

June 26, 2020

Dear Law School Community,

I apologize for the length of this message, but I wanted to share with you the decisions that have been made concerning Fall 2020 instruction.

After great reflection and study, I am writing to inform you that all of our Fall 2020 classes will be conducted remotely. For many weeks we have worked very hard to develop a schedule of in-person classes for the Fall semester that could be offered within the severe constraints created by the COVID-19 health emergency. Our plans have gone through many iterations as we have learned more in terms of campus requirements and public health necessities. I am enormously grateful to Molly Van Houweling, Annik Hirshen, Susan Whitman, and Beth Borowski for the huge amount of time they have spent on this. Lisa Ferrari, Kathleen Vanden Heuvel, and Charles Cannon have made a tremendous effort to determine what we can do in the building to have in-person classes while maintaining social distancing at all times, reducing building occupancy by 75-80% as required by campus, and taking all necessary health precautions. We have submitted detailed plans to campus and worked closely with the Provost's office to make this work.

But after all of these efforts, I and the Contingency Planning Committee have concluded that the best course – for the health of those in our community and for our educational program – is to have the Fall semester's classes be online. Our top priority is protecting the health of our students, staff, and faculty. At the same time, we want to do what is best educationally for our students.

The constraints on having in-person classes are enormous. The campus policy is no more than 25 students in a classroom at a time. This means that we could not have even a small 1L mod meet together. Those 25 students who could meet would need to be seated at least six feet apart. Their classes would need to be conducted only in our largest rooms, Booth Auditorium and Room 105, with students spread throughout the rooms. Students and professors would have to wear masks at all times while on campus, both inside and outside of the building and during classes. We also have concerns about the ventilation system for these parts of the building and its ability to displace room air at the rate required by the Public Health Department.

Even prioritizing classes for 1Ls, we learned through attempting to devise a schedule that the most any student would have is one day a week in the building. Also, the current campus protocol is only one person in a restroom at a time, no matter how large the restroom. This would greatly restrict the classrooms that we could use simultaneously in any part of the building. We could not, for example, have classes in 100, 105, and 110 at the same time. Those rooms, and Booth Auditorium, are the only ones large enough to have classes with the required social distancing.

Restrictions on building capacity also would limit the ability to have simultaneous classes. Cleaning and disinfecting between uses of classrooms would be essential, but likely would be available only once or at most twice a day. We would not have the clean classrooms

necessary to host more than a handful of upper-level classes and those still would be subject to having no more than 25 students in the room and occupancy limits in the building imposed by campus and restroom limitations.

In light of the reduced bathroom capacity and need for classroom cleaning, scheduling a significant number of classes would require redoing the Fall schedule to greatly increase passing time between classes. This would decrease the number of classes that could be accommodated in the daily schedule and disrupt the schedules for which students have already registered

We have been clear that all students and faculty may participate remotely if they wish, which means all in-person classes would have to be hybrid with some students present and some online. Some classes would have students in-person, but faculty teaching remotely. The interactive nature of law school classes would make such hybrid instruction difficult.

Campus has said that we cannot have any events in the Law School. The Café could not open because there is not enough space behind the counter for social distancing. We have been told by campus that break rooms, department kitchenettes, water fountains, and vending machines would not be available. Lockers could not be used. We were told by campus that it is considering requiring that all students arriving from out of the area be tested and not attend in-person for two weeks. This likely would mean that all classes would need to be online for the beginning of the semester.

And this only begins to summarize some of the obstacles to in-person classes. I am convinced we can provide an excellent education via remote learning this semester and frankly a better education than we can through a limited number of in-person classes taught in a hybrid fashion. I also believe it is the safest course for the health of our faculty, staff, and students.

I do not come to this decision easily. Many students have written me urging in-person classes. I know that many faculty members, including me, were hoping to be able to teach in-person. We have worked very, very hard to try to make this happen. But in the end, we concluded that for the Law School, for this Fall, the best course of action is all online classes. I remain very hopeful that this will be just for the Fall semester and the situation will be different for Spring 2021 semester. But it obviously is premature to plan that far ahead.

We are working on a plan for the building to be used, albeit on a limited basis and subject to campus restrictions, by faculty and students for purposes other than live instruction. For example, we are exploring allowing students to reserve space in the building, on a rotating basis, for studying. More details about that will be forthcoming when they are available.

At this point, the campus is encouraging staff to work remotely whenever possible. Even if we are given permission to use the law school buildings, we will, to the greatest extent possible, permit staff to work remotely if they feel the need to do so.

All exams for the Fall semester again will need to be take-home exams, as they were in Spring 2020. Even if we had some in-person classes, this still would have been necessary because of our assurance to students that they could participate remotely for the semester.

In consultation with the faculty, the following policies have been adopted.

1. *The traditional grading system (HH, H, P, PC, NC) will be used for Fall classes.* At our faculty meeting on May 6, several faculty members explained reasons for doing so: providing motivation for students, assisting their job searches, and decreasing reliance solely on subjective personal evaluations. We polled our students and there is not a consensus among them as to their preferred grading system.

We want to do all we can to accommodate students who are experiencing difficulties. This is crucial and we will work especially hard to provide needed accommodations for students on an individual basis. Student Services has increased its capacity for supporting students with disabilities and has pivoted in multiple ways since moving online. This includes checking in regularly with students who receive accommodations to ensure their needs are still being met with the change to distance learning. Student Services also recognized that certain populations may be more impacted by remote learning, including student parents. Any student who needs an accommodation can reach out to Kyle Kate Dudley, Assistant Director for Accessible Education. Any faculty member that has questions or concerns about accommodations with virtual learning can contact Kyle Valenti, Senior Director of Student Affairs.

There has been an extensive discussion on the law deans' listserv about what schools are doing and the overwhelming approach among law schools is to return to their usual grading system. For example, we have heard that University of Chicago, Columbia, Harvard, NYU, Northwestern, Harvard, and Penn have indicated that they will return to their traditional grading systems for the Fall semester. I do not know of any law schools that have decided to shift to Credit/No Credit grading for the Fall semester.

2. *Professors may require attendance and participation so long as they provide an alternative for students who cannot attend "live." If there are classes for which a stricter attendance and/or participation policy is pedagogically necessary, instructors may seek an exception to this policy from Associate Dean Molly Van Houweling.*

Attendance and participation are obviously crucial in law school classes. But we also will have some students, including both LL.M. and J.D. students, who are in foreign countries in very different time zones for whom live attendance and participation is not realistic. We have assured them that they will be able to enroll in Fall classes and we would accommodate their situations. Additionally, students may intend to join live, but may encounter connectivity issues that make it impossible for them to attend in real time on a given day.

Therefore, professors may require attendance and participation, but they need to provide an alternative for students who cannot attend live. However, there may be some classes where live attendance and participation is essential. For instance, a trial practice class may require the simultaneous attendance of students representing plaintiff, defense, witness, and judge. A professor may require live attendance, without an alternative, with permission of Associate Dean Molly Van Houweling.

3. *Classes shall be recorded unless an exception to this is approved by Associate Dean Molly Van Houweling.* As explained above, some students will not be able to attend live because of time zone differences. Also, health, family, and other emergencies may prevent live attendance. Recording classes is essential for these students.

However, there may be some classes or class sessions where recording is inadvisable because especially sensitive and personal material is discussed, or because of client confidentiality in the clinical setting. To accommodate this, the Associate Dean may approve a request to not have a class recorded.

\*\*\*

I was very pleased with our transition to remote teaching in the spring semester under the circumstances. We are committed to doing even better with our online teaching. I am grateful to Dean Van Houweling for conducting a series of workshops for our instructors on many aspects of teaching through this medium. I also am greatly appreciative for our IT staff who have been working very hard to ensure excellent remote instruction.

I hope this clarity about Fall 2020 instruction will help students in planning their living arrangements for the Fall semester. Obviously, being in a place with good connectivity is crucial. The campus has created a fund to help students with needs for technology because of remote teaching. Applications are due by July 15 and can be accessed at <https://technology.berkeley.edu/STEP>. Additionally, I am creating a fund to help students with connectivity issues, such as by purchasing mobile “hot spots” for students when needed. Our IT department will provide additional information. We want to do all we can to facilitate an excellent educational experience for each instructor and student.

We know that this will be especially difficult for our entering students who will begin their experience at Berkeley Law remotely. We are planning many community events of all kinds, especially ones specially oriented to our 1L, LL.M., and first year JSP and J.S.D. students. For the 1Ls, we are creating unique summer activities including optional small “pods” led by 2Ls and 3Ls that will aid in students getting to know each other before classes begin. For the Fall semester, 1L students will soon receive information about special optional small, 1-unit seminars, that are being created to choose among – on topics including climate change in the courts, civil liberties in a pandemic, understanding financial crises, and how to be happy in law school. We also will be announcing some new upper-level classes that may appeal to 2Ls and 3Ls whose preferences may have changed in light of our plan. For LL.M. students, we have created special LL.M.-only classes, including one that I’ll teach on public law in a crisis, and we’ll be offering many community-building and networking opportunities. For JSP and J.S.D. students, we will have seminars just for first-year students and will also plan community building opportunities.

We will work hard to maintain and enhance the many things that make Berkeley Law special. Our terrific pro bono program, under the direction of Deborah Schlosberg, of course, will continue. Also, we will continue to have countless speakers, workshops, events, and symposia throughout the Fall semester.

Obviously, my hope was that we would be able to return to usual classes for the Fall semester. I make the decision for all online classes because I am convinced that it is the best for the health of all in our community and will provide the best education for our students compared to the available alternatives. I, of course, am glad to discuss this and want us to do all we can to make the Fall 2020 semester a huge success, even if under very difficult circumstances.

Warm regards,

Erwin