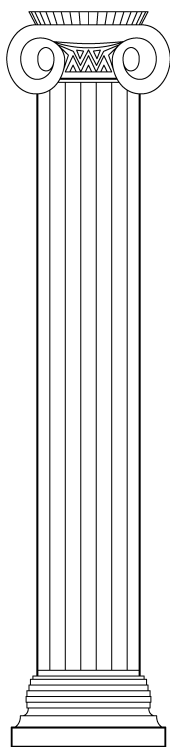


# The Journal of the Legal Profession

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The University of Alabama School of Law

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# The Journal of the Legal Profession

VOLUME 43, ISSUE 2, SPRING 2019

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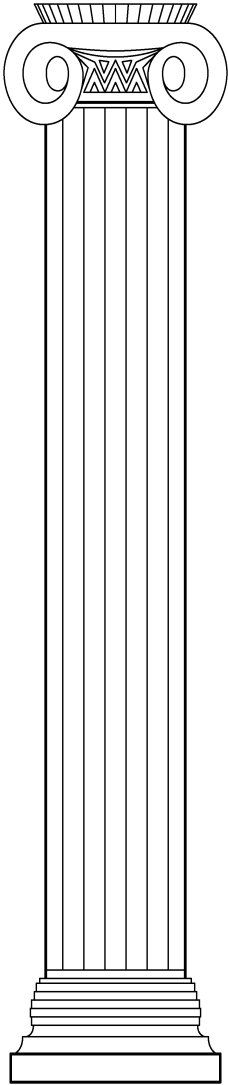
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# The Journal of the Legal Profession

The University of Alabama School of Law



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# METAMORPHOSIS OF LAW TEACHERS: A FEW THOUGHTS ON WHEN, WHERE, WHY AND HOW TO EXIT FULL TIME TEACHING

*Professor Okianer Christian Dark & Professor Jonathan K. Stubbs*

Law teachers often like to talk, and talk, and talk some more. So it's not surprising that the origin of our exploration of when, where, why and how to exit full time law teaching began with a group of law teachers at an AALS annual meeting standing around talking. At some point, it occurred to several of us that we were reaching our 20, 25, maybe even 30-year mark in teaching law students. Many of us were starting to seriously contemplate making a transition from the legal academy, but wondering how to do that. Some individuals were considering how (beyond an obligatory visit to our home institution's Department of Human Resources) might we re-envision life beyond an exit from full time teaching in the legal academy? Questions were raised as to how do we maintain our personal identities and continue to work in meaningful ways?

As we sifted through our ideas, we soon recognized we were not sure what questions to ask ourselves. Unlike the beginning of our careers where there was a lot of assistance and support, both institutionally or through AALS and other places we found ourselves asking: after a significant career what is the best way to proceed. It was out of that conversation that we thought, "Let's start a conversation through AALS about how we might make this transition." That was the impetus for the first Arc of The Career AALS panel in 2017<sup>1</sup> as well as the second one in January of 2019.<sup>2</sup>

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1. Inaugural Panelists were Rev. Prof. Emeritus Joseph Dancy, Jr. (Norfolk State University); Professor Okianer Christian Dark (Howard), Professor Emeritus James Fishman (Pace), Professor Linda Greene (Wisconsin), Professor Emerita Mary Heen (Richmond), Professor Emerita Margaret Montoya (New Mexico), Dean Emeritus Burnele Powell (South Carolina) and Professor Jonathan Stubbs (Richmond).

2. 2019 Panelists were Rev. Prof. Emeritus Joseph Dancy, Jr. (Norfolk State University); Professor Okianer Christian Dark (Howard), Professor Emeritus James Fishman (Pace), Professor Frank Valdes (Miami); Professor Steven W. Hobbs (Alabama), Professor Emerita Ann C. Hodges (Richmond), and Professor Jonathan Stubbs (Richmond).

We reached out to distinguished colleagues who readily agreed to participate as panelists and share their thoughts. As was to be expected, in 2017 and again in 2019 our colleagues rose to the occasion, and openly shared from the depth of their experiences and wisdom. The reception from other peers attending the panel sessions was warm and deeply moving. We were especially touched because it's sometimes a very emotional experience to contemplate a personal metamorphosis – moving from that which is often known and relatively comfortable to that which is sometimes unknown and somewhat unnerving.

Though technical difficulties frustrated our attempts to capture the substance of the 2017 panel and create a podcast, in 2019 through expert assistance from AALS staff, led by Ms. Tracie Thomas, we were successful in creating a podcast for persons who are interested in law colleagues' reflections. Through the efforts of Professor Steven Hobbs at the University of Alabama and the excellent staff of the Journal of the Legal Profession, we were able to secure an opportunity to publish several short essays arising from the 2019 panel discussion. Our hope is that in the not too distant future, other law teachers will add their reflections and experiences for the benefit not only of those contemplating retirement, but also for teachers at earlier stages in their careers both within and beyond the legal academy.

## ENCORE PROFESSOR: CRAFTING A NEW STORY FOR LIFE AFTER THE LEGAL ACADEMY

*Steven H. Hobbs\**

I recently made the observation, as I looked at my faculty at The University of Alabama School of Law, that there were only five colleagues left who had voted on my appointment in 1997. The core of the faculty, that part which assumes leadership on standing committees and holds associate deanships, has shifted to colleagues who have been appointed to the faculty in the last eight to twelve years or so. I am now a senior member of the senior faculty. As my former colleagues have retired, I have contemplated my own transition to emeritus status in the not too distant future. So I appreciate the opportunity to participate in the AALS Arc of the Career panel called, *Encore Faculty: Preparing for Life Beyond the Legal Academy*.

I start from the premise that one's future steps are in part foreshadowed by the steps we have taken in the past. I have travelled a wide variety of paths in my professional career and personal life. Certainly, while all of them may inform my future, I will focus on my experiences as an oral storyteller and as a quilter. I love to tell stories. I have told stories in my classroom,<sup>1</sup> in public presentations<sup>2</sup> and at storytelling events where stories are told to a live audience.<sup>3</sup> In a past AALS annual meeting I helped organize a half-day program on storytelling and the law.<sup>4</sup> At the Alabama Law Institute I assisted in a continuing legal education program entitled, "The Lawyer as Communicator: Story Teller, Story Listener, and Story Builder," that focused on the MacCrate Commission Report's admonition that lawyers must have competent communication skills.<sup>5</sup> I have done storytelling

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\* Tom Bevell Chairholder of Law, The University of Alabama School of Law.

1. Storytelling work shop with Noa Baum

2. *Getting Hooked Up on Mount Olympus*, in METKA ZUPANČIČ, HERMES AND APHRODITE: ENCOUNTERS (2004).

3. Since 2011, I have been the feature storyteller at the Kentuck Festival of the Arts in Northport, Alabama.

4. *Panel Discussion: Developing the 5th MacCrate Skill - The Art of Storytelling: The Association of American Law Schools Section on Legal Writing, Reasoning and Research Section Annual Meeting Program*, 26 PACE L. REV. 501 (2006).

5. See *The Lawyer as Communicator: Storyteller, Story Listener, and Story Builder*, ALABAMA BAR INSTITUTE FOR CONTINUING LEGAL EDUCATION (Oct. 22, 2004) program materials. The MacCrate Commission was a Task Force established by the Section of Legal Education and Admission to the Bar



workshops that consider the uses of storytelling in entrepreneurship, family law and religious organizations. The importance of storytelling has informed a significant part of my legal scholarship.<sup>6</sup> In short, the path of storytelling that I have followed has afforded me an opportunity to contribute something special to the world.<sup>7</sup>

During my presentation at the AALS panel, I displayed one of my quilts. It depicted a storyteller telling to a group of children under a baobab tree. Quilts, as works of art, can be made to tell a story about relevant social issues, especially those concerning the ideal of justice.<sup>8</sup>

At the AALS Conference, I thought it right to begin my presentation by sharing a story. I told the Russian folktale, “Granddaughter’s Sled.” I found this in a story collection called, *Thirty-Three Multicultural Tales to Tell*, gathered by noted storyteller, Pleasant DeSpain.<sup>9</sup>

A long time ago, there was a man named Ivan. He lived with his elderly father Boris, and his very young daughter Natasha. This was, indeed, a very long time ago. It was a time when people thought that old folks were useless. They would take them out into the forest, and leave them out there to die.

Ivan’s father had become feeble, and he was unable to work. He went and got his daughter’s sled, and he tied his father onto the sled.

Natasha came running out and said, “Why are you tying Grandfather to the sled? Where are you taking him?”

Ivan said, “I’m taking him out into the forest.”

Natasha said, “I don’t think that’s a good idea. Grandfather is old, and he can’t cut wood. He can’t pick berries. How will he live?”

Ivan said, “Never mind. Don’t worry about it. It’s something that I have to do.”

“But, can I come along with you?”

Ivan said, “Yes, you can. But don’t ask any more questions.”

Ivan trudged out into the forest, [with] little Natasha following along, picking flowers every once in a while. She thought she would give those to

by the American Bar Association. The report was entitled, *Legal Education and Professional Development An Educational Continuum*, ed. by Robert MacCrate, (1992).

6. Steven H. Hobbs, *Love on the Oregon Trail: What the Story of Maynard v. Hill Teaches us About Marriage and Democratic Self-Governance*, 32 HOFSTRA LAW REV. 111 (2003); Steven H. Hobbs, *Invisible Man and Other Ellison Text: Ralph Ellison as Oral Storyteller*, 26 OKLA. CITY U.L. REV. 927 (2001).

7. Steven H. Hobbs & Shenavia Baity, *Tending to the Spirit: A Proposal for Healing the Hearts of Black Children in Poverty*, 26 BOSTON COLLEGE THIRD WORLD LAW J. 107 (2006).

8. See, e.g., DAN CAMERON, ET. AL., *DANCING AT THE LOUVRE: FAITH RINGGOLD’S FRENCH COLLECTION AND OTHER STORY QUILTS* (1998); CAROLYN L. MAZLOOMI, *QUILTING AFRICAN AMERICAN WOMEN’S HISTORY* (2008).

9. PLEASANT DESPAIN, *THIRTY-THREE MULTICULTURAL TALES TO TELL* (1993). This is my retelling of the Russian folktale, “Granddaughter’s Sled” by storyteller-author, Pleasant DeSpain. I present it here with his approval. Email from Mr. DeSpain on file with author.

her grandfather. When they got to the middle of the forest, Ivan looked at his father and said, "I'm sorry, Father. I have to do this. You know it's the way of our people."

Natasha said, "You can't leave him out here! He's going to starve, or the wolves are going to eat him!"

The father said, "I'm sorry, Natasha, but I have no choice."

Natasha thought for a minute and said, "Well, we can leave Grandfather out here, but I need to take my sled with me."

He said, "Why?"

"When you get old, I'm going to need that sled to bring you out here into the forest."

Ivan thought about that, and his daughter was right. "You're right, Natasha. We're going to take Grandfather home."

They hid in him in a back room, and he said to Natasha, "We can't tell anyone; this has to be a secret."

Time came and time passed. There came to be a big famine in that area. People had eaten all the wheat and rye; they were even eating the seed that they were going to use to plant the next harvest. Ivan tried as best he could to bring food to his father every day, but it got more and more meager. One day, he brought a crust of bread that was really hard and really small. He said, "Father, I'm sorry, but the villagers are starving. No one really has anything to eat."

Boris said, "That's ridiculous. I want you to go out to the barn and take the straw thatch off the roof. If you thresh it really well, there's still enough seeds in there for you to place a rye crop."

He did as he was told, and he planted a fine crop. He and his family and the people in the village all had something to eat. They came out to Ivan's house, and they wanted to know how he came up with that idea. Ivan said, "My father told me about it. He's a wise man."

The villagers said, "But I thought your father was dead."

Natasha jumped in and said, "Grandfather is not dead. We had hidden him, but we have not hidden his wisdom and he has saved all of our lives."

From that day, in this village, the elderly are held in deep respect and honor.

This story has resonance to me for a number of reasons. First, it highlights the challenge of how the elderly are treated in our society. While we hopefully may not take the elderly out into the distant woods anymore, we all will most likely be headed towards assisted living or a nursing home. Anyone who has had an elderly parent recognizes the challenge of providing quality care for a loved one. As more of us so-called baby boomers head towards that inevitable reality, we recognize the shortage of qualified caregivers and care facilities.

Note to deans contemplating new curricula – law schools could be instrumental in training future lawyers who will provide services to families like the one in Granddaughter’s Sled. At The University of Alabama School of Law, we have an Elderlaw Clinic that provides assistance to the local community. The clinic works with students from the School of Social Work to help provide holistic services to elderly clients.

Second, in Granddaughter’s Sled, we learn valuable lessons from Natasha. One, she demonstrates a loving ethic of care by her regard for her grandfather’s well-being. She sees his innate humanity and articulates a respect for his dignity. As faculty, too often we are locked away engaged in important scholarship or teaching preparation or are off travelling to conferences. Often we are “working” from home and miss routine interaction with each other. I am most proud of my faculty when we demonstrate concern for each other as when a colleague faces a medical emergency and we come to offer assistance as they face a health challenge and live an ethic of care.

Two, she has an appreciation for beauty as shown by her collecting flowers for her grandfather even under dire circumstances. This reminds me that we all would prefer to receive flowers while we can still see and smell them. As is suggested by other panelists, it behooves law schools to honor encore faculty and recognize their contributions while they can receive those appreciations. At the School of Law we recognize faculty who have taught there for over twenty-five years by commissioning a portrait of them. Recently we had a ceremonial unveiling of four portraits of colleagues who had achieved that milestone. During the ceremony, their valuable contributions to the legal academy and to our community were recounted. Three of those colleagues were encore faculty

And three, Natasha expresses a precocious sense of wisdom as she schools her father about his possible future. She also leads others by pointing out the obvious to the larger community that our seniors have valuable wisdom to share if we but take the time to ask and to listen. Wisdom seeking is thus a two-way street running between elders and the young. Looking back at my steps in the academy, I cannot count all of the lessons I have learned from my students. Not long ago I participated in a conference focused on the future of our profession. I was privileged to interview Linda Klein, who was then the president of the American Bar Association. She was one of my former students.<sup>10</sup>

Finally, Granddaughter’s Sled reflects upon the accumulated wisdom of our elders. The wisdom was acquired through life experiences often learned through struggle and triumph. As grandfather demonstrates, his wisdom is

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10. *The New Normal for Delivery of Legal Services*, GEORGIA CHIEF JUSTICE’S COMMISSION ON PROFESSIONALISM: CONVOCATION ON PROFESSIONALISM, Program Materials, August 30, 2016.

still very useful to the community, especially in trying times. As we encore faculty transition into life after the legal academy, it behooves us to remember that we are valuable repositories of knowledge, wisdom and, yes, common sense. Our future steps can be guided by what we know. As others have expressed, there are many fulfilling pathways open to us. This is to say we are not so much losing our identities as law professors, but we are building on our life experiences to step through a different doorway of opportunity. Moreover, we have time to pursue other passions that tug at our hearts.

We can do this by looking at examples of professors who have already made that transition to encore status. One of my colleagues, you may remember Martha Morgan, she retired and she got involved with international women's rights organizations. She has been able to travel all around the world and attend international conferences. She also works with the local civil rights lawyers Hank Sanders and Faya Rose Toure in Selma, Alabama addressing issues of injustice. Another colleague, Gene Marsh had served as an NCAA faculty representative on the University Athletics Committee which oversees NCAA regulatory compliance. Alabama once had to go through a very serious infractions review before the NCAA. Professor Marsh later served on the NCAA Infractions Committee. As he retired, he became of counsel to a large law firm consulting with colleges and universities that got in trouble with the NCAA, including places like Penn State. My friend and colleague from Howard University Law School, Professor Cynthia Mabry, taught family law and mediation. After she retired, she began doing federal appellate mediation from her home, telecommuting as it were.

As for me, as I contemplate becoming an encore professor, I am motivated by many of the same issues with which I engaged in my teaching and scholarship. Primarily, I have endeavored to follow the biblical teachings of the Prophet Micah who admonished us to pursue justice.<sup>11</sup> I became a lawyer in large part because I witnessed how lawyers could make substantive changes in the lives of those who have been denied the promises of the Declaration of Independence and the United States Constitution. Equality, freedom and justice are the cornerstones of a society that respects and honors the dignity and humanity of all in our society.

I am currently working on a project that examines the idea of seeking justice at the local community level. Too often citizens are treated unfairly or have had their civil rights violated without an effective method for seeking redress or for ensuring that such violations of rights do not continue to

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11. He hath shewed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly before thy God. Micah 6:8, THE HOLY BIBLE, KING JAMES VERSION.

happen. Often there are no adequate remedies at law or there are too few incidents to bring a class-action impact litigation.<sup>12</sup> Needless to say, our systems of justice should have as hallmarks a commitment to treat all citizens fairly and with respect.

This is especially true of our criminal justice system, from arrest to incarceration to the return to the community. Recently the United States Justice Department issued a scathing report on the deplorable conditions in the Alabama state prison system.<sup>13</sup> Our prisons are rife with overcrowding, lack of adequate medical care and physical and sexual violence. Unfortunately, the report does not examine similar issues in local jails. Of particular note and by way of example, while waiting in the Tuscaloosa County jail for disposition of a case, persons have been subjected to rape and sexual assault in violation of the Prison Rape Elimination Act of 2003. Unfortunately, this happened to one of my family members. It is impossible to find redress for these circumstances if they are not addressed within the relevant statute of limitations. Each person who interacts with legal authorities or public officials should be treated as human beings worthy of dignity and respect. My future endeavors will include proposing a local justice commission that will investigate incidents of injustice and establish a process whereby citizens can obtain assistance when their rights have been violated or they have been treated unfairly. Perhaps it will be on the model of a truth and reconciliation commission.

I return to my love of storytelling. As I approach encore status I can envision developing and telling stories that confront injustices as well as stories that demonstrate examples of achieving measures of justice. There are many voiceless persons who need to have their stories told, as well as communities that need to hear these stories if we are to make freedom and justice ring throughout this land. Additionally, as I have more time to quilt, I can craft quilts that contain images of justice in the style of nationally recognized quilter Yvonne Wells from Tuscaloosa, Alabama.<sup>14</sup>

As a concluding thought I suggest that what we ought to do is start planning ahead of time. What are our passions both professionally and personally? How can we capitalize on that? How can we expand them? How

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12. Civil rights organizations like the Southern Poverty Law Center or the Equal Justice Initiative do not have the resources to represent individual cases of minor injustices that do not have the potential to make systemic changes. However, such minor injustices have cumulative consequences on how a community experiences the overall quality of justice and fairness. See United States Justice Department's report on the quality of justice in Ferguson, Missouri after the police shooting death of Michael Brown.

13. *Investigation of Alabama's State Prisons for Men*, UNITED STATES JUSTICE DEPARTMENT, CIVIL RIGHTS DIVISION, UNITED STATES ATTORNEY'S OFFICE FOR THE NORTHERN, MIDDLE, AND SOUTHERN DISTRICTS OF ALABAMA, April, 2, 2019.

14. Yvonne Wells is a Master Quilter who lives in Tuscaloosa, Alabama. She is noted nationally for her quilts that reflect the civil rights struggle. One of my favorites is a series of quilts that depict the nine Scottsboro Boys.

can we think about doing those things? I recommend to you a book by Sarah Lawrence-Lightfoot called *The Third Chapter: Passion, Risk, and Adventure in the 25 Years After 50*.<sup>15</sup> The third chapter is that the period of time after middle age. What she does is she interviews people who are like us, who are going through this transition to encore status. She looks at the struggles and the challenges and the risks and the loss as we downshift from that time when we are consumed with building our careers and families. And yet we can experience the liberation of making this transition into a different time, a different period of our lives.<sup>16</sup> I fully recommend this book.

I want to leave you with a blessing from the book, *To Bless The Space Between Us*, by John O'Donohue.<sup>17</sup> This is a wonderful book containing blessings for many occasions and circumstances of life. This one is for retirement:

This is where your life has arrived  
 After all the years of effort and toil;  
 Look back with graciousness and thanks  
 On all your great and quiet achievements.  
 You stand on the shores of new invitation  
 To open your life to what is left undone  
 Let your heart enjoy a different rhythm  
 When drawn to the wonder of other horizons.  
 Have the courage for a new approach to time;  
 Allow it to slow until you find freedom  
 To draw alongside the mystery you hold  
 And befriend your own beauty of soul.  
 Now is the time to enjoy your heart's desire,  
 To live the dreams you've waited for,  
 To awaken the depths beyond your work  
 And enter into your infinite source.<sup>18</sup>

I wish you all good luck as you think about retiring. Let's keep those sleds in the garage.

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15. SARA LAWRENCE-LIGHTFOOT, *THE THIRD CHAPTER: PASSION, RISK, AND ADVENTURE IN THE 25 YEARS AFTER 50* (2009).

16. Lawrence-Lightfoot sees the individuals in her study as they leave the known territories of the lives and identities they have built and transition into a new part of their live journeys. She notes: Another thread that weaves through the experiences of people who successfully navigate the terrain between the old and the new, is the power of storytelling. We see how the act of composing a narrative even offering up competing narratives helps us feel less vulnerable, gives us a sense of choice and agency, and permits us to feel some measure of control. *Id.* at 76.

17. JOHN O'DONOHUE, *TO BLESS THE SPACE BETWEEN US: A BOOK OF BLESSINGS* (2008).

18. *Id.* at 167.



## AN INSTITUTIONAL RESPONSE TO SUPPORT ENCORE (RETIRED) FACULTY: “BECAUSE YOU CAN’T RETIRE FROM WHAT YOU ARE”

*Okianer Christian Dark\**

Institutions of Higher Learning invest resources into identifying, recruiting, and developing new faculty and rightly so because they are important to the present and future of the institution. However, for the seasoned or late-career faculty, those who have devoted a significant portion of their professional lives at a given University or College, the attention to their transition from the institution should be important enough for an institutional commitment to assist retiring faculty through the transition, and perhaps even establish ways for retired or encore faculty to retain a relationship, albeit it different, with the University or College.<sup>1</sup> Encore faculty typically complain that their respective institutions respond thusly - “Look, you are gone, and you are done.”<sup>2</sup> Further, institutional transitions for faculty are largely focused on the transactional aspects of retirement such as benefits, finances and phasing plans which, of course, are necessary.

But, faculty retirements also impact individual identity, self-worth, and even legacy.<sup>3</sup> Furthermore, it is not just the individual faculty member stepping away from the institution who requires preparation and adjustment but also the faculty that remain. After all, the individual faculty member may have been a part of the academic program and life of the institution for 30-40 years. The faculty member’s departure will have rippling effects which will be experienced throughout the institution. While normal, such effects should be addressed in a thoughtful, humane and respectful manner because it allows for an orderly transition all around and it is the right thing to do!

This Essay focuses on how the institution can address the needs of retiring and retired faculty because (1) they spent some significant part of

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1. *Life After Law: What Retired Lawyers Have to Say*, 54 AZ ATTORNEY 16 (2017).

2. This comment was made by Professor James Fishman who spoke at the ARC of Career AALS panel on Transitions: Life After the Legal Academy, 2019 AALS Annual Conference.

3. Ron Kelemen, *More Than Money: Are You Psychologically Ready to Retire?*, 62 OR. ST. B. BULL. 35 (2001).



their careers at the institution which benefited from their teaching, scholarship, research, internal and external service, and professional networks; (2) it is the right thing to do because, unlike new faculty who represent potential, these faculty have actually invested their careers in the advancement of students, graduates, other faculty, staff and institutional reputation; (3) they may continue to benefit the University or College as ambassadors with positive reputations and professional networks; and (4) an institutional plan can help minimize the fear, misgivings and other uneasiness about when and how to make this transition.

Increasingly faculty have a significant retirement period,<sup>4</sup> and often these faculty want to be continually engaged as well as make contributions to support their intellectual and creative interests. An Institution of Higher Learning can create programs and policies for these encore (or retiring) faculty who may want to maintain their social connections with university colleagues or be a part of an intellectual community. For example, such programs and policies may address concerns of and for faculty who may desire to continue to serve the university and the wider community, but want an easy, structured way to volunteer their time through the university.

So, why should the institution seek to prolong a relationship with these encore faculty. In Professor Steven Hobbs' article, *Encore Professor: Crafting A New Story For Life After the Legal Academy*<sup>5</sup>, he tells a story that powerfully underscores how senior retired faculty can be an extremely valuable resource. There's a lot of experience, wisdom, knowledge, and, quite frankly, connections that these faculty have within and outside of the Academy. These professional assets can continue to support the university in a variety of ways. One key way is to have encore faculty participate in the mentoring of junior and mid-career faculty. Other examples include having encore faculty involved in significant university projects like the strategic plan, revision of the core curriculum, or revision of a faculty handbook. Similarly, the University or College could benefit from encore faculty's institutional knowledge when updates are considered in areas where continuity is particularly important.

Finally, one might argue that there is a moral obligation that exists because of the nature of the commitment and service rendered by these encore faculty (who may also be faculty emeriti.) It is the decent way to treat people who have served the institution, in many cases, for several decades and to say thanks and mean it particularly given the unique way in which

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4. In recent United States Census, the average age for retirement is 62. However, increasing faculty tend to retire later than 62. See Deborah K. Fitzgerald, *A Professor's Last Crucial Decision: When to Retire*, THE CHRONICLE OF HIGHER EDUCATION (May 30, 2018), <https://www.chronicle.com/article/A-Professor-s-Last-Crucial/243523>. The average or usual length of retirement is about 18 years, but it depends on actual age at retirement and overall health of the retiree.

5. 43 J. LEGAL PROF. 341 (2019).

faculty are bound to the university and its graduates. In this context, the essay outlines low cost thoughtful approaches to supporting encore faculty, campus programs to assist with faculty retirement planning, and campus spaces for encore faculty.

#### LOW COST BUT THOUGHTFUL WAYS FOR INSTITUTIONAL SUPPORT OF ENCORE FACULTY

First, the low-cost ways that are recommended and urged below are a way for the encore faculty member to maintain his or her identity as a faculty member albeit in a different status. Thus, it is very important to have clear policies on the status of retired faculty, title, and post-retirement privileges. Most Universities and Colleges have an emeritus status that can be conferred by vote of the Board of Trustees on a retiring faculty member or automatically conferred by satisfying certain criteria. The Emeritus Status may be limited to certain rank of the professoriate such as only full professors or tenured faculty (whether or not full professors) or all professors if the service at the University has been a certain length of time. Most recognize this rank of Emeritus faculty as honorary and thus, it is a highly sought honorific. In addition, typically the Faculty Handbook or University Policy will identify specific privileges that accompany this status such as addressing the availability of office space, library privileges, or access to University events and programs. University faculties are typically composed of tenured, tenure track, and a variety of both long-term contract and temporary faculty. Since, tenured faculty are not the only classification of faculty retiring from the University, some of the privileges that may only be extended to tenured faculty or tenured full professors could also be available to all faculty who retire. For example, educational institutions should consider both allowing encore faculty to retain their campus email address as well as creating a separate distribution list for the encore faculty so that they can continue to receive information about significant events at the University without being inundated with daily notices and other communications that are typically sent throughout the University or College. Further, having a way to retain the bios and other information about retired faculty on the website for the Department, School or College or University is usually not a costly item, but has a lot of meaning to the encore faculty member. Their bios could be placed in a separate section for retired faculty at the University or School/College level or bios could be included along with the current faculty list but with a designation indicating that the faculty member is retired.

Some encore faculty want to continue to publish and engage in their research post-retirement. Therefore, they need library privileges that include access to databases or a lab to conduct experiments, and possibly to work

with advance students on a research project funded by a grant. They may also need an office or space to work in. Surely all encore faculty may not need or desire this privilege, but the question is whether this could be an option for faculty whose professional identity is intertwined with their scholarly and research productivity.

University policies should be clear about whether and on what basis encore faculty have access to programs, events, and the campus facilities. Thus, providing encore faculty with a retired employee (Faculty) identification card or allowing them to retain their employee card would be an easy way to facilitate access privileges. An employee card system could clearly indicate that the faculty members are retired. For example, access to campus events, and programs can be attractive to these faculty. This access may be accompanied by discounts for certain events like sports events. Of course, events with discounts depends upon the ability of the University or College to manage these financial benefits for retired faculty and perhaps others.

#### CAMPUS PROGRAMS TO ASSIST FACULTY WITH RETIREMENT PLANNING<sup>6</sup>

Retirement is a major life event. Many experts who have studied faculty retirement or conducted studies on faculty retirement trends have concluded that “because career roles are associated with status, identity, power, and money, this transition could be seen as a potential period of crisis” that could be as “devastating to the older individual as job loss at any time in life.”<sup>7</sup> There are models or retirement transition theories that could assist in developing retirement programs to help faculty with this major career adjustment. For example, there is some research that indicates that a good retirement program can be designed in three phases that begins with a planning phase or *preretirement* from 2-5 years, *retirement which is* followed by a period of transition from six months before the official retirement date to six months after retirement, and finally to a period of maintenance or *postretirement*.<sup>8</sup> The latter phase does not suggest that the encore faculty member is limited to only one dream, path, or activity but rather is working to maintain him or herself in a new identify or status as an encore faculty member. This approach allows the University or College to

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6. All Universities and Colleges that provide retirement benefits have staff usually located in Human Resources to assist all employees with Retirement Planning. This planning typically, but not exclusively, focuses on finances, health benefits, and if applicable a phased retirement program. All are important topics, but the focus of these campus programs would be on helping faculty to let go of their desire to remain as full time faculty.

7. American Council on Education, *Review of Faculty Retirement Literature* (April 2010), <https://www.acenet.edu/Documents/Retirement-Literature-Review.pdf#search=Review%20of%20Faculty%20Retirement%20Literature>.

8. *Id.*

have varying level of commitment in and involvement with the encore faculty from the point that the faculty member decides to consider retirement through and into retirement.<sup>9</sup>

Increasingly, Universities and Colleges are using faculty retirement programs including the Phased Retirement Plan to help faculty to plan more effectively for the post-retirement period. To be most helpful, these programs need to respond to several areas affecting encore faculty. First, programs should address faculty emotional, psychological concerns and needs regarding retirement. Second, programs need to facilitate faculty “understanding of” options that could be available either inside or outside of the University. Third, programs would provide guided assistance in developing short- and long-term plans that promote the interests, goals and desires of the encore faculty member.<sup>10</sup> For example, these programs could address when to disclose the decision to retire to other faculty; the ambivalent feelings that faculty have about retirement; and the need to have a sense of accomplishment for a life’s work or a personal legacy.

Each of the phases identified above, would provide the retiring faculty member with resources and information relevant to the stage or phase in which the faculty member is navigating. This and other approaches can (a) provide resources to facilitate the retirement planning process, (b) offer a systematic and structured approach that raises questions that retiring faculty should consider in their planning, and finally (c) assist in and encourage the encore faculty member to develop a plan. An important goal is to find a way - whether through low cost or medium cost measures - to treat encore faculty with respect. That goal encompasses providing them with time to emotionally separate from the institution, construct a personal plan for retirement or at least the early stage of retirement, and to maintain, by choice, a continuous positive relationship with the University or College.

#### THE IMPORTANCE OF HAVING A SPACE ON CAMPUS FOR ENCORE FACULTY

When faculty retire, they often lose their office space which is also critical to their professional identity as faculty. Their place or home on the campus. When they return to the campus, retired faculty experience negativity like they are “guests” who should not stay long.<sup>11</sup> Some Universities or Colleges have policies that may permit retired faculty to

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9. Note that there are various retirement transition models that could be consulted to establish the theoretical framework that would be relied upon to build a program. It is important to select a model that works with the culture of the institution and address the needs and interests of your faculty.

10. George F. Gardner III, *Some Thoughts on Preparing for Retirement*, 24 DEL. LAW 22 (2006); Rosemary C. Byrne, *Planning for Seniority: A Baby Boomer’s Playbook*, 23 NO. 2 EXPERIENCE 37 (2013).

11. A.J. AUERBACH, *PROFESSORS IN RETIREMENT: THE EMERITUS COLLEGE MODEL* (1984).

retain their offices if space is available on campus or to request office space on campus if they are working on a project. Another way that appears to be increasingly adopted is to designate space on the campus for encore faculty like an Emeritus College.<sup>12</sup> It's actually a physical place dedicated and reserved for retired faculty that allows them to be able to continue to maintain and develop new relationships, facilitate ways to support the University either as a mentor or as a part-time instructor for example, and to create programs for encore faculty – e.g., luncheons with speakers, book clubs, or seminars, to stimulate intellectual engagement. These spaces often have an advisory council with encore faculty who establish policies for the Emeritus College while maintaining flexibility for encore faculty to shape programs to address their needs. Also, the Emeritus College has a staff or staff connections with the Office of the Provost or other office that addresses faculty affairs. An Emeritus College or dedicated space for retired or encore faculty is a greater investment than those suggestions proposed above, but such a space with accompanying program and services could contribute to a smoother transition by faculty into retirement and greater faculty satisfaction during retirement.

#### CONCLUSION

When I began to examine faculty retirement literature, I sought to determine what, if any, consideration was given to identifying, studying, developing or addressing my perception that there was (and is!) a cavernous void or lack of information and assistance for late-career or retiring faculty. While most Universities and Colleges have Human Resource Offices with staff to address benefits and retirement from a financial aspect, there was seemingly little attention given to aiding these faculty with “planning a graceful exit to retirement and beyond.”<sup>13</sup> Given the size of the number of faculty who are retiring and are eligible to retire,<sup>14</sup> it is critical that Universities and Colleges fill this void by developing pathways, tools and resources to help them make this deeply personal and important decision. Moving from full-time employment as a present member of the faculty to encore faculty.

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12. The oldest Emeritus College appears to be at the University of Southern California. It is almost 40 years old.

13. *Planning a Graceful Exit to Retirement and Beyond: Starting Points and Guiding Considerations*, Msg. 1626 (March 5, 2018), <https://tomprof.stanford.edu/posting/1626>.

14. Jean McLaughlin, *Facing Crisis in Faculty Retirement, Institutions Find Creative Solutions*, HIGHER EDUCATION TODAY (blog by American Council on Education) (Dec. 9, 2015); Melanie Hicken, *Professors Teach into their Golden Years*, CNN MONEY (June 17, 2013), <https://www.cnn.com/2013/06/20/us/professors-teach-into-their-golden-years/index.html>.

“There’s a trick to the ‘graceful exit.’ It begins with the vision to recognize when a job, a life stage, or a relationship is over – and let it go. It means leaving what’s over without denying its validity or its past importance to our lives. It involves a sense of future, a belief that every exit line is an entry, that we are moving up, rather than out.<sup>15</sup>

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15. Ellen Goodman, *Letting Go, and Looking Ahead*, BOSTON GLOBE (Jan. 1, 2010), [http://archive.boston.com/bostonglobe/editorial\\_opinion/oped/articles/2010/01/01/letting\\_go\\_and\\_looking\\_ahead/](http://archive.boston.com/bostonglobe/editorial_opinion/oped/articles/2010/01/01/letting_go_and_looking_ahead/).



## REFLECTIONS ON A LAW TEACHING CAREER AS THE CURTAIN CLOSES ONLY TO OPEN AGAIN

*Jonathan K. Stubbs\**

Grandmother once said to me, “Johnny boy, it ain’t as long as it has been.” Stated another way, Grandma was telling me that there were not as many years to come in her life as had already passed. In some respects, that’s the way it is with one’s teaching career. There is a beginning, a middle, and then a “something else.”

I write to briefly share a few personal comments regarding how I am thinking about what happens next in my evolving career.

### THE BEGINNING BEGINS THE END

About 33 years ago I was visiting with some very close friends in Stamford, Connecticut. On a Saturday morning I found myself literally on my knees next to the bed in prayer. I was suffering from an acute and relatively widespread but under diagnosed condition called flounderitis. Another friend who was a prosecutor described flounderitis as a condition characterized by symptoms involving individuals acting like they just do not know what to do with themselves. Flounderitis! I thought, “Well, yeah, that’s about right.” And there I was kneeling on a Saturday morning looking for insight about what to do. It came to me: “teach, preach, and a bit of practice.” I said to myself, “I can remember that.” That’s been my focus over the last 30-plus years. That’s central to my personal identity.

I wear multiple hats – teacher, preacher and lawyer. However, for me it all boils down to one organizing principle: service. How can I give back to my community – the community of humans on this interplanetary spaceship called earth?

### CONTINUITY AND CHANGE

A few brief biographical notes may help you to understand my career related decision making. I was born two years before the Supreme Court

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decided *Brown v. Board of Education*<sup>1</sup>. Nevertheless, for fourteen years following the *Brown* decision, little changed in my rural, Tidewater Virginia community.

For example, I attended an overcrowded all black high school built for five hundred and forty students and which packed over nine hundred young people into its brick structure. Later local authorities procured several mobile classrooms which did little to relieve the overcrowding. At the same time as we were being educated in the make shift classrooms commonly known as “trailers”, county government officials funded a new elementary school which opened in 1967 with a nearly all white student body.<sup>2</sup> At that time, a “Freedom of Choice” school desegregation plan was in effect which for various reasons merely resulted in token desegregation of Gloucester County schools. Practically speaking, the County had three elementary schools and one high school with overwhelmingly white student populations along with a smattering of African American students. Approximately two thirds of public school students were white and attended these four schools. In contrast, the remaining one third of public school students were crammed into one segregated African American public school serving grades 1-12. Despite *Brown*, I was bused past an all-white elementary school less than a mile from my home to the all-black school (bursting at the seams) about nine miles away.

These facts helped me to understand that a change in constitutional law did not necessarily mean a change in my circumstances. Accordingly, I developed an early skepticism towards notions of law as some grand and majestic human edifice. I saw that the law – up close – could be used as an instrument of repression. Law could lift its sword and become an executioner rather than a humble and obedient servant of justice. Though I did not recognize it then, when I look back, even as a child, I see that legalized injustice did not sit well with me.

I had the good fortune to grow up in a tight knit African American community in which most of the neighbors were relatives by blood or marriage and were fiercely protective of us children. That meant that any adult in the neighborhood was an informal community law enforcement

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1. *Brown v. Board of Education*, 347 U.S. 483 (1954).

2. See *Achilles High School Landmark Gets New Life*, GLOUCESTER-MATHEWS GAZETTE JOURNAL (May 17, 2017),

[https://www.gazettejournal.net/index.php/news/news\\_article/achilles\\_high\\_school\\_landmark\\_gets\\_new\\_life](https://www.gazettejournal.net/index.php/news/news_article/achilles_high_school_landmark_gets_new_life). The news article points out that in 1967, a new elementary school was built on the site of a former (all white high school). In 1968, in the wake of *Green v. New Kent County*, 391 U.S. 430 (1968) and the Department of Health Education and Welfare’s policy of cutting off funds to public schools which maintained segregated systems, the Gloucester County, Virginia schools transitioned from a dual virtually segregated scheme to a unitary desegregated one. See also Sherry Hamilton, *Gloucester’s First Fully Integrated Class Celebrates Fifty Years*, GLOUCESTER-MATHEWS GAZETTE JOURNAL (Oct. 16, 2019) at A.1.

person and was authorized to deal with children's misbehavior. That usually resulted in an in-person visit and report to your parents specifying your misdeeds. This series of events invariably resulted in enhanced punishment. You had not only misbehaved but also embarrassed the family.

Nearly a half century ago, this social context provided me an early teaching opportunity. At the age of sixteen, I became a Sunday School teacher and Assistant Sunday School Superintendent. Adults in my church family pushed me forward in part because at a relatively early age, I was learning effective verbal and written communication skills in large part through my local 4-H Club where I studied public speaking under the tutelage of a retired educator, Ms. Grace C. Walker. Miss Grace as she was called, was the middle daughter of Thomas C. Walker, Esq., the first African American lawyer on Virginia's Middle Peninsula.<sup>3</sup> I learned both about law from studying with the daughter of a well-respected African American lawyer and about teaching because I was able to present my ideas effectively.

Though I was not much older than they were, I loved teaching middle school students. It was exciting to see them learn. I liked studying the Sunday School lessons and trying to prepare myself to answer students' questions. Somehow it just felt right.

While in high school, I also began to assist the Pastor on a regular basis. I began to feel a pull in the direction of some type of ministry. But like Jonah, I ran in the opposite direction. And as some readers might expect, about ten years (and several law degrees) later, I found myself on Easter Sunday (April 15, 1979) finally acknowledging a calling to preach repentance as part of a Christian ministry. Forty short years ago...

### EBB AND FLOW

While I did not know it, the pieces were beginning to fall into place. After clerking for a distinguished federal trial judge in Philadelphia and working for two years at the City Solicitor's Office in Philadelphia, a transformative tragedy occurred. In January 1983, one of my cousins was killed in an automobile accident. He was only a few years older than I. I found myself wondering what should I do with my career. I was a lawyer with a calling to ministry, but what did that mean? The easy path would have

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3. THOMAS C. WALKER, *THE HONEY-POD TREE; THE LIFE STORY OF THOMAS CALHOUN WALKER: Lawyer Walker of Gloucester* (1958); see also NATIONAL PARK SERVICE, *Thomas Calhoun Walker* (May 7, 2018), <https://www.nps.gov/people/twalker.htm>. T.C. Walker's house is scheduled for substantial renovation after remaining vacant for over thirty five years. See Matt Jones, *T. C. Walker's home sat vacant for decades. Now HU plans to revitalize its alumnus' home*, THE DAILY PRESS (Oct. 20, 2019).

<https://www.dailypress.com/news/education/dp-nw-t-c-walker-house-gloucester-grant-20191020-by2tw2apmffbnoyodtw6rzhwrw-story.html>

been to work at the Solicitor's Office for ten years, get a vested pension, join or perhaps create a law firm, live a comfortable upper middle class life, have a family, retire and die.

Suppose I did that – take the easy, safe well-trod path. Would I have regrets? After thirty or forty years would I say: “I could have. I should have. I would have. But I did not.”

And what about ministry?

A different path beckoned. I applied to Union Theological Seminary and Harvard Divinity School, got into both, and literally flipped a coin as to which one to attend. I wound up at Harvard. Shortly after relocating to Cambridge, Massachusetts, I knew that I had made a wise decision. I needed the time and space away from the grind of law practice as well as other personal matters to focus on what next to do.

I wound up spending hours in meditation in the Harvard Divinity School Chapel. I discovered that at that point in my personal evolution I was not called to a traditional pastoral ministry with a congregation meeting in a specific place, and following a set pattern of worship. Something on the inside (an internal compass) pointed towards preaching as the opportunity presented itself and being open to the guidance of the Spirit.

After two years at Harvard Divinity, I relocated to the Washington, D.C. metropolitan area. I worked with two dear friends in their law firm doing legal research and later spent a semester at Howard Law School. I then moved back to my hometown, Gloucester, Virginia. While overcoming the acute effects of flounderitis, I got admitted to the Virginia Bar. By then I knew that service was the driver of my life activities. I did not need to go to another country or continent to help people in need. The people in my birth community needed my skills. And my parents were then in their fifties. Getting up in age I thought. Since I was single, I felt convinced that I should be in place to help them if and when they needed it. I came back to serve.

After a couple years in a general private practice of law (meaning among other things, litigating boundary disputes, drafting divorce and separation agreements, representing criminal law defendants, incorporating businesses, and representing tort victims) I recognized that something was missing. The teaching aspect of my calling to service was unfulfilled. I reached out to Professor Linda Greene at Wisconsin who suggested that I talk with Professor Okianer Christian Dark at the University of Richmond. And the rest, as they say “is history.” Professor Dark and her late husband Lawrence became my mentors and advisers.

I should note that I nearly remained in private law practice because my client base was expanding and I saw a number of (seemingly) lucrative real estate related business opportunities. But I had the calling: “teach, preach and a bit of practice.” And I know that disobedience to the will of the Spirit is playing with mortal fire.

Since joining the University of Richmond faculty, I have had many professional opportunities to interact with gifted colleagues, students, alums and others. For me personally, two capstone legal educational experiences were meeting and working with the late Oliver Hill, Esq. and more recently with his protégé and law partner, former Virginia State Senator Henry Marsh. I had the honor of participating in editing the autobiographies of both of these human rights luminaries. I first edited Mr. Hill's autobiography.<sup>4</sup> Later with my former student and future law school colleague, Dr. Danielle Wingfield-Smith, I co-edited Sen. Marsh's memoirs.<sup>5</sup>

Mr. Hill was a close friend, law school classmate and professional colleague of Thurgood Marshall. At the urging of Justice Louis Brandeis, Dr. Mordecai Johnson, President of Howard University, established a first class law school so that lawyers could properly prepare civil rights cases for Supreme Court review.<sup>6</sup> Dr. Johnson selected Charles Hamilton-Houston

4. OLIVER W. HILL, SR., *THE BIG BANG, BROWN V. BOARD OF EDUCATION AND BEYOND: THE AUTOBIOGRAPHY OF OLIVER W. HILL, SR.* (Jonathan K. Stubbs, ed. 2007).

5. HENRY L. MARSH, *THE MEMOIRS OF HON. HENRY L. MARSH* (Jonathan K. Stubbs and Danielle Wingfield-Smith, eds.) 2018.

6. *THE BIG BANG*, SUPRA NOTE 4 at 78. Brandeis also advocated that lawyers pay more attention to working in the "public interest". See Louis Brandeis, *The Opportunity in the Law* (Address delivered May 4, 1905) before the Harvard Ethical Society. See <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/business-a-profession-chapter-20> (last visited, May 7, 2019).

[T]he counsel selected to represent important private interests possesses usually ability of a high order, while the public is often inadequately represented or wholly unrepresented. Great unfairness to the public is apt to result from this fact. Many bills pass in our legislatures which would not have become law, if the public interest had been fairly represented; and many good bills are defeated which if supported by able lawyers would have been enacted. Lawyers have, as a rule, failed to consider this distinction between practice in courts involving only private interests, and practice before the legislature or city council involving public interests. Some men of high professional standing have even endeavored to justify their course in advocating professionally legislation which in their character as citizens they would have voted against.

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Here...consequently, is the great opportunity in the law. The next generation must witness a continuing and ever-increasing contest between those who have and those who have not. The industrial world is in a state of ferment. The ferment is in the main peaceful, and, to a considerable extent, silent; but there is felt to-day very widely the inconsistency in this condition of political democracy and industrial absolutism. The people are beginning to doubt whether in the long run democracy and absolutism can coexist in the same community; beginning to doubt whether there is a justification for the great inequalities in the distribution of wealth, for the rapid creation of fortunes, more mysterious than the deeds of Aladdin's lamp. The people have begun to think; and they show evidences on all sides of a tendency to act... Often their leaders are men of signal ability, men who can hold their own in discussion or in action with the ablest and best-educated men in the community. The labor movement must necessarily progress. The people's thought will take shape in action; and it lies with us, with you to whom in part the future belongs, to say on what lines the action is to be expressed; whether it is to be expressed wisely and temperately, or wildly and intemperately; whether it is to be expressed on lines of evolution or on lines of revolution. Nothing can better fit you for taking part in the solution of these problems, than the study and preeminently the practice of law. Those of you who feel drawn to that profession may rest assured that you will find in

to become the Vice Dean of this new full time day law program which replaced Howard's part-time evening program. Hill and Marshall were in the entering class of the revamped Howard Law School. They blossomed under Houston's tutelage. As the de-facto dean as well as a full time law professor, Houston taught his students that a lawyer is either a social engineer or a parasite on society.<sup>8</sup> Along with a number of other courageous lawyer leaders, Houston, Marshall and Hill laid the foundation culminating in the legal "shot heard round the world" – *Brown v. Board of Education*.<sup>9</sup>

Henry Marsh helped to lead the fight to implement the mandate of *Brown*. In addition, Marsh became the first African American mayor of Richmond, Virginia (the capitol of the former confederacy) and served with distinction for nearly a quarter century in the Virginia State Senate. Through their brilliance, courage, determination and skill, Oliver Hill and Henry Marsh sought to make America live up to its creed of "liberty and justice for all." Being privileged to work closely with these human rights champions has sparked a renewed sense of mission within me. I too will serve, in some capacity as long as life lasts.

#### THE END BIRTHS A NEW BEGINNING

Now that you know something about me, you might better understand why for me personally, I have a social justice orientation. Charles Hamilton Houston prepared social justice lawyers as well as planned and implemented long term, groundbreaking legal strategies. The social justice spirit of Houston and Brandeis undergirds my teaching, scholarship and service.

Accordingly, as I move through this part of my career, I ask myself, "What do I have to offer? Who needs to be taught? What is it that I have to teach and for what purpose?" One evolving crisis is the rapidly shrinking opportunity for people who want to enter the legal profession to represent the people whom Charles Hamilton Houston said were unable to fight back.<sup>10</sup>

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it an opportunity for usefulness which is probably unequalled. There is a call upon the legal profession to do a great work for this country.

8. GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* 84 (1983).

9. *Brown*, *supra* note 1.

10. Houston wrote: "I made up my mind that I would never get caught again without knowing something about my rights; that if luck was with me, and I got through this war; I would study law and use my time fighting for men who could not strike back." MCNEIL, *supra* note 6 at 42. As to the need for lawyers willing to serve in the public interest, the Legal Services Corporation Justice Gap Report (2017) estimated that during 2017 approximately 1.7 million legal problems would be brought to Legal Services Corporation grantees for resolution, but "these estimated 1.7 million civil legal problems represent less than 6% of the total civil legal problems faced by low-income Americans. See LEGAL SERVICES CORPORATION, *JUSTICE GAP REPORT*, 31 (2017), available at <https://www.lsc.gov/media-center/publications/2017-justice-gap-report#bfrtoc-2017-justice-gap-report> (last visited, Oct. 22, 2019).

How does one help develop legal champions for folks who are being struck, knocked down and often unable to defend themselves?

Part of my mission, as I see it, is to identify kindred spirits. Who are like minded persons? Who, in this phase of their careers, also would like to be involved in preparing individuals able and willing to be involved in social justice work? Broadly conceived, such work doesn't necessarily mean helping somebody who's trying to become the next Thurgood Marshall or Pauli Murray or Constance Baker Motley or A. Leon Higginbotham or Elaine R. Jones. I am interested in identifying people who want to make a constructive difference in their communities. I would like to assist in preparing them to provide better servant leadership (in the public interest). **When I leave full time law teaching, I will, God willing find some way to serve those in need.**

So my fellow encore or about to be encore colleagues: there must be something that we can yet do. The sled (which Professor Hobbs described in his scintillating essay) is not pulled into the forest for us quite yet.<sup>11</sup> There must be some ways that we can work together in order to make a difference at this time in our careers. But we don't have forever...

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11. STEVEN H. HOBBS, ENCORE PROFESSOR: CRAFTING A NEW STORY FOR LIFE AFTER THE LEGAL ACADEMY, 43 J. LEGAL PROF. 341 (2019).



## FINDING YOURSELF IN RETIREMENT

*Ann C. Hodges\**

When one has worked for nearly a lifetime, contemplating retirement is a challenging task. Initially, there is the decision about the right time to retire. Then, there is the question about what to do after retirement, a decision that may be intertwined with the first. Finally, it is advisable to have a Plan B, i.e., what will I do if Retirement Plan A doesn't turn out as expected. To find the right answers to these question, it is important to know yourself, so that the retirement chosen fits the needs of the retiree in both timing and substance. In the following essay I will suggest some important considerations that should inform the retirement decision and provide advice based on my own experience, both positive and negative, about how to find contentment in retirement.

### HAVE A PLAN

Retirement is a new and different phase of life. For busy faculty (and who isn't), it might seem desirable to have nothing planned for the foreseeable future. In reality, however, unplanned retirement will lose its attraction quickly for most people. My first piece of advice is to plan both the timing of retirement and at least some activities for retirement. The plan can change, and it may, for reasons within your control or outside of it. Having a backup plan will help to deal with those unexpected changes—whether it is because Plan A is a failure or because changed circumstances made Plan A unworkable. The plan should account for the emotional transition, and the financial transition, in addition to the timing of retirement and the substance of it.

### THE TIMING OF RETIREMENT

When retirement begins to appeal, consider what is the attraction. Is leaving fulltime employment truly the answer? For a faculty member who has just had a difficult semester or year, perhaps a sabbatical or similar leave, or a reduced workload is the right prescription. If the faculty member or a

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family member has health challenges, a leave under the Family Medical Leave Act might be an option.<sup>1</sup> Other potential alternatives to retirement that might relieve burnout are changes in course or committee assignments, or even a visit at another school.

In exploring the possibility of a leave or workload reduction, however, be sure to ascertain all the related employer and statutory requirements. For example, a sabbatical may trigger a mandate to remain in fulltime employment for some period after the leave, delaying retirement if the sabbatical reveals that retirement is, in fact, the desired option. FMLA leave may require reimbursement of health insurance premiums the employer paid during leave if the faculty member voluntarily decides not to return to employment.<sup>2</sup>

Another consideration regarding timing is whether the faculty member shepherds particular projects that he or she wants to continue past retirement. Has succession planning occurred and if not, how long will it take to find a successor and get that person up to speed? If there is no apparent successor, is the faculty member prepared to either abandon the project or to continue to work on it post-retirement? For continued post-retirement work, the faculty member should insure that the necessary resources to continue the project will be available. Do not assume that the same resources available to fulltime faculty will be available to retired faculty. Any promises of support should be in writing to assure their continuity. Administrators and priorities change. If the project is important, don't leave anything to chance.

#### THE SUBSTANCE OF RETIREMENT – WHAT TO DO

In considering what happy retirement should look like, contemplate the best parts of the academic job on the best days. Or put another way, what will you miss most about the day to day work of a faculty member? Then try to find a way to get that “fix” in retirement.

If it is teaching, there are numerous teaching opportunities, both volunteer and paid, in most communities. Adjunct teaching at a law school, university or community college is one possibility. Another is teaching noncredit courses through local institutions, whether it be in the area of academic specialty or something else altogether, such as a hobby or passion—photography, genealogy research, or golf. Retired faculty might also teach a class at their church, synagogue or mosque. If interested, do not omit a search for possibilities to teach in other countries. There are short-term and

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1. The Family Medical Leave Act requires employers with fifty or more employees to provide up to twelve weeks of unpaid leave per year for a serious illness of the employee or a family member, as defined in the law. See 29 U.S.C. §§ 2601-2654.

2. 29 U.S.C. § 2614(c)(2).

long-term options available that offer the chance to experience another culture while getting your teaching fix.

Faculty with a desire to continue scholarship may find that relatively easy to do. It is important, however, to determine what resources will remain available from the university. Do retired faculty continue to have access to all the tools necessary for research, including the library, research databases, research assistants, and administrative assistance? The school will almost certainly continue to benefit from retired faculty publications, so faculty members should insure before retirement that sufficient research support will continue past retirement. As in the case of other university commitments, a written confirmation will help insure that the support continues.

Faculty who enjoy administrative work might consider becoming involved, or increasing their involvement, in the community. Nonprofit organizations welcome volunteers for positions on their governing boards or in other administrative roles. Find one or more with a mission that appeals and offer your services. Many of the professional organizations in which faculty currently participate may be delighted to have retired members who have more time to take on administrative and leadership roles.

If working with young people brings joy, volunteering with a nonprofit or governmental organization that works with youth may feed the soul. Mentoring, coaching, tutoring or teaching youth contributes substantially to the community, makes a difference in the lives of young people, and brings rewarding personal relationships.

For licensed law faculty, one way to continue working with the law is law practice. Some may have maintained a practice while in academia and be able to continue that after retiring from the fulltime faculty role. Others may want to start a small practice, do legal consulting in areas of specialization,<sup>3</sup> or use their legal skills to do pro bono work in an area of interest and/or expertise. Former students or colleagues may be a natural source of referrals, consulting, or pro bono prospects. Putting the word out about retirement is likely to lead to multiple opportunities to explore options. The problem may be deciding which options to take and which to decline.

For some, retirement brings the opportunity to focus on a hobby or avocation separate and apart from the career that has occupied so many hours of working life. It may be a hobby that has taken a backseat to work or a new passion that pre-retirement work left no time to explore. What is that dream that has not been fully explored? Is it travel, playing a musical instrument, making art, writing a novel, rebuilding cars, knitting, building model train sets, playing a sport, or all of the above? Retirement offers time to dive in to those interests.

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3. Consulting opportunities may be available even without maintaining an active license to practice, but be sure to ascertain the requirements of the local bar to avoid running afoul of licensing requirements.

## THE SUBSTANCE OF RETIREMENT – HOW TO DO IT

In addition to determining what to do in retirement, consider how to structure retirement. Individuals vary widely in their desire and need for social contact. Before retirement, the job provides a built-in source of social interaction, which, to some extent, is outside the faculty member's control. After retirement, each individual will need to consider the right balance between social interaction and quiet time, and determine how to achieve it. Developing post-retirement social networks will require discerning initiative. Further, it may take some time, through trial and error, to find a comfortable equilibrium between social time and time alone.

A similar consideration is the right balance between structured time and free time. The option of unstructured time may have great appeal when contemplating retirement. But the move from structured time to completely unstructured time can be disconcerting and disruptive. The right balance is individual, but thinking about it before retirement, making a plan based on an individual assessment, and then refining the plan based on experience, will ease the transition.

Another challenging emotional transition for many is the shift from more money coming in to more money going out. Talking with a financial planner and figuring out a budget may help assuage concerns. Do not let financial anxieties prevent enjoying retirement, however, unless there are true financial constraints. One option to address the anxiety, true financial need, or both, is part-time employment, which can also provide both social interaction and structure. Part-time employment can also mitigate the loss of professional identity, which creates another challenging emotional transition in retirement. Regular participation in volunteer activities similarly provides social interaction and structure, and perhaps a continuation of professional identity, although it does not directly address financial stress.

## MY RETIREMENT

I draw the lessons above from the failure of my own retirement. My Plan A failed before retirement even started, with the death of my husband. I was unable to reverse the retirement decision. I had no Plan B and found it impossible to construct one in the months between his death and the onset of retirement. Sixteen months later, however, I have found a place of contentment, marked by a combination of part-time and volunteer work, the current right balance for me of social time with family, friends and colleagues and quiet time, and a similar right balance of structure and free time. I wish for each reader the same.

## CONCLUSION

Don't be afraid to fail at retirement. Law faculty have most likely succeeded at almost everything they have tried in life. But in retirement, be prepared to struggle with the change, to wallow in the absence of your career, and to take time to get comfortable with your new life. If you are ready for the struggle, you will be able to work through it and find the right retirement for you, whether it is Plan A, Plan B or something different altogether. And if you take to retirement like a duck to water, all the better. Use this new phase of life to follow your passions and live into your joy.



## LIFE BEYOND THE ACADEMY: STRATEGIES AND PLANNING FOR THE NEXT STAGE

*James J. Fishman\**

If you are a construction worker or a waitperson in the restaurant industry, you know when it's time to retire; your body tells you. I've never met a law professor who does not think that he or she is as good as they ever were. (Laughter)

The truth is, not very many law professors have died of overwork. With the uncapping of mandatory retirement of tenured faculty in postsecondary education in 1994, there are many faculty who try to stay on forever.<sup>1</sup> I taught for over thirty-five years, and I really felt I was getting stale in the classroom. Students were changing, and I tried to change my teaching approach. I taught new courses as new challenges, but the students weren't learning in the same way, and it was very frustrating for me.

Few at the end of their life would say, "Gee, I should have spent more time in the office." How many years of good health do you have left? How many years? I like to travel, and usually when I travel, it's active travel. How much time do you have left to do that?

I would not give up tenure without a buyout. Physically I could be one of those "I'm just as good as I ever was (or I'm even better)". I approached deans over three years offering to retire. I said, "I want a buyout," and they were very nice and responded, "You know, we like you here," and so forth. One dean said that in the fall of 2014, but by the spring, it turned out that my school's financial situation, like so many others, turned south. The dean came into my office and said, "Are you still interested in retiring?" And I said yes.

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1. In the 1986 amendments to the Age Discrimination in Employment Act, Congress excluded from ADEA coverage employees age 70 or older who were serving under contracts of unlimited tenure at institutions of higher education. Age Discrimination in Employment Amendments of 1986, Pub.L. No. 99-592, § 6, 100 Stat. 3342, 3344 (1986) (codified at 29 U.S.C.A. § 631(d)). However, the amendment also included a provision that the exclusion for tenured faculty was repealed on December 31, 1993. *Id.* § 12. Congress never renewed the section that allowed institutions of higher education to impose mandatory retirement of tenured employees so that since 1994, the mandatory retirement of tenured faculty has been uncapped.

## THINKING ABOUT RETIREMENT: FUNDAMENTAL QUESTIONS

The first question you should ask yourself, of course, is “Can you afford to retire?” The second question you should seek an answer for is: “How is my health care coverage going to change?” Another question to consider is do you wish a long goodbye i.e. a phased retirement or to depart cold turkey. At my school, several Faculty elected phased retirements. In other words, you teach a certain number of years at half-pay, half-time and then stop. That did not appeal to me because I felt that if I was half-time, I’d be there full-time, and if I’m going to retire, I should just do it. The only advantages, I think, of a staged retirement of half-time is you do avoid the scarlet letter or scarlet word of “Emeritus” for a few years, and you have a softer landing when full retirement hits you.

I asked a colleague who was retiring, “Well, Steve, what are you going to do with yourself?” He responded: “I’m going to buff up my golf game,” and I thought, “That’s five hours maybe a day. What else is he going to do?” One of the things I recommend that you do is to create a portfolio of things that you wish to do or occupy yourself when you retire. Some things you’ll accomplish; others you won’t. I always wanted to study French. I’m old enough that I took three years of Latin. One year, I figured I’ll take French. I was put in a class where half the class were students taking third-year Latin, and the other half were students who failed the first year of French. It was a horrible experience. I stopped after one year. So, after retiring I got Rosetta Stone and started studying French. Alas, it felt like high school again, and I didn’t complete it. But I did learn to swim, which was another goal and really very important.

I had never traveled in September. The weather is great. The hordes are gone. You can even get some deals. Even when I was on sabbatical, I never went on a trip in the fall. It’s the beginning of the school year, and you have a project to complete. Why travel if you’re going to feel guilty the whole time? September travel really opened up enjoyable new experiences.

I was ready for retirement, but I didn’t know really know what retirement meant. There is a lot of free time. When I first became Emeritus, I was fortunate in that I was retained as an expert witness in a couple of cases and performed some legal work. This kind of softened the shock of retirement. Those opportunities have withered.

However, I have kept professionally active and continue with my research. I have an office assistant and a research assistant if I want one. I’ve been doing volunteer work and serve on several nonprofit boards.

## NEGOTIATING YOUR EXIT

If you are negotiating for something that all retirees don't receive at your university, get a lawyer. In fact, I had retained an attorney even with the initial approaches to the dean for a couple of reasons. My attorney specialized in employment law and represented a faculty colleague in his retirement negotiation, so he knew the administration. Your lawyer will probably be a better negotiator for your interests than you, and they'll know better how much they can push. Also, I didn't want to be in a situation where I was involved in a negotiation about myself and for it to fail. I know myself; I probably would've had a chip on my shoulder, and the dean probably would have been annoyed at me too. Using an advocate as a buffer may avoid or mitigate that scenario.

You should remember that—at least in our school—you are not only dealing with the dean. He or she can promise you the world, but the university's general counsel's office probably signs off on the terms of the transaction. In my case, that's where the real negotiation took place. I did get everything I asked for, except there were some things I didn't know to request and should have.

I recommend you find out exactly what benefits and faculty perquisites retirees get. There were small things I thought I'd retain but didn't, and I learned about it too late. One which I learned after I retired occurred after a colleague was mentioned a couple of times in an article in *The Wall Street Journal*. There are almost no people on our faculty who read the *Journal*. I thought I would inform the faculty that he was quoted—isn't this nice, etc. I go to hit the link for the faculty list to send the message, and I see a banner: "You are not eligible for this list." I checked it out, and sure enough, I wasn't. No one told me, and I hadn't known enough to ask for access. There were a couple of other things like that.

Find out your institution's approach to former faculty. Schools differ. Some really want to keep their emeritus faculty as part of the community and are much more aggressive in keeping you in touch and welcoming. I think my university's approach can be summed up in three words: "you are gone". Another thing you should consider is what relationship are you going to have to the school? Pace has emeriti who are off the grid completely. One former professor lives in deepest Maine. He walks a mile to get his mail. Others live in the community and come to the school regularly.

One unexpected thing is your relationship with your spouse or partner may change. My wife is still working, and when I retired, I thought I'd be a good house husband. That initiative had mixed results. I mean, who knew that you don't put silk blouses in a clothes dryer? In retrospect, this is humorous, but a friend of mine, a lawyer, retired. Her husband had been



retired. They got divorced within six months. Familiarity bred contempt, she said.

Your relationship to the faculty will change. I was asked to teach a Corporations class in the fall of 2014, a month after I became emeritus, yet I still felt more like an adjunct. I was really surprised at this but, that's what happens.

There's a real conundrum for me about schools' attitudes to retired Faculty. Most Faculty have added to their institutions' reputation over the years through their teaching, research or involvement in the community. You would think schools would want to make retired faculty the gift that keeps on giving by monetizing their contributions and eventually receiving a bequest. I know in our law school, there are a couple of Faculty who are very wealthy. There's been no attempt to cultivate them. In fact, they're annoyed with the school, and they probably will not leave a dime to the institution.

Let me end on a down-note and a positive one. The down note is: be careful with your consumption of alcohol. Every day is Friday. I have known a couple of people, whom I call closet alcoholics, not like the folks you see stumbling on Bourbon Street. However, they drink an awful lot because they have a lot of time on their hands, and the amount of intake tends to increase. On a more uplifting note, you do have the time to get really fit and in the best physical condition for your age group in your life. I'm amazed at some of the seniors I see who are like the post office: neither rain nor sleet nor snow will stop them from their exercise activity.

Retirement is just another stage in life. We all have gone through several previous stages. Let's be honest; nobody in this room, or actually at this conference, has not been successful at some or all of life's chapters. There's no reason why this next stage, where you're as free as you've ever been, shouldn't be successful, too.

# RETIREMENT: A TRANSITIONAL OPPORTUNITY

*Joseph Dancy, Jr.*<sup>1</sup>

## INTRODUCTION

In her book, *After the Darkest Hour*, Kathleen Brehony quotes from the Greek philosopher, Heraclitus who stated “no man ever steps in the same river twice, for it’s not the same river and he’s not the same man.”<sup>2</sup> She utilizes Heraclitus’ statement to indicate that we, too, are always in constant flux and change just as the rushing waters of a moving river.<sup>3</sup>

Indeed, from the infancy stage of our growth and development through our older adulthood stage, psychologist, Erik Erikson, has emphasized that humans experience developmental transitions and changes.<sup>4</sup> According to Erikson, the final developmental stage involves the juxtaposition of *integrity* versus *despair*.<sup>5</sup> We commonly call the last phase of our adulthood our “retirement period”. In this paper, I propose that retirement is a period of opportunity and continued growth. Howard Clinebell reinforces this view when he states:

These are years when intentionality and the growth perspective are essential resources for using fully the new opportunities created by retirement.... The growth task of the retirement years is what Erikson calls ego integrity, the opposite of which is despair.<sup>6</sup>

Clinebell further points out that Erikson’s *ego integrity* is an indicator that an individual has accepted his or her finitude and has reasonable contentment with the passing years.<sup>7</sup> Clinebell continues:

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1. Ph.D., Theologian/Gerontologist, and Professor Emeritus, Ethelyn Strong School of Social Work, Norfolk State University.

2. KATHLEEN BREHONY, *AFTER THE DARKEST HOUR* 40 (2000).

3. *Id.*

4. SEE ERIK H. ERIKSON, *IDENTITY AND THE LIFE CYCLE* (1980).

5. *See generally id.*

6. HOWARD CLINEBELL, *COUNSELING FOR SPIRITUALLY EMPOWERED WHOLENESS* 146 (1995).

7. *Id.*

It [*ego integrity*] means affirming the fragments of meaning and joy and wisdom one has found. It means living and enjoying as much as possible the precious here-and-now moment. This acceptance of life as basically good, ...frees one to keep on living and growing until one dies rather than cutting off one's aliveness in remorse, meaninglessness, and despair. The strength that results from ego integrity is *wisdom*. Ego integrity is the cumulative result of growth throughout the life cycle.<sup>8</sup>

Life's constant flux and change are increasingly impacted by scientific advancements that allow humans to live longer and in better conditions.<sup>9</sup> Indeed, change is one of life's constant factors as we change jobs, where we live and those in our social networks over the course of our lifetime. Sometimes change is voluntary, as when we get to decide when we will retire. Other times, we may face forced or involuntary retirement. Either way, change in our lives occurs.

In this paper I propose that the transition from adulthood to retirement and old age offers opportunities for growth and continued development. Retirement is a transitional opportunity that is best met with careful preparation and planning, unless one experiences involuntary or forced retirement.

#### DEFINITION OF RETIREMENT

Retirement is often defined as "the institutionalized separation of an individual from her/his occupational position, with continuation of income from a pension based on prior years of service."<sup>10</sup> Though age serves as the primary marker to determine the onset of retirement, other factors, such as number of years of service or the condition of an individual's health may trump age as determinants of the commencement of the retirement period.

Interestingly enough, some persons never retire; they continue to work on a reduced or flexible schedule, and still, others die before they reach retirement. Whether we continue to remain in paid employment well into old age, or work on a part-time schedule, or retire fully from paid employment, we are still changing and in flux as life forces and conditions around us are always changing. Change will continue to be central to life. However, "retirement no longer signifies the end of employment; it signifies the beginning of self-chosen activity. It means not only giving up a role but also taking up a new and different role"<sup>11</sup> The latter authors also remind us

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8. *Id.* at 146-47.

9. ATUL GAWANDE, BEING MORTAL: MEDICINE AND WHAT MATTERS IN THE END (2014).

10. ROBERT C. ATCHLEY & AMANDA S. BARUSCH, SOCIAL FORCES AND AGING 152 (10th ed. 2004).

11. *Id.*

that attitudes about retirement generally remain favorable regardless of age or gender.<sup>12</sup>

### *Preparing and Planning for Retirement*

Retirement is a major economic, social, psychological and spiritual event. This significant life event necessitates deliberate preparation and planning. Carl Jung, the renowned psychologist, had these observations about the transition from middle adulthood to older adulthood: “The ‘noon of life’ is the moment of greatest deployment, when a man is devoted entirely to his work with all his ability...But it is also the moment when the twilight is born: the second half of life is beginning”<sup>13</sup> As we shall bear in mind, the twilight period brings greatest satisfaction to those who have made thoughtful preparation. Enumerated in the next section are six major factors to weigh in preparing for life beyond the legal academy or university life.

**1. Financial Planning** –As you prepare to leave the legal academy gather your financial records and estimate what your expenses in retirement will be. Be sure you understand your social security benefits and pension plan. With the assistance of your financial planner, estimate your retirement income, and then plan how you will live comfortably within your financial means.

**2. Health Matters** –Take good care of your health even before you retire. If you are fairly inactive, be aware of the profusion of research that validates the value of regular exercise at all stages of life, but especially during the older years. You may need a fitness coach to guide you in planning an exercise routine that suits your interests, physical ability and time constraints. If you already have a fitness routine prior to retirement, it will be easier to continue or increase your fitness regimen. Nearing retirement requires a careful assessment of your medical care needs. Have candid discussions with your primary care physician and specialists about your current health status. Do you need any elective surgery procedures? Would it be better to take care of some health needs prior to changing to the retirees’ health plan? During retirement, how close will you live to hospitals of excellence and your doctors’ offices?

**3. Living Arrangements and Location** – If you have a spouse or partner, have thoughtful discussions about the kind of community or city where you would like to live during retirement. Do you prefer to remain in the city or dwelling where you are now? What amenities do you desire in your community of choice? If your current dwelling has lots of stairs, will that be problematic as you age? Which type of housing seems right for you

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12. *Id.* at 249.

13. PAUL TOURNIER, LEARN TO GROW OLD 12 (1972).

as you age: a house, town home, condo, senior living community or some other arrangement? If you think you may desire to relocate to another city, be sure to visit that city several times at different seasons prior to moving to be sure that the move will be a “good fit” for you. How much will your living arrangements cost during your retirement?

**4. Distance From Family and Friends** – How often do you want to see those awesome grandchildren of yours? Or would you like some distance from them and your adult children? Be honest about the kind of social support you will need as you age. Who are the family and friends that you would like to assist you should you have emergencies or need long-term care? How far do you wish to live from your core support system?

**5. Transportation** – How healthy are your eyesight and physical dexterity? Do you anticipate that you will be able to drive a car well into your older years, or will you need to consider utilizing public transportation? Does the community where you live or where you may relocate have a light rail system or accessible public transportation? Will you be able to handle the insurance and upkeep of a car, if you choose to continue driving?

**6. New Career Opportunities in Retirement** – Now is your opportunity to reinvent yourself, if you desire. Are there other skills you have that the demands of the legal academy prevented you from pursuing? Do you have hobbies that are potential moneymakers (i.e., photography, starting a small business, real estate)? Are there classes you have always wanted to take, but never had the time? One of the most exciting aspects of healthy retirement is to explore “roads less traveled” in our earlier lives. The key will always be to try to strike a “balance” – not as much work as a full-time job in the legal academy, but enough mental stimulation to keep learning new information, but at your own pace.

The above six items are not meant to be exhaustive of all factors in preparation and planning for retirement. However, these six items remain key areas for every retiree.

#### RETIREMENT SATISFACTION

Research indicates that a satisfying retirement involves a “retirement process that involves *choice, autonomy, adequate preparation, and planning*”, as well as “retirement activities that provide a...chance to learn and to feel useful.”<sup>14</sup> When the above components are paired with financial security, healthy living and desirable living accommodations, you will have key ingredients for considerable retirement satisfaction. Farewell to the legal academy, and welcome to a satisfying retirement!

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14. NANCY R. HOOYMAN & H. ASUMAN KIYAK, SOCIAL GERONTOLOGY: A MULTIDISCIPLINARY PERSPECTIVE 484 (8th ed. 2008).

