2 January 2022

I thank the student groups who wrote to me yesterday regarding the law school's approach to classes in the spring semester. I respect the views you expressed and feel you are owed an explanation of the thought process that led me to the decision I made. I offer this not because I expect to persuade those of you who think my decision wrong, but in order to be transparent with you.

I and the other members of our administrative team share your concerns about the Omicron COVID variant. Like you, we are people with families and complicated lives, affected by the pandemic as you are. None of us knows what will happen in the next several weeks. None of us is a public health expert or a physician. None of us in a position to substitute our judgment for that of public health experts and physicians, tempting as that might be in light of the news reports that are available to us all. We must depend on the administration of the University, which has access to qualified experts, to assess the risks Omicron poses to the health of our community.

Last Thursday I attended a meeting with the Provost, the other deans, and the medical experts who are leading the University's pandemic response. The outcome of that meeting was the delegation of discretion to the deans to temporarily modify modes of instruction. Had the Chancellor and Provost believed that in person classes could not be held with reasonable assurances of safety, I have no doubt that they would have done all in their power to safeguard our community with a different strategy.

I have found the approach being taken by other graduate and professional schools that are starting classes next week instructive. From conversations I had yesterday with Dean Burks at the medical school and Dean Koshuba at the pharmacy school, it is my understanding that both of those schools will be holding classes in person starting this week. Our approach makes that possible, but adds flexibility and relies on the faculty to determine when that flexibility should be applied to the circumstances of a particular course.

The current situation is highly fluid. If the circumstances of the pandemic change in a way that compels the adoption of a different strategy, I fully expect that the University will lead the way by changing its approach. That is not where we are now. The Chancellor and Provost have said that we are in an in-person learning environment for the spring semester. To repeat: I am not in a position to make a different public health assessment for the law school than the one they have made, on the basis of expert advice, for the University as a whole. If there is a change in the University's approach, the law school will respond accordingly.

With the University having delegated discretion in this matter to me, I have exercised that discretion in the only way I know how: by elevating as my central concern the
quality of the education we are providing you. Over the course of the pandemic, as the 2Ls and 3Ls know all too well, the law school community has had considerable experience with remote learning. While I cannot speak for every faculty member, I think it is fair to say that your professors hold views across a continuum on the efficacy of remote versus in person law school classes. No doubt the same can be said of our students. As long as the University is permitting us to offer in person classes, it seems to me that each faculty member’s judgment about the best pedagogical approach to their courses, balanced against the health concerns of those in the course, deserves to be honored.

By permitting faculty to move to remote instruction, we are trying to anticipate the possibility that some level of remote teaching could become necessary. Although we could have chosen to hold all classes in person, across the board, as other schools have done, and later adopted a different across-the-board decision as circumstances change, it seemed to me that the relatively small size of our community and the wide range of circumstances we face could best be served, at least for the time being, with a measure of flexibility and autonomy. Our faculty cares deeply about you, your development as lawyers and your physical and mental health. They are close to you and to the individual situations in which you find yourselves. They are wise, experienced, kind people. I trust them to balance those concerns. I hope you can too.

By deciding to delegate authority on the mode of instruction to individual faculty members, I knew that we were likely to create complexities and challenges for some members of our community. It might well have been simpler to take all classes remote for a period of time. But there can be no assurance that the public health situation will be clearer in two weeks, a month, or longer, than it is now. Given the uncertainties, I have chosen, within the limits of the authority the University has given me, to honor of your professors’ judgments regarding how they feel they can best engage with you in our core academic work.

I appreciate that there are some in our community who would like me to have taken a different path. I accept that many of you do not agree with my decision. Exercising judgment in the midst of shifting facts is at best an imperfect business, and my judgment is fairly open to criticism on this as on other matters. I hope that my attempt to explain my decision has at least made transparent the educational values I am endeavoring to uphold. I am grateful to you for expressing your concerns to me.

Sincerely yours,

Martin H. Brinkley
Dean and William Rand Kenan, Jr.
Distinguished Professor