

**THE ABA TASK FORCE REPORT ON THE FUTURE  
OF LEGAL EDUCATION:  
THE ROLE OF ADJUNCT PROFESSORS AND  
PRACTICAL TEACHING IN THE ENERGY SECTOR**

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**Synopsis:** In September 2013, the ABA Task Force on the Future of Legal Education issued its preliminary report. One of the curriculum reforms advanced by the ABA and others is the expansion of practical courses taught by adjunct professors. The author has developed practical courses focused on the energy industry for Rice University’s Graduate School of Business and the University of Chicago Law School. He advocates teaching industry frameworks through real life examples—from the practitioner’s own career—and then requiring students to apply those lessons in a competitive simulation. For law students considering a career in the energy industry, such courses provide an effective bridge between the traditional curriculum and the practice demands of energy clients.

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I. INTRODUCTION

Once upon a time, law schools focused on training lawyers to think critically, with their eventual employers responsible for practical instruction. This customary division of legal education has come under increasing pressure in recent years. Clients are demanding that work product be completed more quickly, making it difficult to include starter lawyers on matters. Higher billing rates for junior lawyers also have made on-the-job training more expensive.

Just as law firms compete for clients so do law schools vie to place their students with the best employers. Firms, in turn, are demanding that law schools bear more of the training burden:

The model of legal education that took shape in the twentieth century involved a rough division of educational responsibility: law schools took on responsibility for

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basic, general education of lawyers; . . . and the remainder of legal education—in particular, the more skills and business-oriented aspects—were left to be learned from those already in practice. This rough allocation eventually began to break down. The legal profession increasingly began to assign, or try to assign, more responsibility to law schools for the practical and business aspects of the education of lawyers, mainly for economic reasons (including unwillingness of clients to subsidize the education of new lawyers). The result has been increased pressures on law school curricula.<sup>1</sup>

With a tighter job market, law schools also face pressure from students and prospective students to provide *relevant* training that enables them to secure attractive employment.

Lawyers in the energy industry bear a particularly steep learning curve. It is not enough to just be an expert in legal disciplines such as transactions or litigation. Industry expertise is required, as well. Energy law is a many-layered cake of politics, regulations, joint ventures, and industry practice—iced and sprinkled with technical complexity. Practitioners must also understand energy economics, engineering, and geoscience, among other disciplines.

As law schools assume more responsibility for practical instruction, we the practitioners will be the adjunct professors invited to teach what we know. Our courses will be the bridges between the analytical tradition and the real-world demands of practicing energy law. This article proposes a methodology for effectively teaching practical material to law students through the use of (i) simplified frameworks, (ii) real world examples from the practitioner's personal experience, and (iii) a competitive simulation that requires students to apply those lessons under an instructor's supervision.

## II. THE ABA TASK FORCE ON THE FUTURE OF LEGAL EDUCATION

Adjusted for inflation, the cost of law school tuition has quadrupled over the last four decades.<sup>2</sup> While the price continues to rise, opportunities are generally declining. Even the largest law firms have reduced hiring, adding only 3,600 new associates last year, “far behind the 5,100 new hires recorded in 2009.”<sup>3</sup> The net result is that only about half of the 46,000 law school graduates will find full-time employment.<sup>4</sup> This 50-50 gamble is placed with a median student debt of more than \$100,000.<sup>5</sup> As “[h]uman capital analysis starts with the assumption that individuals decide on their education, training, . . . and other additions to knowledge . . . by weighing the benefits and costs,”<sup>6</sup> it is no surprise

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1. AM. BAR ASS'N TASK FORCE ON THE FUTURE OF LEGAL EDUC., DRAFT REPORT AND RECOMMENDATIONS, 15 (2013) [hereinafter ABA REPORT], available at [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/taskforcecomments/task\\_force\\_on\\_legal\\_education\\_draft\\_report\\_september2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/task_force_on_legal_education_draft_report_september2013.authcheckdam.pdf).

2. PAUL CAMPOS, *The Crisis of the American Law School*, in THE SELECTED WORKS OF PAUL CAMPOS 1-2 (2012), available at [http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=paul\\_campos](http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=paul_campos). During approximately the same period, legal services as a percentage of the American economy declined by about 32%. *Id.*

3. Elizabeth G. Olson, *Big Law Has a Shrinkage Problem*, CNN MONEY (June 26, 2013, 12:38 PM), <http://management.fortune.cnn.com/2013/06/26/big-law-layoffs/>.

4. *Id.*

5. CAMPOS, *supra* note 2.

6. Gary S. Becker, *The Economic Way of Looking at Behavior*, 101 J. POL. ECON. 385, 392 (1993).

that the number of law school “applications have dropped from 602,300 to 385,400.”<sup>7</sup>

Such developments led the American Bar Association to establish a task force “to examine current problems and conditions in American legal education and present recommendations that are workable and have a reasonable chance of broad acceptance.”<sup>8</sup> On September 20, 2013, the Task Force on the Future of Legal Education (ABA Task Force) released its Draft Report and Recommendations.<sup>9</sup> The conclusions of the ABA Task Force included:

- *Reducing the Cost of Legal Education.* The ABA Task Force identified increased hiring of full-time faculty as a significant cost driver<sup>10</sup>: “This entrenched culture and structure has promoted declining classroom teaching loads and a high level of focus on traditional legal scholarship.”<sup>11</sup>
- *Improving Curricula Innovation.* The ABA Task Force recommended liberalizing accreditation standards to foster more heterogeneity in law school curricula.<sup>12</sup> For example, “[n]on-tenure track faculty may not account for more than 20% of a school’s faculty-student ratio for the purposes of accreditation.”<sup>13</sup> Such requirements make it difficult for law schools to deliver specialized courses from practicing attorneys.<sup>14</sup> Other commentators have echoed these sentiments, arguing that “the ABA’s accreditation regime needs to be relaxed, to allow schools to employ larger numbers of adjunct faculty, given that competent adjunct faculty serve the valuable dual role of holding educational costs down, while conveying useful information to law students regarding the practice of law.”<sup>15</sup>
- *Increasing Practical Skills.* The ABA Task Force explained that  
[t]he principal purpose of law school is to prepare individuals to provide law-related services. This elementary fact is often minimized. The profession’s calls for more attention to skills, training, experiential learning, and the development of practice-related competencies have been well-taken. Many law schools have expanded such opportunities for students, yet, there is a need to do much more. The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift further toward developing the competencies required by people who will deliver services to clients.<sup>16</sup>

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7. Vicki Salemi, *Law School Applications Decline Drastically*, METRO (Nov. 13, 2013), <http://www.metro.us/newyork/lifestyle/education/2013/11/14/law-school-applications-are-down/>.

8. ABA REPORT, *supra* note 1, at 1.

9. *Id.*

10. *Id.* at 10.

11. *Id.* at 26.

12. *Id.* at 2.

13. CAMPOS, *supra* note 2, at 9.

14. *Id.* at 34 n.116.

15. *Id.* at 34.

16. ABA REPORT, *supra* note 1, at 2-3.

Taken as a whole, the ABA Task Force echoes the concerns already being voiced by lawyers across the nation. The market for legal services is evolving rapidly, and legal education must keep up.<sup>17</sup>

### III. TRAINING ENERGY LAWYERS

While all legal practices entail learning curves, energy law requires both general legal skills (such as transactional or litigation) and the subject matter expertise of the energy industry itself. The energy sector abounds in complexity, with various commercial structures for the extraction and transportation of natural gas and oil, all of which vary according to the laws and regulations of different nations, states, and provinces.<sup>18</sup> So, too, is the energy practice enmeshed with jargon and technical principles of engineering, geology, and economics. Practitioners then must adapt to the dynamic political landscape as governments implement new energy and environmental policies.<sup>19</sup> Lawyers who do not understand the industry's context will struggle to adequately represent their energy clients, however great their basic legal skills.

After completing a judicial clerkship in 1996, I joined Vinson & Elkins' Energy Section in Houston as a second-year associate. The principal clients of the Energy Section were oil and gas pipelines, but partners' practices also routinely included international upstream projects, mergers and acquisitions, and international arbitrations.<sup>20</sup> The theme of associate training was to become an expert in all aspects of the energy business but remain generalists in the law, able to draft stock or asset purchase agreements as easily as argue a pipeline rate case before the Federal Energy Regulatory Commission or the United States Court of Appeals.<sup>21</sup>

As I worked on more matters, I realized that a substantial amount of my "on-the-job" training came from experiencing first-hand all the ways energy companies solved their particular legal problems.<sup>22</sup> This steep learning curve was touted as a competitive advantage for both the law firm and each of us,

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17. *Id.* at 27.

18. *State Energy Regulations*, USLEGAL, <http://energylaw.uslegal.com/state-energy-regulations/> (last visited Jan. 25, 2014).

19. For example, the U.S. Energy Policy Act of 2005 sought to promote "alternative and renewable energy sources, . . . encourage energy efficiency and conservation, reduce dependence on foreign sources of energy, increase domestic energy production, modernize the electricity grid, and encourage the expansion of nuclear energy." Tom Stone, *The Impact of the US Energy Policy Act on the Pumps Industry*, RENEWABLE ENERGY FOCUS (Sept. 22, 2009), <http://www.renewableenergyfocus.com/view/4076/the-impact-of-the-us-energy-policy-act-on-the-pumps-industry/>.

20. Mark Curriden, *It's a Golden Age for Texas' Oil and Gas Transactional Lawyers*, A.B.A. J. (Feb. 1, 2013, 5:59 AM), [http://www.abajournal.com/magazine/article/golden\\_age\\_for\\_texas\\_oil\\_and\\_gas\\_transactional\\_lawyers/](http://www.abajournal.com/magazine/article/golden_age_for_texas_oil_and_gas_transactional_lawyers/) ("For global energy deals, V&E led all law firms [from 2010-2012] by advising on 149 transactions valued at \$208.2 billion.").

21. While such a generalist approach to legal skills is increasingly rare, it is particularly valuable to lawyers who become corporate general counsels.

22. Such foundational expertise comes primarily from working 2,500 hours a year on as many different matters as possible. The push for associates to work long hours is not merely law firm profit. Long hours at the start of one's career is an important component of advancing on the learning curve. An associate who works 2,500 hours per year for five years will be experientially one year ahead of the same associate who only works 2,000 per year during the same period.

individually. After all, the industry's courses of conduct, specialized forms of agreement, and other peculiarities created barriers to entry for lawyers who did not grow up in an energy practice.

The broader legal market acknowledges the value of such expertise, and law firms generally have sought to enter "the sector through strategic lateral hires."<sup>23</sup> For example, Los Angeles' Latham & Watkins and Chicago's Sidley & Austin both persuaded prominent partners from Houston-based firms to join their energy practices.<sup>24</sup> International law firms have followed a similar pattern,<sup>25</sup> with lateral hiring or mergers being used to acquire human capital.<sup>26</sup> When London's Norton Rose combined with Houston's Fulbright, Norton Rose gained "geographic coverage plus something perhaps more important: Expertise in energy law from 'literally hundreds' of Fulbright lawyers already working in the field, said Norman Steinberg, global chairman of Norton Rose."<sup>27</sup>

In turn, the energy industry is highly dependent on the specialized services provided by such law firms. Energy-related transactions comprise almost a quarter of all transactions in the United States: "[B]etween Jan. 1, 2010, and Sept. 30, 2012, [United States]-based energy companies transacted 740 [merger and acquisition (M&A)] deals valued at \$463.6 billion. During the same 33-month period, there were more than 2,454 energy deals globally valued at more than \$1 trillion."<sup>28</sup> The high-value nature of so many energy transactions demands industry experience: "You want the best. You want lawyers who have done these kinds of deals before. They have the expertise."<sup>29</sup>

#### IV. CLIENT RESISTANCE TO STARTER ASSOCIATES

Notwithstanding the delivery of such valuable services, clients have become increasingly reluctant to pay for associate training. This has resulted in some firms reducing their billing rates for first-year associates: "In response to our clients' feedback and concerns about driving down the cost of legal services, we wanted to send a clear message that we are listening. So, we have therefore reduced both the rates and the salaries of our incoming first year associates [by

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23. Curriden, *supra* note 20.

24. *E.g.*, Lacy Burton, *Sidley Austin Raids Raft of Firms for Houston Energy Launch*, *LAWYER* (Feb. 16, 2012), <http://www.thelawyer.com/sidley-austin-raids-raft-of-firms-for-houston-energy-launch/1011428>. article.

25. *E.g.*, Collin Eaton, *International Law Firm Opening Energy-Focused Office in Houston*, *FUELFIX* (Sept. 24, 2013), <http://fuelfix.com/blog/2013/09/24/international-law-firm-opening-energy-focused-office-in-houston/>.

26. Ronnie Crocker, *Fulbright & Jaworski Energy Practice Powers Merger with British Firm*, *HOUS. CHRON.* (Nov. 14, 2012, 10:40 PM), <http://www.chron.com/business/article/Fulbright-amp-Jaworski-energy-practice-powers-4038548.php>.

27. *Id.* Law firms with a Houston presence but headquartered elsewhere include: Mayer Brown, Weil Gotshal, Akin Gump, Skadden, King & Spalding, Baker Hostetler, Seyfarth Shaw, Squire Sanders, Baker McKenzie, Jones Day, Pillsbury, Sutherland, Greenberg Traurig, Hunton & Williams, Hogan Lovells, Morgan Lewis & Bockius, McDermott Will & Emery, DLA Piper, Fish & Richardson, Latham & Watkins, McGuireWoods, Winston & Strawn, Simpson Thacher, Cadwalader, Paul Hastings, Sidley Austin, Dentons, Norton Rose Fulbright, and Katten Muchin Rosenman.

28. Curriden, *supra* note 20.

29. *Id.* (internal quotation marks omitted).

20%].<sup>30</sup> One firm has even implemented a program similar to medical residency.<sup>31</sup> Starting lawyers are “paid less, bill less, and spend more time training” that includes “hands-on learning” with partners without concern about billing for the time.<sup>32</sup> Firms also may informally discount the work of starter associates. For example, partners may bill clients for only some, or even none, of the hours worked by junior lawyers.

What market forces explain clients’ reluctance to pay for starting associates? Most often cited are changes in starting associate billing rates. The National Law Journal billing survey showed the following changes in associate billing rates from 1990 to 2010<sup>33</sup>:

Associate Experience Level	1990 Average CPI Adjusted <sup>34</sup>	2010 Average	% Increase Above CPI
Starting Associate	\$147.33	\$203.92	38%
Senior Associate	\$302.41	\$421.01	39%

Although associate rate increases have exceeded the pace of inflation, partner billing rates went up by a similar amount, approximately 41% (adjusted for CPI).<sup>35</sup> During the same period, “[l]egal work has become increasingly specialized because clients have more sophisticated needs and expectations, and technology and globalization have only exacerbated these trends.”<sup>36</sup> Given increased specialization, is a 40% increase in billing rates unreasonable? Perhaps the answer is that clients do not mind paying a 40% premium for senior associates and partners who have achieved more specialization but object to doing so for starter lawyers who presumably have no greater expertise in 2010 than they did in 1990.

While cost efficiency is always a factor in selecting outside counsel, another concern looms: risk of work product delay. Over the course of my career, time expectations have accelerated:

[I]t is speed that has impacted the modern legal epoch of the past generation. A substantial number of the respondents noted that technology and the increased pace it enabled over the past two decades dramatically changed the field forever. The tempo of legal practice has directly affected collegiality, client service, training, loyalty, longevity and growth. “Today, communication is instantaneous, which

30. Ashby Jones, *Reed Smith Slashes Associate Salaries, Billing Rates*, WALL ST. J. (Nov. 10, 2009, 1:06 PM), <http://blogs.wsj.com/law/2009/11/10/reed-smith-slashes-associate-salaries-billing-rates/>.

31. Jordan Furlong, *The Decline of the Associate and the Rise of the Law Firm Employee*, LAW21 (Oct. 28, 2013), <http://www.law21.ca/2013/10/decline-associate-rise-employee/>.

32. *Id.*

33. All data shown is from the 1990 and 2010 NLJ Billing Surveys. *NLJ Billing Survey*, ALM LEGAL INTELLIGENCE, <http://www.almlegalintel.com/SurveyDescription.aspx?id=jEM7Q%2f5Lelo%3d> (last visited Feb. 6, 2014) (requires purchase).

34. The rates in the survey have been adjusted for inflation to 2010 numbers using the Bureau of Labor Statistics Consumer Price Index (CPI) calculator. *CPI Inflation Calculator*, BUREAU LAB. STAT., [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) (last visited Feb. 6, 2014).

35. *NLJ Billing Survey*, *supra* note 33.

36. Sam Spiewak, *Studying the Legal Profession*, STAN. LAW. (May 31, 2011), <http://stanfordlawyer.law.stanford.edu/2011/05/studying-the-legal-profession/>.

requires people to respond more quickly and the pace is much more accelerated,” noted [David] Boies.<sup>37</sup>

Clients “expect instant communication, instant answers and instant gratification.”<sup>38</sup> The compression of the time schedule means that general counsels must also consider the possibility of work product delay as an additional cost.

Let us explore how the inclusion of starter associates could impose delay costs on the client. When a starter associate is asked to undertake the first draft, the billing partner will need to explain the client’s circumstances and how to draft the document. The associate will then undertake background reading of precedent documents (the same form of document for different clients or matters) and earlier client memos related to the matter. The associate will ask the partner follow-up questions via email, telephone, or in-person. This process culminates with the selection of a precedent document, which is modified by the associate to incorporate the client’s specific content. After a first draft is completed, the billing partner will likely revise the document further. In contrast, a senior associate or partner already familiar with the client’s circumstances usually can deliver the same work product in a fraction of the time.

As such, the cost equation of starter associates is comprised of two distinct types of cost—higher hourly rates (compared to the past) *plus* the cost of delay. The compounding nature of these costs is why general counsels are reluctant to include young associates on matters—and are increasingly selective about which matters they work on. A recent *American Lawyer* survey “found that 47[%] of law firms had a client say, in effect, ‘We don’t want to see the names of first- or second-year associates on our bills.’”<sup>39</sup>

#### V. INCORPORATING PRACTICAL EXPERIENCE INTO LEGAL EDUCATION

“The fundamental issue is that law schools are producing people who are not capable of being counselors,” says Jeffrey W. Carr, the general counsel of FMC Technologies, a Houston company that makes oil drilling equipment. “They are lawyers in the sense that they have law degrees, but they aren’t ready to be a provider of services.”<sup>40</sup>

For decades, the mission of most—and certainly the top—law schools was to train students in rigorous, analytical thinking. The antiquated case law merely served to train lawyers *how* to think<sup>41</sup>: “Law schools have long emphasized the theoretical over the useful, with classes that are often overstuffed with antiquated

37. ARI KAPLAN, *THE EVOLUTION OF THE LEGAL PROFESSION* (2010), available at [http://arikaplanadvisors.com/AriKaplan\\_DiscoverReady\\_EvolutionStudy\\_FINAL.pdf](http://arikaplanadvisors.com/AriKaplan_DiscoverReady_EvolutionStudy_FINAL.pdf).

38. Tread Davis, *Changes and Challenges in Law Practice in the Past Fifty Years*, CSA BULL. (Cal. Soc’y Anesthesiologists, San Mateo, Cal.), Summer 2010, available at [http://www.csahq.org/pdf/bulletin/davis\\_59\\_3.pdf](http://www.csahq.org/pdf/bulletin/davis_59_3.pdf).

39. David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), [http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?\\_r=0](http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?_r=0). Segal summed up the sentiment of clients: “Teach new hires on your own dime.” *Id.*

40. *Id.*

41. Marc Luber, *What They Don’t Teach You in Law School*, HUFFINGTON POST (July 26, 2013, 4:05 PM), [http://www.huffingtonpost.com/marc-luber/what-they-dont-teach-you-\\_b\\_3818627.html](http://www.huffingtonpost.com/marc-luber/what-they-dont-teach-you-_b_3818627.html).

distinctions, like the variety of property law in post-feudal England.”<sup>42</sup> A strong foundation of critical thinking presumably enabled law graduates to succeed in any legal career. The practical would come later, after graduation.

This equilibrium is no longer acceptable to much of the marketplace, and law schools are responding. For example, the University of Chicago has implemented the Doctoroff Business Leadership Program, which is designed to deliver practical business skills.<sup>43</sup> About fifteen students per class will take “advanced seminars taught by leading practitioners,” participate in a transactional clinic, and “be assigned a business mentor [to] provide . . . one-on-one counseling.”<sup>44</sup> Dean Schill of Chicago explained that in addition to the core competencies of “problem solving and getting to the root of issues,” students in the business program also will receive “the technical skills to become business leaders.”<sup>45</sup>

For students considering an energy practice, industry expertise can be bolstered with more energy-specific courses and workshops. The most likely method for delivering such content is the use of adjunct professors, who are usually experienced, practicing attorneys. Adjunct professors already teach about a quarter of all law school courses and

play a very significant and increasing role in legal education, from trial and appellate advocacy courses to such specialty areas as intellectual property and sports and entertainment law. Recently, law schools have expanded their use of adjuncts into other areas of the curriculum including business and commercial law courses. Only core courses such as constitutional law and first-year required courses remain largely the sole province of the full-time faculty.<sup>46</sup>

The use of adjuncts costs law schools about \$5,000 per course, which is considerably less than the comparative cost of full-time faculty.<sup>47</sup> A law school can offer “approximately forty adjunct-taught courses for the price of one additional faculty member.”<sup>48</sup> However, there are regulatory limits to law school reliance on adjuncts.<sup>49</sup> “The Association of American Law Schools . . . requires its member schools’ *full-time faculty* to offer ‘at least two-thirds of the credit hours or student-contact hours leading to the J.D. degree.’”<sup>50</sup> ABA accreditation limits also regulate the extent to which adjuncts can be used in legal education.<sup>51</sup>

Notwithstanding the increased use of adjunct professors, it does not appear that adjuncts are displacing any regular faculty. Studies have shown an

42. Segal, *supra* note 39.

43. Marsha Ferziger Nagorsky, *Creating Business Leaders: A Plan for the Future*, U. CHI. L. SCH. REC., Fall 2013, available at <http://www.law.uchicago.edu/alumni/magazine/fall13/businessleaders>.

44. *Id.*

45. *Id.* The University of Chicago Law School also has launched a leadership initiative designed to train its students in “strong interpersonal dynamics.” Marsha Ferziger Nagorsky, *The Kapnick Leadership and Professionalism Initiative*, U. CHI. L. SCH. REC., Fall 2013, available at <http://www.law.uchicago.edu/alumni/magazine/fall13/kapnick>.

46. David A. Lander, *Are Adjuncts a Benefit or a Detriment?*, 33 U. DAYTON L. REV. 285, 285 (2008).

47. *Id.* at 289.

48. *Id.*

49. *E.g.*, CAMPOS, *supra* note 2, at 9.

50. Lander, *supra* note 46, at 287 (emphasis added) (quoting ASS’N AM. LAW SCH., AALS HANDBOOK: BYLAWS § 6-4.1 (2008), available at [www.aals.org/about\\_handbook\\_requirements.php](http://www.aals.org/about_handbook_requirements.php)).

51. *Id.*



“enormous increase in the number of law school faculty,” with faculty-to-student ratios being cut in half over the last three decades.<sup>52</sup> Rather, it appears that a combination of faculty hiring and adjunct teaching has enabled law schools to decrease each professor’s teaching burden.<sup>53</sup> Full-time faculty are now teaching only two or three courses per year.<sup>54</sup> This light course load enables a greater focus on legal scholarship, and “nearly all of the true legal scholarship is done by full-time faculty.”<sup>55</sup>

The resulting increase in scholarly publication by full-time faculty members has been substantial:

Law schools have greatly increased the size of their faculties in order to ensure that individual faculty could teach less. And they have done this in order to ensure that faculty would publish more law review articles. . . . A survey of the legal academic literature reveals that professors at American law schools published approximately 1650 law review articles in 1970 and nearly 10,000 in 2010. Over that time, the total number of tenure track professors has roughly doubled, while the per capita publication rate of law review articles per professor has nearly tripled . . . .<sup>56</sup>

Quantity does not necessarily translate into quality. Commentators have complained that “[p]rofessors are rewarded for chin-stroking scholarship, like law review articles with titles like ‘A Future Foretold: Neo-Aristotelian Praise of Postmodern Legal Theory.’”<sup>57</sup> Judge Richard A. Posner, a faculty member and prolific author, has described contemporary legal scholarship as “[w]elcome to a world where inexperienced editors make articles about the wrong topics worse.”<sup>58</sup> Only about half of law review articles are ever cited in literature or court cases.<sup>59</sup> Of articles cited by the United States Supreme Court, almost 40% are authored by “students, practicing lawyers and others outside the more elite parts of the academic establishment.”<sup>60</sup>

In fact, most full-time faculty members have little or no experience as practicing lawyers, “with the new hires at ‘top twenty-five’ law schools having only 1.4 years of prior practical experience.”<sup>61</sup> Has a scholarship-focused academy contributed to graduating lawyers who are less prepared? Or, has market pressure for practical training—which full-time faculty members are less capable of delivering—pushed the academy in the direction of more scholarship?

52. CAMPOS, *supra* note 2, at 8.

53. *Id.*

54. *Id.*; see also Lander, *supra* note 46, at 289.

55. Lander, *supra* note 46, at 291. In contrast, adjunct professors are expected to focus on teaching. Given the focus of adjuncts on teaching, it is not surprising that “students commonly say that adjunct professors on average are more effective law teachers than full-time tenure-track law faculty members.” Brent E. Newton, *Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105, 145-46 (2010).

56. CAMPOS, *supra* note 2, at 8-9 (footnote omitted).

57. Segal, *supra* note 39.

58. Richard A. Posner, *Against the Law Reviews*, LEGAL AFFAIRS, Nov./Dec. 2004, available at [http://www.legalaffairs.org/issues/November-December-2004/review\\_posner\\_novdec04.msp](http://www.legalaffairs.org/issues/November-December-2004/review_posner_novdec04.msp).

59. Adam Liptak, *The Lackluster Reviews That Lawyers Love to Hate*, N.Y. TIMES (Oct. 21, 2013), [http://www.nytimes.com/2013/10/22/us/law-scholarships-lackluster-reviews.html?\\_r=0](http://www.nytimes.com/2013/10/22/us/law-scholarships-lackluster-reviews.html?_r=0).

60. *Id.*

61. Newton, *supra* note 55, at 127-28.

If faculty members lack the experience to teach practical courses being demanded by the market, increased publication rates could be a form of job security.<sup>62</sup>

In any event, adjunct professors provide a flexible mechanism for adapting the law school curriculum to market signals, which every law school receives from both its students and prospective employers. Adjunct course offerings can be added or dropped over time, as demand for different types of practical content changes. Different law schools also can offer regional industry content, be it energy, finance, or technology. As barriers to faculty composition are reduced, a more efficient equilibrium should result—more adjunct teaching, fewer full-time faculty, and less superfluous publishing.

#### VI. METHODOLOGY FOR A PRACTICAL ENERGY COURSE

When properly structured, energy law courses taught by adjunct professors familiarize students with the industry and its issues. Such courses also improve a student's capacity for practical application more generally—by synthesizing and applying legal skills to a specific industry setting:

[A]djuncts will have an enhanced sense of how to meld the theoretical and the practical, and they are generally more focused upon how to use the law strategically to accomplish client goals. . . . [Adjuncts'] special contribution is that they are able to think "transactionally," which combines the theory and the practice in a strategic way.<sup>63</sup>

I developed my first energy course for Rice University's Graduate School of Business in 2007. Many students from Rice go on to work for energy companies, and the school has cultivated an experienced energy faculty. Rice's energy professors include James Hackett, former Chief Executive Officer of Anadarko Petroleum, Vincent Kaminski, former Head of Quantitative Modeling at Enron, and Bill Arnold, former Director of International Relations for Shell.<sup>64</sup> Course offerings include International Energy Simulation, Geopolitics of Energy, Entrepreneurship in the Energy Industry, Business Strategy in the Energy Industry, and Project Management in Energy.<sup>65</sup>

My contribution to Rice was International Energy Development (IED). The first six lectures provide a simplified framework for how companies evaluate, acquire, manage, and divest a range of energy projects in the developing world. Its content also incorporates many real-world examples from my own career,

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62. Another possible cause is "that schools are competing to increase their U.S. News and World Report rankings. . . . The competition also affects cost because rankings are partly affected by per-student expenditures, student-faculty ratio, and library resources." Debra Cassens Weiss, *GAO Puts Blame on US News Rankings for High Law School Tuition*, A.B.A. J. (Oct. 27, 2009, 7:13 AM), [http://www.abajournal.com/news/article/why\\_you\\_can\\_blame\\_us\\_news\\_instead\\_of\\_the\\_aba\\_for\\_high\\_law\\_school\\_tuition/](http://www.abajournal.com/news/article/why_you_can_blame_us_news_instead_of_the_aba_for_high_law_school_tuition/).

63. Lander, *supra* note 46, at 290 (emphasis added).

64. William M. Arnold, RICE JONES GRADUATE SCH. BUS., [https://business.rice.edu/Bill\\_Arnold/](https://business.rice.edu/Bill_Arnold/) (last visited Jan. 23, 2014); James T. Hackett, RICE JONES GRADUATE SCH. BUS., <http://jonesgsm.rice.edu/OnlineDirectory/PersonnelDetail.aspx?id=3316> (last visited Jan. 23, 2014); Vincent Kaminski, RICE JONES GRADUATE SCH. BUS., <https://business.rice.edu/OnlineDirectory/PersonnelDetail.aspx?id=3331> (last visited Jan. 23, 2014).

65. *Energy Courses*, RICE JONES GRADUATE SCH. BUS., [http://jonesgsm.rice.edu/Energy\\_Curriculum.aspx](http://jonesgsm.rice.edu/Energy_Curriculum.aspx) (last visited Jan. 23, 2014).

which I use to illustrate the types of challenges arising at different stages of a project's life.<sup>66</sup> The second half of IED requires students to participate in a competitive simulation involving the acquisition of West African petroleum licenses.

Subsequent to Rice, I have created other practical courses for the University of Chicago Law School (Energy Law Seminar), the Agostinho Neto University Law School in Angola (International Oil & Gas Transactions),<sup>67</sup> and Marathon Oil Corporation (Petroleum Negotiation Workshop). In doing so, I have identified three critical elements for a successful "practical" course: (1) simplified frameworks, (2) personal examples, and (3) competitive simulations. This three-step methodology helps students bridge the foundational skills of their Master of Business Administration (MBA) or Juris Doctor (JD) programs to a particular practice area, such as energy.

#### A. *Simplified Framework*

The first challenge facing an adjunct professor is transitioning from the professional environment (where colleagues possess high levels of specialized knowledge) to the academic environment (where students have little or none). Presentations to industry colleagues are often given in shorthand because of the audience's shared experiences. This is not the case for graduate students. The adjunct professor needs to distill a complex industry into a streamlined framework. Simplification of complexity is a precursor to making the teacher's experience accessible to novices.

A basic understanding of the energy industry's upstream, midstream and downstream components is a useful starting point. An upstream course can then advance to outlining its focus areas, such as exploration, appraisal, development, production and improved/enhanced oil recovery. A midstream course can introduce students to a framework of gathering, transmission, and distribution systems, as well as the differences between the transportation of oil and natural gas. By understanding how the energy industry functions, students are in a better position to appreciate why particular legal problems exist.

The next task is providing a roadmap for the course. I like to think of each course as a story, comprised of several chapters representing the daily lectures. International Energy Development tells the story of how energy companies go about acquiring, managing and divesting projects in the developing world. The project lifecycle starts when a company decides which types of projects to pursue and where. Companies then have to approach governments and competitors to identify and negotiate acquisitions. International ventures may encounter a variety of threats, such as expropriation and sanctions. Even divesting a project in the developing world can be challenging, as sellers and prospective buyers navigate government approvals. My IED students are on a journey, and every lecture is a stop along the route from a project's initial pursuit to its eventual sale.

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66. Additional detail concerning the author's course is contained in the course book. SCOTT GAILLE, INTERNATIONAL ENERGY DEVELOPMENT (2011).

67. The Agostinho Neto University is a public university located in Luanda, Angola. *About UAN*, AGOSTINHO NETO U., <http://www.uan.ao/pt-pt/acerca-da-uan/acerca-da-uan.aspx> (last visited Feb. 6, 2014).

These lectures are reinforced by my introductory textbook, *International Energy Development*. I wrote *International Energy Development* as the book that I wished someone would have handed me on my first day at Vinson & Elkins—a high level summary of the international energy sector and the legal and commercial challenges that companies typically encounter there. I ask my students to read the book in full prior to the first day of class. Doing so reinforces my framework and sets the stage for deeper analysis of specific issues.

How should an adjunct design individual lectures? Again, simplification is paramount. I start by listing the concepts that I could teach in a particular lecture. Then I rank order them. If my students only learned one thing on a given day, what would it be? For example, in teaching the Foreign Corrupt Practices Act,<sup>68</sup> I want my students to walk out the door thinking: *beware of local agents*. If I am teaching a particular contract, I might rank its provisions according to how contentiously they are negotiated. By limiting each lecture to a handful of topics, I can focus my students' attention on the matters they are most likely to encounter in the real world. Doing so also sets the stage for the second step—the use of personal examples.

### B. Personal Examples

Once the adjunct has established a simplified structure, it needs to be populated with situational examples that show how the professor has handled real matters.<sup>69</sup> I like to spend half of each lecture discussing case examples from my career. This is another reason why it is so important for practical lectures to focus on just a few points. Case explanations take a lot of time. If a given lecture contains too many issues, there will not be enough room for the effective use of examples.

Given time constraints, adjuncts need to carefully select their case studies. However interesting a story may be, it has to advance the students' understanding of the framework being taught. Most of us have experienced a lecturer whose idea of teaching was a stream of random “war” stories. But entertainment is not enough. In order for the adjunct's experiences to matter, the case studies need to “infuse and enrich theory in a way that enhances learning.”<sup>70</sup> The personal examples need to show how the particular issue arose and what was done about it.

For instance, I use examples to show how corrupt officials place pressure on companies and their employees to violate the Foreign Corrupt Practices Act.<sup>71</sup>

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68. Foreign Corrupt Practices Act, Pub. L. No. 100-418, 102 Stat. 1415 (1988) (codified as amended at 15 U.S.C. §§ 78m, 78dd-1, 78dd-2, 78ff (2012)).

69. The debate between theoretical and practical teaching contains elements of the multi-millennial debate over the approaches of Plato and Aristotle. See generally ARTHUR HERMAN, *THE CAVE AND THE LIGHT: PLATO VERSUS ARISTOTLE, AND THE STRUGGLE FOR THE SOUL OF WESTERN CIVILIZATION* (2013). My emphasis on practical observation and experience is generally Aristotelian. See generally ARISTOTLE, *NICOMACHEAN ETHICS* bk. VI, (G.P. Goold ed., H. Rackham trans., Harvard Univ. Press rev. ed. 1934) (c. 384 B.C.E.). “Understanding . . . is about the objects [of] practical wisdom.” *Id.* at bk. VI, 10. “[W]e ought to attend to the . . . sayings and opinions . . . of people of practical wisdom . . . because experience has given them [insight].” *Id.* at bk. VI, 11.

70. Lander, *supra* note 46, at 290.

71. Pub. L. No. 100-418, 102 Stat. 1415.

One of my favorite cases involves an African nation that requires proof of immunization against yellow fever. A government nurse is responsible for checking each immunization certificate at the airport arrivals hall. Those without certificates are taken into an alcove where the nurse points to an old syringe and requests \$100 (or more) to let the employee pass unvaccinated. I ask my students: “What would you do if you were in that position?” Such examples leave my students with a better understanding of how a corrupt official can exploit circumstances and vulnerabilities—regardless of the number of zeroes behind the dollar sign.<sup>72</sup>

### C. Competitive Simulations

The last step in my teaching process requires students to apply the simplified framework (as illuminated by personal examples) to a competitive setting. The use of simulations “allows [students] to internalize their new knowledge. Instead of memorizing lessons on the blackboard, they [a]re forced to exercise,” which leads to “[t]rue expertise.”<sup>73</sup> The benefits of learning by simulation are well-established:

They give learners opportunities to practise and reinforce their learning in a safe environment. They allow the learner to follow different decision trees and explore the consequential effects of an incorrect decision. Examples of simulations can be seen in aviation and other high-risk professions such as medicine or the military.<sup>74</sup>

Simulations for airline pilots are believed to have reduced accidents by 71%, and “studies have found big benefits when medical students use simulators to practice colonoscopies, laparoscopic surgery and even the varied techniques of general surgery.”<sup>75</sup>

Simulations also have a well-established track record in the legal profession, where law firms use mock trials and negotiation games to train starter associates. For example, DLA Piper has developed a simulation called the Finance & Projects Academy:

Lawyers work in cross-border teams, acting as either borrowers or lenders in a simulated transaction. For the first seven weeks of the programme they work in a virtual environment to open negotiations and agree initial terms. In the eighth week the programme culminates with face-to-face negotiations. Each team is supported by two partner mentors who provide guidance and feedback at each stage.<sup>76</sup>

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72. The use of personal examples also can raise issues of client confidentiality. David Hricik, *Life in Dark Waters: A Survey of Ethical and Malpractice Issues Confronting Adjunct Law Professors*, 42 S. TEX. L. REV. 379, 393-96 (2001). How should the professor integrate career examples while protecting former employers and clients? One advantage of the energy industry is its relative transparency. Due to many industry newspapers, it is usually possible to teach a personal example solely by reference to the public record. See also *id.* at 395. Where this is not possible, the adjunct may have to discuss the parties generically to protect their identities (“Company Beta,” “a country in Africa,” etc.). *Id.* at 393.

73. Jonah Lehrer, *The Value of Simulation*, WIRED SCIENCE (June 29, 2011), <http://www.wired.com/wiredscience/2011/06/the-value-of-simulation/>.

74. Claire Line, *Business Simulations for Legal Training*, INFOLAW.CO.UK (Sept. 2007), <http://www.infolaw.co.uk/newsletter/2007/09/business-simulations-for-legal-training/>.

75. Lehrer, *supra* note 73.

76. Delphine Chevallier, *Dropping the Jargon—Why Law Firm Training Courses Should Focus Less on the Law and More on How to Practise It*, LEGAL WEEK (Sept. 27, 2013), <http://www.legalweek.com/legal->

Lovells employs a project called TransAct, which trains lawyers using hypothetical deals from their own practice areas.<sup>77</sup> By extending such simulations to law schools, students can receive practical learning earlier—prior to employment.

In *Simulations: Collaborative Experiential Learning*, adjunct professor Jay Finkelstein explains why simulations should play a greater role in law schools:

Law firms need lawyers who can actually be productive earlier in their career. That's part of what this is all about. Clients are no longer willing to bear the expense of having their law firms train young lawyers, so new approaches are necessary. We need to address this requirement for practice skills within the law school curriculum.<sup>78</sup>

Finkelstein's international negotiation course is being offered at five law schools, including Stanford and Northwestern.<sup>79</sup> It pits two teams of students against each other: "(i) a multinational pharmaceutical company that is seeking to acquire a raw material for a new patented drug in order to get this drug to market, [and] (ii) a government-owned agricultural cooperative in a developing country that can supply the needed raw material."<sup>80</sup> The teams are often from two different law schools, and they negotiate using video conferencing and email.<sup>81</sup> Throughout the process, the adjunct professors comment on the students' successes—and mistakes.<sup>82</sup> Finkelstein's course balances the "doing" with instruction, such that "about half of the class time being in seminar format for each side discussing the transaction, negotiation strategy, and written communications to the other side, and the other half of the time as video/negotiating time."<sup>83</sup>

IED seeks to achieve similar results with a West Africa petroleum license simulation that requires approximately one-third of the instruction time. IED usually has about forty students, who are divided into ten "teams" or "companies" of four students each. These companies then randomly draw budgets (all of similar but slightly different amounts) setting forth the maximum each can spend on oil exploration in the Republic of Angola. The teams are presented summaries of several real Angolan petroleum licenses, including the number of drillable prospects, the chance of discovering oil, and, in the event of a discovery, the expected oil reserves. In preparation for the game, students develop their own basic economic models, which drive their bidding strategies.

My simulation takes place over approximately six hours, usually divided into three sessions. The first class period is devoted to a live auction during which teams competitively bid on the licenses. After the auction concludes, teams then engage in negotiations with one another to acquire and/or divest

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week/analysis/2296490/dropping-the-jargon-why-law-firm-training-courses-should-focus-less-on-the-law-and-more-on-how-to-practise-it.

77. Line, *supra* note 74.

78. Jay Finkelstein & Karl Okamoto, *Simulations: Collaborative Experiential Learning*, 14 TENN. J. BUS. L. 419, 420 (2013).

79. *Id.* at 419, 429.

80. *Id.* at 421.

81. *Id.* at 422.

82. *Id.* at 420.

83. *Id.* at 422.

interests in each other's licenses. Some teams opt for concentrated positions (in one or two blocks) while others seek to create diversified portfolios of smaller interests from many blocks. Because the negotiation workshop is multilateral, uncooperative negotiators may be bypassed. Finally, the simulation concludes with the rolling of dice to see which wells discover oil, thereby driving home the reality of risk in the energy industry. The team that ends the simulation with the most net present value wins the game.

Over the course of the IED simulation, I provide feedback regarding models, bidding strategies, and negotiation tactics, seeking to reinforce the skills being taught. Such real-time feedback is an important element of simulations:

The focus is on "learning by doing" in a controlled environment under the guidance of a professor who provides needed instruction at critical points in the negotiation. . . . Most importantly, "mistakes" during the negotiation become lessons to be discussed in class and not malpractice. Students can experiment; if something doesn't work, we can talk about it in class. We can figure out why it didn't work and what lessons to take away from that, and we can modify the approach to the negotiation for moving forward.<sup>84</sup>

Students in a successful simulation often compare their experience to the difference between "talking about learning to drive versus getting behind the wheel."<sup>85</sup>

## VII. CONCLUSION

As market demand for practical education grows, more energy lawyers will have the opportunity to personally contribute as adjunct professors. Yet this transition is not necessarily an easy one. Our usual speaking venue is filled with colleagues of comparable expertise—not twenty-somethings whose understanding of the energy industry may be limited to watching *Syriana*<sup>86</sup> and *Promised Land*<sup>87</sup> at the multiplex. A simplified framework, populated with personal examples, and followed with a competitive simulation, can direct practical learning in a way that is both relevant and accessible to the next generation of energy lawyers.

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84. *Id.* at 420-21.

85. *Id.* at 429.

86. SYRIANA (Warner Bros. 2005).

87. PROMISED LAND (Focus Features 2012).