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The Uneasy Integration of Adjunct Teachers into American Legal Education

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Our infamous foreparent Langdell, sometimes called the founder of modern legal education, considered it essential to his plan that law professors be schooled in legal theory and, preferably, not contaminated by the experiences inherent to the practice of law. Nearly one hundred years post-Langdell, Edward J. Devitt characterized this antipragmatic vision as "Langdell's disease."[1] This infectious disorder may still be contaminating American legal education, but in the last twenty years two cures to Langdell's disease have been administered at most law schools: permanent tenure-track or long-term-contract clinical faculty, and the use of adjuncts as classroom teachers. This discussion focuses on some of the issues surrounding the use of adjuncts.

In many urban areas, a rich and varied community of potential adjunct faculty is available, and law schools make frequent use of them. In the greater Washington region, for example, it is not unusual for a law school to list anywhere from 100 to 200 adjunct faculty. Even when you set aside writing and advocacy instruction, at some law schools adjuncts teach 20 to 35 percent of the upper-level curriculum.[2]

Despite their numbers, too often adjuncts remain shadowy figures who enter the law school under cover of darkness, rarely participating in the intellectual dialog of the institution. Even more rarely do they participate in discussions about changing pedagogical styles, testing methods, or other topics pertinent to teaching.

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Much of this essay is based on my own experience; as academic and associate dean I was responsible for administration of the adjunct law faculty at the American University for five years. Ideas and sections of this paper were presented at the AALS Annual Meeting in 1994 and again in 1996 at the ABA Conference on Law School Administration, held by the Section of Legal Education and Admissions to the Bar.

1. Law School Training: The Key to Trial Advocacy, 65 A.B.A. J. 1800, 1802 (1979).
2. Robert A. Stein noted that some law school deans predict "greater use of adjunct faculty to teach lawyering skills, possibly in team teaching arrangements with permanent faculty." The Future of Legal Education, 75 Minn. L. Rev. 945, 955 (1991).

Given the volume of adjunct teaching at many schools, it is worth taking time to talk through a few issues raised by the MacCrate Report,[3] and then to consider such other matters as relations between adjuncts and full-time faculty;[4] the training of adjuncts; their use for specialized courses and externships; their compensation; and the hiring and evaluating of adjunct teachers.

The MacCrate Report makes clear that law schools must teach skills along with theory and doctrine. The report laboriously sets out the menu of skills that its authors believe are essential to the lawyering process. It urges law schools to integrate those skills, from initial client contact through to settlement, into the curriculum of the school.

One way to address MacCrate-based concerns is to use a corps of adjuncts to supplement conventional offerings in the curriculum. But even a large, well-developed adjunct faculty does not guarantee that the skills side of MacCrate is satisfied. When adjuncts are used in conventional upper-level courses, the likelihood that they will achieve the goals of the MacCrate Report is low. It is a safe guess that most adjuncts in that setting see themselves as "law professors." Either by design or by coincidence, they will do to their students in the classroom what was done to them when they were law students two or three decades ago—a time when a certain level of satirical nastiness was not only accepted but viewed as an essential part of law teaching. In this outdated model, much of the pragmatism and experience adjuncts have achieved in the practice of law is probably lost or set aside in favor of perpetuating some bizarre Langdellian psychodrama.

This leads me to two important topics—the relationship with full-time faculty and adjunct training.[5]

Newly hired adjunct faculty are never too old, too distinguished, or too wise to be above an indoctrination program carefully designed to communicate the few things on which your faculty might agree. Every adjunct hired should be Mirandized as follows, although the substance of the warning will vary from school to school:

3. American Bar Association Section of Legal Education and Admissions to the Bar, Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (Chicago, 1992).

4. As for displacement of full-time faculty, I would only point out that adjuncts are hired because full-time faculty want to have a diversified curriculum and also want to have lower teaching loads. Any time a member of the full-time faculty expresses concern that a particular course is being taught by an adjunct, I recommend this reply: "I will be happy to assign the course to you instead."

5. The necessity of taking an aggressive approach in training adjuncts is barely debatable. "Adjunct instructors are difficult to supervise. It is also difficult to keep quality adjunct faculty in these courses. The teaching ability, diligence and dedication of adjuncts is uneven." Lewis D. Solomon, Perspectives on Curriculum Reform in Law Schools: A Critical Assessment, 24 U. Tol. L. Rev. 1, 21–22 (1992) (discussing adjuncts in writing and advocacy programs).

> Students do not have the right to remain silent. Anything students say can and will be used, creatively and effectively, to encourage a structured and flowing discussion. Students have a right to a rigorous and challenging classroom, but not one that subjects them to the kind of satirical abuse that you might have experienced as a law student.

Continuing the basic rights lecture, you should tell the adjunct:

> You have the right to lecture, but understand that while lecturing can feel good and be an opportunity for you to organize and present information in a way that you have always wanted, it is the least effective form of teaching with the lowest long-term retention of any method you might choose.
>
> Students have the right to know at the beginning of the semester what type of testing and evaluative mechanisms will be used. Students have the right to know what policies you will follow on attendance and class participation. Students have the right to know how, when, and where you will be available outside class for personal meetings and discussions of material. Students have the right to request (although you do not have an absolute obligation to provide) your assistance in their development in the lawyering marketplace.

Having thus Mirandized the adjunct with this lecture, you should present a clear picture of the kinds of teaching methods used and the success rates achieved by different faculty using methods such as simulation. You should explain the classroom technology that may be available, and initiate a kind of earthy discussion on how much time and energy should go into preparing for an individual class.

In the course of indoctrinating the new adjunct, you should mention the grave risks inherent in believing that one can prepare one's own materials for a course the first time through. This is part of the process of recalibration, or readjusting a lawyer's expectations about modern legal education. Adjunct faculty need to be told that student performance will probably not be as high as they have fantasized, and that the task of teaching is more difficult and time-consuming than they may have guessed.

In this dialog, you should describe the grading practices in your law school and explain the curve if one exists—or, if there isn't one, what a typical distribution of grades looks like. It is inexcusable to have an adjunct submit a set of grades radically different from the typical distribution. It is not fair to the teacher or to the students.

This one-on-one training, generally by a faculty member serving as an associate dean, has an intensely paternalistic quality. But turning this into a group discussion or bringing other faculty in at random to participate in the training is inefficient and will surely produce uneven results. That is not to say that full-time faculty are not critical to the integration process. But law school administrators must clearly play the role of trainer at the outset.

If faculty are not part of the initial training team, what role should they play? No adjunct should be hired without having an opportunity to discuss the substantive field with full-time faculty. At many schools, the chair of the

appointments or personnel committee interviews all adjuncts. Another model is to create a faculty committee on adjuncts that can play a role in interviewing and thereafter in socializing adjuncts into the intellectual and communitarian life of the law school.

Each adjunct should be linked up with at least one full-time faculty member to talk about the teaching process and substance. This relationship should be funded (i.e., bring me your lunch receipt). The one-on-one exchange is preferable to large-scale social events that bring adjuncts and full-time faculty together. Receptions and parties have almost no beneficial effect on adjuncts. Faculty members appear because they feel that it is obligatory, but no decent discourse takes place about subject matter or pedagogy.

In addition to one-to-one mentoring, my school has tried brown bag lunches: select adjuncts were invited, and speakers discussed teaching techniques. These were not always successful, and so we tried a different approach.

Six years ago we announced, *ex cathedra,* that our adjuncts (who number almost 200) constituted a faculty. Accordingly, they were told when they were hired that they had to attend one adjunct faculty meeting during the course of the semester. We set this meeting at a time convenient for the largest number of them—usually around five o'clock or on Saturday morning.

The agenda for such a meeting includes information about events and procedures in the law school. Important administrative actors such as the dean of students, the registrar, persons from the career services office, the clinic director, and technical staff who assist adjuncts in document preparation make short presentations. The next phase of the meeting involves reports by adjunct committees. We created four committees: one on adjunct writing (obviously broadly defined); a second on adjunct benefits; a third on teaching quality; and, fourth, a course coordination committee, designed to ensure that courses taught by adjuncts are generally in harmony with what is taught by full-time faculty. Adjunct faculty meetings are run by a chair elected by the whole of the adjunct faculty. At each meeting *full-time* faculty give a brief presentation on teaching, testing, or some other directly pertinent topic. These meetings must be short and carefully orchestrated.[6]

We have long recognized that adjuncts are well equipped to teach skills courses such as trial advocacy and negotiation, but a word should be said about other curricular slots for which adjuncts are particularly well suited. Adjuncts are a terrific resource for enriching the upper end of any curriculum, the specialized "capstone" courses. But there is a very real need to calibrate adjunct expectations of student performance; the more specialized a field becomes, the more critical it is to engage in this fine-tuning. Adjuncts are often poor judges of students' interest in a field, and of their sophistication in the field. Concepts that are second nature to the lawyer/expert/adjunct after

6. It takes a huge amount of time and energy to make the "faculty meeting" concept work. By the time I left my position in the dean's office, I found myself convening these meetings irregularly at best.

twenty years in practice are new and complex to a second-year law student. The expert lawyer who is not aware of this disparity is likely to be ineffective as a teacher.

Externships are another excellent way to use adjuncts. The new accreditation standards for externships have changed the role that adjuncts can play. I urge you to read the standards carefully and to figure out how you might make use of adjuncts as part of a team working with a student who has been placed in the field.[7] If you have a generous resource base, you will find that the most successful externships are those where the student has an adjunct serving as a field mentor and a full-time faculty member who works with the student and the adjunct over the semester.

It is fairly typical today for an adjunct to be paid $4,000 or $5,000 to teach a course meeting once a week for fourteen weeks. For many lawyers, that is serious money.[8] The pay level of adjuncts—around Washington and, I suspect, elsewhere—has gone up dramatically in the last five years. Many adjuncts are paid on a credit-hour basis and, through dark market forces few of us understand, are quite capable of finding out not only what other adjuncts are paid at the same law school, but what adjuncts are paid throughout the city.

Virtually everyone who seeks a position as an adjunct will tell you, "Of course, I'm not doing this for the money." We know different. Permit me a First Amendment analogy. Some years ago I asked a colleague why media companies fight so hard in libel cases. Is it principle? True concern about the chilling impact of excessive defamation verdicts? My colleague responded with the old line: "When they say it's not the money, it's the money."[9] So it is with adjuncts.

Perhaps because adjuncts profess little concern about their pay, law schools too often overlook questions of equity in establishing adjunct compensation rates. Some years ago I attempted to adjust our salary structure to make sure that those who had comparable credentials, experience, and responsibilities were paid about the same. It can cost several hundred thousand dollars over a period of years to make the changes necessary to have a defensible pay schedule for adjunct faculty.

A subissue in compensation involves team teaching by adjuncts. There are two points of view. One can argue that when two people are team-teaching a course and devoting the same amount of energy to the course, they should be paid the same amount. Or one can argue that each adjunct should be rated individually. Both arguments are defensible, and my advice is to select one and make sure you explain it to your team teachers before you issue contracts.

7. See Ken Myers, Velvel: Count More Adjuncts as Profs to Keep Class Size Low, Nat'l L.J., Mar. 25, 1996, at A16; Pedro E. Ponce, Accreditation Action; Adjunct Law Profs Up for Status Boost, Legal Times, Feb. 12, 1996, at 15.

8. It is naive to think there is some mysterious anomaly in the world of adjuncts which voids the usual relationship between proper compensation and the work product. As with all employment, people who are paid fairly and appropriately do better work than people who are not.

9. My colleague Janet Spragens attributed this to Floyd Abrams.

We come to hiring and evaluation. I have already discussed interviewing, team teaching, training, and compensation issues, all of which are part of "hiring." Here are some other things to think about if you are the primary actor in the complex and delicate dance of hiring adjunct faculty.

1. Many law schools find themselves inundated with requests from practicing lawyers to take a shot at teaching: these schools can let the forces of nature create their résumé bank of prospective candidates. But such a procedure is probably unsatisfactory and perhaps even dangerous. For many reasons, not the least of which is honesty about faculty diversification, it is a good idea to advertise positions annually. Letting important teaching appointments depend on random submissions is irresponsible.

2. The sources of adjunct teachers are apparent: private firms and sole practitioners, the judiciary, government agencies, trade associations, public interest groups and nonprofits, and even the world of politics. Cultivating these groups and discovering the best means to communicate with each takes time and money, but it is time and money well spent. As you cultivate potential sources of adjunct faculty, you are also spreading the good word about your law school—creating employment opportunities for students, laying groundwork for fundraising, and working toward other public relations goals.

3. I have become skeptical of proposed appointments that are based on friendships between faculty and practicing lawyers, judges, or politicians. You should be careful of such proposals. Your faculty colleague may be in an awkward position—asked to put forward a friend who may not be the most qualified teacher. On the other hand, faculty often have excellent contacts that you should take advantage of. I suggest that you find a way each semester to solicit the whole faculty for prospective adjuncts, avoiding the pitfalls of perceived favoritism.

4. Make sure that your fundraisers and your dean are absolutely clear on the inadvisability of using adjunct teaching slots as a means of fundraising. Appointing a donor or prospective donor as an adjunct may create a double nightmare: this person may be a disaster in the classroom, and then may be hurt and angry when the contract is not renewed.

5. Decide early on how you are going to handle the linkage between externally generated course proposals and adjunct hiring. One of the more common problems for associate deans is this situation: a prospective adjunct has submitted a wonderful course proposal (usually in a field in which he has worked for years) that strikes you and the curriculum committee as a solid and valuable addition to your offerings—and yet, after interviewing the author of this fine proposal, you believe that this is not a person who should be hired. This situation is fraught with peril. Putting aside some nasty copyright problems pertaining to the course syllabus that lurk in this scenario, I offer some simple solutions.

One possibility: never submit an external course proposal to your curriculum committee until you have interviewed the author. This is a simple way to handle the problem, but it leaves you with an awkward interview: you don't

know whether the person you are interviewing has any real hope of ever teaching at your law school.

Or you might develop a quick-read review process with your curriculum committee that allows you to proceed with an interview with at least a vague notion that the course will become part of your offerings.

Finally, I suggest that you prepare a carefully worded disclaimer, to be sent to any external person who submits a course proposal, stating the ground rules and the risks of going forward. Perhaps the greatest risk is that the proponent will spend considerable time perfecting the proposal to satisfy the curriculum committee and ultimately the voting faculty, but later you will find someone better suited to teach the course. Although you don't want to discourage a highly competent practitioner from submitting a proposal, you must make it clear that there are no guarantees, and you must protect both your institution and the practitioner from what may be a damaging interaction.

6. On a different note, I want to return briefly to the topic of compensation and pay equity. At most law schools the dean's office has considerable discretion in setting adjunct salaries, but the other university actors are not inconsequential. For the great majority of law schools, there is some cursory review of salaries by a university dean for academic affairs, an assistant to the provost, or a similar character. Certain predictable themes underlie these reviews: comparability to other adjunct faculty in the university, thoroughness in the search and hiring process, and documentation of each appointment. It seems that actors in a university's central administration often pay more attention to details than law school administrators. Lower anatomical Freudian references often pervade these exchanges when there is conflict; I suggest that planning ahead is preferable.

Before the start of each academic year, engage in a real dialog on salary levels with the appropriate university officer. Find out what the going rate is for law school adjuncts in your region, and what adjunct faculty are paid in other divisions of your university. Propose a range of salary for each adjunct rank based on experience, scholarship, and similar factors.[10] Once you have accord on the ranges, the allocation should be entirely up to your discretion. This protects you and the university official and should end debates about pay levels.

On the matter of appointment details, too much administrative blood is spilled over the differences between adjunct hiring in the law school and in other divisions of a university. For example, most law schools would not solicit reference letters when hiring a federal judge to teach a section of trial advocacy, even though another university division would insist on a résumé,

10. At many law schools, there are three ranks of adjuncts: lecturer, professorial lecturer, and "full" adjunct professor. Each rank should have a permissible pay range, and the terms for promotion between ranks should be clear. See James N. Baron, The Structure of Opportunity: How Promotion Ladders Vary Within and Among Organizations, 31 Admin. Sci. Q. 248 (1986).

references, and a documented review before hiring an adjunct. Again, a clear agreement about the contents of an adjunct's file can avoid conflict. The demands of equal treatment and equity are powerful, and what might strike you as an unreasonable demand by a university actor may in fact protect you and your law school from downstream liability.

My final topic is evaluation—most important, what to do when the evaluations of classroom performance are poor, alarming, or otherwise problematic. In my years of reviewing law schools for accreditation purposes, I have yet to run across an institution that does not use some type of student evaluation form from which information is summarized and conclusions are extrapolated. We are all familiar with the 5-point scale (5 is great, 1 is subhuman) that gets used in the following inane manner: "Well, Mr. X got a 3.94 but Ms. Y got a 4.23. No question here—let's retain Ms. Y." There are a few questions that I want to raise about this desecration of the fundamentals of statistics.

First (and with no desire to sound like Andy Rooney), why do we ask so many questions on the form if we are really going to look only at the one or two questions in which we ask students to do what we are uncomfortable doing: to generalize about whether they "like" the teacher or not? Second, why is it that after becoming comfortably ensconced on a law faculty, we feel it unnecessary to pay any attention to the most overt statistical realities—for example, to realize that a seminar with nine students cannot be evaluated by means of the same form, drawing the same statistical inferences, that we use in a class of 100 students? Finally, where is it written that we violate academic freedom or otherwise infringe on fundamental contractual arrangements if we have full-time faculty regularly sit in on the classes of newly appointed adjuncts?

I leave to you the above questions, and move on to what to do if some valid evaluative process has taken place and the results do not look good. Assuming that you are willing to invest some energy in the situation, rather than immediately firing the adjunct, consider whether the situation is one that would change if you found (or the adjunct identified) a complementary team teacher. Although it is not all that likely, you might even find someone on your full-time faculty who would be interested in teaching with the adjunct, giving you a blend of an experienced teacher with an experienced lawyer.

Or the inadequate evaluations may be the result of external circumstances that can be corrected if you give the adjunct some help. For example, adjuncts do not have the same flow of free and diverse teaching materials available to full-time faculty. Sometimes a shift to more suitable materials can make a real difference to an adjunct's teaching. Further, the time of an offering, the classroom assigned, and the subject area all can play a role in poor evaluations, and it is not wise to be in administrative denial over such matters.

But if all attempts to assist the adjunct have failed, the end game begins. This is a situation where being clever rarely succeeds and being direct is not uniformly appreciated. Stated differently, there is no easy way to fire an

adjunct. I have tried many approaches, all of which begin with a paragraph or two saying how much the dean, the faculty, and the students appreciate the adjunct's services, recognizing that the small amount of money paid to adjuncts does not begin to compensate them for all their efforts, and acknowledging how indebted the school is to the adjunct for all the hard work involved in teaching. These are almost always true statements but do little to soften what follows. Here are some ideas for the next part of the letter, which follows a "however" and shifts to the fact that the adjunct is not being asked back:

(A) "Despite your great contribution to the school, we [notice the pure poultry factor in the use of "we," not "I"] have decided to initiate a rotation of outside experts on our adjunct faculty to diversify the information . . . ."

(B) "The excessive number of offerings has resulted in the need to trim certain courses from our schedule in order to have decent enrollments in our most basic classes . . . ."

(C) "We have come to the conclusion that the advanced methods and ideas set forth in your class would be more appropriate in a postdoctoral program . . . ."

(D) "It just isn't working out . . . ."

The transparency in A, B, and C is stunning, and no one you have hired is stupid enough to believe any of them. You are left with some variation of option D—a direct and blameless severance. The only further recommendation I would make is that you handle these sad events in person rather than by mail. But I confess that this is an act of courage in which I rarely participated.