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THEY PUBLISHED, NOT PERISHED, BUT WERE THEY GOOD TEACHERS?

Fred R. Shapiro*

It is widely recognized that teaching is accorded a far lower priority than scholarship in the reward system for American university professors. Harvard paleontologist Stephen Jay Gould has remarked about the importance of teaching in tenure decisions, “I’ve never heard it seriously considered . . . . There’s lip-service given to it.”

Douglas Kankel, a tenured biologist at Yale, has gone further, stating, “It is extremely unlikely that if you are a professor with an exceptional teaching background, you will survive the tenure process.”

The universities’ indifference, even hostility, toward teaching is symbolized by the catch-phrase publish or perish. The origins of the attitude may be tracked by pursuing the origins of the phrase. General and educational periodical indexes reveal uses of the latter in article titles going as far back as the mid-1950s. A search on the JSTOR full-text journal archive shows that the earliest example in the *Journal of Higher Education* is dated 1952.

I asked John Simpson, the editor-in-chief of the *Oxford English Dictionary*, what is the earliest use of publish or perish in the files of the *OED*. Mr. Simpson responded that their earliest citation is from a letter written by Marshall McLuhan to Ezra Pound on June 22, 1951:

The beaneries [Pound’s term for universities] are on their knees to these gents [foundation administrators]. They regard them as Santa Claus. They will do “research” on anything that Santa Claus approves. They will think his thoughts as long as he will pay the bill for getting them before the public signed by the professorry-rat. “Publish or Perish” is the beanery motto.

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5. See id.

Through subsequent research I discovered a still earlier occurrence of *publish or perish*, which now stands as the earliest known. In Logan Wilson's 1942 book, *The Academic Man: A Study in the Sociology of a Profession*, Wilson wrote the following in a chapter on prestige and the research function: "The prevailing pragmatism forced upon the academic group is that one must write something and get it into print. Situational imperatives dictate a publish or perish credo within the ranks."  


9. See id.

10. See id.

11. See id.


13. *Id.* at 767 tbl.I.

14. *Id.* at 767 tbl.II.
tion of academics who, at least by the measure of having published one or more citation landmark articles, had attained the preeminent levels of published scholarship. If the teaching prowess of these academics could be gauged in some way and compared with the teaching prowess of a control group selected from the total population of law professors, the results might be of some interest. Such an exercise might shed a little light on whether the deemphasis of teaching in universities extends to law schools and, if so, what the end results of this deemphasis have been.

My primary challenge was to come up with an indicator of teaching excellence. "Teacher of the Year" awards and the like would be nearly impossible to research—even at the home schools of the scholars, records of such honors might be incomplete. Obtaining information on student evaluations of professors was even more far-fetched. The only practical method that occurred to me was examining tributes published in law reviews upon the retirement or death of the scholar. Praise of teaching ability in a commemorative or obituary essay in the professor's own law school's law review might be suspect, as such pieces are constrained by conventions of celebration and politeness, but my theory was that a mediocre or poor teacher could be spotted by the complete absence of praise or the (presumably rare) expression of negative comments with regard to teaching. If there were no mention whatsoever of teaching excellence in a tribute, it could be guessed that the subject of the tribute was probably a mediocre or poor teacher.

My list of most-cited recent legal articles was not suitable as a basis for examination of tributes to the authors because the authors were still active. Therefore I focused on the list of most-cited articles of all time and the list of most-cited older articles. I looked up each of the included articles to determine if the author had ever had a tribute or memorial published in his (back in those days, it was not necessary to say his or her) home-school law review. To ensure that apples and oranges were not being compared, I excluded tributes that were too short (only one or two pages) to provide a fair opportunity for teaching ability to be mentioned and tributes to a retiring dean who would remain a regular faculty member (these seemed to represent special cases not comparable to other kinds of tributes). I also excluded tributes published before 1950, as they were too remote in time to be meaningful for a study of modern legal education.
What remained after these exclusions were twenty-one tributes to authors who appeared on the all-time or the older list. They cover a time-span from 1950 to 1996, roughly corresponding to the time-span of publish or perish. I read each of the tributes, counting how many said something positive, even as little as one sentence, about the teaching prowess of the subject, and how many went through the entire tribute without even that one sentence of praise.

I next obtained a control group of tributes to professors who did not appear on the most-cited all-time list or the most-cited older list. I did so by searching in the Index to Legal Periodicals database on Westlaw for articles in which the word tribute or memorial appeared in the title, or that were indexed under the headings "biography" or "obituary," excluding those articles that were not published in a law school law review or whose subject was clearly identified as a judge rather than an academic. After selecting a sample of tributes from the search results, I verified each one selected to make sure that it was in fact a retirement tribute or a memorial to a faculty member at the home institution of the law review. As before, I did not include any tributes that were very short or that were directed at someone retiring only from the deanship. I also constrained the sample to make sure that the ratio of obituaries and retirement tributes was approximately the same as the mix (13:8) in my list of twenty-one tributes to authors of highly cited articles.

The above procedure gave me a sample of tributes from the period of August 1981 (the inception of the Index to Legal Periodicals on Westlaw) to the present. To fill in the period 1950 to July 1981, matching the chronological scope of the tributes to highly cited authors, I turned to the pre-Westlaw, paper volumes of the Index to Legal Periodicals. Here I looked up the subject heading "Biography: Individual," under which the ILP indexed all tributes and memorials. I again selected a sample of tributes, distributed over the 1950-81 time period and with about a 13:8 ratio of obituaries to retirement commemorations, and restricted the sample to tributes to a retiring or deceased professor at the law review's own law school. Once again, tributes of only a page or two were avoided, as were tributes to a dean returning to regular faculty status.

15. See infra app.I.
16. See infra app.I.
Combining the Westlaw and pre-Westlaw samples, I ended up with a list of fifty tributes to use as a control group for comparison with the tributes to highly cited professors. I read through these as I had the group of twenty-one tributes, counting how many of them featured at least minimal praise of the subject’s teaching quality and how many omitted all such praise.

**RESULTS OF THIS MODEST EXERCISE**

When I tabulated the totals for the authors of the articles on the list of most-cited legal articles of all time, with the authors of most-cited older articles also added in, I found that six out of the twenty-one tributes (twenty-nine percent) made absolutely no mention of teaching prowess. For the control group of selected tributes to law professors, two of the fifty tributes (four percent) made absolutely no mention of teaching prowess.

This is an unscientific study, with too small sample sizes to permit any firm conclusions from the results. It is also possible that the control group, which covered a broader spectrum of law schools than the elite-school-dominated highly-cited-author group, is not truly comparable. There may be benign explanations for the disparity in percentages—perhaps some of the highly cited authors whose teaching was unnoted were fine teachers, but their teaching was so overshadowed by their glittering scholarship that it was forgotten by memorialists. Even so, the difference in results between the two groups is striking. It is hard to escape the judgment that while, generally, praise of teaching is a nearly universal feature of tributes to law faculty, for the most highly cited scholars, it is often completely absent from their tributes, and this despite the fact that such scholars typically are accorded much longer tributes than is the norm. Good teaching, indeed teaching period, was not part of the story of many of their lives.¹⁹

I want to close this little exploration by mentioning that, while going through the tributes to the supercited scholars, I kept my eyes open for actual negative commentary on teaching ability. I assumed that this would be rare, for obvious reasons of politeness and, in the case of still-living subjects, avoidance of giving offense, but might in some instances still slip through. In fact, I found only one instance

¹⁹. I should state in fairness that, of the fifteen out of twenty-one highly cited scholars who were praised for their teaching, a number of them were described as superb, inspirational teachers.
where an actual negative crack made it into tribute print. This was the following:

[Professor X] has never suffered fools gladly, and he has found life too short, too stimulating, too important to rehearse for the pedestrian mind the rituals of legal learning. He has always taught for those who wanted a glimpse of the future; and he has sought consciously to use the best student minds he could attract.

As a consequence there are hundreds of students who have graduated from [X Law School] untouched by a great intellect and an extraordinarily warm and generous personality. That is their loss.20

Although the negative is blended in with extremely positive statements, there is no mistaking the import of this passage, that Professor X (who is, incidentally, a revered scholar of towering importance) had some kind of problem in teaching the average law student. And perhaps that import is a microcosm of the general import of my findings: in a reward system based, in law schools as in universities as a whole, on published scholarship credentials, emphasis on teaching inevitably perishes, and those who succeed admirably in the scholarship game may nonetheless have some kind of problem with the task of teaching law students.

20. Citation censored by author.
APPENDIX I: TRIBUTES TO HIGHLY CITED SCHOLARS

APPENDIX II: CONTROL GROUP OF SAMPLE TRIBUTES

37. Symposium, *Dedication in Memory of Professor William Dewey Rollison*, 47 Notre Dame Law. 7 (1971).
46. *In Memoriam: Professor Howard Lewis Hall*, 1961 Wis. L. Rev. 167.