Compliance in Digital Formats

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EDITORIAL

COMPLIANCE IN DIGITAL FORMATS

About one year ago, the Covid-19 pandemic changed our day-to-day life fundamentally. This marks a date to draw conclusions and evaluate the changes and adaptions made to encounter this pandemic. The ongoing situation has not only caused changes in the legal field but also in the personal workspace. Boundaries need to be set and redefined due to the special circumstances the world is facing at the moment. Hence the question arises whether the legal and personal adaptations to the virus have been successful.

Therefore, this edition of CEJ will start with an interview showing the perspectives of two German attorneys on the pandemic as a catalyst for evolution in the legal world. We also feature different articles on compliance- and medical-related topics associated with Covid-19. We will cover the impacts of the pandemic on medical tourism and anti-corruption compliance. In addition to this two complementary articles by students from the USA and Germany compare the university experience in times of corona. Another contribution that connects these two countries highlights US compliance for German SMEs. Furthermore, we are happy to let our series of book reviews continue with an article about 'The Small Firm Roadmap'.

We aim to continue the debates on the development of compliance in digital forms and are interested in articles from all over the world. We eagerly await your respective impulses and hope you enjoy the lecture of this special issue!

With our best regards,

Michele DeStefano & Hendrik Schneider
Founder and Content Curators of CEJ

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A CRISIS SPARKS INNOVATION – THE COVID-19 PANDEMIC AS A CATALYST FOR EVOLUTION IN THE LEGAL WORLD?

AN INTERVIEW WITH STEPHAN EBNER AND HENDRIK SCHNEIDER

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A CRISIS SPARKS INNOVATION – THE COVID-19 PANDEMIC AS A CATALYST FOR EVOLUTION IN THE LEGAL WORLD?

An interview with Stephan Ebner and Hendrik Schneider

What is your current work environment- home office or office?

Stephan: I currently am in home office. Due to the coronavirus restrictions, most of the work is done remotely.

Hendrik: We still work from our office most of the time as our infrastructure is here, including books, journals and files we receive. To stay safe, if available we take Covid-tests regularly and wear masks.

What were you experiencing as the greatest challenge you had to face in the context of pandemic adaptations at work?

Stephan: Many projects have been put on hold due to the pandemic. Talks could not take place, so networking with colleagues, clients and possible future clients needed to happen in a new way. I personally used LinkedIn more frequently and successfully.
Apart from that, structuring the day at home office has been quite a challenge.

Hendrik: I also experienced talks being cancelled in the beginning of the pandemic. Meanwhile, the shift to online talks via zoom or teams has worked out pretty well and successfully. For our firm, the sudden switch from analogue to digital meetings has been a challenge. But luckily, I have colleagues at my office who are more accustomed in the technical field and therefore were able to find technical solutions quickly so the work on the projects could continue.

Let's talk about digital communication. How was client interaction influenced and what were the reactions you received towards the adaptations?

Stephan: Building up trust with clients is key in our job. You can't compare this process through the screen with meeting in person. But once trust is gained, digital communication offers many possibilities which simplify working together, like sharing documents and files on screen. The clients expect you to master all the necessary tools and have experience in using them the best way.
Something you just cannot replace is short talk over a cup of coffee to clear something up or exchanging business cards at a conference.
Also, transferring events like wine tastings for example as part of the program after a conference to a video call has opened up a new field of compliance risks that need to be taken in consideration.

Hendrik: The communications with my Chinese business partners did not change, as it has already been online due to the distance. From my experience, Chinese lawyers, businessmen and clients mainly use the messenger app WeChat to text and video call, due to the distance, so I adapted to that and use WeChat for business meetings. In Asia, it was not the pandemic that induced the digital communication.
When working in an international context, not much has changed in the pandemic. Video calls were already the go-to communication tool.

But I do think that the pandemic makes a faster development in the field of digital communication possible.
The feedback I received was mostly from colleagues, who wanted to meet again soon and catch up, since you haven't seen each other in a long time, as business trips simply don't happen anymore.

Which field in the legal work world is impacted the most by the pandemic in your opinion?

Stephan: In my opinion, it's cross-border actions. Many Small and Medium Enterprises (SMEs) stay locally and within their current field. Outbound investment is very difficult at the moment.

Hendrik: The business in criminal law is happening as usual, investigations are running and defense mandates are coming in. Cornering criminal investigations, we have noticed a delay in interrogations and access to files. This is due to the Covid precautions, neither the police nor the department of public prosecution is agreeing to online interrogations e.g. of witnesses.

Stephan: I agree, technical hardware is a crucial part. I am impressed by U.S. and Chinese authorities. The U.S. is well prepared in online court proceedings, which is a standard in which Germany is behind compared to the U.S. and China.

Hendrik: Concerning the technical setup in our law firm, I find it incredibly useful to have a good partner on hand, who is well informed about the possibilities of digital work and advises their clients according to their needs in the process of enhancing digital work.
In my opinion, technical progress is not inhibited by the costliness it brings with it but rather the by the lack of willingness to adapt and be confronted with new ways of working.

Which pandemic-sparked invention holds the most potential?

Stephan: In my opinion, it is the acceptance of video calls and the changes in communication. Before, it was much more important to meet in person to get acquainted to each other. Now, we can make use of the technological possibilities and benefit from it. Travelling is not necessary anymore to meet with clients from all over the world, you can simply start a video call.

Hendrik: For me, it is key to find the right dose of communication and technology. We have to keep in mind, that as humans we have limited abilities to process information and therefore it is crucial to implement a practice that is aware of both benefits and risks of the digital tools. I see the most potential in the process of acquiring these skills.

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ANTI-CORRUPTION COMPLIANCE IN TIMES OF THE COVID-19 PANDEMIC

Criminal law risks and incentives for compliance-mangement-systems in the healthcare sector

Elias Schönborn

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ABSTRACT

In addition to a global endurance test for the health system, the Corona pandemic triggered a tremendous social and economic crisis. Health professionals as well as politicians and business managers have to make decisions with considerable consequences under great time pressure. In this context, numerous international organizations - including Transparency International, GRECO and IACA - point out that the Corona crisis can be a breeding ground not only for conflicts of interest, but also for corruption.[1] Even though quick decisions have to be made at present,

[1] Cf. Transparency International Deutschland, *Die Corona-Krise - ein Katalysator für Korruption?* Positionspapier (June 2020), https://www.transparency.de/fileadmin/Redaktion/Publikationen/2020/Positionspapier_Korruptionspraevention_Corona_Juni_2020.pdf (last visited Jan. 31, 2021); Daniel Bischof, *Corona-Krise als Nährboden für Korruption*, interview with Thomas Stelzer, Wiener Zeitung, (Apr. 27,

it is clear that the strict prohibitions on corruption must be fully observed also in times of the Corona crisis. In order to avoid violations from the outset, existing compliance systems should continuously be updated and adapted to the current situation. This article begins with a description of possible forms of corruption in the health care sector that are particularly relevant in the current times of crisis. Finally, the article offers ideas for updates on the company's internal healthcare compliance system with regard to anti-corruption.

2020), https://www.wienerzeitung.at/nachrichten/politik/oesterreich/2058429-Corona-Krise-als-Naehrboden-fuer-Korruption.html (last visited Jan. 31, 2021); GRECO, *Corruption Risks and Useful Legal References in the context of COVID-19* (Apr. 15, 2020), https://rm.coe.int/corruption-risks-and-useful-legal-references-in-the-context-of-covid-1/16809e33e1 (last visited Jan. 31, 2021).

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I. INTRODUCTION

Fighting corruption is not only an important topic in public discourse in times of crisis. In recent years, prosecution offices and courts have had to deal with an increasing number of different forms of corruption. In times of the corona crisis, in addition to the need for medications and vaccines, the demand for numerous medical products, such as respirators, disposable gloves, protective masks, disinfectants or COVID-19-tests has increased drastically. Involved persons often have to provide and procure large quantities of these products under considerable time pressure. Thomas Stelzer, head of the International Anti-Corruption Academy (IACA) recently stated in this context (translated from German original): "*States around the world are suddenly investing an enormous amount of money to support the economy and the health system. This can enable corruption, if sufficient control structures are not created at the same time. [...] The boundaries between legitimate commissions and other 'payments' are often very thin*."[2]

Many legal laypersons are not aware of how narrow this range is. After all, getting a commission can be a normal business process in one case, and a violation of criminal law punishable by several years of imprisonment in the other case.

The actors in the health sector are facing the challenge of providing effective therapies, tests and vaccines for patients within a short time for the COVID-19-virus that has not been known for long and mutations of that virus that have been known for even less time. In this context, there is a considerable risk of facilitation payments, for example to gain preferential access to certain medical services in an overburdened health system. GRECO points out that in times of crisis, this form of corruption (which is commonplace in some states) appears even in states where it is otherwise rare.[3]

In addition, another potential gateway for corruption is the danger of conflicts of interest and (partly inadmissible forms of) lobbying. Transparency International shows that, for example, during the swine flu pandemic, scientific advisors to the WHO were simultaneously employed by pharmaceutical companies that earned money from the pandemic. In order to avoid conflicts of interest, WHO advisors must therefore now disclose their income and (financial) connections. The fact that the government is granted an extraordinary amount of power in times of crisis, while restricting traditional parliamentary structures, is also cited as a potential threat for corruption and abuse of power.[4]

This article cannot describe all forms of corrupt behavior in the health sector.[5] In the following, the corruption risks that are currently relevant for the economic sector, and there especially for the health industry, are presented. This concerns payments/commissions on the medical procurement market,

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[2] Daniel Bischof, *Corona-Krise als Nährboden für Korruption*, interview with Thomas Stelzer, Wiener Zeitung, (Apr. 27, 2020), https://www.wienerzeitung.at/nachrichten/politik/oesterreich/2058429-Corona-Krise-als-Naehrboden-fuer-Korruption.html (last visited Jan. 31, 2021).

[3] GRECO, *Corruption Risks and Useful Legal References in the context of COVID-19*, 3, (Apr. 15, 2020), https://rm.coe.int/corruption-risks-and-useful-legal-references-in-the-context-of-covid-1/16809e33e1 (last visited Jan. 31, 2021).

[4] Transparency International Deutschland, *Die Corona-Krise - ein Katalysator für Korruption?* Positionspapier, 2, (June 2020), https://www.transparency.de/fileadmin/Redaktion/Publikationen/2020/Positionspapier_Korruptionspraevention_Corona_Juni_2020.pdf (last visited Jan. 31, 2021).

[5] For an in-depth analysis of the topic, cf. Elias Schönborn: Korruption im Gesundheitswesen, 45 et seq. (2020).

sponsoring of hospitals as well as donations and gifts to hospital staff. In addition to the relevant provisions of the Austrian Medicines Law (*Arzneimittelgesetz*, "AMG"), the Law on Medical Products (*Medizinproduktegesetz*, "MPG"), the limits of judicial criminal law in accordance with the Criminal Code (*Strafgesetzbuch*, "StGB") must be followed in particular.

II. MEDICAL PROCUREMENT MARKET

The healthcare market is highly competitive, which has even increased since the outbreak of the pandemic in the beginning of 2020. It does not take too much imagination to assume that the manufacturers of medical products, medicines and vaccines have a considerable incentive to convince patients or end users, physicians, pharmacists, intermediaries, hospitals, local authorities and entire confederations to buy exactly their products. Especially in the hospital sector, there is a large procurement market with many suppliers and care providers, which is a playground for purposeful influence and informal control mechanisms.[6]

A. Procurement by public institutions

If Austrian public hospitals procure medical products, medical devices and vaccines (hereinafter referred to as "medical goods"), the hospital employees are mostly employees of the Austrian hospital operating companies, which are mostly limited liability companies in accordance with Austrian corporate law. The shares of those companies are held by a regional authority (mostly one of the nine Austrian federal states). They are therefore office bearers (*Amtsträger*) and thus subjects to the anti-corruption provisions of the Austrian StGB.[7]

If a company in the healthcare sector tries to influence an office bearer to order medical goods for a public hospital by means of financial incentives (e.g. by granting commissions to him personally), this gives rise to criminal liability in accordance with the anti-corruption provisions in accordance with Sec 304 – 308 StGB.

Furthermore, physicians and other employees who have the power to dispose of the hospital's assets are persons in authority within the meaning of Sec 153, 153a StGB.[8] Hospitals are generally entitled to any provisions their employees receive for their professional activities. A breach of this principle can therefore also constitute the offence of embezzlement or forbidden acceptance of gifts under Sec 153 et seq StGB.[9]

The above mentioned principles also apply when the European Commission procures medical goods for its Member States, which was for example the case when the European Commission ordered COVID-19 vaccines.[10] The acting decision-makers of the European Commission are office bearers in

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6 Grimm, *Korruption im stationären Sektor*, in: Walter Pfeil & Michael Prantner, Sozialbetrug und Korruption im Gesundheitswesen, 87 (2013).

7 Elias Schönborn: Korruption im Gesundheitswesen, 101 et seq. (2020); Grimm, *Korruption im stationären Sektor*, in: Walter Pfeil & Michael Prantner, Sozialbetrug und Korruption im Gesundheitswesen, 105 (2013).

8 Elias Schönborn: Korruption im Gesundheitswesen, 167 et seq. (2020).

9 RIS-Justiz RS0095569; Kirchbacher/Sadoghi, in: Höpfel/Ratz, WK² StGB § 153 mn. 31, 47.

10 Cf. MedMedia, *Erster Corona-Deal: Österreich fixiert 6 Millionen Impfdosen* (Aug. 27, 2020), https://www.medmedia.at/relatus-med/erster-corona-deal-oesterreich-fixiert-6-millionen-impfdosen/ (last visited Jan. 31, 2021).

accordance with the Austrian StGB. Corruptive conduct in this context is punishable under Sec 304, 305, 307 and 307a StGB if the deciding EU office bearer acts with the intent that the financial interests of the EU are thereby harmed or likely to be harmed.[11]

B. Procurement by private institutions

Employees and agents of private hospitals and other private medical institutions generally do not fall under the definition of office bearers and are therefore not subjects of corruption offences in the public sector. However, in the case of a commission granted to the decision-maker, they may be liable to prosecution under Sec 153 et seq StGB according to the principles described above.

In addition, employees and agents of private medical institutions can fulfil Sec 309 StGB. In summary, this offence requires the granting of a benefit in the course of business to a staff member or agent for a legal act in breach of duty. If a staff member of a private hospital purchases medical goods from a certain supplier because he receives a benefit (e.g. a commission) for it, although there are cheaper suppliers for the same or a comparable product on the market, this order (as a legal transaction) is in breach of duty and therefore punishable under Sec 309 para 1 StGB.[12] The person who offers, promises or provides such a commission is liable to prosecution according to Sec 309 para 2 StGB.

III. SPONSORSHIP OF PUBLIC HOSPITALS

Contributions from manufacturers to hospitals generally fall under the regulations for sponsoring. The term sponsoring covers any material or immaterial benefit in which the "donor" seeks a return, essentially in the form of advertising effects. This distinguishes sponsoring from traditional (gratuitous) donations or gifts.[13] An essential criterion of sponsoring is therefore the exchange relationship between the sponsor and the sponsored.[14]

Sponsoring is commonplace in the medical sector and serves in particular to promote the image of pharmaceutical companies and medical device manufacturers. In concrete terms, conferences, congresses or other events are usually "sponsored", where the aforementioned companies are offered the opportunity to present their products. However, sponsoring can also be provided without an (openly expressed) advertising effect, for example in the case of borrow agreements for medical equipment with hospitals.[15]

According to the criteria of the Austrian Supreme Court, sponsoring is permissible if the sponsoring service is based on a contract for pecuniary interest that is valid under civil law.[16] If the specific sponsoring is not opposed by any legal regulations and if there is no sham contract, benefits in the course

11 On the related criticism of the limited criminal liability under corruption law of "EU officials", cf. Stefan Huber, *Neueste Änderungen im Korruptionsstrafrecht durch BGBl I 2019/111*, JSt 2020, 111 (114 et seq).

12 Nordmeyer/Stricker, in: Höpfel/Ratz, WK² StGB § 309 mn 33.

13 Koblizek, *Verwaltungssponsoring*, in Wieselthaler: Korruptionsprävention in Theorie und Praxis, 57 (2015).

14 Cf. Clara Ifsits: Strafrechtliche Risiken des Sponsoring. Zur Strafbarkeit von Sponsor und Gesponsertem wegen Untreue und Korruption, 3 with further references (2017).

15 Elias Schönborn: Korruption im Gesundheitswesen, 53 with further references (2020).

16 OGH, June 6, 2016, 17 Os 8/16d.

of sponsoring are therefore excluded from criminal corruption law.[17] If, for example, a physician concludes a third-party funding contract with a pharmaceutical company on behalf of the hospital he works for, the financial benefits are matched by the contractually agreed research project. Due to the legally justified claim from the exchange relationship, there is therefore no "benefit" relevant to corruption criminal law.[18]

Generally, also pandemic-related gifts from companies to hospitals also fall under the sponsorship regulations. This concerns, for example, providing (free of charge) protective masks, disinfectants, protective equipment, respirators, etc. Since such benefits regularly have at least an advertising effect for the company, there is usually an (implied) sponsoring relationship, so that the provisions of corruption law generally do not apply due to the lack of a "benefit".

If, on the other hand, direct benefits are granted to physicians or other hospital employees in the course of sponsoring, it depends on the question whether the individual person is in a contractual relationship with the sponsor. If this is not the case, there is also no service and consideration between the individual and the sponsor that excludes a benefit under corruption criminal law.[19] Such benefits are analyzed in more detail below.

IV. GIFTS TO HOSPITAL STAFF

Corrupt agreements between healthcare professionals (especially physicians) and companies are hardly ever practiced openly, but "hidden" in legal cooperation agreements. For healthcare compliance, it is therefore important, especially in times of the Covid pandemic, to check the plausibility of cooperation relationships with physicians and to document the cooperation agreements in detail.[20] Existing cooperations must also be checked for validity, plausibility and whether they are likely to create the appearance of justifying or concealing an unlawful act. In addition to the relationship between physicians with hospitals, this applies in particular to cooperations and consultancy agreements with pharmaceutical and medical device manufacturers as well as financial participations in these companies. As stated above, in the case of a contract for pecuniary interest that is valid under civil law, a "benefit" under corruption law is excluded and therefore not punishable. Therefore, in the following, only those cases in which the individual does not have a contractual relationship with the "sponsoring" company are assessed.

Recital 50 of the European Union's Directive on the Community code relating to medicinal products for human use[21] reads as follows: "*Persons qualified to prescribe medicinal products must be able to carry out these functions objectively without being influenced by direct or indirect financial inducements.*" Gifts to hospital staff must therefore be viewed in a differentiated manner. In general, the special relationship of trust between physician/pharmacist and patient requires that physicians and phar-

17 See also Huber: Das *Korruptionsstrafrecht 2013 – alte Probleme, neue Regelungen, offene* Fragen, 71 (2017).

18 Alois Birklbauer, *Die Anwendbarkeit der Korruptionsbestimmungen auf Ärzte*, RdM 2013, 223 (226).

19 Elias Schönborn: Korruption im Gesundheitswesen, 53 with further references (2020).

20 Cf, also on the topic in Germany: Daniel Geiger, *Das Gesetz zur Bekämpfung von Korruption im Gesundheitswesen und seine Auswirkungen auf Strafverfolgung und Healthcare-Compliance*, CCZ 2016, 172 (177 et seq).

21 Directive 2001/83/EC.

macists, when recommending or prescribing drugs or medical products, are guided solely by the patient's well-being and interests and not by the question whether they have received or are to receive personal benefits in this process.

According to Sec 55a AMG, it is prohibited to grant, offer or promise a premium, financial or material advantage to physicians or pharmacists in the context of sales promotion of medicinal products/drugs. The cost absorption of reasonable travel and accommodation expenses and participation fees at scientific events exclusively related to the profession are excluded from the prohibition as well as appropriate representation expenses (Sec 55a paras 2 and 3 AMG). Furthermore, benefits of low value that are relevant to medical or pharmaceutical practice are also not covered by the above-mentioned prohibition under Sec 55a AMG. This generally includes items with a value of less than EUR 100, such as small amounts of benefits like disinfectants, respiratory masks, disposable gloves etc. [22]

The equivalent for medical device advertising is regulated in Sec 108 MPG. The same regulations and prohibitions apply *mutatis mutandis* as for the promotion of medicinal products.

It must be pointed out that in all these regulations there is no "relief" whatsoever in the event of a crisis and/or pandemic. The limits outlined must therefore be strictly adhered to even in times of the current Corona crisis.

In the absence of a special authorization, a failure to transfer a benefit with a value of more than EUR 100 to the employer (such as the hospital) may also constitute a criminal offence under Sec 153a StGB. This is the case, for example, if a representative of a pharmaceutical company visits a physician in the hospital and gives him a gift, if the physician does not pass the gift over to the hospital.

Cases in which there is a connection between a benefit and a concrete activity or future activity of the hospital employee have to be assessed particularly critically and may, under certain conditions, be punished under the corruption provisions of StGB. This concerns, for example, the prescription of a drug/medical product that is made on the basis of a financial benefit, for example within the framework of a commission agreement with a physician, who receives a certain percentage of the sales price for each product prescribed. The corresponding offences are, depending on the specific form of corrupt behavior, to be assessed under Sec 153, 153a StGB as well as Sec 304 - 309 StGB and are punishable by prison sentences of several years.

V. COMPLIANCE

The purpose of anti-corruption compliance is not merely to prevent penalties, but – above all – to protect patients as well as business partners and employees. Healthcare compliance also serves the reputation of the company and the public's trust in the healthcare system.[23]

For anti-corruption compliance in the medical sector, precise knowledge of medical law and criminal law contexts is indispensable. From a certain company size onwards, companies in the health sector

[22] Cf. Elias Schönborn: Korruption im Gesundheitswesen, p. 235 et seq (2020).

[23] Cf. Alexander Petsche/ Daniel Larcher, *Von Geschenken und anderen die Freundschaft erhaltenden Vorteilen: Korruptionsprävention im Gesundheitswesen*, JMG 2016 H 0, 40 (42).

employ their own "compliance officers" as (legal) generalists to ensure compliance with all legal norms relevant to the specific company. If necessary - especially in difficult or special cases - they also engage external specialists in certain areas of law. This regularly also includes the particularly sensitive area of anti-corruption.

Especially smaller and medium-sized companies that are active in the health sector and do not have a compliance department that is specialized down to the last detail have their compliance system put together and regularly reviewed by external experts, especially attorneys, and benefit from the attorney's strict duty of confidentiality. This involves in particular the elaboration of a compliance guideline or a code of conduct which analyses the concrete risks of the company in order to raise the problem awareness of the employees on the one hand and to work out concrete instructions for action for employees on the other hand. An important principle in this context is the documentation and written form principle for (cooperation) contracts with physicians.[24]

Since every company is different, healthcare compliance must specifically address the concrete corruption risks and (medical) facilities as well as problem areas of the respective company. In this context, compliance guidelines and codes of conduct have to be adapted to new circumstances in the company and - due to frequent amendments to the law – have to be updated regularly.

In practice, it has also proven useful to hold regular employee training sessions on these topics, in which employees also have the opportunity to enter into a dialogue with experts and receive answers to compliance-relevant questions that affect their daily work. In this context, areas that tend to be vulnerable to corruption, such as sales/distribution or procurement can also be addressed in detail. In addition, internal whistleblowing systems that maintain confidentiality as well as concrete amnesty programmes can be a perfect rounding of a company's compliance management system.[25]

If a suspicion of corruption arises within the company, internal investigations by external advisors such as attorneys and/or auditors can help to uncover potential misconduct while maintaining absolute confidentiality.

VI. CONCLUSION

In addition to individual punishment of the decision-makers or employees involved, companies operating in the health care sector may also be imposed with considerable fines under the Austrian Act on responsibility of legal entities (*Verbandsverantwortlichkeitsgesetz*, "VbVG"). In accordance with the quote by US lawyer Paul McNulty "*If you think compliance is expensive, try non-compliance*", some health care companies have already established special compliance precautions for anti-corruption, while for others this process is still pending. The Covid pandemic is an opportunity to catch up on this long overdue homework. The examples presented above concern only the most obvious forms of corruption in the health sector in times of the Corona crisis. Overall, the topic is complex and includes not only an assessment under criminal and administrative law, but also civil and corporate law issues.

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[24] Alexander Petsche/ Daniel Larcher, *Von Geschenken und anderen die Freundschaft erhaltenden Vorteilen: Korruptionsprävention im Gesundheitswesen*, JMG 2016 H 0, 40 (42 et seq).

[25] Alexander Petsche/ Daniel Larcher, *Von Geschenken und anderen die Freundschaft erhaltenden Vorteilen: Korruptionsprävention im Gesundheitswesen*, JMG 2016 H 0, 40 (43).

Moreover, since there are hardly any court decisions on this topic in Austria, there is a growing need for legal certainty among companies operating in the medical sector. The first step towards this is a comprehensive analysis of the corruption risks in one's own company. To conclude the topic with the words of Transparency International (translated from German original): *"We can understand the Corona crisis as setting the course for a comprehensive social transformation. [...] This new challenge offers a window of opportunity for changes that are of fundamental importance for trust in politics and administration, for decency and fairness in business and for the cohesion of society as a whole".*[26]

[26] Transparency International Deutschland, *Die Corona-Krise - ein Katalysator für Korruption?* Positionspapier, 5, (June 2020), https://www.transparency.de/fileadmin/Redaktion/Publikationen/2020/Positionspapier_Korruptionspraevention_Corona_Juni_2020.pdf (last visited Jan. 31, 2021).

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U.S. COMPLIANCE FOR GERMAN SMEs 2021[1]

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[1] This article was first published in German in CCZ-Corporate Compliance Zeitschrift 1/2020, p. 7-12. The Authors are very grateful to CCZ for allowing them to publish this translation including an update.

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I. REQUIREMENTS OF THE US MARKET FOR COMPANIES 2021

The US society and the judiciary expect German companies operating in the US to comply fully with all US legislation. The United States of America is one of the most important economic market for medium enterprises and a successful appearance in the US market is of paramount importance for many companies.[2] M&A deals in the US are very interesting currently,[3] the unrest caused by the BREXIT promotes this situation.[4] Therefore, it is important that German companies adhere to US laws.

In this context, the question often arises as to whether or to what extent Small and Medium Enterprises (SMEs) should follow and implement US compliance requirements. The consequences of state and/or federal investigations against SMEs in the States can be detrimental, also due to the lack of financial resources compare to large companies. German SMEs should not hope the respective US authorities will be considerate.[5] It is assumed that a company is implementing compliance procedures according to its size and operational activity. The risk to determine how to meet this requirement to the satisfaction of the supervisory authorities remains with the companies.

II. COMPLIANCE REGIME IN THE USA

A. Essential legal bases in the United States de lega lata

The law in the United States of America is not only based on court decisions. This is particularly true in the area of compliance. As response to the last severe financial crisis in the beginning of 2007, the U.S. legislature has passed more and more differentiated legislation.

The US Foreign Corrupt Practices Act (US FCPA) is a particularly relevant anti corruption codification for US law practice that extends beyond the borders of the states. In order to interpret the US FCPA, the Resource Guide US FCPA has been introduced, which is intended to provide companies with a guide to implement regulations similar to the SEC Enforcement Manual FATCA, which is intended to provide assistance in dealing with the Foreign Account Tax Compliance Act 2010 (FATCA).[6]

FATCA is another law companies must comply with in practice. On the basis of FATCA, US taxpayers must for example report information of foreign bank accounts to the Internal Revenue Service (IRS). Failure to comply with these rules result in heavy penalties. Since 2018, we also know that FATCA is not just a sham legislation. The Department of Justice (DOJ), U.S. Attorney's Office, Eastern District of New York – announced its first conviction in the case of "Adrian Baron".

In 1961, the US legislature enacted the internationally known International Travel Act 18 U.S.C. 1952.

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[2] Stephan Ebner, CORPORATE FINANCE 2019, 304 (CF 1312433).

[3] Stephan Ebner, Interview titled "*Why M&A deals are now attractive in the USA*", FINANCE of 28.08.2019, https://www.finance-magazin.de/deals/ma/warum-ma-deals-in-den-usa-jetzt-attraktiv-sind-2044121/ (last visited Feb. 09, 2021).

[4] Stephan Ebner, WIRTSCHAFT STEUER & RECHT 2019-1, 126.

[5] See. Stephan Ebner, ZRFC RISK, FRAUD & COMPLIANCE 2019, 199 (206).

[6] However, it is not the US alone that is active in this context, e.g. the UK is in no way behind, Stephan Ebner, INITIATIVE – The Magazine for Members Of The German-British Chamber of Industry & Commerce, 8 (2019).

According to this Act, intergovernmental travel or the use of an intergovernmental body in favor of extortion or an illegal enterprise is prohibited. The Act also prohibits the use of communication and travel facilities for the commission of state or federal crimes. Another relevant codification in the context of financial market law is the Dodd-Frank Wall Street Reform and Consumer Act of 2010.

Due to media-related scandals involving the accounting of Enron, WorldCom, Global Crossing, Tyco and Arthur Andersen, which led to billions of dollars of losses among companies and investors, the US legislature issued the Sarbanes-Oxley Act (SOX) in 2002. The SOX also played a decisive role for many private companies in the areas of corporate governance, financial supervision and compliance.[7] Medium-sized companies that grow fast or consider an IPO often meet the requirements of the SOX voluntarily. This is true, although SOX actually only applies to companies whose securities are traded on the US stock market, are offered outside the stock market or in public in the United States.

1. The SOX as a prime example of US compliance legislation

The SOX applies in a far extraterritorial way to German companies, even if only access to the US capital market is sought. In principle, the law has established a significantly increased personal liability responsibility of senior management for the accuracy of financial figures submitted.[8] This legislation, which is so important for the further development and differentiation of compliance in the USA, has led to major changes in the disclosure of balance sheets and the demand for real independence of auditors. Generally speaking, the SOX requires that balance sheets reflect the actual status of the company and that efficient internal control systems validate the financial reporting.

It is beneficial for the actual implementation of such codifications that US authorities are willing to rigorously enforce these laws.[9] The compliance with SOX regulations usually leads to improved internal control of the company. In addition, the company is generally valued higher, because it complies with stricter regulatory requirements. Another advantage of complying with SOX regulations is that it can be used to limit major liability risks in a sustainable manner. Although there are many reasons for taking action to follow SOX's rules, smaller companies cannot always implement all regulations due to limited budgets and staff shortages.

2. Current: -FCPA Corporate Enforcement Policy- and -A Framework for Compliance Commitments-

In March 2019, the DOJ made changes to key provisions of the FCPA Corporate Enforcement Policy.[10] The focus of these guidelines is primarily on clarification concerning self-reporting and cooperation with authorities. The 2019 innovations effect the use of instant messengers for business communications, which should now be possible much easier.

It is no longer needed to communicate all the circumstances concerning the individuals who might be

[7] Stephan Ebner, ZRFC RISK, FRAUD & COMPLIANCE, 199 (2019).

[8] Most of the provisions of the SOX strictly only apply for companies that have registered either a securities class pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, or are obligated to submit reports pursuant to the Stock Exchange Act, or have filed a registration declaration under the Securities Act of 1933, as amended.

[9] See. Determann, Neue Zeitschrift für Verwaltungsrecht, 562 (2016).

[10] Stephan Ebner, ZRFC RISK, FRAUD & COMPLIANCE, 199, (201 f.) (2019).

involved in a violation of the US FCPA. Compliance measures shall be fully recognized even if significant facts are communicated about persons who are more closely involved or solely responsible for such violations. This is a welcoming modification, since it is difficult to determine the circle of all persons (groups) that may be affected in this context.

Furthermore, liability relief in the area of M&A is now explicitly promised, when the acquirer of a company carries out a proper compliance due diligence check and nevertheless compliance violations of past proceedings are only discovered later as usual (Point 9-47.120-Nb4).[11] This clarification creates more legal certainty and predictability.

Last but not least, as already mentioned, companies are explicitly required to keep business records, and to provide clear instructions for the use of instant messengers by employees. Among other things, the intention is not to jeopardize the business data contained in such messages with its permanent storage. The use of such messaging applications is even more widespread in US companies than it is currently in Germany. These clarifications are overall quite positive. Although, this indicates that good compliance can be beneficial, the authorities continue to hold individuals personally accountable. Due to this fact companies are still reluctant to disclose infringements of the US FCPA on their own initiative or preventively. It is expected that this will change in the foreseeable future.

Additional up-to-date or new information on how to operate compliance in the United States is found in the paper "A Framework for Compliance Commitments" published at the beginning of May by the US Department of the Treasury's Office of Foreign Assets Control (OFAC). OFAC is a separate supervisory authority for foreign assets. The regulation is in essence nothing new, and is based on five core virtues, which include management involvement, risk-driven approach, internal monitoring, regular reviews and constant training.[12]

However, if a company cannot demonstrate any CMS based on these standards, such a failure is even more serious because similar standards have been published by many US authorities.[13] A possible argument of claiming to be unaware of the importance of compliance should, therefore, simply be hopeless.[14]

3. California Consumer Privacy Act

Since August 14, 2020, the California Consumer Privacy Act[15] (CCPA) provides for stricter data protection regulations in California. Other U.S. states (New York) have enacted similar laws or are still in the legislative process. The CCPA can be seen as a landmark U.S. data privacy law. Nevertheless, it is unlikely that is the blueprint of a federal data privacy law.

A company subject to the CCPA is a for-profit organization or legal entity that does business in California and collects consumers' personal information. It's registered office is irrelevant; branch offices

11 Stephan Ebner, CORPORATE FINANCE, 304 (CORPORATE FINANCE1312433) (2019).

12 See. Stephan Ebner, ZRFC RISK, FRAUD & COMPLIANCE, 199, (204 ff.) (2019).

13 More recently for example the DOJ: "Guidance on Evaluating Corporate Compliance Programs".

14 Stephan Ebner, ZRFC RISK, FRAUD & COMPLIANCE, 199, (207) (2019).

15 https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=3.&part=4.&lawCode=CIV&title=1.81.5 (Feb. 09, 2021).

and onsite distributors are included. Collecting such data generally means "buying, renting, collecting, receiving". Nevertheless, there are three thresholds and one of which must be exceeded for the application of the CCPA: -Annual gross receipts in excess of $25 million- or -annually buy, sell, receive, or share for commercial purposes the personal information of 50,000 or more consumers, households, or devices- or -50 percent or more of its annual revenue is based on the sale of consumers' personal data-.

The CCPA does not apply to medical information and entities under the HIPAA health law or the California Confidentiality of Medical Information Act, the Gramm-Leach-Bliley Act, or the California Financial Privacy Act. Additionally, certain personal information collected from applicants, employees, owners, directors, and contractors are exempted, too.

Companies that are subject to both the CCPA and the European General Data Protection Regulation (GDPR) face various legal questions. Which requirements are to fulfilled in detail and are companies potentially exposed to both sanction regimes? Even though the GDPR sets higher requirements overall, there are additional requirements in the CCPA that must be complied with (for instance, the classification of household and device data as personal information).

Here you are again a well-known phenomenon of international legislation: New rules are hastily enacted, but these are not really well-thought-out. The CCPA has not been adapted to international data legislation. The economy and ultimately the citizen have to cope with legal uncertainty. It is questionable whether the next double data breach agreement will be agreed or whether fines from international corporations can be taken into account.

Companies concerned have to review and update privacy policies and align with CCPA, implement a highly visible opt-out button and indicate consumer rights. In practice, it is a considerable effort to adapt to the new law. In 2021, it will remain a challenge for German companies to comply with the CCPA as well as the GDPR.

B. Considerations on how to deal with US regulators

German companies will mainly experience contact with the DOJ, the US Securities and Exchange Commission (SEC) and OFAC in the US. Both the DOJ and the SEC may be jointly or separately responsible for a case of US FCPA investigations. According to a subjective experience, client cases involving the exclusive participation of the SEC have usually proven to be much more difficult. Only speculations could be made about the reasons for this. The Fraud Section [16] of the DOJ's Criminal Division has sufficient expertise to conduct such procedures alone. In the past, this agency still has often consulted with the SEC in matters concerning the US FCPA.[17]

Nevertheless, it is the SEC that has the primary responsibility for both regulating the securities mar-

[16] https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act (Feb. 09, 2021).

[17] Christoph Partsch, The Foreign Corrupt Practices Act (FCPA), 67 (2007).

kets in the United States and investigating civil violations of anti-corruption and accounting regulations (SEC Division of Enforcement).[18]

1. Adaptability required

If an out of court settlement is not reached, the DOJ or the SEC is expected to file a lawsuit in a district court.[19] A defense strategy should take this fact into account. Despite possible weak evidence by the authorities, a court decision is often sought in order to increase the pressure on a company. Even if a court case is decided in favor of a company – especially foreign companies should from experience usually not hope to prevail – the damage is considerable due to the (publicity of) litigation alone.

From a German point of view, it is difficult to understand the sometimes extremely wide-ranging powers of said US authorities.[20] It must be remembered in this context that there is also no classic administrative procedure or administrative jurisdiction in the States within the meaning of German law. An agency like the SEC can prosecute companies, unlike the Bundesanstalt für Finanzdienstleistungsaufsicht in Germany, both from a civil and criminal law standpoint. Powers that in Germany, for example, are reserved for the judiciary may also be exercised in some instances by the executive branch.

Generally speaking, personal contact with officials in the United States is more important, as this seems to be the case in Germany. Therefore, first maxim in dealing with U.S. authorities should be to emphasize the ability and especially the willingness to cooperate fully with the U.S. investigators. From experience, a strategy based on conflict avoidance must end fatal for German companies in the States. In addition, it should be avoided to indicate an existence of a supposedly higher level of the rule of law in Europe or Germany. On the one hand, this is not right in substance,[21] one would compare apples with oranges. On the other hand, this will not be of any importance in the States. Most likely such behavior would be considered inappropriate. German companies do not have a strong lobby in the United States. Although Germany is still an important trading partner, there are now more important cooperation partners such as China or Canada.

2. Soft skills crucial

Generally, cultural differences can be crucial. In Germany it is common to directly address the factual key points in a conversation; this should be avoided with US administrative staff. Many German professionals continue to underestimate the "Small Talk", which is simply a commandment of courtesy in the USA. This ability must be practiced. If a foreigner categorically refuses to do so, may not leave a good impression.

In other words, a in Germany considered normal procedural act or a common behavior by the employees of a U.S. authority can be completely misunderstood, without the person acting being aware of it or even intended to act like that. Especially in Anglo-Saxon states, messages to the other party are often hidden between the lines. Due to the great power of the prior mentioned authorities in the USA,

18 Christoph Partsch, The Foreign Corrupt Practices Act (FCPA), 69 (2007).

19 Martin Schulte/Cornelius Görts, RECHT DER INTERNATIONALEN WIRTSCHAFT, 562 (2006).

20 Stephan Ebner, ZRFC RISK, FRAUD & COMPLIANCE 2019, 199, 201 ff.

21 Stephan Ebner, Unternehmensbezogener Geheimnisschutz, 410, (2016).

it is important to follow these social rules. Generally at the time the matter is in court there will not be much to win, if there had been any miscommunications before. Experience has shown that, in contrast to German officials, communication with US authorities is often much easier, if the rules of the game are adhered to.

III. CMS 2021: OPERATING SUCCESSFUL COMPLIANCE IN THE USA

A. Data transfer between the USA and Germany (data protection compliance)

It is not only since the GDPR has been in force that the issue of data protection seems to be taking over in Europe. For example: in all EEA countries, e.g. Italy or Hungary, German companies are allowed to transfer personal data at any time under current law without any major justification, but in the relationship between Germany and the USA, this is de lege lata not possible.[22] Considering the efficiency of the US economy and the local public administration, the reliability of US companies or the general importance of the products of North American companies in Germany, this result must be a surprise.[23] In the long term, Europe and Germany can be economically damaged by such a (mis) understood data protection law.[24]

However, companies cannot change this situation and must perceive the contradiction, in particular with regard to the conception of their CMS, and understand German data protection law as a problem which is in principle only relevant to Germany and does not have an international effect in general. This is also important because internationally operating German companies need internationally unified or holistically functioning CMS.[25] Prerequisite for this is also a problem-free exchange of data between subsidiaries of the company in the United States and Germany. It requires a proper allocation of real data protection risks. German companies must set aside existing reservations regarding in-house data transmission with the participation of the USA. The discussion on data protection in Germany is also misused to protect existing vested interests. From a German point of view, there is still no convincing evidence that could consider the US data protection level inappropriate.[26] Rather, the US standards are comparable with the German data standards[27] and certainly significantly higher than the data protection level of some EEA states.

As a result, German companies operating in the United States have no choice but to accept this competitive disadvantage, which is to a certain extent due to European or German law. Companies must seek other solutions in the case of data transmissions involving the United States of America taking

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[22] Lothar Determann, Neue Zeitschrift für Verwaltungsrecht, 565 (2016).

[23] Stephan Ebner, Interview on the title „Warum M&A-Deals in den USA jetzt attraktiv sind", FINANCE of 28.8.2019, https://www.finance-magazin.de/deals/ma/warum-ma-deals-in-den-usa-jetzt-attraktiv-sind-2044121/ (Feb. 09, 2021).

[24] In this context, we should also consider, for example, the already unascourtable lead of the USA and China in the field of artificial intelligence, which is so promising for the future, which is based precisely on the evaluation and implementation of the largest data sets. In the USA there is no general ban on automated data processing with permission reservation, as we know it in Europe, where investors and company founders already, by law, are deterred as a preventive measure, Lothar Determann, Neue Zeitschrift für Verwaltungsrecht, 566 (2016).

[25] Stephan Ebner, COMPLIANCE BERATER, 322, (325 f.) (2019)

[26] Lothar Determann, Neue Zeitschrift für Verwaltungsrecht, 567 (2016).

[27] Stephan Ebner, Unternehmensbezogener Geheimnisschutz, 418 (2016).

into account reasonability and the associated justification effort.

B. Compliance in the Transatlantic Context

1. Basic principles such as proportionality, effectiveness and efficiency

If there have been investigations against foreign companies in the US in the past, so far only a few companies have dared to litigate and thus faced confrontation with the US judiciary. In most cases, an agreement has been sought, in particular by entering into a data processing agreement (DPA).[28] The unpredictable liability risks, coupled with the low chances of success in the District Court, have and will at the same time recommend such an approach in the majority of cases. Consequently, companies should always make an effort to pursue a DPA. The principles of economic efficiency, proportionality and effectiveness, which are generally accepted in the area of compliance, also apply to matters involving the USA. These principles must be balanced in each specific case.[29] The results of such a balance may differ depending on the consideration of the situation in Germany or the USA, e.g. in view of the different liability paradigms.[30]

In terms of liability law, it is the entrepreneur who has to stand up for compliance failures in the end. This applies to both domestic and international business activities. This can also be inferred from the frequently used scenarios of Section 43 (2) GmbHG.[31] Maximizing basic principles, based on US circumstances, is therefore not entirely separate from the imperative requirement of ongoing review of systemic compliance violations. [32]

2. Evaluation, improvement and crisis resilience of an international CMS

A CMS is solely with the integration of US law never quite finished and thus should not be considered final. Such control mechanisms are constantly on the test as a kind of “living" concept.[33] In light of the constantly and rapidly changing legal situation of the participating States, it is necessary to evaluate them on an ongoing basis.
Standstill is equivalent to weakness in the system or vulnerability to procedural violations.[34]

Of course, it cannot be ruled out that individual structures may not prevail in practice in a specific company. Experience has shown that this can happen especially if structures, which are primarily tailored to German law, are now transferred to business entities in the USA. It cannot be concluded that what proved to be successful in Germany is also suitable for the United States.

[28] Tim Wybitul, BETRIEBS-BERATER, 606 (2009).

[29] Stephan Ebner, COMPLIANCE BERATER, 322, (325 f.) (2009).

[30] Nicolas Ott/Cäcilie Lüneborg, CCZ - CORPORATE COMPLIANCE, 79 (2019).

[31] See also Karl Brock, BETRIEBS-BERATER, 1292 ff. (2019).

[32] See Nicolas Ott/Cäcilie Lüneborg, CCZ - CORPORATE COMPLIANCE 2019, 73.

[33] Stephan Ebner, COMPLIANCE BERATER, 322 (325) (2019).

[34] A comparison could be drawn, among other things, with anti-virus programs, which also require regular updates in order to be able to safely counter the latest attacks.

If a crisis cannot be avoided, often in the context of a positive night-time behavior[35] the question of the apprehency of the relevant "catch-up threshold" in the USA is particularly problematic. The degree of suspicion that must be reached in order to trigger further information obligations for companies operating in the USA is unclear.[36] The guideline applicable in Germany, according to which the so-called "sufficient factual evidence" within the meaning of the initial suspicion of criminal law (Section 152 (2) StPO) cannot just be applied[37] to US law. First, there is no initial suspicion in US law like in German law, and second, the specific liability risk situation must be considered. Generally, the higher the assessed risks, the earlier compliance induced measures must be initiated and risk minimization processes initiated.[38]

Also, in this context, the so-called ISION case law[39] should be mentioned. According ISION doubts about the independence of the investigators can already rule out a reduction in liability in principle. In the US, as well as in Germany, entrepreneurs can then quickly be put on the defense legally, if only in-house employees carry out the necessary audits in order to answer this question. Only constant revision and system refinements can generate sufficient resilience and security. [40]

C. New Challenges: Covid-19 Measures

In light of the current pandemic, another consideration for German companies operating in the US in 2021 is to handle Covid-19 related risks. As vaccines are rolling out across the globe many German companies are wondering if they can implement mandatory vaccination policies in their US company. Also, not only the question arises if they can implement such mandatory policy but also what procedures they must implement in order to keep the work environment safe and their employees healthy under the Occupational Safety and Health Act (OSHA), or to avoid claims such as tort or workers' compensation claims.

Besides implementing preventive measures such as social distancing rules, wearing masks, and teleworking, a first step could be to encourage employees to get vaccinated. In a next step the company may be able to implement a vaccine policy, that applies to all similarly situated employees, considers inter alia medical and religious accommodations, and complies with current law and guidance from US authorities such as the Center for Disease Control and Prevention (CDC), the U.S. Equal Employment Opportunity Commission (EEOC), and the OSHA.

Pursuant to the Americans with Disabilities Act (ADA) mandatory medical exams of employees must be "job related and consistent with business necessity."[41] Following this principle and pre-Covid US

[35] Alexander Eufinger, CCZ - CORPORATE COMPLIANCE, 214 (2016).

[36] See. Nicolas Ott/Cäcilie Lüneborg, CCZ - CORPORATE COMPLIANCE, 75 f. (2019).

[37] Nicolas Ott/Cäcilie Lüneborg, CCZ - CORPORATE COMPLIANCE, 76 (2019).

[38] Jürgen Krisor, COMPLIANCE BERATER, 27 (2019).

[39] BGH (German Federal Supreme Court), CCZ - CORPORATE COMPLIANCE, 76 (2012).

[40] Stephan Ebner, Müllmagazin, 46 ff. (2008).

[41] U.S. Equal Employment Opportunity Commission, Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA (February 8, 2021), https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees#7.

law on vaccination[42], it may be possible to implement mandatory vaccine policies. If immunity is essential to the job, such as for healthcare workers, which are determined by CDC as the first group to receive vaccines[43], a company would probably have a strong case to justify a mandatory vaccination policy. But even in other industries this might be possible. The above-mentioned principle established by the ADA, federal, state, and local laws concerning COVID-19, and guidance from US public health authorities must be evaluated on a case-by-case basis. In these uncertain and unprecedented times with authorities changing guidelines rapidly, a company must always ensure to be up to date with current US laws and regulations and should consult with their legal counsel for further advice concerning any Covid-19 related policy implementations.

IV. FUTURE OF CMS FOR GLOBAL OPERATING SME'S

A. Points of contact with the USA pose the greatest liability risks

Since 1978, we were able to regularly see smaller cases against European companies in the USA, with the number and size of these processes having increased steadily since then.[44] In the future, more than today, German companies that do business in the USA will have to deal more closely with the US legal system, otherwise considerable damage is inevitable. Overall, the greatest risks are the likelihood of prosecution, as well as the scope or severity of possible sanctions in the US.[45]

In general, the application of US law seems to be much more pragmatic than it is in Germany. For example, companies in the US can expose themselves for prosecution by violating the principle of guilt alone.[46] While in Germany there are prior long disputes as to whether or not specific behavior is punishable at all, in the US it is much less likely in this context that maybe long disputes will occur.[47] The importance of court decisions in common law could possibly play a role here. Court decisions are based on real life situations and are not based on theories of possible life scenarios codified by ministerial officials. Furthermore, neither the DOJ nor the SEC are holding back to exercise their own extensive investigative powers.[48] Last but not least, the activity or performance of German supervisory authorities can also be compared with their US counterpart.

The approach in this context that primarily the management level of companies is individually the focus of the investigations[49] is different in Germany. A delegation-proof core stock of reactive compliance obligations of the company management will meanwhile have to remain also according to the

[42] See e.g. Hustvet v. Allina Health Sys., 910 F.3d 399 (8th Cir. 2018).

[43] Center for Disease and Control Prevention, Vaccination Implementation Strategies to Consider for Populations Recommended to Receive Initial Doses of COVID-19 Vaccine (Persons included in Phases 1a-1c), (February 8, 2021), https://www.cdc.gov/vaccines/covid-19/implementation-strategies.html.

[44] Christian Schefold, COMPLIANCE BERATER, 181 (2019).

[45] See. Kerstin Waltenberg, wistra, 199 (2018).

[46] Stephan Ebner, Kriminalistik, 432 ff.

[47] For example, the question of the extent to which certain modalities of commodity futures on commodity futures exchanges in the USA could be punishable under Section 263 of the StGB, see Stephan Ebner, Criminal Studies, 681 ff. (2007).

[48] Michael Wiedmann/Marco Greubel, CCZ - CORPORATE COMPLIANCE, 94 (2019).

[49] Markus Rieder/ Tarik Güngör, CCZ - CORPORATE COMPLIANCE, 141 ff. (2019).

German legal opinion.[50] It is not enough, or it is generally not recommended to hire only additional compliance officers in the USA or Germany (with jurisdiction for the United States of America).[51] Rather, CMS should be implemented de lege artis; expertise must go before mass.

B. Importance of international compliance for SMEs

Digitization is also constantly driving the area of compliance. Companies are urged to jump on this increasingly faster moving "data train" in order not to fall behind their competitors. But how should this be assessed?

1. Digitizing Compliance

A complete digitization or automatic data evaluation systems can of course not be the entire solution, common practices will continue to be decisive.[52] In principle the problem can be broken down to one objective: employees of companies should not be exposed to situations that could lead to a collision of business objectives and compliance requirements.[53]

Of course, US investigative authorities will account with goodwill, if an affected company itself carries out comprehensive (automated) data evaluations and makes these results available to the participating authorities.[54] However, the CMS 2021 does not necessarily require this. Such data processing systems must also be integrated into the basic structure of the company. So far, it was easier for multinational companies to implement compliance systems than it has been for SMEs[55] due to their immense resources. So why confront this unequal struggle at all, when there are other ways?

2. Less is often more!

Measures must be seen in relation to the risks actually present and the size/industry.[56] More importantly, it should also be remembered in this context that the auditorium should not be forgotten. Goal must be to find a balance with the authorities and courts in the United States. And that is what the administration and the judiciary have in common in the new and the old world, it is lacking a medium solution. Less is, therefore, often more. Even without the use of technologies such as "Text mining/predicative analyses" [57] a company can implement effective compliance. Increased engagement with foreign legal systems will not save us from the further advancement of digitalization.[58]

Due to US official's own (lack) of experience, it is likely they may be convinced, if a company did not exclusively implement a high-tech compliance approach. Last but not least, many programs and

[50] Landgericht München I (Higher Regional Court Munich I), Neue Zeitschrift für Gesellschaftsrecht, 345 ff. (2014).
[51] Stephan Ebner, COMPLIANCE BERATER, 322 (324).
[52] See. Stephan Ebner, M&A REVIEW, 290 (294) (2019).
[53] See. Heiner Hugger/Raimund Röhrich, BETRIEBS-BERATER 2010, 2645.
[54] Nicolas Ott/Cäcilie Lüneborg, CCZ - CORPORATE COMPLIANCE, 78 (2019).
[55] Roche/Humphries, Maritime Risk International 2010, 10.
[56] Hugger/Röhrich, BETRIEBS-BERATER 2010, 2645.
[57] Hot/Schaffer, CCZ - CORPORATE COMPLIANCE 2018, 1515.
[58] Stephan Ebner, M&A REVIEW 2019, 290.

methods are simply not yet fully developed. Some of these models could first be just intended to increase the sales of the sellers offering them. As a result, the decisive factor will be the thoroughness and consistency of a coherent CMS.

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MEDICAL TOURISM IN A PANDEMIC

Telemedicine as an asset in international patient care

Christian Fadi El-Khouri

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Christian Fadi El-Khouri has been involved in the medical travel industry for over a decade. Starting out with operating his own facilitation service he now uses his understanding of the industries inner workings, to consult hospitals and destinations on matters of cross-border-healthcare. As a student of business law at the University of Applied Sciences in Mainz, Germany, a big part of his work revolves around ethical and legal considerations as they apply to medical tourism.

ABSTRACT

Medical tourism, as many other industries, has suffered a big hit during the Covid pandemic. Being impacted both on the tourism and the healthcare side of the industry, it faces multiple challenges to recover. Looking at another period in time when the medical tourism industry was this heavily impacted and comparing technological advances during the respective periods, this article elaborates on how to better use digital technologies to rebuild and strengthen international patient care infrastructures.

Before delving into the topic at hand I make the usual disclaimer: Due to the sensitive nature of the industry, there is not a lot of hard data available on medical tourism. Many hospitals do not record foreign patients differently than local patients, due to the specific set of laws that apply to them. Only a few medical tourism destinations collect hard data and survey medical tourists on their experience. Thus, any quantative analysis of the impact the Covid pandemic had and will have on medical tourism is strongly limited.

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I. WHAT IS MEDICAL TOURISM?

Medical tourism refers to the practice of traveling abroad with the primary focus being to receive medical services and attention. There is a plethora of explanations for why patients travel for medical treatment. The main motivations are the search for the best available medical treatment and the search for better medical treatment than in the country of origin. Another motivation is the search for more affordable medical treatment or even medical treatment with shorter waiting periods vis-à-vis over capacitation in domestic hospitals. Beyond these main drivers, medical travel is observed in patients who live in border regions and for medical emergencies and in case there is a requirement for health-promoting environmental conditions that cannot be achieved in the country the patient lives in.

The global medical tourism market is currently valued at 44.8 billion USD at a compound annual growth rate (CAGR) of 21.1% from 2020 to 2027.[1] While in the past it was either seen as part of the healthcare or tourism industry, in the last three decades medical tourism matured into its own industry.

II. THE PANDEMIC'S IMPACT ON THE MEDICAL TOURISM INDUSTRY

The industry is subject to many of the Covid pandemic's disruptions. Hospitals, currently mostly limited to the necessary services and urgent medical care, do not admit international patients. At the same time travel is restricted to a degree we have not seen before. Even if a patient manages to travel abroad and to be admitted in the hospital of their desire, they might not be allowed to bring a family members or interpreters to their appointments, which in some cases might directly impact the treatment experience and outcome.

For many of us, independently of generation, this situation is unprecedented. However, looking at the medical tourism industry in isolation and from a German perspective, it is not.

III. BORDER RESTRICTIONS: NOT UNPRECEDENTED IN MEDICAL TOURISM

In the 1990s, the medical tourism industry was not even remotely comparable to what it is now. It wasn't a matured industry or considered commonplace to travel abroad to receive medical treatment. In spite of that, Germany already attracted a steady flow of patients, especially from the Middle East. Some even describe this period as the golden age of medical tourism for Germany. Our company used to care for an average of 50 patients each week, in one hospital alone. All of them from the Middle East.

Then in August 1990, tensions between the Iraqi Republic and the State of Kuwait lead to what is now referred to as the Gulf War. Overnight flights were canceled, and appointments postponed to an unspecified date. Nobody could anticipate how long this situation would last, and if a recovery in the near future was possible. It seemed like in a matter of hours everything came to a halt.

[1] Grand View Research, Medical Tourism Market Size, Industry Report, 2020-2027, Grand View Research (Feb. 11, 2020, 01:04 PM), https://www.grandviewresearch.com/industry-analysis/medical-tourism-market.

Similarly, in February 2020 we noticed hospitals taking longer to process international patient requests. Certainly, this was owed to the uncertainty of what was to come. During March hospitals started to completely shut down international units, requests went unanswered and appointments got canceled. From there on the situation only tightened, which brought medical tourism to a standstill. Appointments that have been postponed for just a couple of weeks were permanently canceled. Staff in international offices and departments was furloughed or laid off. As the situation manifested itself around the globe, international patients seized to send requests, since they weren't even allowed to leave their home country.

IV. TELEMEDICINE IN INTERNATIONAL PATIENT CARE

As this is not intended to be a lesson in the world's geopolitics, here is the big picture.

Although we find ourselves in a comparable situation, there is a key differentiating aspect: Technology. In 1990, e-mail was anything but a standard way of communication. While today, patients can get a hospital appointment with the click of a button or quick and easy direct communication through e-mail, back then they had to call the hospital and facilitator directly. Medical documentation was sent via telefax, telex, or parcel service. Processing medical travel requests is a demanding task even with the use of the technology that is available nowadays. Months of work between initial contact and departure are not unusual as there are extensive requirements for information, organization, and visa processing. In the 1990s things took longer, although that was, to a degree, mitigated since people who inquired for medical treatment options abroad only did so if they were financially capable and decisive in taking that step. Still, the hurdles were higher in the 1990s, things took longer and were overall, less convenient.

One might assume that the difference in technology would mitigate the effects of the pandemic on the industry. One might also assume that hospitals would use telemedicine services to stay in touch with current patients, offering them digital post-operative consultations and tending to their requests digitally. However, this is not what we have observed. Be it rigid hospital structures or hierarchical issues, hospitals seem to struggle with offering their remote services to international patients. While health-tech certainly experienced a maybe industry-changing boost, the transfer of these technologies hasn't manifested in international patient care.

The demands, international patients have for telemedicine services, aren't unreasonably high. In fact, most of them are just seeking an adequate infrastructure to continue current treatment protocols or talking to a specialist should they have an ailment they would like to be evaluated. Seldomly they request anything beyond, what we refer to as an ad-hoc consultation (initial consultation) or a second medical opinion. In light of this, it doesn't seem to reach beyond one's imagination to offer these services, promoting patient's health and their trust. In reality, things look differently. I will try to shed some light on some of the reasons for the lack of international telemedicine offers and how to navigate these obstacles.

V. OBSTACLES LIE IN CHOICE, IMPLEMENTATION AND MARKET PENETRATION

One of the impediments is the availability of designated technology itself. There are many platforms designed for telemedicine services. However, these services most commonly are concepted for a specified legal jurisdiction, without a cross-border-healthcare adaption in mind. So, while a platform

might adhere to the General Data Protection Regulation of the European Union (an EU wide effort to harmonize data privacy and protection, which applies not only to EU member states), it does not adhere to the regulations of the state the individual patient might stem from. Hospitals are careful when it comes to "just" trusting any one of these many providers. And rightfully so. Not only in Germany but globally, the industry is often known to be somewhat scandal-ridden. Be it illegal commissions for patient referral, faulty translations, or illicit practices by medical tourism facilitators, hospitals are not looking to add privacy law violations to the list. The due diligence required to verify a platform's specification is time-consuming and demanding.

Added are the common phenomena of paralysis by analysis and choice overload. Paralysis by analysis refers to a process in which overthinking a situation might delay or halt progress. Choice overload describes a cognitive impairment, caused by too many seemingly equivalent options, that keeps people from making a decision. To put it simply: There are too many telemedicine technologies for hospitals to choose from. While I strongly support competition as the best quality driver and quality control mechanism, hospitals have a hard time deciding which technologies are adequate and suits for their needs. Currently, hospitals do not have the capacity they can devote towards an in-depth analysis of different technology providers. Further, it requires a mix of competencies to understand these technologies to evaluate them. Besides technical understanding and a legal evaluation, there is a requirement for understanding the necessary processes connected with international patient care. The choice should be based on this variety of factors to ensure quality and usability, granting a satisfying experience to the patient, while keeping processes lean for the medical provider.

Another hurdle is the prominent role medical tourism facilitators play. While I always emphasize that companies, who intermediate between patient and medical provider, in many cases are essential, operating with and through them bears undeniable risk. That risk mostly manifests in legal or reputational consequences.

Many facilitators will not make telemedicine solutions accessible to the patients that contact them or even dissuade patients from using them. Medical tourism facilitators usually benefit from a commission, the medical provider pays them based on the revenue, the referred patient generates. Tele-consultations often are less financially challenging than an in-present consultation, which reduces the facilitator's benefit. Further facilitators want to minimize the risk of "losing the patient". This does not refer to the medical use of the phrase, but an industry term akin to "losing the customer". Offering a direct point of contact to the medical provider puts the patient, who priorly had to rely on the facilitator, in a position of control. If he feels well-tended to (medically and non-medically) he might use this direct point of contact in the future, bypassing the facilitator's service.

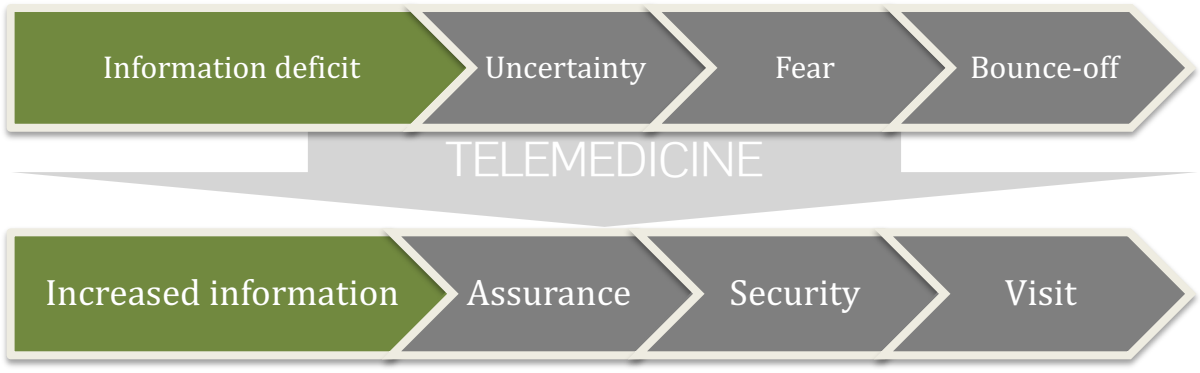
This problem is emphasized by the lack of well-concepted modes of cooperation between medical providers and facilitators. Contractual agreements between hospitals (or physicians) and facilitators are problematic and often unlawful from the onset. There is a plethora of underlying problems in hospital-facilitator-relationships and not always have the parties agreed on the exact terms of their cooperation. Consequently, designing appropriate partnerships for the implementation of telemedicine, that are accordant to the law of two or more jurisdictions, is just one of the barriers that have to be overcome, when offering telemedicine for international patients.

VI. MUTUAL BENEFIT RATHER THAN MUTUAL EXCLUSIVITY

On an industry level, many stakeholders perceive a conflict of interest between medical tourism and telemedicine. The fear is, that enhanced international telemedicine practices will make medical tourism obsolete, thus depriving the stakeholders of their benefit. Similar to what I have explained above, a patient wouldn't need the services of a facilitator to contact the provider of his choice. While telemedicine would thrive, medical tourism would suffer. While I cannot with certainty forecast what the future holds, I have never agreed with that particular point of view. It only follows from the premise that medical travel and telemedicine are mutually exclusive, which they aren't. I even find myself seeing them as mutually beneficial. Hospitals can open new revenue streams by implementing business models that adapt the technological advances. Combining digital health solutions with in-person visits could vastly improve the patient experience as they were consulted priorly and hence, can utilize the in-person visit more efficiently. Well-designed telemedicine services are a lead-generating machine for hospitals. If implemented correctly, hospitals could see more inquires and actual patients, due to the correct use of digital means. Take the current pandemic as an example. When things became clearer in March and April 2020, some hospitals invested in their telemedicine infrastructure and reached out to their current patients abroad, letting them know that the hospital was ready to help them to the highest degree possible from afar. The result? Patients already scheduled their visits and treatments for 2021. Another benefit is transparency. One of the major issues the medical travel industry faces is a lack of transparency. This applies to medical travel with and without medical facilitators as an intermediary. Offering patients, the chance to connect in advance, explaining matters in detail, and clarifying options ensures them they are on the right path and their travel expenses will not be for nothing.

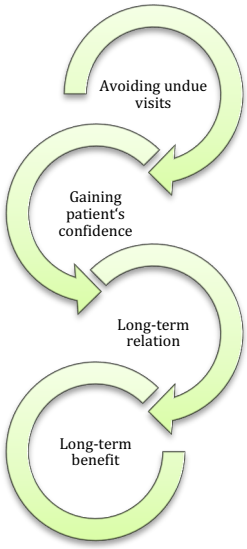
People who contemplate traveling to another country for medical treatment find themselves in a vulnerable position. They are about to go on a journey, often to a different country and culture, to receive essential services in a different language. The more information can be provided beforehand, the better prepared the medical traveler is. Priority on the list is the ability to speak with the specialist who will end up treating them in advance. It adds familiarity to a prior unfamiliar situation. Per out internal analytics, as well as data from our clients, we see that 7 out of 10 prospective medical tourists decide against travelling (bounce-off) due to fear. This fear is, in the majority of cases, a result of uncertainty which stems from an information deficit. By providing a direct link to the specialist, in which questions can be competently answered, the root cause for the uncertainty gets leveled, which results in patient confidence and ultimately a decision to visit the clinic (see graphic 1).

Graphic 1



Further, providing the direct link can also prevent patients from travelling without necessity. What at a first glance seems to be counterintuitive to the medical provider, actually saves internal resources. More importantly it gains the patient's trust as he will understand that the hospital primarily cares for his health and wellbeing, instead of prioritizing financial considerations.

Graphic 2



A short-term reduction in visits, translates into a long-standing provider-patient relation that will turn out to be much more beneficial to the provider (see graphic 2).

VII. CONCLUSION

For the impact the Covid pandemic has and will have on medical tourism we must be careful in drawing conclusions. One often-mentioned notion, which I agree with, is that destinations that managed the Covid pandemic well in the public eye, will see a rise in medical tourists, while nations who seem to have struggled with the situation might have a lot of work ahead of them, to be an attractive destination. This view is also supported by a survey the International Medical Travel Journey conducted.[2]

This stems from the connection between management of the Covid pandemic and quality of healthcare in a country, although this interpretation is not without fault.

As per the survey, medical travelers will also seek out well-known hospital brands and providers, even more so than before.

It is hard to say what will determine the industry's recovery for individual stakeholders. However, I perceive active participation as an influential factor. Going forward it now is more important than ever to market a medical travel destination and to be present in the public's eye, showing the willingness and openness to be a recipient of international patients. Further, demonstrating to international patients that a country or hospital cares for them and that an adequate infrastructure is present to assist

[2] Keith Pollard, A Serious Impact On Healthcare-Related Business, International Medical Travel Journal (Feb. 12, 2020, 09:00 AM), https://www.imtj.com/blog/serious-impact-healthcare-related-business/.

them, whether travel is possible or not.

And that is where telemedicine comes in.

While in 1990 we did not have the technological means to support patients from afar, we do now. It would be remiss of hospitals, interested in caring for international patients, not to use these means to make themselves more attractive.

Besides being an important tool in generating treatment requests it is even more useful in ensuring ongoing support. From the patient's perspective, who seeks medical treatment abroad precisely because adequate treatment is not possible in his home country, the service continuity is attractive and ever so often even necessary.

Telemedicine can be a powerful driver for growth even in the medical tourism industry. Not only as a safety-net for situations like the one we find ourselves in currently. Much more so as a tool for continuous support and even a service to attract patients to a location in a way, that makes them come back again.

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THE ELEPHANT IN THE VIRTUAL LAW CLASSROM: DIFFERENT PERSPECTIVES BUT A COMMON LOSS

Tiffany A. Perez

AUTHOR

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ABSTRACT

Due to the Covid-19 pandemic, law schools had to pivot to virtual legal education quickly. In the wake of the pandemic, scholars have eagerly written about the dos and don'ts of the virtual law classroom. Although some articles have represented the law students' perspective and some have represented the law professor's perspective, none have done both in an attempt to create empathy and bridge the gap between what students' desire, and what law professors are currently providing, and what good virtual legal education requires. As such, based on several interviews with law professors and students, this Article begins by describing one online Contracts class first from the professor's point of view and then from the student's point of view. The professor and students' different perceptions of the same class are then analogized to John Godfrey Saxe's poem The Blind Men and the Elephant. Then, using the Kübler-Ross Grief Cycle as a vehicle to build empathy and understanding, this article attempts to demonstrate the similarities that exists between students and professors' feelings about online virtual education, namely that both professors and students alike are avidly grieving a common loss: in-person, Socratic law school days of old. As such, they are both experiencing denial and anger about their situations. In keeping with one of the key strategies recommended by the Mayo Clinic for overcoming denial in grief, this article "journals" their realities and provides both the student and professor

perspective in the hopes that, by doing so, it will rid the misconceptions and bridge the way for a new type of virtual legal education to be created—one that meets (and/or exceeds) both professors' and students' expectations.

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I. INTRODUCTION

Today's law schools look completely different than when I started law school—and that was less than two years ago! I began my studies at the University of Miami School of Law in-person in the Fall of 2019. Due to the spread of the Novel Coronavirus, known as Covid-19,[1] by March 2020, my law school education shifted from in-person to online. Law schools in the United States were forced to shut down and provide their services to students across video conferencing platforms such as *Bluejeans, Zoom,* and others. To date, 89% of U.S. law students are taking classes entirely online.[2] Many articles have been written providing practical strategies and best practices to teaching law classes online.[3] These articles often play the judge or jury's role, ruling on the virtual legal education system's effectiveness.[4] Others simply provide suggestions on how law professors should be teaching online to keep law students engaged.[5] While there have been a few articles covering law students' thoughts on the effectiveness of their virtual legal education,[6] no articles show both the student's and the professor's perspective with the objective of building empathy between them. This article is designed to fill this gap because, without a clear understanding of each other's perspectives (student-professor; professor-student), effective virtual legal education cannot be created. Based on several interviews

[1] *A Timeline of COVID-19 Developments in 2020*, Am. J. of Managed Care (Jan. 1, 2021), https://www.ajmc.com/view/a-timeline-of-covid19-developments-in-2020.

[2] *Law Schools and Global Pandemic*, Thomson Reuters Institute (2021), https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2020/12/Law-Schools-and-the-Global-Pandemic_FINAL.pdf.

[3] *See, e.g.*, Seth Oranburg, *Distance Education in the Time of Coronavirus: Quick and Easy Strategies for Professors*, Duquesne University School of Law Research Paper No. 2020-02 (Mar. 13, 2020) (suggesting strategies to teach law school online); Jacqueline D. Lipton, *Distance Legal Education: Lessons from the *Virtual* classroom,* 60, IP L. REV. (forthcoming 2020) (suggesting the skills required to teach law school successfully online); Daniel C. Powell, *Five Recommendations to Law Schools Offering Legal Instructions Over the Internet*, U of AL Public Law Research Paper No. 922767 (2006) (outlining his five recommendations law schools should apply in order to be successful at virtual legal instruction); Lucy Jonston-Walsh & Alison Lintal, *Tele-Lawyering and The Virtual Learning Experience: Finding the Silver Lining for Remote Hybrid Externships & Law Clinics after the Pandemic*, Akron L. REV. (2021) (suggesting strategies for law schools to use when teaching virtually); Jharna Sahijwani, *Legal education and Pedagogy in the Virtual Environment: Experiences and Challenges* (Nov. 10, 2020) (sharing best practices used in law schools in India); Amy Wallace, *Classroom to Cyberspace: Preserving Street Law's Interactive and Student-Centered Focus During Distance Learning*, International J. of Clinical Legal Education (forthcoming 2021) (outlining best practices to teach law school online based on her experience with the Street Law program); Nina A. Kohn, *Teaching Law Online: A Guide for Faculty*, J. of Legal Education (forthcoming 2020) (suggesting what best practices law faculty should use to teach online); Agnieszka McPeak, *Asynchronous Online Law School Teaching: A Few Observations* (Mar. 12, 2020) (sharing best practices to teach asynchronous law school courses); Renee Allen et al., *Recommendations for Online Teaching*, St. John's Legal Studies Research Paper No. 20-0012, (2020) (a group of law professors collaborated to write their recommendations for courses being taught online based on their own experience and conversations with colleagues and students).

[4] *See* Ira Steven Nathenson, *Teaching Law Online: Yesterday and Today, But Tomorrow Never Knows,* St. Louis University L. J. (forthcoming 2021) (using the Beatles and her experience as a law professor the author critiques virtual legal education); Francine Ryan, *A virtual law clinic: a realist evaluation of what works for whom, why, how and in what circumstances?*, 54 The Law Teacher (2020) (evaluating effectiveness of all virtual law clinics in UK law schools).

[5] Nathenson, *supra* note 4.

[6] See e.g., Kelsey Griffin, 'As Good as Virtual School Can Be': Harvard Law Students Embrace Online Learning, The Harvard Crimson (Sept. 8, 2020) (Harvard Law students share their perspective on online law school); Marlyse Vieria, Classes Online: Student Perspectives and Privacy Concerns about Zoom, Virginia Law Weekly (Mar. 25, 2020) (University of Virginia Law students share their perspective on online law school); Kayla Molina & Lisa Dahkle, Quarantine Diaries: Tales From Two Long Weeks of Law School in Canada, USA, ABA for Student Lawyers (Mar. 25. 2020) (documenting how law students in Canada and U.S. experienced the first two weeks of the pandemic).

with professors and students (and my own experience as a student teaching assistant),[7] I attempt to journal both the teacher and student perspectives of one law school contracts class. After pointing out the differences in their attitudes and perceptions of the class, I then turn to identify the similarities. Ultimately, I argue that the commonality between students and professors concerning virtual legal education in the U.S. is that they are both in a state of grieving, i.e., they both grieve their past "in-person" law school experiences. In terms of the stages of grief, both appear to be in the first stage of grief (denial), moving to the second (anger).[8] The Mayo Clinic identifies several strategies to overcoming denial. Among those strategies are "honestly examining the fear and journaling about the experience."[9] This article is an attempt to do that for both professors and the students. By journaling their experiences, I hope to help students and professors address the elephant in the "virtual" law classroom[10] and bridge the gap between their two perspectives. Only after examining the loss and denial (and anger) they are experiencing will true progress in virtual legal education be made.

II. LAW SCHOOL CONTRACTS CLASS FROM TWO PERSPECTIVES (PROFESSOR AND STUDENT)[11]

A. THE PROFESSOR PERSPECTIVE

Dear Diary,

We are already a month into the semester, and I have no idea who my students are. Most of them join my synchronous Zoom lectures and leave their cameras off, even though my syllabus requires them to have their videos on in order to pass the course. I have started associating their voices with black boxes or still-frame pictures, many of which do not show real, identifying characteristics. It makes me self-conscious to be lively and energetic in my video when I cannot recognize if it is well received. It is nearly impossible to read a virtual room, even when students have their videos on. Without a doubt, it is impossible when their cameras are off. And after what happened today, I feel completely incompetent.

I decided to start class a little differently this morning. I have researched what "works" in virtual education and try to implement it as often as possible. In an attempt to personally connect, I started class by sharing about my life outside of being their professor. I told them about this incredible case

[7] I interviewed two professors during the Spring 2021 semester and interviewed two law students. One I interviewed during the Fall 2020 semester and another during the Spring 2021 semester. Over the Summer of 2020, I worked as a Research Assistant to Professor DeStefano and was also able to develop and build asynchronous content for her Civil Procedure class and interact with other faculty members assisting them in making the transition online. During the Fall of 2020, I was a Dean's Fellow for Professor DeStefano's Civil Procedure Course at the University of Miami School of Law. In this role, I was able to interact with over 60 first year law students and get an understanding about their experience in virtual legal education. It is these interactions and my own experience as a law student during Covid-19 that I base my journal entries off. *Academic Achievement Program: Dean's Fellow Study Groups*, https://www.law.miami.edu/academics/academic-achievement-program-deans-fellows-study-groups (last visited Feb. 12, 2021).

[8] In a future article, I plan on explaining how virtual legal education in the U.S. will move through the other stages of grief.

[9] Mayo Clinic, *Denial: When It Helps, When It Hurts*, https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/denial/art-20047926 (last visited Mar. 3, 2021).

[10] The expression "the elephant in the room" means that there is a topic that is difficult to address, and people do not want to talk about. Here, the elephant in the room is that law professors and law students are not empathetic towards the others perspective.

[11] This is a hypothetical Contracts class, and the diary entries combine the insights and experiences of various professors and students. They do not represent the actions of a specific professor or the actions of a specific student.

that I won last week. During the case, I made a creative argument and thought the students would enjoy seeing how contracts worked in real life. As I wrapped up my story, I asked the students to share their thoughts in the chat. Nothing! I even wondered if I had accidentally disabled the chat function. I then said: "If you do not feel like typing, just unmute yourself and share your response." And still nothing. Not a single hand raised or comment. I told them I was okay with silence and would sit and wait for them to respond. At this point, I was practically pleading with them—still nothing. After sitting in awkward silence for several minutes, I took a deep breath, thought to myself, "I can't wait until we go back to in-person learning," and moved on.

Next on my "house-keeping" list (or the list of administrative announcements I needed to make) was their quizzes. Many of the students are not completing the weekly quizzes as required. I reminded them that the quizzes are required and calculated into their final grade. I even reminded them, for the millionth time, of the steps: "Open your Blackboard, locate the left-hand side toolbar, click quizzes, click on the title that corresponds with the week, and then take the ten-question multiple-choice quiz." I saw a few head nods, which was more interaction than I had all day. Then suddenly, a hand raised, and I got excited at the prospect of participation. That excitement quickly dwindled when the student had the audacity to ask me where the quizzes and content were located; after I had just finished explaining the steps. A part of me is really frustrated and longing to go back to a time where quizzes were given on a scantron in class. However, I try to be sympathetic by recognizing that the students are most likely perplexed and trying to adapt to this new learning environment.

One thing that I think would clear up most of the confusion is having a single platform that would allow me to upload all the course content in one place. Today I had to remind them again of the following: their class recordings are on Echo360, the class readings are on Blackboard, and the class rules are in the syllabus posted to Blackboard and shared with them on MS Teams and emailed by my assistant. It is quite a challenge to manage so many different tools effectively. When I think I understand the tools, they get a new update, and its brand new. This makes me want to scream! But still, if I can take the time to learn all these tools and platforms, the students can take the time to keep an organized planner and learn them too. Not only have I had to learn the platforms, but I have had to search for (and create) more interactive content to keep the students engaged.

Remembering the research, I read on incorporating videos, I thought I would start the substantive portion of the class by sharing a fantastic video on promissory estoppel, a concept that can be confusing to many students. I screen-shared the video straight off of YouTube, hoping it would spark some engagement. Most of my colleagues are more advanced and know how to download it, but I will get there too one day. In the meantime, YouTube it is. The video explains the concept so clearly, and I was hoping that they would enjoy getting a fresh perspective and not having to hear my voice lecture them for a few moments. Yet, I am pretty sure that's not how they perceived it. Before I could even explain the video, I was interrupted by a loud voice that seemed very angry. I did not know where it was coming from. Were we getting "zoom-bombed?" I wondered. But, no, it was much worse! As I looked over the "participants" list, I realized one of the students had accidentally unmuted himself. He called me some of the meanest names anyone had ever called me and sounded so entitled, going on and on about how he pays for my paycheck. At that moment, I felt like the worst professor ever! Clearly, they do not appreciate any of the hard work I am putting in to make this class successful.

Still, in shock by the outburst, I had no idea what to do. I tried to think back on a time when this had

happened while we were in person. I could not think of a single time. Here I was in a Zoom room confused and overwhelmed while stoic students stared back at me (those who had their cameras on, that is). I scrambled to think of what to do next. Maybe I should take a break? I asked myself. Not only would it help with the awkwardness, but it would give my voice a nice break. But there is no time to do that. The students do not realize that going straight through a 3-hour class without a break is a necessary evil in a virtual world. Another contradiction to the research on virtual learning best practices is that class time is not shorter. The research suggests I assign a lot of asynchronous content in order to make synchronous class time more efficient. I do this, but instead of speeding up the class time, it is slowing us down. I am almost sure this is because the students are not doing the asynchronous work. I see the Blackboard completion reports! Anyways, I decided to skip the break and start lecturing on the next case in the casebook.

It is all so exhausting; I teach for 3+ hours, work on my book, attend committee meetings, and take my kids to and from soccer practice. All of this, in addition to worrying about my mother in the ICU with Covid: it really makes no sense since she is healthy and exercises every day. She did not go out and always wore a mask. So many of her friends have been going out to restaurants and are reckless. Yet, it is my mother that is fighting for her life. Life just is not fair.

Teaching law school online is exhausting, confusing, and frustrating. I really should have listened to my mentor and gone on sabbatical this year. When will we be able to go back in time to the way it was? Hopefully soon. Well, off to prep for tomorrow's classes and pour myself a large glass of wine.

Sincerely,
Law Professor

B. THE STUDENT PERSPECTIVE

Dear Diary,

We are already a month into the semester, and I have no idea what is going on in my law school Contracts class, not to mention who my classmates are. After realizing I needed all the help I could get in this class, I decided to turn on my camera for the first time all semester in hopes of getting some extra participation points. Having my camera on made me feel super self-conscious. Having to stare at myself while I try to take notes and review my pre-written case-briefs only had me focusing on my facial expressions. I never realized the weird faces I made while listening to my professors. I spent most of the class trying to find an appropriate resting face. Should I smile? Should I furrow my eyebrows? I got so distracted staring at myself and wholly ignored anything the professor was saying. So, honestly, having my camera on did not help with my understanding. Not only was I distracted, but the class was so dull, well, except for that one part, but I will get to that later.

We all know our professor is currently practicing law since it is on the law school's website, but today she started the class by telling us how great she thinks she is. Her story started with a bare recitation of crucial facts about a case she just handled. It was interesting since the facts were similar to cases we had already read. However, she quickly took the story too far when she went on and on and on about the argument she made. I got really confused by the complexities of her argument. As she was finishing up, she asked us to put in the chat any questions we had or unmute ourselves if we had any

comments. When no one asked her questions, she proceeded to wait. She should learn how to read the room. No one wanted to talk about it, so we should have saved class time and moved on. As an alternative, she could have asked us about what we had done during the past week or what we wanted to practice, but she was too self-absorbed to ask about our interests. This had me wondering, would she come across so arrogant in person? Or was she trying to be relatable over Zoom and just failing at that? Once her self-indulgence ended, she went on to discuss the weekly quizzes.

I have done as many quizzes as I can with the time I have, but unfortunately, I have missed a few. When I was researching whether to go to business school or law school, I became convinced that law school was the path for me since most of my grades would come from one essay final exam. I have always been a great writer and a poor multiple-choice test-taker, so the exam format made law school incredibly appealing. Since the pandemic hit, professors have been assigning multiple-choice quizzes, and each professor has different protocols. Some professors give quizzes every week, and others assign the quizzes at the end of every unit. Several of my professors grade them on a completion basis, while others calculate our quiz scores based on correct answers. There are pros and cons to both options. If they are based on completion, I could take my time and work through the right answers at my own pace and use them as a study-aid. If they are based on how many I get correct, then I have to study, which can be quite tricky with so many other assignments. Oddly enough, since she's explained the quizzes a dozen times, I am still confused about how this professor grades our quizzes. I was tempted to ask but then remembered that the class was being recorded and chickened out. I miss being able to ask questions in class without my question being saved on a recording and uploaded for everyone to see. An example of a question I would not want to be recorded if it were me was when a classmate asked the professor where the quizzes were located. The question made me laugh, but I also felt terrible for our professor because she had just explained it. No wonder she has to say it every class session! Most likely, my classmate is confused because of all the different tools and platforms we are using.

This reminds me to make a note of what she said: "class recordings are on Echo360, class readings are on Blackboard, and the class syllabus should be in Teams or an email her assistant sent out." Wait, when was the last time I checked my email? And I hate MS Teams! It slows my computer down, and there are too many channels and chats. I am always missing important announcements. Anyway, it would make much more sense if it could all be in one place and if all my professors were using the same platforms. It can get pretty hard to keep track of everything, even for someone who has a meticulous planner like me. Finally, after wrapping up her long-winded announcements, it was time to begin class.

Class started with her sharing a video on promissory estoppel. She screen-shared the video straight off YouTube. This seemed lazy since some of my other professors are creating their own content. It also made me feel like I could have taught myself at home with a simple Google search. My search would have also resulted in better videos because I had no idea what was going on in the one, we watched in class. I was super confused about the concept. After feeling so defeated and unmotivated after watching the video, I decided to order a supplemental reading from Amazon. As I was finishing up the order, I heard a voice and looked backed over to the Zoom screen. It took me a second to realize what was happening. Another student had accidentally unmuted himself/herself (talk about a nightmare). Without realizing the whole class could hear, the unknown voice said: "This is such a waste of time! Am I paying thousands of dollars to watch a dumb YouTube video? Does she not

understand I pay her paycheck? One call to the Dean, and I can get her fired for not doing her job." He also made sure to include a few cuss words when describing our professor. The whole Zoom room was silent until the student realized he/she was unmuted and quickly silenced his/her microphone. As students, we all think these things at times, but I would have never said that to my professor. Being online just makes everyone more irritable, and watching a video feels like a cop-out to teaching. What happened to the dreaded cold-calls I have seen in the movies? Since doing law school online, I have yet to receive one cold-call, but that still seems much more educational than watching a video.

Following this outburst, there was this uncomfortable vibe. The professor was bothered by the eruption, and the rest of my peers in shock that this actually happened. In my opinion, this would have been the perfect time to go on break and give everyone a moment to collect themselves. However, this professor does not believe in breaks. Her class is over three hours long, and we go straight through without stopping. It is inhumane, and quite frankly, it should be considered some sort of intentional tort. False Imprisonment? Intentional infliction of emotional distress? I have to ask my 3L friend if this happened when they took contracts in person or if the "no breaks" dilemma happens because we are online. The problem with not taking a break is that I end the class exhausted and unmotivated to do any more work. I have started calling this feeling a "screen-time hangover" because all this time online makes me feel like I felt after a night out as an undergrad. I do not understand how she expects us to go home and spend hours doing all the asynchronous homework. I try my best to do the asynchronous work, but I still do not finish them before the next class, even when I watch the content on two-speed. Nevertheless, the rest of the class was boring since she reviewed the cases in a mundane fashion.

While reviewing the cases, I also got a text from my mom that my dad had lost his job due to Covid budget cuts. This text made me nervous since we were already struggling financially after my mom was laid off earlier this year. I do not know how I am supposed to pay off my loans or how I am going to pay for rent. I already live in a small studio apartment and do not go out to eat with friends to save money. My anxiety has never been higher due to my parents' struggles and the challenges with virtual law school being exhausting, confusing, and frustrating. I took a deep breath, but I can't help but wonder if I should have taken a gap year or gone to business school instead. I also can't help but imagine what it will be like when we go back to "in-person" learning, and I get to sit in a large lecture hall and get the real law school experience. Well, off to "Quimbee," tomorrow's Civil Procedure cases, and have a beer.

Sincerely,
Law Student

III. THE ELEPHANT IN THE ONLINE LEGAL CLASSROOM: SAME EXPERIENCE DIFFERENT PERCEPTIONS

Our student and professor's diary entries depict a similar scenario to that depicted by John Godfrey Saxe's poem *The Blind Men and the Elephant*. In the poem, six blind men interact with an elephant for the first time. One of the men touches its side and exclaims that the elephant is a wall. Another touches its trunk and declares it is a snake. The poem continues with each of the men describing the elephant as different objects familiar to them. As Saxe puts it in his final line: "each was partly in the

right and all were in the wrong."[12] Similarly here, we have the professor and the student who, like the blind men, are each experiencing the same thing, the virtual legal contracts class, yet each has a different perception of the experience, and as the blind men, "each was partly in the right, and all were in the wrong." What do I mean by that?

Consider the reason the professor started the day with the story of her recent contracts win. She did so because she believed it was a creative way to teach her students something and let them know her personally. In this way, she was partly right. The research indicates that allowing your students to know you personally is crucial to a good virtual class. However, she was also all wrong because, to the students, her story seemed braggy and irrelevant. What they cared about was getting through the class times and understanding how the quizzes were graded. Similarly, the promissory estoppel video fell prey to the blind-man's interpretation. Here, the students perceived the video as a short-cut that cheapened their law school experience because it was a YouTube video instead of content created by the professor. The angry student went as far as questioning if the video was worth his tuition money and challenged the professors' expertise. On the other hand, from the professor's point of view, this was a genuine and strategic attempt to break up a lecture's routine, be more creative, and bring reality into the classroom (to spruce up the already dry material). The professor confesses in her diary entry that she is confused as to what went wrong since she did what she was supposed to do, but the video was poorly received. Both the story of the professor's real-world experience and the video on promissory estoppel are perfect examples of how students and professors interpret virtual class differently and, like the blind men, were partly right but also completely wrong. The law professor tries to follow best practices and engage students in a virtual world applying the research recommendations, yet they do not get perceived in the way intended.

Articles on "virtual education," "teaching in times of Covid-19," and "virtual law schools" all advise professors to use media alongside their traditional lectures. In her 2020 article *Teaching Law Online: A Guide for Faculty,* Professor Nina Kohn wrote that "[i]ncorporating media into the online class can make for a more varied student experience. Media can include PowerPoint presentations, video clips, or anything else that can appear on your computer screen. With the right platform, faculty can share anything on their screen with students so students can see it in real-time."[13] Further, Professor Margaret Ryznar identifies five common mistakes in online teaching, including "not engaging students in multiple formats of learning" as one of the common errors then suggests that to prevent this mistake from occurring, professors should incorporate videos, animations, and written explanations of concepts.[14] Exactly what the professor did in the diary entry above. In other words, incorporating videos is considered a best practice among legal educators and is a suggested tool to use to increase student engagement with the substantive material. Therefore, the professor was doing her best to apply the proven research. However, her approach was ineffective. In fact, according to the research, what most professors are doing doesn't appear to be working. A recent survey of over 1,700 law students asked them to rate their virtual legal education experience compared to their on-campus learning experience. More than half of the students found that their virtual legal education was "less

[12] John Godfrey Saxe, The Blind Men and the Elephant (1872).
[13] Nina A. Kohn, *Teaching Law Online: A Guide for Faculty*, J. of Legal Education (forthcoming 2020).
[14] Margaret Ryznar, *Common Mistakes in Online Teaching* (June 24, 2020).

effective" than in-person learning.[15] Nine out of ten students also considered their legal education now overpriced because of virtual learning.[16] The most prominent example of student dissatisfaction—or rather, outrage—is the lawsuits filed by enrolled students against higher education institutions.[17] Among these class action lawsuits are claims of breach of contract and conversion seeking tuition reimbursements.[18] In summary, the research demonstrates what our diary entries show and, that is, professors are trying to meet students' needs, but they are not meeting them.

When compared, the professor's perspective and student's perspective seem very different. Yet, they also share commonalities: both are incredibly frustrated with the current state of affairs, and both would prefer for things to go back the way things were before. In essence, both are grieving a type of education that has now passed. Although grief is often associated with the loss of a human life, Sigmund Freud describes grief as "...the reaction to the loss of a loved person, *or* to the loss of some abstraction which has taken the place of one, such as...an ideal…" Here, the loss is the traditional legal education model, the ideal legal educational method, the in-person Socratic method.[19] Before Covid-19, this standard legal education model was regarded by most as the ideal (and most competitive) model of higher-education.[20] Therefore, it only makes sense that the crucial players (professors and students) experienced a loss when separated from that model.[21] Assuming this is true, i.e. that both are grieving a common loss for the in-person law school of the past, we must ask ourselves two questions: How can knowing where they are in the grief cycle and that they are in the same part of the grief cycle lead to a better virtual legal education system for the future? It is to this question the next section turns.

IV. GRIEVING FOR LAW SCHOOL OF THE PAST: OVERCOMING DENIAL

As explained above, both professor and student have experienced a loss due to COVID-19, and both are grieving for a legal education world that doesn't exist anymore. According to the Kübler-Ross Grief Cycle, grief can be broken into five stages: (1) Denial, (2) Anger, (3) Bargaining, (4) Depression, and (5) Acceptance. It is important to note that grief stages are not linear, meaning that the professors and students may fluctuate between multiple stages.[22] As will be explained below, arguably, professors and students in the virtual legal education system are still in the denial stage or, at best, just starting

[15] Mehran Ebadolahi, *Law School Moves Online, Students Express Doubts*, Attorney at Law Magazine (Jul. 1, 2020) https://attorneyatlawmagazine.com/law-school-moves-online-students-express-doubts.

[16] Ebadolahi, *supra* note 17.

[17] *See, e.g.*, *Barkhordar v. Harvard University* (D. Mass. Filed June 6, 2020); *In re Columbia Tuition Refund Action*, 2021 WL 79063 (S.D.N.Y. Feb. 26,2021); *Salerno v. Florida S. Coll.*, No. 8:20-cv-1494-30SPF, 2020 WL 5583522 (M.D.FL Sept. 16, 2020); *In re Boston University COVID-19 Refund Litigation*, No. 20-10827-RGS, 2021 WL 66443 (D. Mass. filed Jan. 1. 2021).

[18] *See supra* note 17.

[19] Mehran Ebadolahi, *Law School Moves Online, Students Express Doubts*, Attorney at Law Magazine (Jul. 1, 2020) https://attorneyatlawmagazine.com/law-school-moves-online-students-express-doubts.

[20] David Wilkins, *Keep the Socratic Teaching Method, But Change the Focus,* The New York Times (Dec. 15, 2011) https://www.nytimes.com/roomfordebate/2011/12/15/rethinking-how-the-law-is-taught/keep-the-socratic-teaching-method-but-change-the-focus.

[21] Further, according to research, "[g]rief can be caused by situations," including the ending of a relationship," or losing a job. Here, the current situation is the ending of the prior in-person created professor/student relationship (and even professor/student role) as it was before Covid that could be the cause of grief. Christina Gregory, Ph.D., *The Five Stages of Grief An Examination of the Kubler-Ross Model*, https://www.psycom.net/depression.central.grief.html (last visited Mar. 3, 2021).

[22] Kimberly Holland, *What You Should Know About the Stages of Grief,* Healthline (2018), https://www.healthline.com/health/stages-of-grief.

their way into the second stage of the grief cycle, which is anger. Neither of these stages in themselves help create a new way of educating future lawyers that work for both professors and students, but a shared perspective could.

That people are in the denial stage is not surprising when considering that denial occurs when people experience overwhelming shock due to (1) surprising and (2) devastating news. No one can doubt that the change to online was a surprise to all as no one could have predicted the Covid-19 pandemic shutting down the entire globe. This caused law schools to have to make the shift from in-person to virtual practically overnight. Most law schools, including Miami Law, dismissed students for spring recess and then shut down with students not returning to campus for the rest of the Spring 2020 semester. [23] In contrast, it would take an institution years to transition from in-person to virtual under ordinary circumstances.[24]

As for devastation, this is an aspect of virtual learning that is especially unique to the Covid-19 pandemic. Before the pandemic, the few students taking classes virtually and the few professors teaching virtually had fewer extenuating circumstances than they do now. For example, students must learn while being caregivers to loved ones who are sick with the virus. Some professors have had to teach while sick with the virus. And with the U.S. Covid deaths exceeding 500,000, students and professors deal with tremendous personal losses and/ or fear of personal losses.[25] In addition, the pandemic has been devastating to people's mental health. A recent study found that 80% of young people have expressed worsening mental health conditions due to Covid-19 and the lockdowns.[26] This is especially concerning for law students who are significantly susceptible to mental health challenges.[27] The already devastating numbers have only been made worse by the pandemic because of the lack of socialization opportunities. Lastly, many families have also experienced losses resulting from losing jobs, stable child-care, and food security.[28]

In addition to the devastation occurring in the professors' and students' personal lives, the lack of technological resources only added to the devastation. Professors and students were forced to make this shift to virtual education without the proper tech infrastructure. The technology in place was not advanced enough to sustain the change. For example, at Miami Law, there was not a uniform platform

[23] See Shannon Najmabadi & Naomi Andu, Texas Colleges and Universities Are Going Online Because of Coronavirus. Here's what They're Doing, Texas Tribune (Mar. 12, 2020). See also Devi Shastri & Annysa Johnson, Wisconsin Colleges Cancel In-Person Classes, Drop Events, Send Students Home, Extend Spring Break, Milwaukee Journal Sentinel (Mar. 20, 2020); Lily Altavena, Tracking College Closure: U.S. Colleges Closing, Going Online Due to Coronavirus, Arizona Central (Mar. 13, 2020).

[24] Tim Cynova, *How to Transition to A Virtual World Overnight*, Fracturedatlas.org (Mar. 13, 2020). https://blog.fracturedatlas.org/expedited-transition-virtual-workplace.

[25] CENTERS FOR DISEASE CONTROL AND PREVENTION, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (last visited Mar. 1, 2021).

[26] Michaela Schippers, For the Greater Good? The Devastating Ripple Effects of the Lockdown Measures, Erasmus University Rotterdam (2020).

[27] In a study that compared law students to undergraduates and other graduate students, law students showed alarmingly high numbers of suicide contemplation. 21% of law students reported seriously contemplating suicide in comparison to 9% of undergraduates and 5% of other graduate students. *See* Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, J. of Legal Education 139 (2016).

[28] Kim Parker, Rachel Minkin & Jesse Bennet, *Economic Fallout from Covid-19 Continues To Hit Lower-Income Americans The Hardest*, Pew Research Center (Sept. 24, 2020), https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest.

or standardized system for information. Some professors used *Zoom*, while others used *Bluejeans* and others opted to email students pre-record lectures. On a broader scale, Miami-Dade County Public Schools, the fourth-largest school district in the country, had their software crash on the first day of classes,[29] that's tech devastation at its endpoint! When combining the human impacts, Covid-19 has had and the lack of reliable technology, it is hard to deny that its impact has not been devastating. When aggregating the fact that Covid came as a surprise, it makes sense that both professors and students are reacting to this shock the way most people do, which as Kübler-Ross' research suggests, is with denial.

Kübler-Ross (and researchers who have continued to explore her model) identify the following characteristics of denial, including (1) confusion/doubt and (2) decreased productivity.[30] The diary entries above and my interviews make it clear that both characteristics exist among professors and students.

First, the diary entry (based on my interviews) demonstrates that professors are experiencing a new kind of doubt, which is about gauging the virtual room. This inability to gauge a virtual room's understanding of a topic is a unique challenge for teaching online. Professors have shared that, in person, they can hear laughter, see head nods, and even sense the feeling in the room. In contrast, as we can tell from the professor's diary entry when teaching to a bunch of lifeless zoom room boxes, they feel as if there is no way to know if the students understand the content. This causes professors to doubt whether they are doing enough to connect and teach effectively. Secondly, the diary entry (and my interviews) indicate that professors are in a state of confusion. They don't know how long material should take in an online format and how to measure asynchronous instead of synchronous content. In the diary entry above, the professor questions why it takes her longer to get through the material even though she has assigned asynchronous components to the lectures that should have helped speed up what needed to be covered in the synchronous class. Since research suggests that students are supposed to learn at the same pace with a combination of synchronous and asynchronous work,[31] the professor is confused as to why the inverse is occurring.

We see doubt and confusion among law students as well. In the student diary entry above, the student talks about missing the old, in-person type of questioning: cold-calling. Cold-calling is the term used to describe law professors' use of the Socratic method.[32] This method is depicted in film and literature as where most of a law student's learning occurs.[33] Since the law student has not been cold-called in the virtual classroom and is instead learning via YouTube videos, the law student doubts the quality of his education. Secondly, the student is confused about the quizzes, how they are graded, and other

[29] Colleen Wright, Ering Doherty & Karina Elwood, '*Our Community Deserves Better.' Unsolved Software Outage Mars Miami's First Day of School*, Miami Herald (Aug. 31, 2020) https://www.miamiherald.com/news/local/education/article245369120.html.

[30] See Elisabeth Kübler-Ross & David Kessler, On Grief and Grieving: Finding the Meaning of Grief Through The Five Stages Of Loss (2005). See also Anastasia Belyh, Understanding the Kubler-Ross Change Curve, (July 28,2020) https://www.cleverism.com/understanding-kubler-ross-change-curve/.

[31] Asynchronous Learning Tips and Tools, Fordham University https://www.fordham.edu/info/29629/asynchronous_learning_tips_and_tools (last visited Feb. 26, 2021).

[32] *The Socratic Method*, The University of Chicago The Law School (last visited March 3, 2021) https://www.law.uchicago.edu/socratic-method (last visited Mar. 3, 2021).

[33] See Scott Turrow, One L (1977); See also Molly Bishop Shadel, Finding Your Voice in Law School: Mastering Classroom Cold Calls, Job Interviews, and Other Verbal Challenges (2013); See also THE PAPER CHASE (20th Century Fox 1973).

inconsistencies since each professor uses different platforms.

My research and the research by others also indicate that with the turn to online legal education, there has been a dip in productivity, the other well-known characteristic of denial.[34] Productivity is calculated by weighing the inputs to the outputs.[35] If we consider the inputs as the professor's content and the output as the use/absorption of that content, it appears we have a situation where inputs outweigh the outputs. First, consider the preparation time the professor has put into the lecture: reading the cases, searching for the video content, and uploading any supplemental material, plus creating the asynchronous content. During the professor's synchronous lecture times, the student fails to interact and engage, keeping the camera off and refusing to place comments in the chat. Or consider the weekly quizzes created by the Professor, something the professor never did before (i.e., pre-covid, law school was lectures, and one final exam). Yet, the students are not completing the quizzes. Based on my interviews with professors, many incorporated quizzes into their virtual curriculum for two reasons (1) to check the students' understanding of the material and (2) so that the final exam is not weighted as highly. These quizzes were carefully created to meet these two objectives. Yet the input outweighs the outputs because the students are not taking the quizzes at all, reaping neither of the professor's intended benefits and causing a dip in productivity. Lastly, the professor assigns asynchronous videos for the student to watch before coming to class, and the student is simply not watching them or watching them at two-speed. Creating asynchronous content can take several hours between planning, filming, editing, and uploading. Although the professor's increase in the input should have resulted in an increase in productivity, the opposite has occurred.

Along with these two classic signs of denial, both professor and student exemplify denial in another way: although they might appear to have accepted their loss (loss of an "entity," that is, the in-person legal education model),[36] they have not yet processed it fully. Kubler-Ross shares the story of a widow whose husband unexpectedly passed away while on a business trip.[37] The widow was able to share the news with her sister and plan the funeral while also making statements of longing or disbelief.[38] Although it may have seemed like the woman had accepted her husband's death since she had planned the funeral; actually, the woman was in denial.[39] She was learning to live with the loss rather than processing the loss. It is not until the widow sees her husband's wedding band on his dead body that she truly realizes he has passed away. Similarly, here, it appears, the professors and students are experiencing a kind of denial, like that of the widow. They began making the necessary arrangements: researching best-practices and attending virtual classes. In other words, they are living with the loss. However, they have not yet begun processing it. They have yet had their moment of clarity. Just like the wife needed to see the ring on her husband's hand before snapping out of her denial, law

[34] Anastasia Belyh, Understanding the Kubler-Ross Change Curve, (Jul. 28, 2020) https://www.cleverism.com/understanding-kubler-ross-change-curve/.

[35] Specifically, if the inputs outweigh the outputs, productivity is low; if the outputs outweigh the inputs, productivity is high. Paul Schreyer & Dirk Pilat, *Measuring Productivity,* 33 OECD Economic Studies (2001).

[36] Research shows two types of denial: (1) denial that results from one's mortality and (2) denial that stems from the loss of another person or entity. This article focuses on the latter since the professors and students are experiencing the loss of an "entity," that is, the in-person legal education model. *See* Elisabeth Kübler-Ross & David Kessler, *On Grief and Grieving: Finding the Meaning Of Grief Through The Five Stages Of Loss,* 8 (2005).

[37] Elisabeth Kübler-Ross & David Kessler, On Grief and Grieving: Finding the Meaning Of Grief Through The Five Stages Of Loss, 8 (2005).

[38] Kübler-Ross & Kessler, *supra* note 30, at 9.

[39] Kübler-Ross & Kessler, *supra* note 30, at 9.

professors and law students need to do the same. The hope is that this article will serve as a catalyst (like the ring on the widow's husband's finger). By journaling the opposing perspectives, professors and students will be able to see their common loss and begin to process their loss and make room for creating a new type of virtual legal education. Thus, in reading this article, the hope is that professors and students will recognize that they are in the grief cycle and that they are in the same part of the grief cycle, which in turn might help open up the space for the creation of a better virtual legal education system for the future. This is in keeping with the strategies that the Mayo Clinic identifies as helpful to overcoming denial. Among those strategies are "honestly examining the fear and journaling about the experience."[40] This article attempts to do that for the professors and the students. Also, the diary entries continue to give professors and students a more honest view of the state of virtual legal education, bridging the gap and moving the professors and students closer to a resolution. By journaling their experiences and further addressing the elephant in the "virtual" law classroom, by making such an analogy to the first stage of grief, I hope to bridge the gap between their two perspectives (professor and student). Only by bridging this gap will the professors and students be able to holistically examine the loss (and anger) they are experiencing. Only then will true progress in virtual legal education will be able to be made.

V. CONCLUSION

As previously mentioned, to overcome denial, an honest, detailed, and accurate depiction of the loss must exist. This is exactly what is missing here. Both students and professors have suffered a shared loss, but they do not see it as such. Yet they must. To overcome denial and start to process their loss, the student and professor must understand each other and their respective perceptions of virtual legal education. Currently, they are missing half of the story, halves that this article brings to life in an attempt to bridge the gap between them and cultivate empathy between the professors and students. The good news is that my research indicates that professors and students alike might be starting to enter the anger stage.[41] This is indicated by exclamations by both the professor and the student that the situation *isn't fair* and their tendency to blame the other for what is going on. While it is true that being in a state of denial or anger is not by itself productive, the reason this is good news is that their anger indicates that both student and professor may be ready to read this article and see each other's perspective. Whether they are in anger or denial or oscillating between the two, my hope in writing this article, in journaling their differing perspectives and uncovering their shared loss in an open and honest way, is that professors and students alike will be able to see the elephant in the room that the other one sees, and, as a result, make room for real progress in virtual legal education to be made.

[40] Mayo Clinic, Denial: When It Helps, When It Hurts, https://www.mayoclinic.org/healthy-lifestyle/adult-health/in-depth/denial/art-20047926 (last visited Mar. 3, 2021).

[41] *See* Jenna Fletcher, *What are the Stages of Grief?*, (Feb. 3, 2020) https://www.medicalnewstoday.com/articles/stages-of-grief (last visited Mar. 3, 2021).

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STUDYING LAW IN TIMES OF CORONA

THE SHIFT FROM CAMPUS TO HOME OFFICE – A STUDENT'S PERSPECTIVE

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She thanks Prof. Schneider for teaching her the value of teamwork as an opportunity to learn from each other and creating an environment of inspiration, encouragement, and exchange of ideas. Without him, this article would not have been possible.

ABSTRACT

In March 2020 the Covid-19 pandemic changed life circumstances drastically for everyone. Exactly one year ago the university had to shift from campus to the internet. This led to huge alterations in how professors lecture and how student university life takes place. After this year, it is time to evaluate the changes and put them into perspective. This means recognizing the benefits of technology to legal education instead of seeing the current situation as a replacement that disappears as soon as a return back to campus is possible.

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I. INTRODUCTION

At this moment, as of March 2021, universities are approaching their third online semester, meaning this situation has already lasted for over a year. But what happened in this year at law schools? How did online university evolve in this relatively short but eventful time? This contribution will focus on a student's perspective and draw conclusions from personal experiences as well as from a survey conducted by the University of Mainz. The survey examines the digital summer semester of 2020 from the students' and the professors' perspectives.[1] In reviewing the student experience and survey data, both the negative and positive examples should be highlighted. Only transferring what worked on campus to online teaching will not be enough. The special unchangeable circumstances universities, students and professors are facing right now should fuel the desire to not only 'make this work' but actively take part in setting new standards for law school education. In conclusion, students as well as professors, are interested in making the most out of this situation.

II. COMPARISON OF UNIVERSITY PRE - COVID-19 AND NOW

On 24th of March 2020 the University of Mainz went into emergency operations mode due to the Covid-19 pandemic for the first time.[2]

Before that, going to law school looked quite different. Professors lectured on a specific topic in lecture theatres on campus and students participated in those lectures by answering and posing questions and taking part in discussions. Those lecture courses are divided up into sections based on the students' skill level ranging from beginner to advance in the three main fields (criminal law, civil law and public law) which are completed by passing an exam and a term paper. Prior to Covid-19, students would primarily study and work on assignments in the library.

The University of Mainz has been in emergency operation mode since the 21st of December 2020 which has just recently been extended until April 18, 2021.[3] Most certainly classes will not take place on campus until fall 2021. During this time between the two lockdowns the University followed a hybrid concept. This hybrid concept included access to libraries, study places and enabled that exams, practical lab courses and other specific courses could take place on campus.[4]

This was changed as soon as the University had to leave the so called limited standard operations. At the moment the campus is closed to the general public, some libraries are accessible to borrow books and courses with essential practical components take place on campus, if online replacements are not possible. Not only the students but also the university's employees should work from home wherever possible.[5]
Concerning law school, this means all classes were held online since the first semester of dealing with

[1] Schmidt, Schmidt, Becker Ergebnisse der Befragung Lehren und Lernen im „digitalen" Sommersemester 2020. A summary of the results and the evaluation (university members access only) can be found under (last visited March 23, 2021).

[2] https://corona.uni-mainz.de/news/ (last visited March 23, 2021).

[3] https://en.corona.uni-mainz.de last visited March 23, 2021).

[4] https://lehre.uni-mainz.de/2020/07/09/winter21/ last visited March 23, 2021).

[5] https://corona.uni-mainz.de last visited March 23, 2021).

Covid-19. The tools primarily used by students and professors are LMS (Learn-Management-System) and Microsoft Teams. Further, in terms of law school exams not all of them could be taken on campus. Rather, these exams were transferred online formats. But what exactly does this mean for a law student and how has it affected their day-to-day? This is something I explore in the next section by detailing my daily routine.

III. A DAY IN THE LIFE OF A LAW STUDENT

This morning I woke up at 7:00 am, which is quite early for me. It's harder to get up and start your day when you don't have any appointments and a long day of no interactions and studying by yourself ahead. It feels as if the world has stopped turning and the concept of time has become unreal. Every day is the same and has become quite interchangeable with the next one.

The first cup of coffee sits next to my laptop as I'm checking my e-mails, notifications on Microsoft Teams, and whether there's any announcements on LMS about my exams taking place or still being postponed to an unknown date without providing any further information. After that I check up on the tasks, I still have to finish this week. For my communication studies course, I have to complete weekly assignments in order to pass. However, this is not the case in law school classes and has not been before.

Submitting papers is usually followed by watching pre-recorded lectures that have been uploaded to LMS by the professors. Sometimes they're just 30 minutes long instead of the 90 minutes intended and you can definitely tell which professor is not enthusiastic about having to hold their lectures like that. The atmosphere has changed, everything feels weird and off. Asking the student next to you when you were not able to follow the class has become rewinding the last 30 seconds. Talking to your professor has now become writing an e-mail and hoping for an answer. Raising your hand in class to make a point or discuss a matter now has become writing in the chat or in an asynchronous discussion room. Making new friends and getting to know people has become nearly impossible. You just don't grab a coffee or lunch together after your lecture. I rarely know who I'm taking classes with, turning on the camera when nobody else does is scary and the inhibitions to start a conversation with someone you have neither seen nor talked to in your life before are immense. Online university is a quite lonely world right now that has been stripped off all social aspects you associate with and expect from going to university.

Feeling frustrated I decide to go for a run to clear my head and see something other than my own four walls. Going outside usually makes me feel better.

Back to my workspace it is, with another cup of coffee and a little bit more motivation. With the help of setting timer I spend the afternoon being quite productive until I stumble over a problem that occurs on the regular. As a law student, you depend on books to study. These books are quite expensive and updated frequently, so in times before the pandemic, I would usually study at the library. I chose the library, not only for the atmosphere but also for easy access to the most recent edition of the books. With libraries being closed now, my apartment has become my workspace. This means I mainly have to rely on online sources or borrow these books from the library. In theory, this sounds like a good alternative, which provides you with the literature you need. But in reality, this is simply not the case. Access to study and case books online is rare and the number of books available to borrow just can't

supply all the students. And surprise, the book I need is not accessible online. This means a trip to the library in the next few days.

Slightly frustrated and tired I end my day by closing the laptop. Sitting in front of the computer all day may not sound exhausting, but it definitely is. Spending your time at online university is a quite passive and lonely activity, so it is not as fulfilling as spending your day on campus and ending it by going home and not by closing your laptop.

The frustrating and tiring part of this is not that the world is enduring a pandemic at the moment and therefore everyone has to restrict their lives to a certain extent. It is the feeling of being left alone in those times, where compassion, dedication, and flexibility are much needed from professors as well as students. This situation is new and uncomfortable for everyone – we were not prepared for this. Nevertheless, living with a knock-off version of lecturing as prerecorded videos on a platform should not be a long-term solution.

IV. THE DIGITAL CAMPUS

A. Survey on the digital summer semester 2020 at University of Mainz

After the first semester online due to the Covid-19 pandemic the University of Mainz conducted a survey on the digital semester: summer 2020 targeting students and professors. The evaluation shows interesting findings I want to address.

Overall, the communication between students and professors has declined.[6] This lack in interaction has caused the students to wish for more communication, feedback and less self-study.[7] Both students and professors stated that the workload in the digital summer semester 2020 was higher than before.[8] Also nearly half of the professors and more than half of the students didn't have any prior experience with online university.[9]

B. Overview of tools and teaching styles

As already mentioned, every professor has used their own approach when shifting their university courses from campus into the virtual world. The most common approach used by professors is to prerecord the lectures and uploading them as a video podcast for the students to watch. Other professors offer virtual meetings to discuss the provided input and answer questions that may arise, but this is not the general practice. Questions are rather answered in forums or by e-mail. In addition to that, a few other tools on LMS can be used. This includes a voting tool, discussion forums, test tools to self-check your knowledge and uploading extra material. To sum up, there is a wide range of formats a professor can use and incorporate in their teaching concept.

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[6] Schmidt, Schmidt, Becker Ergebnisse der Befragung Lehren und Lernen im „digitalen" Sommersemester 2020 16-17 (https://www.zq.uni-mainz.de/ergebnisse-der-studierenden-und-lehrendenbefragung-im-sose-2020/ (last visited March 23, 2021).

[7] See supra note 6, 39.

[8] See supra note 6, 20-21.

[9] See supra note 6, 28-31.

C. What works, what doesn't and what is promising?

Several universities have provided guides on structuring classes in consideration of the altered teaching situation.[10] These articles mostly focus on how student activation could work in an online setting.

Transferring what worked on campus to a virtual platform is discouraged from, as the students remain passive and the professor-student-connection can't properly develop.[11] Rather than that incorporating the tools provided on the university's platforms in the class concept and carefully evaluating whether synchronous and asynchronous courses are suitable is advised. Asynchronous courses like prerecorded lectures are suitable for acquiring basic knowledge on the particular topic. A deeper knowledge then can be gained by hosting synchronous courses including discussions, questions and answers and in general: human interaction.

To further activate the students and guide them with their self-study tools on the virtual learning platform like voting, self-tests or discussion forums can be very helpful. The crucial point here is to implement these tools in the course concept with thought; otherwise the sheer amount of unknown and new tools can be overwhelming and lead to the contrary of the desired effect. Therefore, the course concept should be planned carefully in consideration of benefits and risks of each tool and offer a tailor-made solution to face the complex challenges of online university. The crucial chance in shifting to the digital campus is the possibility to individualize and cater to the different needs of each course.

The process of implementing these individual concepts could also benefit from teamwork between professors and students. Having to adapt to a situation like the current one with little to no experience in online teaching needs the parties affected to communicate their needs, exchange what works and what doesn't from each perspective and develop ideas together. Teaching is a topic that not only concerns students as well as professors but is dear to them – so why not come together and benefit from the different experiences, ideas and skillset? Learning from each other will shape the future of law school.

V. CONCLUSION

Transferring university from campus to the internet forced some change in the way of teaching at law school. These valuable experiences should not only be seen in context in the pandemic – the learnings need to be applied to teaching law in general. It is about time to put, "chalk and talk" in the past and adapt to the needs of both professors and students. University is not only a place for studying but also for learning from each other.

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[10] See amongst other: Universität Potsdam Studierende online aktivieren – Unsere Tipps für die digitale Lehre (https://www.uni-potsdam.de/en/zfq/lehre-und-medien/online-lehre-2020/studierende-online-aktivieren) (last visited March 23, 2021); Universität Hamburg Digitale Lehre in Corona-Zeiten: Denkanstöße und Praxistipps (https://www.jura.uni-hamburg.de/media/lehrprojekte/think-tank/digitale-lehre-in-corona-zeiten.pdf) (last visited March 23, 2021); LMU München Tipps für die digitale Lehre (https://www.multiplikatoren-projekt.peoplemanagement.uni-muenchen.de/downloads/digitale-lehre/tipps-fuer-digitale-lehre.pdf) (last visited March 23, 2021); Hanke & Holländer Aktivieren statt Belehren (https://www.b-i-t-online.de/daten/aktivieren-statt-belehren.php) (last visited March 23, 2021).

[11] Hanke & Holländer Aktivieren statt Belehren (https://www.b-i-t-online.de/daten/aktivieren-statt-belehren.php) (last visited March 23, 2021).

It is crucial for good teaching to constantly rethink old ways and adapt to new surroundings. A change in law school was long overdue, the need for new innovative concepts was not just sparked by the pandemic but made visible.

A crisis has an innate potential for innovation. The Covid-19 pandemic has marked the kick-off of re-thinking teaching law. The spark for innovation has been lit – now it is on students and professors to work together and see this as a chance to bring law school to the present.

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THE SMALL FIRM ROADMAP. A SURVIVAL GUIDE TO THE FUTURE OF YOUR LAW (2019)

Book review

Paul McCormack

AUTHOR

Paul McCormack is a dual qualified attorney (New York, USA) / solicitor (England & Wales), and has been practicing law for over 12 years. Paul is the founder and CEO of legaltech company, Kormoon (www.kormoon.ai) who specialize in making compliance with data privacy simple. Paul started his career within "big law" at global law firm DLA Piper (London, UK), specializing in commercial, technology and data privacy legal matters. Paul later moved in-house to HSBC (London, UK) where he spent a number of years within the Global Data Privacy and Cybersecurity legal team, and more recently as Global Head of Data Privacy for Saudi Aramco (Saudi Arabia).

TABLE OF CONTENTS

I. AUTHORS

Aaron Street is the co-founder and CEO of Lawyerist. For the past ten years, he's been leading Lawyerist's business growth and strategy. His career passion is building thriving culture- and impact-driven companies. In addition to his work at Lawyerist, Aaron is an angel investor and advisor in a variety of startups.

Sam Glover is the founder of Lawyerist. After starting his own law firm in 2005, he started Lawyerist as a way to share what he learned about law practice and connect with other "similarly different-minded" small-firm owners. Sam is the host of The Lawyerist Podcast, the Lawyerist Lens video series, and serves as Lawyerist's chief web developer.

Stephanie Everett leads the Lawyerist community and Lawyerist Lab. She practiced at a big law firm for five years before co-founding her own firm. As the managing partner, Stephaniewatched her firm grow from two lawyers to a team of twenty in just seven years.

Marshall Lichty graduated from the University of Minnesota Law School in 2002 and, in his career as a lawyer, worked at both large and small firms, learning to manage and improve those firms to be more client-centered, tech-enabled, and profitable.

II. REVIEW

In the era of global pandemics and working from home (or perhaps more accurately for many lawyers, living at work) this has prompting changes in working practices, faster adoption of technology across our personal and professional lives and a greater sense of urgency to evaluate our work-life balance makes this book very relevant to lawyers considering leaving existing law firms to set up solo, or those who have already taken the plunge to establish their own practice. There are various forces impacting the law market today "[a]ll of this is causing legal upheaval in the marketplace and challenging the traditional, historical business model of the law firm"[1].

The Small Firm Roadmap is a great addition to the works in this space of "legal upheaval" and focuses on some practical guidance for any aspiring small firm entrepreneurs or help to those already embarking upon that journey.

Part 1 sets the tone for the book by providing some context into why traditional law firm models are outdated and some key elements which any aspiring law firm owner should be considering. It provides some tips, guidance and analogies from what appear to be experience from one of the author's (Stephanie) experiences throughout her legal career.

Chapter 1 sets the stage and tone for the book by unpacking some of the reasons why traditional law firm business models are fundamentally broken. A perspective shared by the authors resonated to me which was the reference to: "in the eyes of any owner [i.e. the partners]... every hour spent on strategy, systems, technology, accounting, management, pro bono work, creative problem solving, and hiring

[1] Michele DeStefano: Legal Upheaval - A Guide to Creativity, Collaboration, and Innovation in Law (2018).

and mentoring employees is just an hour lost of revenue". For many lawyers who have been in traditional law firms (or any law firm to be fair), this will be a well experienced pain point of existing as an associate and being a slave to the chargeable / billable hour. The authors rightly point out that this model leads to the outcome that "[t]he owner may be doing their job as a lawyer, but they're failing as the leader of their firm".

Chapter 2 moves into what the future of law may look like with notable nods to some leading pioneers in the space such as LegalZoom and focusing the review on major legal trends which may provide an interesting way to pre-empt what the future may hold. The authors discuss consumer market trends which may be indicative of consumer expectations when it comes to legal services. They also consider other societal changes which may impact a firm such as diversity and inclusion, economic disruption, climate change, remote working / nature of work, and technological changes (e.g. artificial intelligence).

Chapter 3 discusses law firms as a business. The authors use an interesting analogy of law firms to dentists, with law firms needing to differentiate between the visionary, the firm manager and the "legal technician". These provide a helpful breakdown to consider what a good model for operating a law firm as a business may look like. Chapter 4 delves into the "Lawyerist" vision, a viewpoint which the authors contends that "... the future belongs to those firms who are nimble, forward-thinking, and technology enabled", a hypothesis that seems entirely sensible and plausible given the direction of travel within the legal services industry. The authors drill deeper in chapter 5 by introducing the Lawyerist scorecard which has been developed by the Lawyerist to identify areas of strength and room for improvement for solo practitioners and small law firms.

Part 2 sets out a roadmap for small firms. It begins by suggesting that personal goals are key to refocus upon for lawyers and proposes a set of questions to help focus the readers' attention to recalibrate what personal goals may be when seeking to establish a firm. The "goal-setting mindset" is well described and appropriately articulated as being a core pillar to defining what is important to the reader when seeking to set up their own practice. From here, the authors discuss the importance of business strategy and provide some key elements to consider, such as adopting a vertical decision making structure rather than a flat model. As Part 2 moves into chapter 8, the authors discuss the move from "traditional lawyer-centered profession" to "client-centered services". It provides some guidance of what this may mean in practice from client-centered pricing / fees, structuring your pricing around value. It provides some general discussions around pricing but also discussing how to communicate with clients, including a suggestion to "drop the legalese". Chapter 9 discusses the importance of sales and marketing. The authors provide a very clear message on this by explaining that "... if you're not perpetually marketing your firm, developing your brand and reputation, and improving your client-onboarding and sales-conversion processes, your practice is at risk". All of this I would entirely agree with.

Chapter 9 moves across to tips to assess value of time spent and used (and maximizing value from this) and also where your clients come from / ways to calculate return on investment for marketing costs. Some of this is a little on the generic side, but does provide some useful food for thought for considering how to model a formula to best suit the readers' own objectives.

Chapters 10 and 11 explores a very important backbone for law firms, and this is the systems and procedures, coupled with technology. Having spent time working with a number of the large / global UK law firms on this topic, it is clear that a common trait and pain point are the legacy systems and complex underlying taxonomies which underpin their technology platforms. The authors discuss ways in which a small firm may look to implement systems and procedures which are tailored to their needs but are optimized for productivity. When it comes to technology, the authors contend that "technology is a strategy - or at least a tool that supports strategy". They also introduce the reader to various themes and relevant issues regarding adoption of technology for firms (including cybersecurity risks and threats).

Part 2 concludes with: chapter 12 which discusses the finances of the firm and the core considerations for any legal business to succeed; chapter 13 which explores the area of people and staffing, discussing practical guidance in creating organizational charts to hiring strategies around cultural fit, and paying people fairly; and chapter 14 which provides an overview of how the reader can delve and explore further into content from the Lawyerist.

III. SUMMARY REMARKS AND CONCLUSION

The book provides a very comprehensive and rounded summary of essential building blocks and pillars to establish a law firm / legal practice of the future. I found it engaging with the approach taken of weaving anecdotes, providing useful links to content available on the Lawyerist site and providing a framework to help the reading determine what may be appropriate for them, their personal goals and creating an effective business which provides legal services.

Whilst the authors appear to all be from the USA, the book doesn't come across as overly US centric and as a lawyer having practiced for the majority of my career within England (London), the concepts and anecdotes resonated with me, and appear to translate well across international borders.

As summarized above, the chapters within Part 1 provide an interesting account of some important questions to ask yourself to help focus what is important to you personally and also the importance of viewing and establishing your law firm as a business. Part 2 gets into specifics and dissects the components or building blocks of a law firm and provides some very good and business focused considerations for any aspiring law firm owner. Part 2 was successful in providing the reader with a rounded overview in what appears to be by design wide and shallow so as to cover all bases, rather than deep and narrow. With this in mind, this book is by no means the panacea or recipe book / step-by-step guide to achieve these objectives but the wide and shallow approach gives the reader key questions and base understanding of concepts which may not be overly familiar to them, and which can be explored further by more in depth books on specific topics.

In conclusion, this book is designed for aspiring small innovative law firm owners, or those existing small firms looking for inspiration to refocus their business model. If you're looking for a recipe book / step-by-step guide, this is not the right book for you. However, if you're considering leaving a law firm to set up your own practice or considering revamping your existing practice, this book provides some really helpful and insightful concepts which would certainly serve as a solid framework (*or "roadmap" as the title aptly describes*) to build from or simply seek inspiration from. Overall a very informative read and was a great way to also learn more about the Lawyerist (*including their interesting podcasts).*