

## COMMENT OF THE ASSOCIATION OF LEGAL WRITING DIRECTORS ON PROPOSED REVISION TO STANDARD 403

While we applaud the Council's decision to hold steadfast in not revising Standard 403(a) requiring that the first-year curriculum be substantially taught by full-time faculty, the proposed change to subsection (b) allows a law school to use adjuncts for all upper-class courses. Without a doubt, this revision impacts the quality of legal education at those schools that push the line and have more adjuncts teaching than full-time faculty. Indeed a school conceivably could use adjuncts for the entire two years of upper-level courses.

The Association of Legal Writing Directors (ALWD) is a non-profit professional association of leaders of legal reasoning, research, writing, analysis, and advocacy programs from law schools throughout the United States, Canada, Australia, and Qatar. ALWD has more than 300 members representing more than 150 law schools. ALWD's purpose is to promote leadership in the legal writing discipline and to improve the status of legal writing professionals within the legal academy. Throughout the years, ALWD has maintained an active role in promoting standards that improve the quality of legal education. Unfortunately, the proposed revision to Standard 403 does not do that.

### No Need Exists to Change the Standard

One rationale for the proposed revision is to allow for innovation and flexibility while retaining the requirement that schools ensure effective adjunct teaching. Yet, if a school uses substantially more adjuncts and thus has fewer full-time professors, then there are fewer experienced faculty to oversee adjuncts. Moreover, the current Standard is already designed to promote significant flexibility for innovation in its requirement that full-time faculty teach more than half of all credit hours actually offered by the school or two-thirds of the student contact hours generated by student enrollment. Innovation and flexibility exist in that half of the credit hours could be taught by adjuncts, assuming adjuncts are innovative and flexible. In reality given that adjuncts do not have the same class preparation time, it follows that they have less time to prepare an innovative class than a full-time faculty member. Sometimes, an adjunct's "innovation" is merely a rehashing of war stories from practicing law.

## The Role of Adjunct Faculty

Adjunct faculty serve a vital role in legal education to supplement the curriculum offered by the full-time faculty. Indeed, adjuncts are frequently used to offer skills-based courses while a full-time faculty member's teaching load is concentrated on casebook courses. These skills-based courses include smaller sections in trial advocacy, pre-trial litigation skills, oversight of externships, and much more.

Contact with students is time-consuming.<sup>1</sup> Adjuncts usually are practicing attorneys or judges. The demands on their time mean less time for class preparation, less individualized feedback to students, and less interactive and collaborative learning. Most adjuncts spend little time on campus outside of class time. This leaves the students with less face-time with an adjunct professor. This face-time is often the most beneficial part of a student's learning. The student and faculty member can have a true dialogue focused on the student's needs. That does not happen when the faculty member is physically unavailable. An adjunct running into class with moments to spare and leaving soon after class is hardly the model to generate effective one-to-one contact. A student needs to be able to walk into the professor's office readily. E-mail communication can substitute to answer specific questions, but the nuanced dialogue needed to understand complex issues simply cannot occur electronically.

Furthermore, the proposed revision will have a disproportionate impact on disadvantaged students. Such students need teachers who are experts in the latest teaching techniques.<sup>2</sup> "Law students need to be taught by professors who are experts at teaching. Good teaching requires not only subject-matter expertise, but also the ability to convey the material to students and to help students become self-regulated learners. Part-time teachers generally can't do this."<sup>3</sup>

Increased faculty-student contact outside the classroom has positive outcomes for disadvantaged students of all types.<sup>4</sup> These positive effects have been found to have a direct effect on education outcomes independent of other school experiences and student characteristics.<sup>5</sup> Student contact with faculty, especially outside of class, is an independent predictor of learning gain or growth.<sup>6</sup>

A full-time faculty member is likewise a busy individual. The difference is that a faculty member's obligations are all related to legal education from teaching to institutional and national service to scholarship. The full-time faculty member has not only the teaching experience, but also has helped draft learning outcomes, is skilled at assessment, and is invested in a specific topic area through scholarship.

## Students Are Not the Beneficiaries of This Revised Standard

Who then are the beneficiaries of no restrictions on adjunct teaching? Definitely not the students, but the for-profit law schools. For-profit schools are the most likely to take advantage of the proposed standard. According to a recent study on undergraduate institutional hiring, 93% of for-profit faculty are hired on a part-time basis.<sup>7</sup> At traditional non-profit universities, adjuncts comprise only one-third of the instructional faculty.<sup>8</sup> To allow for-profit law schools to use a similar number of adjuncts in law school flies in the face of the increased scrutiny of low bar passage rates that for-profit law schools frequently undergo. While the bar examination is one admittedly flawed assessment of student learning, the question remains whether the use of adjunct faculty results in a decrease in student learning in core casebook courses<sup>9</sup>—the very subjects tested on the bar examination. Until that issue is thoroughly researched, taking this step to eliminate any requirement on upper class teaching by full-time faculty is a grave mistake.

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<sup>1</sup> Susan B. Apel, *Principle 1: Good Practice Encourages Student-Faculty Contact*, 49 J. LEGAL EDUC. 371, 380 (1999).

<sup>2</sup> E. Scott Fruehwald, *How to Help Students from Disadvantaged Backgrounds Succeed in Law School*, 1 TEXAS A & M L. REV. 83 (2013).

<sup>3</sup> E. Scott Fruehwald, *Opposition to Proposed Elimination of Rule Requiring Full-Time Faculty to Teach at Least Half of Every Law School's Upper-Level Courses*, LEGAL SKILLS PROF BLOG (Mar. 28, 2017), [http://lawprofessors.typepad.com/legal\\_skills/2017/03/opposition-to-proposed-elimination-of-rule-requiring-full-time-faculty-to-teach-at-least-half-of-eve.html](http://lawprofessors.typepad.com/legal_skills/2017/03/opposition-to-proposed-elimination-of-rule-requiring-full-time-faculty-to-teach-at-least-half-of-eve.html).

<sup>4</sup> Joe Cuseo, *Faculty-Student Contact Outside the Classroom: Supporting Evidence & Promoting Practices*, [http://uwc.edu/sites/uwc.edu/files/imce-uploads/employees/academic-resources/esfy/\\_files/faculty-student\\_contact\\_outside\\_the\\_classroom.pdf](http://uwc.edu/sites/uwc.edu/files/imce-uploads/employees/academic-resources/esfy/_files/faculty-student_contact_outside_the_classroom.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Phillip W. Magness, *For-Profit Universities and the Roots of Adjunctification in US Higher Education*, 102 LIBERAL EDUC. (Spring 2016), <https://www.aacu.org/liberaleducation/2016/spring/magness>.

<sup>8</sup> *Id.*

<sup>9</sup> See Andi Currio, *The Potential Adjunctification of Law School Faculties*, BEST PRACTICES FOR LEGAL EDUCATION BLOG (May 17, 2017), <https://bestpracticeslegaled.albanylawblogs.org/2017/05/17/the-potential-adjunctification-of-law-school-faculties/>.