

2018

Integrating Adjunct Faculty Into Teaching Real Estate Transactions Law & Practice--Both in the Classroom and Online, 53 Wake Forest L. Rev. 947 (2018)

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INTEGRATING ADJUNCT FACULTY INTO TEACHING
REAL ESTATE TRANSACTIONS LAW & PRACTICE—
BOTH IN THE CLASSROOM AND ONLINE

*Celeste M. Hammond**

TABLE OF CONTENTS

| | | |
|------|---|-----|
| I. | INTRODUCTION..... | 947 |
| II. | TEACHING FROM A TRANSACTIONAL PERSPECTIVE..... | 950 |
| III. | EFFECTIVELY INTEGRATING ADJUNCT FACULTY IN LEGAL EDUCATION | 953 |
| IV. | MAKING USE OF NEW TECHNOLOGY TO GET THE “BEST” FACULTY AND TO REACH MORE STUDENTS—DISTANCE LEARNING | 956 |

I. INTRODUCTION

I welcome the invitation to share my experience and ideas on teaching law students about the real world of real estate from a transactional perspective, beyond the appellate cases that are the basis of so much traditional legal education. I am a founding mother of this Association of American Law Schools (“AALS”) section on Real Estate Transactions. I have been delighted to see the section’s broad focus on the field of real estate law and practice, now extended to teaching by Professor Tanya Marsh and her team of committee members. Professors Daniel Bogart, R. Wilson Freyermuth, Tanya Marsh, and Greg Stein are all well-known scholars and teachers. I will join them in sharing my suggestions about providing our students the best learning experiences possible, which includes the use of successful experienced practitioners as adjuncts to keep the “real” in real estate education.

Adjunct professors are critical to meeting the goal of preparing our students for practice. No full-time real estate professor is familiar with all aspects of real estate law and practice, or at least not for very long after they left practice to become professors—where the criteria for advancement is much different. Adjuncts are the ones doing the

* I acknowledge the collaboration I have had with Virginia Harding in thinking and writing about Transactional Law and Teaching. Additionally, I thank the many dedicated adjuncts, named and unnamed, for teaching our students about commercial real estate law and how transactional attorneys add value to their clients’ endeavors.

deals and responding to the trends that are not immediately reflected in the text books used in class.¹ Adjuncts are a resource that too often is ignored. In his recent article, adjunct Professor Jay Gary Finkelstein discusses the continuing obstacles to bringing practitioners into the law school classroom.²

The significance of the transactional perspective in lawyering has been ignored for too long. Even though legal education emphasizes litigation and dispute resolution, studies indicate that over fifty percent of lawyers “practice some aspect of transactional law.”³

Luckily, I have missed some of the emotion that Professor Finkelstein mentions about what I will call the “transactional lawyer grudge.”⁴ Because I practiced for eight years before coming into teaching full time, I was comfortable interacting with adjuncts. The law school dean who rejected my application to be a new professor because I had “been practicing too long” now seems completely out of step, but Professor Finkelstein is correct that most academics are not comfortable with practitioners because they have never practiced law nor been involved in bar association activities.⁵

I am comfortable with the collaboration. Bar groups like the Chicago Bar Association and Chicago Mortgage Attorneys Association in Chicago, the American Bar Association (“ABA”) Real Property, Probate & Trust Law Section, and especially the American College of Real Estate Law recognize professors as an integral part of their membership.⁶ They rely on us for analysis of new law, for informing members of new publications, and even provide some with opportunities to be guests in a class, coteach a course, or even teach as adjunct. I think that this collaboration is important to meet the goal of preparing our students for practice. We full-time professors learn a lot from practitioners about the “real world” of real estate as it has evolved over the years, while the practitioners rely on us to keep them up to date on the best practices in teaching. This is not surprising since collaboration is one of the skills that all lawyers need.⁷ Identifying “collaboration” as a skill to teach now may seem

1. See Jay Gary Finkelstein, *Barriers to Entry: Putting it Together, School by School*, 2 J. EXPERIENTIAL LEARNING 129, 130 (2017), <http://digitalcommons.tourolaw.edu/jel/vol2/iss1/9>.

2. *Id.* at 138–39.

3. *Id.* at 134.

4. *Id.* at 138–39.

5. See, e.g., *id.*, at 130, 137; Barbara Lentz & Andrew Verstein, *Shared Perspectives and Strategies in Course, Curriculum, & Competency Exercise Design*, 18 TENN. J. BUS. L. 452, 457 (2016).

6. See Emily Zimmerman, *Should Law Professors have a Continuing Practice Experience (CPE) Requirement?*, 6 NE. U. L.J. 131, 162–163 (2013).

7. See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 88–89 (2007) (encouraging collaboration as a principle for teaching law in part because attorneys often work in groups).

obvious, but even twenty years ago “skills” meant the ability to write a memorandum of law or an appellate brief.⁸ Drafting documents came later with the development of best practices in legal education by the ABA Section of Legal Education and Admissions to the Bar.⁹

In the twenty years since the Center for Real Estate Law (the “Center”) was created at the John Marshall Law School,¹⁰ I have served as its director. This has provided me with the privilege of working with the original advisory board that included experienced real estate practitioners who populate Chicago’s best real estate firms—from the big firms like Bell Boyd & Lloyd, Arnstein & Lehr, Piper Rudnick, and Schiff Hardin to the boutique firms like Gould & Ratner.¹¹ After all, Chicago was and still is one of the top “real estate cities” in the country.¹² Nationally recognized real estate lawyers like Virginia Harding, Tom Homburger, Janet Johnson, and Ray Werner helped me to develop the curriculum that would prepare a student for a practice in commercial real estate. Additionally, the advisory board identified the experienced practitioners who became our adjunct faculty. These practitioners knew the specialties of their colleagues with whom they had transacted, and they had some good sense about who would make a great teacher too.

At least in dealing with the hiring of part-time faculty, much of Daniel Bogart’s experience as academic dean parallels my work as director of the Center.¹³ The Center has a post-JD LLM degree for attorneys and a joint JD/LLM for JD students who come to law school knowing that they want to dive right into commercial practice or work in the commercial real estate business.¹⁴ The Center works to help

8. *Id.*

9. See, e.g., ROBERT MACCRATE ET AL., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 233–68 (1992); STUCKEY ET AL., *supra* note 7, at i–v; WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 21–46 (2007).

10. Jmlschicago, *Graduate Real Estate Law Degree Programs: An Overview*, YOUTUBE (July 22, 2011), <https://www.youtube.com/watch?v=M5TmHTeIQx4&list=PL6F0C935D967F9179&t=0s&index=1>.

11. See generally The John Marshall Law Sch., *Real Estate Advisory Board*, THE CTR. FOR REAL ESTATE LAW, <https://www.jmls.edu/academics/realestate/advisory-board.php> (last visited Sept. 17, 2018) (exemplifying the diverse employment of current board members, including large firms and boutique firms).

12. Chicago has a vibrant economy that requires land acquisition, commercial real estate financing, and construction and land development. This cultivates issues related to ownership of income producing real property like retail, office, and industrial properties.

13. Daniel B. Bogart, *ABA Learning Outcomes Compliance and the Real Estate Course Trajectory—Reflections of an Outgoing Associate Dean*, 53 WAKE FOREST L. REV. 923, 933 (2018).

14. See *The Center for Real Estate Law*, JOHN MARSHALL L. SCH., <http://www.jmls.edu/realestate> (last visited Nov. 13, 2018).

JD students realize that they have the ability to take courses offered at only a few other law schools.¹⁵ I had a rare amount of autonomy to develop the Center from deans who had a hands off approach.¹⁶

II. TEACHING FROM A TRANSACTIONAL PERSPECTIVE

Like most new full-time professors, I taught first-year courses including Property and Contracts. It was difficult to ignore the transactional aspects of practice and the skill set I had developed from my years in practice. I found myself using actual documents from practice in my first-year courses.¹⁷ My students actually saw forms from practice and contracts while in law school, which is important in the current era with brands like “practice ready”¹⁸ and “experiential” abound.¹⁹

For example, when teaching Property, I put together classes combining the law about restrictive covenants (those are the ones that “run with the land”), public regulations like those of the California Coastal Commission, and the “takings” issues that arose in a case going to the US Supreme Court.²⁰ I travelled to the Sea Ranch on the coast of California about three hours north of San Francisco to look at the “DIRT”²¹ as all careful real estate transactional attorneys do. I also reviewed the Homeowner Association (“HOA”) documents that set up the Sea Ranch.²² I even produced an hour-long video tape tour

15. *See id.*

16. Dean Gilbert Robert Johnston was the Dean at the time my leadership of the Center for Real Estate Law began. Dean Johnson recognized that I had the ability to bring the outside world of practice to our institution.

17. *See* Celeste M. Hammond, *Borrowing from the B Schools: The Legal Case Study as Course Materials for Transaction Oriented Elective Courses: A Response to the Challenges of the MacCrate Report and the Carnegie Foundation for Advancement of Teaching Report on Legal Education*, 11 TENN. J. BUS. L. 9, 28 (2009). *See also* Celeste M. Hammond, *Integrating Doctrine and Skills in First-Year Courses: A Transactional Attorney's Perspective*, 17 LEGAL WRITING 409, 415–425 (2011) (providing examples of practical exercises for first-year property classes).

18. *See generally*, Robert Condlin, *Practice Ready Graduates: A Millennialist Fantasy*, 31 Touro L. Rev. 75 (2015) (disputing the reality of practice ready).

19. Finkelstein, *supra* note 2, at 133 (criticizing the litigation based instruction so much a part of the law school curriculum even in typical business law courses).

20. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 828, 841–42 (1987).

21. The term “DIRT” is the name of one of the first legal blogs, created by Professor Patrick Randolph, Jr. who was a leader in the transactional perspective movement until his death. The DIRT blog continues to be administered by the ABA and University of Missouri Kansas City Law School. It brings together practitioners and academics to consider important issues facing the industry and its attorneys. *See* WELCOME TO THE DIRT, <http://dirt.umkc.edu/> (last visited Nov. 13, 2018).

22. *Welcome to the Sea Ranch*, THE SEA RANCH, <http://www.tsra.org> (last visited Nov. 13, 2018).

of the premises and what I witnessed to share with my students! Using what is now termed a “formative assessment,” I had my students answer questions posed by a simulated buyer client. This assessment required the students to read the HOA documents to give them the legal context. After viewing videos of the public easements going down from Highway 1 to the Pacific Ocean, we discussed how the government regulations requiring those easements surprised the owner/developer whose plans preceded those government requirements. Students liked the “DIRT” of the experience.

In my Contracts class I use several simple form contracts as a base for students to understand the disputes in the appellate cases. It is not easy to convince first-year students that looking at the contract is at least as important as looking at the appellate opinion in the book. When I cover breaches and excuses for nonperformance, I ask students to consider how the drafting by the transactions’ attorneys might have made a difference in preventing a dispute or at least discouraging litigation. The four-to-five-person teams into which I divided up my large class worked out formative assessment problems and made presentations to the entire class.²³ Depending on the situation, students might interview a client or negotiate a term of the agreement. OMG—this is integrating transactional skills into the first year!²⁴

Several memorable transactions conferences confirmed the significance of this aspect of practice and this approach to teaching law.²⁵ As Executive Director of Emory’s Center for Transactional Law and Practice beginning in 2007, Professor Tina Stark helped establish the Transactional Law and Education biennial conference series.²⁶ AALS held a workshop on transactional law as part of the Mid-Year Meeting Conference on Business Association in June 2009 in Long Beach, California.²⁷ Recognizing that “[s]ince the last Conference on Business Associations in 1998, business, law, and legal education have all undergone profound change, rendering the field of business associations teaching and scholarship an even more robust and

23. See Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students’ Collaborative Skills*, 38 WM. MITCHELL L. REV. 1162, 1169 (2012) (explaining how teams can enhance learning).

24. See Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 603–04 (2007) (reporting that actual case studies like the sort used in business schools and medical schools, rather than appellate cases, should be integrated even into first year courses at Harvard Law School).

25. See, e.g., Rachel Arnow-Richman, *Scaling Carnegie: Four Iterations of Teaching Transactional Workplace Law Skills*, 18 TRANSACTIONS 439, 439 (2016) (discussing four models for integrating transactional lawyering skills into the doctrinal classroom during the most recent conference held in 2016).

26. George W. Kuney, *Introduction to the Special Report*, SPECIAL REPORT TRANSACTIONS 1, 1 (2009).

27. Association of American Law Schools, *Mid Year Meeting: AALS Workshop on Transactional Law*, AALS NEWS, May 2009, at 6, 6.

exciting one,”²⁸ this conference brought together over thirty-five members of the academy (yes, both Tina Stark and I were invited presenters)²⁹ to examine the changes and make suggestions for the future in this important area of legal education.

Around the same time that I began teaching, developing the Center for Real Estate Law, and taking advantage of the transactions conferences, scholars were examining law school course materials, especially the ubiquitous appellate cases coming out of the Harvard Law School’s early efforts, to make the study of law more academic than the apprenticeships approach that had been common until then.³⁰ The use of appellate cases, rather than the case studies developed for the Harvard Medical School and its College of Business, to learn the law has resulted in an emphasis on the litigation practice of attorneys.³¹ That emphasis has been difficult to change. Amy Deen Westbrook commented, “the Langdellian model is particularly out of touch for the simple reason that transactional lawyers rarely have much to do with appellate cases.”³² A push to use case studies, rather than appellate cases, as a way to develop the context of the law in practice followed.³³ The result is a wide number of texts that look like traditional casebooks with the word “Transactions” in their titles³⁴ and several law school texts that consist of case studies rather than appellate cases.³⁵

28. Association of American Law Schools, *AALS Mid Year Meeting Conference on Business Associations*, AALS NEWS, May 2009, at 4, 4.

29. Celeste M. Hammond, Professor, J. Marshall L. Sch., Using Legal Case Study: United Homes Inc. Portfolio Real Estate Auction to Teach Commercial Real Estate Transactions, Presentation at AALS Workshop on Transactional Law (June 11, 2009).

30. See generally Celeste M. Hammond, *Borrowing from the B Schools: The Legal Case Study as Course Materials for Transaction Oriented Elective Courses: A Response to the Challenges of the MacCrate Report and the Carnegie Foundation for Advancement of Teaching Report on Legal Education*, 11 TRANSACTIONS 9, 18–20 (2009) (discussing how Harvard Law School’s case method sought to make the study of law more academic, but has been criticized as not accurately reflecting changes in the legal community).

31. *Id.* at 25, 29–31.

32. Amy Deen Westbrook, *Learning from Wall Street: A Venture in Transactional Legal Education*, 27 QUINNIPAC L. REV. 227, 261 (2009).

33. Hammond, *supra* note 30, at 30–31.

34. See, e.g., *id.* at 10.

35. See, e.g., JOHN S. DZIENKOWSKI & AMON BURTON, *ETHICAL DILEMMAS IN THE PRACTICE OF LAW: CASE STUDIES AND PROBLEMS* (2006); D. GORDON SMITH & CYNTHIA A. WILLIAMS, *BUSINESS ORGANIZATIONS: CASES, PROBLEMS, AND CASE STUDIES* (3d ed. 2012).

III. EFFECTIVELY INTEGRATING ADJUNCT FACULTY IN LEGAL EDUCATION

It is not enough to find successful practitioners and send them into the classroom with high fives. Just as the young attorney learns from working with experienced attorneys, the new adjunct needs to make the transition from being a practitioner to a successful teacher. The days of giving the new adjunct the casebook and a course outline are long gone. Today's syllabus not only includes assignments but also includes learning objectives—things that practitioners are likely to find new and much different from when they were in school—and assessments throughout the course, instead of the single final examination.

The resistance of the full-time faculty to having practitioners involved with teaching JD students challenges our ability both to convince worthy candidates to teach and then to devote the resources necessary to make them effective teachers. Professor Finkelstein who is an adjunct faculty member at Stanford, Berkeley, Georgetown, and American comments: "Practitioners who teach present a threat to faculty who teach but do not practice. This is particularly true with respect to transactional practice where few full time faculty have experience."³⁶ Andrew Verstein, a full-time professor at Wake Forest, is refreshingly candid in admitting his anxiety about teaching with someone who has had significant practice experience and teaching experience like Barbara Lentz, with whom he shares responsibilities for teaching first-year Contracts.³⁷ He explains how even having a partner from a construction firm as a guest lecturer would "make someone in my position uncomfortable . . ."³⁸

Moreover, even some of those who notice the lack of cooperation between themselves and full-time faculty are optimistic that progress will be made. Professor Finkelstein foresees the modification of doctrinal courses to integrate practical skills by a partnership using a hybrid model where lectures might be available to students online to be heard outside of the classroom while the class time is used for developing skills through exercises.³⁹ Andrew Verstein thinks there "are real potentials for bridge building and for trust building and for validation" between the full time faculty who have the fear but also recognize the advantages of having their students be more "practice aware,"⁴⁰ even if not "practice ready."⁴¹ Professor Andrea Boyack supervises a blog for law school professors where she initiated a

36. Finkelstein, *supra* note 2, at 130.

37. See Lentz & Verstein, *supra* note 5.

38. See *id.* at 460.

39. Finkelstein, *supra* note 2, at 154.

40. See Jay Gary Finkelstein, *Practice in the Academy: Creating "Practice Aware" Law Graduates*, 64 J. LEGAL EDUC. 622, 630–31 (2015).

41. See Lentz & Verstein, *supra* note 5, at 464.

discussion encouraging such partnerships between full-time faculty and adjuncts.⁴²

For the LLM in Real Estate Law at John Marshall Law School, we set our goal to prepare our graduates to practice with the knowledge and skills comparable to those of third-to-fifth-year associates at major firms specializing in commercial real estate practice. In my role as director of Center for Real Estate Law at John Marshall,⁴³ I have had wonderful relationships with many of the finest adjuncts teaching transactional law. I started out having attorneys like David Chernoff (then associate general counsel for the MacArthur Foundation—a noteworthy owner of land)⁴⁴ come into my Property and Real Estate Transactions classes as a guest lecturer. Later, he taught our Drafting & Negotiations Workshop course over many years. Tom Homburger took on several roles with our Center over its twenty years. Tom taught the elective JD course in Commercial Real Estate Transactions and then agreed to serve on the first Advisory Board in 1993.⁴⁵ While also a partner at K&L Gates, he taught the LLM course for many years; now, he is teaching at the University of Arizona Law School as Part-Time Professor of Practice.⁴⁶ Janet Johnson of Schiff Hardin and I worked together as officers of the Chicago Bar Association Real Property Law Committee where we both served as chair.⁴⁷ Janet served on the Advisory Board and then taught the Commercial Real Estate course, which she now teaches as an online course.⁴⁸ However, my collaboration in the truest sense has been with Virginia Harding. As a partner at Gould & Ratner, Virginia is known as a “Dirt Lawyer” extraordinaire.⁴⁹ She represents developers of land in the exurbs of Chicago.⁵⁰ Virginia has

42. See Andrea Boyack, *Get “Practice Ready.” Get Set. Go!*, PRAWFSBLAWG (Aug. 27, 2015, 11:29 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2015/08/get-practice-ready-get-set-go.html>.

43. See *The Center for Real Estate Law*, JOHN MARSHALL L. SCH., <http://www.jmls.edu/realestate> (last visited Nov. 13, 2018).

44. See *Board of Trustees*, VANDERCOOK COLL. OF MUSIC, <http://www.vandercook.edu/about/board-of-trustees/> (last visited Nov. 13, 2018).

45. See *Thomas C. Homburger*, K&L GATES, http://amsecc.org/wp-content/uploads/galleries_AmSECC_Board_documents_Mr_Homburger_Thomas.pdf (last visited Nov. 13, 2018).

46. See *Commercial Real Estate Loan Documents: Current Structures and Negotiating Trends*, STRAFFORD, <https://www.straffordpub.com/products/commercial-real-estate-loan-documents-current-structures-and-negotiating-trends-2018-06-14> (last visited Nov. 19, 2018).

47. See *Janet M. Johnson*, PRACTISING LAW INST., https://www.pli.edu/Content/Faculty/Janet_M_Johnson/_/N-4oZ1z0zqsq?ID=PE416173 (last visited Nov. 13, 2018).

48. See *id.*

49. See *Virginia M. Harding*, GOULD & RATNER, <http://www.gouldratner.com/bio/virginia-m-harding> (last visited Nov. 13, 2018).

50. See *id.*

been on the Advisory Board since its inception.⁵¹ She has taught the basic real estate transactions course for many years.⁵² More recently we have cotaught courses in Leasing Ownership & Management and Climate Change Law. Since 2014 we have developed and cotaught the Leasing course and Climate Change Law as online courses. She has presented at the Emory Transactional Law Conference for which she authored an article about teaching transactions online.⁵³

Dean Darby Dickerson started her tenure at John Marshall Law School in January 2017⁵⁴ with many initiatives. Among them was the appointment of a full-time faculty member, Professor Ardath Hamann, to serve as an Associate Dean for Faculty Development.⁵⁵ This administrative position is to be held by a full-time faculty member and it functions to support the work of the adjuncts teaching here. Dean Dickerson's leadership reflects the ongoing relationships that I have witnessed between our full-time faculty and our adjuncts.

One more suggestion to those who are involved with preparing adjuncts to teach in real estate courses—try a “Teach-In”!⁵⁶ As I became responsible for identifying and preparing new adjuncts for their teaching in the LLM degree program in Real Estate Law, I came across *The Adjunct Faculty Handbook* in its first edition published by Sage Publications in 1996.⁵⁷ I bought copies for my adjuncts and directed their attention to specific chapters. As I comment in my article about how I developed ways to prepare adjuncts, “[M]any found the chapter on developing lesson plans and syllabi invaluable, which is not surprising since the practice of law does not routinely require practitioners to consider course content nor to draft syllabi.”⁵⁸ The Teach-In was an early attempt to prepare practicing attorneys to teach not as they had been taught in law school, but in a fashion that promoted integrated learning.⁵⁹ As adult learners, our adjuncts

51. *See id.*

52. *See id.*

53. Virginia M. Harding, *Teaching Professional Skills in an Online Substantive Course from the Perspective of an Adjunct Professor*, 18 TENN. J. BUS. L. 529, 529 (2016).

54. *See* Globe Newswire, *The John Marshall Law School Selects Darby Dickerson as New Dean*, CNBC (Oct. 17, 2016), <https://www.cnbc.com/2016/10/17/globe-newswire-the-john-marshall-law-school-selects-darby-dickerson-as-new-dean.html>.

55. *See* The John Marshall Law School, *John Marshall Announces New Faculty Administrators*, JOHN MARSHALL L. SCH. (Dec. 14, 2017), <https://news.jmls.edu/featured-news/john-marshall-announces-new-faculty-administrators/>.

56. Celeste M. Hammond, *For Adjunct Faculty, Try a Teach-In*, L. TCHR., Spring 1998, at 4.

57. *See* THE ADJUNCT FACULTY HANDBOOK (Virginia Bianco-Mathis & Neal Chalofsky eds., 1996).

58. Hammond, *supra* note 56, at 4.

59. *See id.*

would not benefit from my merely delivering a lecture at the Teach-In, passing out some handouts, and considering the matter handled. Instead, we decided to provide the adjuncts with an array of teaching models that they could emulate for their particular course. Based upon my own experience as a new teacher, I decided to structure the Teach-In as a simulated three-hour class in which the adjuncts as students would both discover and try out skills that I wanted them to adopt in their own teaching. This approach was hugely successful. I recommend it to those who will teach as adjuncts as well as to those making sure the adjuncts meet the ABA effective teaching standards.⁶⁰

The next big challenge for me is to help adjuncts move from teaching in the classroom to teaching online. For the adjunct that enjoys being the sage on the stage and having an opportunity to regularly engage face to face with students, this is hard. As the Center develops all of its courses for online delivery by spring 2019, having this collaborative relationship—a true partnership—with the adjuncts will be critical to successful teaching.

IV. MAKING USE OF NEW TECHNOLOGY TO GET THE “BEST” FACULTY AND TO REACH MORE STUDENTS—DISTANCE LEARNING

Dean Judith W. Wegner⁶¹ introduced me and Virginia Harding to Distance Learning in 2001 when Dean Wegner reported her earning a Certificate in Distance Learning for Higher Education through a program at the University of Wisconsin Madison. The program itself was completely online—a true example of teaching and learning by modeling. At that point in time, the University sent CDs to its students, and then we practiced what we learned by interacting with each other via a discussion board. Of course, the other students in the cohort were impressed—they were newbies at college teaching, and I was an experienced and tenured professor of law. Virginia actually completed the certificate program; I did not.⁶²

Legal education is driven by the accreditation of the ABA which most states look to for verification that their law graduates can take the bar examination.⁶³ ABA Standards control the ability of a law

60. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS ch. 4, Standard 403(b) at 28 (AM. BAR ASS'N 2018).

61. Judith W. Wegner served as Dean of the University of North Carolina at Chapel Hill School of Law from 1989-1999. *Former Dean Judith Wegner Honored for Service to UNC*, UNC SCH. L. (Jan. 23, 2008), <http://www.law.unc.edu/news/story.aspx?cid=79>. Wegner retired from the school in December 2016. *Judith Welch Wegner*, UNC SCH. L., <http://www.law.unc.edu/faculty/directory/wegnerjudithwelch/> (last visited Nov. 13, 2018).

62. As many law students taking online courses discover, these courses may involve even more work than the traditional course.

63. See Herb D. Vest, *Feeling the Giant: Breaking the ABA's Stranglehold on Legal Education in America*, 50 J. LEGAL EDUC. 494, 497 (2000); see also United

school to use distance education in teaching.⁶⁴ Distance education is defined as a course “in which students are separated from the faculty member or each other for more than one-third of the instruction and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously.”⁶⁵

Legal education has been skeptical of distance learning (as legal educators have been of most change). Distance learning is a “disruptor”⁶⁶ to the industry. In the context of business it means to “radically change . . . as by introducing a new product or service that creates a new market.”⁶⁷ Now, distance learning is mentioned frequently, especially when the new requirement of experiential learning comes up, and it is at least something which legal education needs to deal with.⁶⁸ For example, Simon Canick mentions it in his article about bringing technology skills into the law school curriculum.⁶⁹ The ABA Standards are evolving, albeit slowly, to permit teaching entire JD courses by distance learning technology.⁷⁰ Programs that are labelled ‘hybrid’ like the one at William Mitchell College of Law in 2015 use a combination of a week of in-person instruction and end with an in-person session at the conclusion of the online course.⁷¹ Full-time JD programs such as those conducted by Concord are not accredited by the ABA.⁷²

For most law schools, even using the “flipped” classroom is an innovation.⁷³ I began my experiment with distance learning as a

States v. Am. Bar Ass’n, 135 F. Supp. 2d 28, 30 (D.D.C. 2001) (discussing the ABA’s function as the Department of Education’s recognized accreditation agency for law schools). This hallowed position of the ABA for this role has come under criticism. However, that is way beyond the scope of my comments here.

64. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS ch. 3, standard 306 at 19 (AM. BAR ASS’N 2018).

65. *Id.* (providing details of bar eligibility requirements for the various states including use of distance education in Standard 306).

66. See *Definition of Disrupt*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/disruptor> (last visited Nov. 18, 2019). Disruptors by technology to the commercial real estate industry will be the subject of one of the Center for Real Estate Law’s future conferences.

67. *Id.*

68. See Elizabeth Olson, *Law Schools Are Going Online to Reach New Students*, N.Y. TIMES (June 22, 2016), <https://www.nytimes.com/2016/06/23/education/law-schools-are-going-online-to-reach-new-students.html>.

69. See Simon Canick, *Infusing Technology Skills into the Law School Curriculum*, 42 CAP. U.L. REV. 663, 673 (2014).

70. See, e.g., Jack Crittenden, *How Distance Learning is Changing Legal Education*, NAT’L JURIST, Spring 2017, at 10.

71. G.M. Filisko, *Bricks and Bytes: Hybrid Law School Program Allows Far-Away Students to Earn Degree*, ABAJ., May 2015, at 31 (describing this first ABA approved program).

72. Vest, *supra* note 63, at 501.

73. See Canick, *supra* note 69, at 678 (describing flipped classrooms).

response to the Polar Vortex hitting Chicago and most of the eastern part of the United States in January, 2014. Indeed, I missed planned travel to the AALS annual meeting in New York City because airports were shut down for the relevant days. John Marshall Law School, in one of its few snow days, was closed during the first week of the spring semester. Rather than inconvenience my students by scheduling several make-up classes on a Friday night or Saturday, I audiotaped lectures with the regular PowerPoint presentations I already was using for classes. My students were very grateful in a winter that continued to produce record snow in the region. And this substitution of online lectures for a few regular Contracts and Real Estate Transactions classes was well within the accreditation regulations.⁷⁴

ABA Standards regarding distance learning do not apply to LLM and other non-JD degree academic programs. With more than sixty online programs offered, the number of such programs has more than doubled since 2014.⁷⁵ These have been the places for experimenting.⁷⁶ The John Marshall Law School offers seven LLM programs that are totally or partly available online.⁷⁷ John Marshall offers over fifty online courses that are available to both JD and LLM students.⁷⁸ The Center for Real Estate Law itself is on schedule to be totally online by spring 2019. These online courses are being developed and taught by adjuncts who have taught their courses in the traditional classroom!

The collaboration continues. I will benefit from the practice-based knowledge and skills that the adjuncts bring to their courses, and they will learn how to teach in this new way. Based upon my experience in distance education, information from other academics like Ken Randall,⁷⁹ who is exploring the appropriate use of distance learning in legal education, and the empirical study I performed using surveys of students in both traditional and online courses, I am convinced that transactional skills can be taught online.⁸⁰ This new format for teaching law is especially appropriate for adjuncts because it allows them to fit the teaching into their

74. ABA STANDARDS, *supra* note 64, Standard 306, at 19 (not defining a course with one-third less of the course instruction occurring online as a “distance education” course).

75. Crittenden, *supra* note 70, at 10–12.

76. See Steven C. Bennett, *Distance Learning in Law*, 38 SETON HALL LEGIS. J. 1, 7 (2014).

77. The John Marshall Law School LL.M. programs are: Real Estate Law, International Business & Trade, Intellectual Property, Information Technology, Estate Planning, Tax, and Employee Benefits.

78. See *JD Law Courses Online*, JOHN MARSHALL L. SCH., <https://www.jmls.edu/academics/jd/jd-online.php> (last visited Sep. 12, 2018).

79. See Crittenden, *supra* note 70, at 10 (Ken Randall is the former Dean of University of Alabama Law School where he developed a totally online LLM in Business Transactions. He is founder and CEO of iLawVentures which provides online course content for law schools).

80. See *e.g.*, Celeste M. Hammond et al., *Online Learning and Transactional Skill Courses*, 18 TRANSACTIONS 521, 521 (2016).

schedules. Especially with an asynchronous approach, the lectures are prepared ahead of time and videotaped or audiotaped for the students. Interactivity by discussion forums and team work occur on the schedule of the students. This is surely a special place in legal education for that partnership between law school professors and adjuncts to expand.