance to him, it was an important part of his job and of who he was. He enjoyed coaching Mock Trial and I got to go along once as a judge, watching Don and the students strategize (he really could be quite competitive!). This, to me, captures Don's nature: I was told that the last thing Don did before letting his family

drive him to the hospital, for what turned out to be the last time, was finish a recommendation letter for one of his students.

One of Don's last finished projects was a book he coauthored with Jennifer Bowie and John Szmer ("The View from the Bench and Chambers: Examining Judicial Process and Decision Making on the U.S. Courts of Appeals"). In an author-meets-critic roundtable at SPSA on the book this year, Jennifer and John at the beginning of the roundtable provided a few words about Don and his legacy. Jennifer told a story about how she and Don met Judge Posner. As they stepped into Judge Posner's impressive Chicago circuit court office, Judge Posner shook Don's hand and said, "So you are *the* Don Songer." His scholarly legacy was remarkable, and yet it was only one of the many things that made his life achievements so impressive. One of them, perhaps, is that when we, his students, think of him, it is first and foremost as a friend.

Reggie Sheehan (rsheehan@msu.edu)

Professor, Michigan State University



I first met Donald Songer thirty years ago when I entered the PhD program at University of South Carolina. Don was my mentor, my advisor, and my co-author but most importantly he was my friend. All of Don's PhD students would tell you he is and will always

be our role model. Not just a role model professionally, but a role model for how to live your life and be a good person. He cared about all of us and he was never far away when we needed advice. It was almost uncanny how sometimes I would get a phone call from Don right when I was thinking I needed to talk to him. We may have lost the opportunity to have that phone call in the future but his presence will always be with us, because we were molded by him into the people and professionals we are today, and there is a reflection of Don in everything we do in our own careers and lives.

Don was a scientist. He was fascinated with the scientific method and he enjoyed the process of developing research ideas, testing hypotheses, analyzing data and publishing findings. I am sure one memory all of his PhD students share in common is going into Don's office and sitting in the chair beside his desk and brainstorming research ideas. He loved the intellectual interaction and he loved the challenge of creating new publications.

Don was not a selfish scholar. If he had a research idea, he would invite graduate students and undergraduate students onto the project for co-authorship. It was his firm belief the best way to train students was to involve them quickly in the professional process of writing papers and presenting at conferences. Don was one of the few scholars in the profession who brought undergraduates to conferences to give paper presentations.

There is really no need for writing about his accomplishments as a scholar since his research record and national reputation are well known in the profession. But many in the profession may not know the other Don Songer, the man himself, not just the political scientist. At his funeral his son Michael shared a story with us that I had never heard. When Don graduated from high school in Miami, he was named valedictorian of his class. Most would have accepted the honor and the accolades but Don was convinced that a Jewish friend of his had a higher grade point average. He took it upon himself to calculate both grade point averages and determined in fact his was not the highest. Don refused to accept the honor and went to the administration requesting his friend be given the valedictorian accolade. This story tells you much about the man and his values. He was one of the most progressive people I ever met in my life and he truly believed in fairness and equal treatment of all people.

Don had a multi-faceted life outside of the political science profession. He was active in his church and his community. Many may find it surprising that Don was an actor in local theatre productions. It started as something he could do with his daughter when she was younger but even after she grew into an adult, the acting continued and he played many well-known roles in both dramatic and musical theatre.

Don was a family man. He was a devoted husband and father. When his children were in school, he would rush home every day around 3 pm to be there when they returned home. I was one of his students during those years and I remember often being in the law library with him coding data for the Courts of Appeals database and he would see the time and would stop and leave for home. If we had work to do, he would often come back after dinner and we would work in the office late into the evening. One of my fondest memories is his love for chocolate brownies and milk shakes. I always knew when he was coming back to work in the evening that I would be having a chocolate brownie that night, something that was definitely a treat for an impoverished graduate student. Those evenings were very productive on the database and in producing publishable papers.

He was a caring individual for both his family and his students.

I saw Don a few weeks before his passing. I wanted to check on him and see how he was doing since his health was declining rapidly. I sat in his office for almost two hours and we talked a few minutes about his health but he immediately moved the conversation to politics, sports (we both were Tar Heel basketball fans) and then I got the question some of his students are very familiar with...."Reggie, how is that next book we are co-authoring coming along." Having known him for so long and how much he loved to talk research, I was ready for the question. I said, "Now that you mention it, I would like to run a few ideas by you on a model I think we can run for the book." A large smile came across his face and you could see him perk up in his wheelchair and the excitement in his eyes I had seen so many times over the years when discussing research ideas was alive and well. The last thing I remember Don saying to me when I said goodbye that day and I was walking out of his office was "Reggie be sure and write all of this up in an email and send it to me and we will get going on it. " Always a scientist. Always a mentor. Always a friend.

Symposium: Academics As Advocates

"Best Practices for Academics as Advocates"

Kathryn C. Bender (benderkc@cofc.edu)

Associate Professor, College of Charleston



Having the perspective of an academic through the lens of a former college general counsel is helpful to me in my new role as faculty but it is sometimes at odds with the "advocacy" that my colleagues and I may want to engage in outside of campus. As an academic, we want to be able to express ourselves because the cause is education and restraint is antithetical to the

cause. A university lawyer wants to be able to protect the institution from lawsuits, yet needs to balance the institutional employees' rights and responsibilities as much as possible. It is from this vantage point that the following observations about academics as advocates are made. I end with the expected conclusion of *moderation* and suggest that neither polar extreme - unrestrained or muzzled - should be the goal. I suggest an approach that is somewhere in-between these extremes. Naturally, it is up to the academic to decide which of the three routes to take when advocating a position, an opinion, and/or a complaint, but if it is extreme, it may be perilous.

The usual backdrop for lawyers and political scientists is the source of the legal rights. For academic expression outside of the classroom, protection of the academic's speech is found in the 1940 AAUP Statement, the respective university faculty codes, the 1st and 14th Constitutional Amendments and common law. The American Association of University Professors, in its 1940 Statement, proclaimed the following (bold is added):

*College and university professors are citizens of a learned profession and officers of an educational institution. When they speak or write as **citizens**, they should be free from institutional censorship or discipline, **but** their special position in the community imposes special obligations ... They should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that **they are not speaking for the institution.***

The interpretive comments from 1970, which were adopted by the Council of the AAUP and endorsed as Association policy, pertaining to this section indicate the following (bold is added):

*If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 on the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that **teachers are citizens and should be accorded the freedom of citizens**. In such cases, the administration should assume full responsibility and the American Association of University Professors and the Association of American Colleges are free to make an investigation.*

The Council, in the footnote, suggests that paragraph 3 should be interpreted in keeping with the 1964 Committee Statement, specifically (bold is added): "The controlling principle is that a faculty member's expression of opinion as a citizen **cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position**. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

This is in keeping with the 1st and 14th Amendments, and their subsequent applications and interpretations, that free speech is not absolute and that there are some restraints that are allowed. A few key court decisions are illustrative and help both the academic and the university attorney get a sense of the boundaries within which it is safe to advocate outside of the classroom. In *Sweezy v New Hampshire*, 354 US 234 (1957) the Court acknowledged a state's right to be concerned about "subversive" and dangerous individuals and their activities but held that such concern must be secondary to the Bill of Rights. "Academic freedom" itself was found to be a matter of "special concern" of the 1st Amendment in *Keyishian v Board of Regents*, 385 U.S. 589 (1967), where the academic's firing for refusal to sign an oath to refrain from joining the Communist Party was ruled as unconstitutional. The other foundational base is the long-standing support, as seen in statutes and common law, that no one loses her ability to speak as a private citizen by virtue of being a public employee.

There are two primary considerations: is the speech a

matter of public concern and, if it is, is the expression itself such that the balance weighs in favor of the individual academic? Even if the balance tips in the institution's favor, another consideration is whether the same action would have been taken even without the speech factor. If the protected public concern-related speech was a substantial or motivating factor in the negative job action (as in the 2011 4th Circuit case of *Adams v Trustees of UNC-Wilmington* where a jury found a professor's religious-based speech should have been protected), then the action will be considered unlawful.

In *Connick v Myers*, 461 U.S. 138 (1983), the Court enunciated the rule that if speech does not relate to a matter of public concern, "absent the most unusual circumstances" the discharge of the academic will not even present a 1st Amendment issue. In that case, the "balance" test was also considered and the Court found that it weighed in favor of the public institution because distribution of a questionnaire challenging management was determined to be damaging to the harmony and discipline that a public employer can reasonably require.

Pickering v. Board of Education, 391 U.S. 563 (1968), is a key example, in which the Court examined the 1st Amendment rights of a high school teacher who was fired for writing a letter to the local newspaper criticizing the town's elected education leaders. The first part of the test, that speech being a matter of public concern, was met. There was no evidence that the teacher's comments were disruptive to faculty discipline or university efficiency nor that he knowingly or recklessly made false statements. Therefore, the right to engage in this type of speech on issues of public importance was upheld.

An example of speech not being considered a matter of public concern is seen in the case of *Maples v Martin*, 858 F.2d 1546 (11th Cir, 1988). Here five tenured professors lost their due process claim when they were transferred to other university departments after they publicly and widely criticized the decision-making process within their department. The 11th Circuit held that the criticism affected morale and discipline within the institution.

While scholarship and teaching enjoy more protection via academic freedom than extra-institutional utterances, these examples highlight that even intra-institutional speech is not absolute. Cases where the balance was found to tip in favor of the public employer focus and thus unprotected speech often include facts where the academic's speech was considered disruptive to the school or was merely a personal airing of grievances regarding public employees or decisions. These would

be thought of in AAUP terminology as the faculty member being found to be “unfit” for the position. There is less protection of speech if it is inflammatory, such as two 6th Circuit cases: one in which the academic criticized the comparison of the gay rights movement with the civil rights movement in *Dixon v University of Toledo*, (2012), and the other where the adjunct allowed the “n” word to be used in the classroom in *Hardy v Jefferson Community College* (2001). In *Wirsing v University of Colorado*, 739 F. Supp. 551 (1990), the court upheld the university’s right to deny a pay increase because of a tenured faculty member’s refusal to follow university requirements of giving the standard course evaluations to her class.

Although courts are generally reluctant to interfere in college administration, they will uphold college demotions/refusal to grant tenure/firing decisions when such decisions are proven to be based not on “academic freedom” but on disruption of the college enterprise. An apt quote follows: “... school authorities can sanction conduct materially and substantially disrupting school discipline, even though that conduct [is] perhaps not unlawful.” *Franklin v. Atkins*, 409 F. Supp. 439, 449 (D.Colo.1976), aff’d, 562 F.2d 1188 (10th Cir.1977), cert. denied, 435 U.S. 994, 98 S. Ct. 1645, 56 L. Ed. 2d 83 (1978).

In *Garcetti v. Ceballos*, 547 U.S. 410 (2006), which distinguished *Pickering*, the Court held as unprotected the public employee’s comments that were made pursuant to employment and thus in an official capacity as an employee. In that capacity, the Court held that such statements were not protected. Simply put, statements

do not enjoy 1st Amendment protection if they are made as an employee in connection with his/her job.

Using these examples as a backdrop, my general counsel self would caution as follows: an academic’s speech will be protected if it is genuinely a matter of public concern (e.g., financial considerations of the college, discrimination based on sex and other protected classes, academic quality/ethics) and not mere grumbling, failure to follow reasonable college requirements, and/or morale-busting and discipline-challenging volatile airings.

Either extreme of never speaking for fear of reprisal or always complaining publicly about every university administration/other faculty thorn that bothers you is an inadvisable place to be. My “academic” self would continue to look through the lens of a general counsel and suggest that an academic advocate freely and responsibly about matters of public concern both because it is important for society to hear that perspective and also because it is a role that both bolsters a faculty member’s voice and it serves as an important check on what might otherwise be heavy-handed administration of the institution. Just as one would probably want from a colleague, it is advisable to avoid “advocacy” that publicly undermines others or is simply spewing venom. An academic may think that such speech is one’s inalienable right, but it is tempered by the institution’s right and responsibility to advance the furtherance of the academic good of the whole in the educational process without unnecessary and unprotected cacophony. Moderation and balance is the target for academic advocacy to which this faculty member aims.

“The Public Law Educator: The Role of Engagement and Advocacy”

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As faculty, we sometimes get that amazing letter or email years later from a student thanking us for the difference that we made in her life. It is sometimes a rare moment like this that reminds us of the important work we are doing as teachers. This wonderful feedback is so appreciated in the midst of the extremely hard

work that members of our profession do in their day-to-day work of grading, classroom management, research and increasing service commitments on and off campus. The day-to-day work consumes us at times and makes it hard to appreciate the importance of our job and the impact that we have on those we teach. It is especially hard to appreciate the difference we make in

an environment where budgets are being cut and there is more and more demand for accountability. Parts of society are questioning why the work of an academic matters. For those of us in public education, the experience of tightening budgets means more questions about our impact to our states and its taxpayers who fund us. Engagement, and even advocacy, is another way that our work matters. The connection of faculty, students and our alumni to community needs brings important impact that needs to be appreciated, valued and even incentivized by our institutions.

I was really pleased to have been asked to write about the role of engagement and advocacy in our profession for this symposium. I have been thinking about this subject for quite some time over my 18 year career as facul-

ty member and now in my half of year of service as a Dean of the College of Public Affairs. The strengthening of our work in civic engagement is getting more and more attention in higher education as we reconsider our impact. It is something that academic leaders are taking seriously as we work to extend our reach into communities. The effort to solve societal problems in all academic fields is an extension of the “land grant” mission of some universities, which provides visible impact that also builds a positive reputation for the institution. Engagement and advocacy, though, is something that professors appreciate already as a real opportunity to make a difference in the lives of our students and in our communities. It’s work that synthesizes our teaching, research and service. Engagement and advocacy work create change and demonstrates to the public the exciting things that faculty and students are doing in an ever competitive market to attract students and resources.

In this essay, I draw on some experiences of my career and make a case for the value of civic engagement to both the individual faculty member and the institution. I also raise questions about how efforts to do civic engagement also inevitably cross into advocacy, which can entangle faculty members and institutions into “politics”. While the role of advocacy in higher education creates a conundrum for public employees who are restricted from political activity, it is almost impossible to separate advocacy from engagement. I argue that engagement work on campuses should be encouraged. It can build an exciting and meaningful career that is valuable to institutions and important to society.

The Role of the “Engaged/Advocate” Educator

Engagement has been among the most rewarding experiences of my career as an educator. This is because I believe that my teaching, research, and service work came to complement each other by my efforts to connect externally. Through some really spectacular mentors I learned early that my students and I could help bring knowledge and work to the community, but also bring what we learned from the community back to our university.

As I was thinking about what to write in this essay, a former student of mine from the University of Arizona contacted me. She sent a remarkable thank you, which included a package containing a published article in *The Court Manager* and an acknowledgment page from a thesis she wrote to become a Fellow of the Institute for Court Management (ICM). For those who don’t know the ICM Fellows program, it is a very important certificate for leaders of judicial administration. In her note, she talked of how I helped introduce the field to her, helped her get an internship with the courts, and how she found her way into a career in judicial management. The truth is

that I could have never helped her if I had not worked to bridge my research work, and later teaching, to leaders in this field. A mentor once told me that if I wanted to learn more about court budget politics and institutional reforms in courts, I should connect with professionals. He encouraged me to go where they meet. I ended up attending several meetings of the National Association for Court Management where I made contacts, built ties, and participated. I not only found a place for the work I was doing on court budget politics and judicial independence issues, but I also made contacts in this field. Judicial administrators helped me design an undergraduate and graduate course on judicial administration that I taught at the University of Arizona and they provided advice on building internships. I even published a paper on how the fields of public administration, criminal justice, and law and courts did not adequately help us connect students to judicial administration. I learned this from my experience and interaction with professionals.

Engagement helped my research work have an impact and it dramatically improved my teaching. Some of the opportunities from engaging include invitations to testify at hearings of the American Bar Association, League of Women Voters of Detroit, the judicial system of California, and the opportunity to consult a bit with other state court systems. I’ve presented at associations of court intergovernmental relations officers, spoken to the Conference of Chief Justices, and been invited to participate in summits of court leaders. I currently serve on the Research Advisory Council for the National Center for State Courts. Finally, I have had the opportunity to serve on several commissions including a judicial merit selection committee, judicial performance evaluation team, the Arizona Court Leadership Institute and a state regulatory board that certified independent document preparers. I have been blessed with a career that has never been boring.

I am not writing this to provide a resume. As I look back on my time as a graduate student, I remember that I hoped so much that my work might make some little bit of difference to students and others. My teachers and mentors connected me with practitioners and helped me find a place for my work. I learned more about the needs of a profession and then tried to reach into those needs. I’ve discovered new ideas and started projects that mattered to leaders in the field. When I started a new project, I also had access to those working in the field to receive feedback and data.

In all of this, engagement helped me expose my students to a career field that needs great leaders. In the case of my student, she found a profession that she knew nothing about before, fell in love with it, and has now earned one of its most important designations.

That's what we hope to do as teachers.

The Role of the "Engaged" Institution

The work of faculty to connect their students to the community improves our institutions. We face more and more pressure to justify what we do. Graduation rates, student enrollments, and filling employment needs drift in as important metrics of a university's work. Engagement work also shows our value and does so by teaching and connecting research and service to those who are solving problems.

Engaged learning helps students learn about our communities and to tackle societal problems. There are many forms that we use including service learning, capstone projects, and internships. Each connects the university in a measureable way to citizens who fund us. It shows off our cutting edge programs, builds experience for students entering a tough job market, it helps us connect to our alums, and it provides visibility in a market for students that is competitive.

As Dean of the College of Public Affairs (CPA) at the University of Baltimore, I brought my philosophy of engagement with me. As my family was transitioning to Baltimore and closing on a new house, I remember laying awake most of the night on April 27th as we watched our new city burn during the Freddy Gray uprising. It was sobering to say the least. Our city is one of the most creative and amazing places that I have lived and I already love it, but it is faced with unfathomable problems, a deep history of racial discrimination, poverty and urban decay. There are large sections of abandoned housing in many parts of the city which are only blocks away from parts of the city that are wealthy.

After the uprising, I arrived to find an energy in our students and faculty who wanted to do more and to have our College help improve the city. CPA trains public and nonprofit servants. Many are often first generation college students who grew up in the city. They want to improve it and many are attending part-time while they work in jobs that are doing just that. There has always been a commitment on campus to serve the city, but we have seen it amplified. We worked with our faculty to create "Divided Baltimore," a CPA course that brought in public and nonprofit employees and activists to lead discussions on city problems like housing, crime, poverty, race, and health. A weekly session was opened to the public and community members joined us on campus.

As I met with our faculty this past fall, I found that many were doing engagement work with our students. I also learned that few knew what others were doing inside of CPA. I formed a committee of our most actively en-

gaged faculty and asked for two things: a study of what we are doing in the college already; and for recommendations on how we can do more to elevate our work and provide incentives to do engagement. Opportunities to connect our faculty and students with Baltimore organizations come weekly. We also needed a place in the College to consider what we can and cannot do.

Engagement vs. Advocacy: Conundrum

Engagement work presents problems. The work inevitably leads to advocacy. This raises issues for social scientists in their role of producing evidence but refraining addressing its political implications. How does engagement stack up with the role of the disinterested, "fact producing" faculty member who is rightly concerned about the appearance of bias? For example, in our College we have faculty members in our School of Criminal Justice who study sexual violence on campuses, the re-entry of incarcerated women into society, and who teach UB students together with inmates inside Jessup prison. In each case, the faculty members have done research and have taught on subjects that engage real world problems.

On prison re-entry, a Dr. Renita Seabrook created, runs, and writes about her program, "Helping Others 2 Win." She is frequently asked by policy makers about the program and she advocates for expanding resources for re-entry. Her graduation events on our campus are attended by policy makers and local justice officials. She teaches about the program and the women enlighten her students on the experiences of leaving prison. There is no question that this engagement crosses into advocacy and there are certainly some in society that might disagree with the change to our approach to justice. Similarly, Dr. Tara Richards who studies intimate partner violence has testified before the state legislature on expanded data reporting of this form of violence in higher education institutions. Dr. Andrea Cantora has written of the experiences of inmates and UB students learning together inside a prison. Her course provides engaged learning experiences that change perspectives on justice. What is learned shapes opinion and has led to discussion of our university offering degrees to inmates with the extension of Pell Grants by the federal government. In each example there is direct and indirect impact of engagement on advocacy. They are difficult to separate.

There is value of engagement to faculty, students and institutions, but there is value of what we learn in the policy process at every step (formulation, adoption, legitimation, implementation, and evaluation). There are legal restrictions on the political activity of public and nonprofit servants. There is also "space" for those with knowledge to be at the table with those seeking to solve problems. There is a need for policy makers to hear

from experts on the problems we address in our communities. That means faculty and students entering the policy conversation with data and with experiences. There is value in hearing of the opportunities and challenges faced by a re-entry program or a law clinic at our law school that helps run a veteran's treatment court. If justice officials are interested in re-entry, there is great value in providing a seat at the table for those who have run a program and have done research that provides some clues on how to improve implementation. I believe that public officials (teachers, law enforcement, judges, and social workers) have deep knowledge that might be missed by policymakers. Policy makers should hear more from public law scholars and our students.

Conclusion

Engagement work on campuses should be encouraged and it is a priority for many. Civic engagement and service learning have received significant investment by many of our institutions. It is a priority for some as they earn the Carnegie Community Engagement which distinguishes them for their work. A quick internet search finds volumes of literature on campus engagement and

how to reward it. Institutions, like my former university, Western Carolina, have adopted the "Boyer Model" and have found creative ways to incentivize and reward faculty for engaged scholarship, teaching and service in their annual review and promotion and tenure process. The Department of Political Science and Public Affairs at WCU also added engaged learning requirements to their degrees. As I attended the annual meeting of the Council on Urban and Metropolitan Universities, I found an entire conference devoted to the subject where universities shared best practices. So while it has always been here, there is growing interest by institutions to do more.

Engagement makes a career exciting. You watch your students solve problems, reflect on experiences and connect to careers. Engaged research and service work does that for faculty. Engagement brings access to data, ideas for new projects, and an opportunity to have published work impact others. Engagement is valuable to our institutions as we look to excite and recruit new students, build employment networks for our students, find grants, and build a reputation for making a difference.

"How to be a Smart Advocate for Federal Programs that Impact Your Career"

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Do you ever think that it is someone else's job to advocate for federal funding for programs that support the political science community? Have you thought that your voice can't possibly matter to a Member of Congress because you are just one of the approximately 700,000 people in the representative's congressional district? Or,

perhaps you are the type of person who thinks that elected officials will surely support your favorite federal program because it is just "common sense." Well, all of these thoughts are misguided and could be damaging to the future of federal funding for programs that are important to your community.

In this short article, I will share what I have learned working as a congressional staffer on Capitol Hill and in the business of federal relations for a major research university. In addition, I will provide some recommendations for what you can do to be a smart advocate for federal programs that impact your career.

First, I strongly encourage you to support the work of the American Political Science Association (APSA). APSA

has advocated for federal support of vitally important entities including the National Science Foundation (specifically political science funding in the Social, Behavioral and Economic Sciences Directorate), the National Endowment for the Humanities (NEH) and Title VI (international education) in the Department of Education. You can learn more about the APSA's advocacy efforts at their website: <http://community.apsanet.org/advocacy/home>. The website also includes some helpful tips on how to make the most out of your advocacy.

Before contacting any elected official about a federal program that impacts your academic career, it is important to coordinate with your university's office of government relations. This is both a courtesy and a potential legal requirement if your university is registered to lobby the federal government. If your university does not have such an office, reach out to the office of external affairs or legal affairs. It is important that you ensure that any work you do does not violate your employer's policies related to lobbying.

I have learned over time that faculty might feel more loyalty to their discipline than their employer. However, the elected officials you contact will be more interested in the fact that you work for what is likely one of the larg-

er employers in their district than your membership in the APSA. If you coordinate your interests with the staff at your university who are interacting with elected officials on a regular basis, they can educate you about the idiosyncrasies of particular elected officials and their staffs.

Before you contact an elected official, it is also important to keep in mind that coalitions matter in DC. Reach out to other people at your university who have similar interests in advocating for your priorities. One email, letter or call to a congressional office about a particular issue might appear to be an anomaly, but a cluster of individual contacts is more likely to get an office's attention. Similarly, think about others (especially those outside of academia) within your congressional district, or your state, who share your interests. As APSA suggests, it may make sense for a group from different employers to schedule an appointment to visit a member of Congress in his or her home office. Of course, you can also use APSA to help you coordinate your efforts and test your messaging.

One of the biggest mistakes I see faculty make when they are interacting with Members of Congress or their staffs is that they spend too much time talking about their qualifications. It is certainly difficult to get accepted to graduate school, complete a Ph.D., and secure a tenure track position at a university. However, most in Congress generally accept that you are qualified to be doing what you do. A better use of your time is explain-

ing why funding for your program of interest is a good use of taxpayer money. As many people have said, "governing is choosing" so you need to think about your advocacy in the context of all of the other people who are asking the Member of Congress to support their interests. I think that political scientists probably understand this better than most academics, but you must keep in mind that your audience doesn't have the luxury of becoming an expert on any given topic.

Also, don't take anything for granted. For example, your entire career may be tied to the notion that federal support for the NEH makes sense to any reasonable person. But I have seen firsthand how tough it's been to fight off proposed cuts to NEH, NSF SBE, and Title VI. Because there are so many diverse and competing interests during each federal budget cycle, the programs that tend to fare the best are the ones with large and active coalitions behind them. Those coalitions aren't grown overnight, but are the result of years of coalition building, savvy leaders and strong arguments that resonate with "average" Americans. There may have been a time in our history where support for programs important to the APSA community was a given. But those days are over. If you expect consistent and sustained funding for federal programs you care about, you and your colleagues must continuously make the case that spending on these programs has broad societal impact. And while you're at it, engage some non-academic partners in your advocacy as well.

"Academics, Advocates, and Activists: The Puzzles of Praxis"

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The question of whether academics should be advocates is an interesting one, and I view the matter complexly.

First, it is worth pondering what we mean by "advocate" or "advocacy." The most obvious and perhaps familiar mode is advocacy of issue positions, partisan candidates or officials and platforms, or ideological positions. Many of us do this as citizens relatively independent of our scholarly roles, but we do not conduct our research directly to this end. I sometimes write op-eds, talk to journalists, participate in writing amicus briefs, give speeches, donate money, and join or help organize events advocating a cause, party, or person. But I consider this separate from my role as a researcher and teacher; in fact, my advocacy is often on matters that are not primary topics of my published re-

search. In this regard, I tend to draw a bright line distinction between my academic roles and citizen endeavors.

One reason for my ease of making this distinction that I have little *intellectual* interest in policy oriented research. Instrumental advocacy of particular policies, in my view, tends to undercut the process of inquiry, which for me always aims for surprise, discovery, rethinking; I revel in finding the unexpected and exposing the unintended. Too much policy research sacrifices inquiry to a predetermined cause, and spends most time looking for a problem to which a favored solution can be attached. My intellectual research works from a premise that the world is very complicated and most analyses that are simple or clear cut are banal or uninteresting. My primary academic advocacy regards posing unorthodox questions, endorsing critical themes (class or race dimensions), and challenging familiar premises. To direct my

research energies to support for a clear, simple position on solving a problem simply is not inviting. There is a place for policy research in policy organizations, but I as a scholar generally resist the “pull of the policy crowd.”

But the matter is much more complicated yet. Simply put, everything that I do as a teacher and researcher is a form of “indirect” advocacy. I identify my primary scholarly interests in understanding how and to what effect unequal institutional, ideological, and instrumental power are organized and contested in modern societies, primarily in the US but also in different contexts around the world. My particular substantive interest concerns struggles by working people, as manifest in activism by labor unions, community groups, social movements, and the like. I generally avoid directly advocating particular policies or issue positions involving working people in my scholarship, but by research and teaching about their struggles, I am focusing attention on the hierarchical structure of work in capitalist society, the interests and injuries of workers, the world views and aspirations of workers, the various strategic political gambits of workers, and the ways that institutional arrangements and ideological conventions shape the possibilities, forms, and outcomes of struggle. My research offers no solutions to these historical structural relationships, however unjust. Instead, my research indirectly aims to make visible and accessible workers and their struggles to a host of audiences – students, scholars, journalists, activists, the broader public, and so on. It always reflects a general concern with “social justice,” even though the concrete, discrete implications are unspecified.

But my work is hardly unique in this regard. I am tempted to say that every study of political institutions, relations, events, and actors aims to call attention to certain dimensions of the broad political landscape, to elevate their significance on the attention agendas of others. My research amplifies the voices of research subjects whom I select to analyze and report, because I do want to underline their significance and increase understanding as well as empathy for their causes, against a disciplinary obsession with the state, elite actors, and hegemonic orders. But my own intervention is most concerned with sophisticated analysis of how subaltern groups struggle for justice, what they are doing and how that matters, which usually is quite complex, is riddled with paradoxes, and aims for generalizable understandings rather than direct support for a cause.

An example from my own scholarship illustrates the point. In 1994, I published a book, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: 1994). My study aimed to develop and put to work a hybrid “legal mobilization” framework to analyze

the complex institutional, ideological, and instrumental terms of power at stake in the decentralized movement for pay equity reform; at a broader level, I labored to use the case studies to advance some general theoretical insights about how “rights advocacy” works in practice. The book clearly denied interest in advocating for the cause or policy of comparable worth; indeed, an early chapter gave considerable space to critics and opponents of the reform policy logic. At the same time, I am very aware that the book worked to make visible the situation of women workers, their perceptions of grievance, their variable activism to challenge what they viewed as gender discrimination, and their complex political efforts to mobilize around claims of women workers’ rights. The latter is the type of indirect educational advocacy that characterizes much of my research and teaching: I amplified attention to issues, struggles, and people nearly invisible in social science research. But my primary goal for the book was to engage academic audiences about how legal advocacy matters in group conflict, regardless of whether readers agreed with comparable worth policy or even cared about the specific case studies of female workers.

The same was true for a later book that I co-authored with William Haltom, *Distorting the Law*. We labored to show how the growing concern about excessive frivolous litigation developed in the late Twentieth Century and its implications at multiple levels. The analysis advanced a three dimensional framework for understanding the historical phenomenon and political discourse generally. While the book addressed a great deal of matters related to the policy clash over “tort reform,” we did not directly advocate a position about the reform policy. In fact we distanced ourselves from plaintiffs’ attorneys’ efforts (including the documentary heavily influenced by our book, *Hot Coffee*) to invoke us as opponents of tort reform, not least because the book shows that some aspects of the plaintiffs’ bar made business-supporter reformers’ appeals all too compelling and that the civil tort system is not an adequate remedy for many injured persons.

There is yet a deeper epistemological matter at stake, of course. As scholars, we strive for analytical and empirical rigor. Distance, neutrality, and objectivity are heralded by professional norms, and we have internalized lots of learned and enforced disciplinary conventions in our methodological toolkit to try to assure these ends. But most of us also candidly recognize that we can never inhabit the ungrounded, unbiased Archimedian point, the neutral place, so often revered. We all stand somewhere. We all introduce into our research the biases of our experience, our individual attitudes and commitments, the training we received and the methods we use. Every way of seeing is limited and biased, a mode

of not seeing or validating alternatives. My response to this problem is twofold: first, to strive for rigorous, independent, critical analysis and thick, informed, well-grounded empirical knowledge of my subject; and second, frank acknowledgement that my work adopts a particular standpoint, most often one that views the world through the eyes of my research subjects. For example, in *Rights at Work* I frankly acknowledged that the standpoint of analysis was one of women workers, not because I shared or agreed with such a view, but because one sensible and important but rarely embraced way to critically assess the achievements or failures of a movement is in terms of the goals and standards of movement activists themselves. I was fortunate that the book won much attention and three major book awards (including the Pritchett Book Award from Law & Courts); it is best known for developing the now much recognized “legal mobilization” framework for analysis and for advancing some influential insights about the interplay of litigation, courts, and rights activists in struggles for change. I took this as a sign of respect, if not vindication, for my position on standpoint theory.

But *Rights at Work* raises another issue about academic advocacy. In short, long before and during my research for the book, I had been active in the political movement for gender wage equity about which I wrote. I openly supported the cause in the early 1980s, I collaborated with activists in Washington State, I became a source of information sharing about local struggles around the nation, and I increasingly found myself speaking at rallies, consulting on strategy, and the like through the early period of my research. In short, my roles as academic analyst and movement advocate were fused inextricably as I was we often call “participant observer.” The book did not directly acknowledge that relationship, however, because as a young scholar I feared that exposing my on-the-ground engagement would justify questioning my impartiality, my rigor, my analytical judgment. I now think that that wariness was unjustified, and not just because I won awards for the book. It is very clear that the book, while it consciously avoided taking a position on policy, was much more compelling and powerful because of my involvement in the movement. My close connection to the movement facilitated many important outcomes: unparalleled access to movement activists, organizations, and records that otherwise would not have been possible; a growing sense of “won” trust that made me and activist subjects intellectual collaborators; a sensitivity to questions and insights defined by activists rather than by remote academics; an awareness about the many complexities, paradoxes, and unintended consequences at stake in the political legacy; and a sense of excitement from experience in the midst of action that was impossible from the comfortable distance of my campus office. I very strongly believe that my en-

agement in the movement made the book far more successful as *academic analysis* than it would have been otherwise. Indeed, the research began with funding from an NSF grant to study largely academically defined questions (“the literature”) and ended up, quite surprisingly to me, challenging many premises of the original proposal with common sense I gleaned from my activist involvement. I want to think that activism made me a far deeper, more insightful, and more critical analyst as well as a better grounded empirical scholar.

My own career as a scholar has been marked by lots of activism and engagement that is separate from my research activity and also much that has been fused inextricably with activism. I am currently Director of the Harry Bridges Center for Labor Studies at the University of Washington. The Center is committed to academic goals of research and education, but Center activity regularly involves me as an individual in collaborative advocacy for a host of causes – organizing conferences, publicizing worker events, strategizing campaigns, participating in protests, and the like. This role requires me to speak out through the mass media at times, but most of my activity is in collaboration with unions, workers’ groups, and community activists. Much of this activity is tangential to my research, but at times the research merges with activism. One example is the SeaTac-Seattle Minimum Wage History Campaign Project. This digital web archival project (<http://content.lib.washington.edu/projects/sea15/index.html>) is one of the most exciting and novel enterprises of my scholarly career. It would not have been possible without my established connections to workers, union leaders, community activists, and others in the movement. And the research has further connected me in turn to ongoing worker activities in a host of ways. Moreover, a very ambitious book on the legal mobilization politics of Filipino cannery workers over the Twentieth Century grew directly out of our (my and co-author George Lovell) extensive involvement in the Bridges Center – through regular interaction with activist workers formerly in ILWU 37, access to extensive archives on the workers’ political and legal struggles, and routine validation of these activists’ history among Center collaborators. I am hopeful that this project – *A Union by Law: Filipino Labor Activists and the Transpacific Struggle for Justice* (under contract with Chicago) – will become the most important book of my academic career, and it simply would not be possible without my activism in the Puget Sound labor community over the last twenty five years.

All of this is not to say that there are not tensions between advocacy and academic work. I often find myself confused or paralyzed by shifting roles – research scholar, public intellectual, citizen activist, Center director – that I enact regularly in different contexts. Each of

those roles requires performance according to different, often conflicting, protocols for sustaining credibility and effectiveness. For example, the Bridges Center is committed to research and teaching about worker interests and struggles, but its general public mission for the most part avoids direct issue and partisan advocacy. Where is the line between my collaboration with unions and worker groups as center director and as citizen activist? When and how might my activism compromise the Bridges Center and draw fire from ever-present critics, many of whom can cause us considerable hassle? I constantly wrestle with drawing lines and policing my many different roles.

But the biggest cost of activist involvement and collaboration in the community is in the time and energy that it

takes from my scholarly activity. During the last year of heavy activity in the Labor Center and beyond in community politics, my time for research, writing, and publication has clearly diminished. I have been careful not to compromise my teaching and, especially, graduate mentoring commitments, but the quantity of scholarship has diminished and my exhaustion increased. Overall, though, the praxical involvement has been both intrinsically valuable and contributed greatly to the quality and integrity of my scholarship on law and rights mobilization politics, so the tradeoff has been worthwhile. Working to find the right balance will continue to be an ongoing challenge, but I am very fortunate to have the option of holding a paid professional position that enables such opportunities for citizen engagement along with intellectual inquiry.

Books to Watch For – Spring 2016

Drew Lanier, Editor (drew.lanier@ucf.edu)

Associate Professor, University of Central Florida

Christopher P. Banks (Kent State University) and **David M. O'Brien** (University of Virginia) have published *The Judicial Process: Law, Courts, and Judicial Politics* (Sage/CQ Press, ISBN 978-1-4833-1701-4). It “is an all-new, concise yet comprehensive core text that introduces students to the nature and significance of the judicial process in the United States and across the globe. It is social scientific in its approach, situating the role of the courts and their impact on public policy within a strong foundation in legal theory, or political jurisprudence, as well as legal scholarship. The authors do not shy away from the politics of the judicial process, and offer unique insight into cutting-edge and highly relevant issues.”

Ryan C. Black (Michigan State University), **Ryan J. Owens** (University of Wisconsin—Madison), **Justin Wedeking** (University of Kentucky), and **Patrick C. Wohlfarth** (University of Maryland—College Park) have co-authored *U.S. Supreme Court Opinions and Their Audiences* (Cambridge University Press ISBN 978-1-1071-3714-1). “This book examines whether the United States Supreme Court manipulates opinion clarity to mollify or circumvent its various audiences. It finds justices write clearer opinions to enhance compliance with the Court’s decisions and to circumvent negative audience responses to those decisions. The authors examine this dynamic by creating a unique measure of opinion clarity and then testing whether the Court writes clearer opinions when it faces ideologically hostile and ideologically scattered lower federal courts; when it decides cases involving poorly performing federal agencies; when it decides cases involving states with less professionalized legislatures and governors; and when it rules against public opinion. The results show the Court writes clearer opin-

ions in every one of these contexts. It also shows actors are more likely to comply with clearer Court opinions. These findings demonstrate how the evolution of law is a function of justices acting strategically in the face of different audiences.”

Susan Burgess (Ohio University) and **Kate Leeman** (Ohio University) have co-authored *The CQ Guide to Radical Politics in the United States* (Sage/CQ Press, ISBN 978-1-4522-9227-4). “This unique guide provides an overview of radical U.S. political movements on both the left and the right sides of the ideological spectrum, with a focus on analyzing the origins and trajectory of the various movements and the impact that movement ideas and activities have had on mainstream American politics. It is organized thematically, with each chapter focusing on a prominent arena of radical activism in the United States. The chapters will trace the chronological development of these extreme leftist and rightist movements throughout U.S. history. Each chapter will include a discussion of central individuals, organizations, and events as well as their impact on popular opinion, political discourse and public policy. For movements that have arisen multiple times throughout U.S. history (nativism, religious, radical labor, separatists), the chapter will trace the history over time but the analysis will emphasize its most recent manifestations. Sidebar features will be included in each chapter to provide additional contextual information to facilitate increased understanding of the topic.”

Damon M. Cann (Utah State University) and **Jeff Yates** (Binghamton University) have published *These Estimable Courts: Understanding Public Perceptions of State*

Judicial Institutions and Legal Policy-Making (Oxford University Press, ISBN 978-0-1993-0721-0). In the work, the authors “explore how citizens feel about the government institutions at the front lines of jurisprudential policy-making in America - our nation's state and local courts. The book's central focus concerns a primary question of governance: why do people support and find legitimate the institutions that govern their lives? Cann and Yates evaluate the factors that drive citizens' support for their state and local courts and that influence peoples' perceptions of the proper role of these courts in our society, as well as how judicial policy-making should be made. A viable democracy depends upon citizen belief in the legitimacy of government institutions. Nowhere is this more evident than in judicial institutions. Courts depend heavily on a reservoir of public good will and institutional legitimacy to get their decrees obeyed by the public and implemented by other policy actors. It enables courts to weather the storm of counter-majoritarian decisions and remain effective governing bodies whose edicts are respected and followed. *These Estimable Courts* takes advantage of new original survey data to evaluate citizens' beliefs about the legitimacy of state courts as well as a number of important related concerns. These include peoples' views concerning how judges decide cases, the role of judges and courts in policy-making, the manner in which we select judges, and finally, the dynamics of citizens' views regarding compliance with the law and legal institutions.”

Lief Carter (Colorado College) and **Thomas F. Burke** (Wellesley College) have released the ninth edition of the classic *Reason in Law* (University of Chicago Press, ISBN 978-0-2263-2818-8). “Over the nearly four decades it has been in print, *Reason in Law* has established itself as the place to start for understanding legal reasoning, a critical component of the rule of law. This ninth edition brings the book's analyses and examples up to date, adding new cases while retaining old ones whose lessons remain potent. It examines several recent controversial Supreme Court decisions, including rulings on the constitutionality and proper interpretation of the Affordable Care Act and Justice Scalia's powerful dissent in *Maryland v. King*. Also new to this edition are cases on same-sex marriage, the Voting Rights Act, and the legalization of marijuana. A new appendix explains the historical evolution of legal reasoning and the rule of law in civic life. The result is an indispensable introduction to the workings of the law.”

Michelle D. Deardorff (University of Tennessee at Chattanooga) and **James Dahl** (University of Illinois at Urbana-Champaign) have co-authored *Pregnancy Discrimination and the American Worker* (Palgrave MacMillian, ISBN: 978-1-1373-4304-8). “The percentage of women in the American labor force exceeds 57%, and many experience pregnancy during their working years. Howev-

er, few analyses have explored how law mediates conflict between workplace expectations and the realities of pregnancy. This book explores how the federal courts have addressed the two primary federal statutory protections found in the Pregnancy Discrimination Act and the Americans with Disabilities Act. While pregnancy discrimination has been litigated under both, these laws establish different forms of equality. *Formal equality* requires equal treatment of pregnant women in the workplace, and *substantive equality* requires the worker's needs to be accommodated by the employer. Drawing from a unique database of 1,112 cases, Deardorff and Dahl discuss how courts have addressed pregnancy through these two different approaches to equality. The authors explore the implications for gender equality and the evolution of how pregnancy and pregnancy-related conditions in employment can be addressed by employers.”

Alison Gash (University of Oregon) has written *Below the Radar: How Silence Can Save Civil Rights* (Oxford University Press, 978-0-1902-0115-9). “In 1993, the nation exploded into anti-same sex marriage fervor when the Hawaii Supreme Court issued its decision to support marriage equality for gay and lesbian couples. Opponents feared that all children, but especially those raised by lesbian or gay couples, would be harmed by the possibility of same-sex marriage, and warned of the consequences for society at large. Congress swiftly enacted the Defense of Marriage Act, defining marriage as between a man and a woman, and many states followed suit. Almost a decade before the Hawaii court issued its decision, however, several courts in multiple states had granted gay and lesbian couples co-parenting status, permitting each individual in the couple to be legally recognized as joint parents over their children. By 2006, advocates in half the states had secured court decisions supporting gay and lesbian co-parenting, and incurred far fewer public reprisals than on the marriage front. What accounts for the stark difference in reactions to two contemporaneous same-sex family policy fights? In *Below the Radar*, Alison Gash argues that advocacy visibility has played a significant role in determining whether advocacy efforts become mired in conflict or bypass hostile backlash politics. Same-sex parenting advocates are not alone in crafting low-visibility advocacy strategies to ward off opposition efforts. Those who operate, reside in, and advocate for group homes serving individuals with disabilities have also used below-the-radar strategies to diminish the damage cause by NIMBY (not in my back yard) responses to their requests to move into single-family neighborhoods. Property owners have resorted to slander, subterfuge, or even arson to discourage group homes from locating in their neighborhoods, and for some advocates, secrecy provides the best elixir. Not every fight for civil rights grabs headlines, but sometimes, this is by design. Gash's groundbreaking

analyses of these strategies provide a glimpse of the prophylactic and palliative potential of low-visibility advocacy.”

Christine B. Harrington (NYU) and **Lief H. Carter** (Colorado College) have co-authored the fifth edition of *Administrative Law and Politics* (Sage/CQ Press, ISBN 978-1-4522-4040-4). The authors “demonstrate how the legal system shapes administrative procedure and practice. Using accessible language and examples, the casebook provides the foundation that students, public administrators and policy analysts need to interpret the rules and regulations that support our legal system. This new edition offers a balance of case excerpts and commentary, and has been thoroughly updated.”

Harry Hirsch (Oberlin College) has published *Office Hours: One Academic Life* (Quid Pro Press, ISBN 978-1-6102-7333-6). “Even a cursory glance at today’s headlines reveals that higher education is in crisis. Tuition outpaces inflation, states slash budgets, graduation rates decline, and technology threatens to reshape everything. Universities continue to crank out new PhDs, but many will become poorly-paid members of a secondary, adjunct labor force teaching most of today’s college courses. Scholars lucky enough to be on the tenure track must publish more and more, while students at large universities sit in ever larger lectures, seldom interacting with professors. Yet every year, thousands of applicants from the world over apply to America’s most prestigious colleges and universities, and students and their families continue to spend huge sums on college. What are colleges and universities really like—from the inside? What do we do wrong, and what are we doing right? What is it like to be a professor and administrator at one of America’s prestigious educational institutions? This memoir asks these questions, in a very personal way.”

Nancy Maveety (Tulane University) has published *Picking Judges* (Transaction Publishers, 978-1-4128-6330-8). “What defines a president? Is it policymaking? A good relationship with the American people? Or is it legacy? Most would argue that legacy imprints a president in the American consciousness. A president’s federal judicial appointees may be his or her most lasting political legacy. Because federal judges serve for life, their legal policymaking endures long after a president’s term in office is over. Presidents who care about serving their mandate, who desire to maximize their policy agenda, and who wish to influence America’s constitutional fabric appoint as many federal judges as possible. This new volume in the Presidential Briefings series shows how the president’s appointment power has expanded beyond its bare constitutional outlines. In exercising their constitutional powers while paying heed to political opportunities, presidents and the Senate have together

created America’s modern judicial appointment politics. Presidents consider a host of demographic and ideological factors, candidate qualities, and electoral politics.”

Lauren McCarthy (University of Massachusetts—Amherst) has written *Trafficking Justice: How Russian Police Enforce New Laws, from Crime to Courtroom* (Cornell University Press, ISBN 978-0-8014-5389-2). “In response to a growing human trafficking problem and domestic and international pressure, human trafficking and the use of slave labor were first criminalized in Russia in 2003. In *Trafficking Justice*, Lauren A. McCarthy explains why Russian police, prosecutors, and judges have largely ignored this new weapon in their legal arsenal, despite the fact that the law was intended to make it easier to pursue trafficking cases. Using a combination of interview data, participant observation, and an original dataset of more than 5,500 Russian news media articles on human trafficking cases, McCarthy explores how trafficking cases make their way through the criminal justice system, covering multiple forms of the crime—sexual, labor, and child trafficking—over the period 2003–2013. She argues that to understand how law enforcement agencies have dealt with trafficking, it is critical to understand how their “institutional machinery”—the incentives, culture, and structure of their organizations—channels decision-making on human trafficking cases toward a familiar set of routines and practices and away from using the new law. As a result, law enforcement often chooses to charge and prosecute traffickers with related crimes, such as kidnapping or recruitment into prostitution, rather than under the 2003 trafficking law because these other charges are more familiar and easier to bring to a successful resolution. In other words, after ten years of practice, Russian law enforcement has settled on a policy of prosecuting traffickers, not trafficking.”

Anthony J. McGann (University of Strathclyde—Glasgow), **Charles Anthony Smith** (University of California—Irvine), **Michael Latner** (California Polytechnic State University) and **Alex Keena** (University of California—Irvine) have co-authored *Gerrymandering in America: The House of Representatives, the Supreme Court, and the Future of Popular Sovereignty* (Cambridge University Press, ISBN 978-1-3165-0767-4). “This book considers the political and constitutional consequences of *Vieth v. Jubelirer* (2004), in which the Supreme Court held that partisan gerrymandering challenges could no longer be adjudicated by the courts. Through a rigorous scientific analysis of U.S. House district maps, the authors argue that partisan bias increased dramatically in the 2010 redistricting round after *Vieth*, both at the national and state level. From a constitutional perspective, unrestrained partisan gerrymandering poses a critical threat to a central pillar of American democracy, popular sovereignty. State legislatures now effectively determine the political

composition of the U.S. House. The book answers the Court's challenge to find a new standard for gerrymandering that is both constitutionally grounded and legally manageable. It argues that the scientifically rigorous partisan symmetry measure is an appropriate legal standard for partisan gerrymandering, as it logically implies the constitutional right to individual equality and can be practically applied."

Paul Nolette (Marquette University) has published *Federalism on Trial: State Attorneys General and National Policymaking in Contemporary America* (University Press of Kansas 2015, ISBN 978-0-7006-2089-0). "The book presents the first broad-scale examination of the increasingly nationalized political activism of state attorneys general, which includes many recent challenges to Obama Administration policies. Nolette traces how and why this AG activism has become so prominent, illustrating how new social policy regimes of the 1960s and 1970s—adopting national objectives such as cleaner air, wider access to health care, and greater consumer protections—promoted both adversarial legalism and new forms of cooperative federalism that enhanced the powers and possibilities open to state attorneys general. The author traces how AGs have taken advantage of these new circumstances and opportunities, and how increasing political polarization has impacted the role of the AGs, through case studies involving drug pricing, environmental policy, and health care reform. These activities suggest that the federalism exercised by state attorneys general frequently complicates national regulatory regimes and raises important questions about contemporary American democracy."

Jill Norgren (CUNY) has written *Rebels at the Bar: The Fascinating, Forgotten Stories of America's First Women Lawyers* (NYU Press, ISBN 978-0-8147-5862-5), which now appears in a paperback edition. "Long before Sandra Day O'Connor and Ruth Bader Ginsburg earned their positions on the Supreme Court, they were preceded in their goal of legal excellence by several intrepid trailblazers. In *Rebels at the Bar*, the author recounts the life stories of a small group of nineteenth century women who were among the first female attorneys in the United States. Beginning in the late 1860s, these determined rebels pursued the radical ambition of entering the then all-male profession of law. They were motivated by a love of learning. They believed in fair play and equal opportunity. They desired recognition as professionals and the ability to earn a good living. Through a biographical approach, Norgren presents the common struggles of eight women first to train and to qualify as attorneys, and then to practice their hard-won professional privilege. Their story is one of nerve, frustration, and courage. This first generation practiced civil and criminal law, solo and in partnership. The women wrote extensively and lobbied on the major issues of the day, but

the professional opportunities open to them had limits. They never had the opportunity to wear the black robes of a judge. They were refused entry into the lucrative practices of corporate and railroad law. Although male lawyers filled legislatures and the Foreign Service, presidents refused to appoint these early women lawyers to diplomatic offices and the public refused to elect them to legislatures."

Jennifer K. Robbennolt (University of Illinois) and **Valerie P. Hans** (Cornell University) have co-authored *The Psychology of Tort Law* (NYU Press, ISBN 978-1-4798-1418-3). "Tort law regulates most human activities: from driving a car to using consumer products to providing or receiving medical care. Injuries caused by dog bites, slips and falls, fender benders, bridge collapses, adverse reactions to a medication, bar fights, oil spills, and more all implicate the law of torts. The rules and procedures by which tort cases are resolved engage deeply-held intuitions about justice, causation, intentionality, and the obligations that we owe to one another. Tort rules and procedures also generate significant controversy—most visibly in political debates over tort reform. *The Psychology of Tort Law* explores tort law through the lens of psychological science. Drawing on a wealth of psychological research and their own experiences teaching and researching tort law, Robbennolt and Hans examine the psychological assumptions that underlie doctrinal rules. They explore how tort law influences the behavior and decision-making of potential plaintiffs and defendants, examining how doctors and patients, drivers, manufacturers and purchasers of products, property owners, and others make decisions against the backdrop of tort law. They show how the judges and jurors who decide tort claims are influenced by psychological phenomena in deciding cases. And they reveal how plaintiffs, defendants, and their attorneys resolve tort disputes in the shadow of tort law. The authors in this work shed fascinating light on the tort system, and on the psychological dynamics which undergird its functioning."