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on Being in a Good Place with Great People at the Right Time**

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THE BUSINESS TRANSACTIONAL LAWYER AS SEALS LEADER: REFLECTIONS ON BEING IN A GOOD PLACE WITH GREAT PEOPLE AT THE RIGHT TIME

Joan MacLeod Heminway*

Sometimes, each of us finds she just happens to be in the right place at the right time. Call it serendipity; call it chance. Call it what you will. It is the story behind my long-term engagement with the Southeastern Association of Law Schools, now the Southeastern Association of Law Schools, Inc.—commonly known as “SEALS.”

I was in my early 40s when I attended my first SEALS conference.¹ That year, I attended as The University of Tennessee College of Law’s designated “Young Scholar.” Being labeled a young scholar in the early years of my teaching career gave me hope about my late start in legal education. It also generated a healthy amount of jokes. The name and format of this flagship program has evolved to become the “New Scholar Workshop,” in large part to avoid those jokes and correct any possible (but perhaps improbable) misperception that one needed to be of a certain low age to participate. As I recall, the label “Junior Scholar” also was in the mix as a possible label for this part of the conference program, but it had different negative connotations

My initial SEALS conference was amazing. Kent Syverud, then the Dean at Vanderbilt University Law School (now the Chancellor and President of Syracuse University),² was our moderator. Although at that time SEALS did not formally assign mentors to new scholars, he voluntarily took on that role. He spoke with me briefly after the panel concluded and gave me a page of handwritten notes that memorialized his comments. Even though my paper was on a topic that was not wholly in his wheelhouse (U.S. federal insider trading law and policy), his comments were on point and helpful. At a cocktail reception later in the day, he took pains to offer me support and encouragement in my scholarship. I remember him specifically saying that my practice would continue to lead to novel insights that other scholars would not have and that he hoped I would continue to allow my fifteen years of private practice to infuse my scholarship. I am still grateful for the time Kent took with me that day and for the interest he took in my work.

My confidence level as a scholar and as a member of the law academy rose substantially after that first conference. I knew then that I wanted to pay the benefit forward. I started small. I noticed there was little, if anything (outside scattered junior scholar papers and a presentation or two as part of the annual

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¹ I began my teaching career at the age of 39, after almost 15 years of private practice.

² See *Chancellor Kent Syverud*, SYRACUSE UNIV. (last visited Sept. 4, 2017), <https://chancellor.syr.edu/biography/>.

Supreme Court Update on private law issues), in the way of business programming at the SEALS conference. With the support of Russ Weaver³—then the Chair of the Programming Committee of SEALS as an unincorporated association⁴—I started to use and extend my growing network of law faculty teaching business law courses in the Southeast (and beyond) to create some business law panels for SEALS. For a number of years, that was my main role as a member of the SEALS Programming Committee. I had help over time from many folks, including David Millon (later a SEALS President),⁵ Fred Tung,⁶ Mike Guttentag,⁷ and John Anderson.⁸ Coordinating and organizing business law programs for SEALS—something I have continued to do—has been a truly enjoyable experience for me.

Eventually, this work resulted in my nomination for election as a member of the SEALS Board of Trustees (the “Board”). I lost that first election (in which there were four candidates for one Board slot) in a run-off against my dear friend (and current SEALS Treasurer) Linda Jellum⁹ but was later appointed (in 2007) to the Board to fill a vacancy. My service as a trustee later led to my nomination for and election as Vice-President/President Elect of SEALS in 2010 and my subsequent service as President and Immediate Past President (2011-13). Since that time, I have served on the Program Formatting Committee to help ensure the professional presentation of our conference program. Most recently, in 2016, I was appointed Deputy Corporate Compliance Officer/Secretary of SEALS, a position I continue to hold.

Over the years, I have gained so much from SEALS—support and co-authors for a book I edited and contributed to,¹⁰ a long-term friendship leading

³ See *Russell L. Weaver*, U. OF LOUISVILLE BRANDEIS SCH. OF L. (last visited Sept. 4, 2017), <https://louisville.edu/law/faculty-staff/faculty-directory/weaver-russell>.

⁴ SEALS was organized as a Florida corporation in 2005. Prior to that time, it was an unincorporated association that organized its annual conference using a Programming Committee that any faculty member of a SEALS member school could join by volunteering and adding his or her name to an email list maintained by Russ Weaver.

⁵ See *David Millon*, WASH. AND LEE U. SCH. OF L. (last visited Sept. 4, 2017), <https://law.wlu.edu/faculty/emeritus-faculty/david-millon>. A list of the SEALS Presidents is available at <http://sealslawschools.org/about-seals/historical-information/seals-presidents/>.

⁶ See *Frederick Tung*, B.U. SCH. OF L. (last visited Sept. 4, 2017), <http://www.bu.edu/law/profile/frederick-tung/>.

⁷ See *Michael Guttentag*, LOY. L. SCH. L.A. (last visited Sept. 4, 2017), <http://www.lls.edu/faculty/facultyliste-g/guttentagmichael/>.

⁸ See *John P. Anderson*, MISS. C. SCH. OF L. (last visited Sept. 4, 2017), <https://law.mc.edu/faculty/directory/john-anderson>.

⁹ See *Linda Jellum*, MERCER U. SCH. OF L. (last visited Sept. 4, 2017), <https://law.mercer.edu/faculty/directory/jellum/>.

¹⁰ See JOAN M. HEMINWAY, *MARTHA STEWART'S LEGAL TROUBLES* (Carolina Acad. Press, 2007). SEALS participant Ellen Podgor, later a SEALS President, was instrumental in producing, and contributing to, this book. See Ellen S. Podgor, STETSON U. C. OF L. (last visited Sept. 4, 2017), <http://www.stetson.edu/law/faculty/podgor-ellen-s/>. In addition to offering support and co-authorship, Ellen helped secure the participation of SEALS member school faculty, including

eventually to co-authorship on a book chapter,¹¹ publication opportunities,¹² requests to collaborate on proposals for and participation in programs for other conferences,¹³ and productive feedback on my work. These benefits are all easy to identify. But a great deal of what I have gained has come from the joy of giving. Mentoring new (and, more recently, prospective) law scholars has given me relationships in the law academy that I cherish. They are irreplaceable.

A more subtle—but powerful—source of joy that SEALS gives me, however, is the understanding that some of my work as a corporate adviser and decision maker in SEALS's leadership has helped SEALS navigate and thrive in its amazing growth spurt over the past fifteen years. Although my contribution has been small in comparison with that of many others, I may be the most proud of offering SEALS some of my corporate law knowledge and expertise in these efforts. Growing pains are common in not-for-profits. They can originate from both internal and external forces. SEALS certainly has had its share. However, the number and impact of those inevitable bumps in the road have been minimized by the hard work of many behind the scenes. These indefatigable constituents include the Board, officers, staff, and volunteers, as well as many unsung leaders in and outside the SEALS committee structure. It is in my leadership roles with SEALS roles that I have benefitted the most from my engagement with the organization. I have shared, but more significantly I have learned and developed important professional relationships that impact much of what I do as a law professor.

(among others) Kathleen Brickey (now deceased), Geraldine Szott Moohr, Michael Seigel (now deceased), and Chris Slobogin. See *Tribute in Memory of Professor Kathleen F. Brickey*, WASH. U. SCH. OF L. (last visited Sept. 4, 2017), <http://law.wustl.edu/faculty/pages.aspx?id=9753>; *Geraldine Szott Moohr*, U. OF HOUS. L. CENTER (last visited Sept. 4, 2017), <http://www.law.uh.edu/faculty/gmoohr/>; *Longtime UF Law Professor Mike Seigel Passes Away*, U. OF FLA. LEVIN C. OF L. (Jan. 6, 2015), <https://www.law.ufl.edu/law-news/longtime-uf-law-professor-mike-seigel-passes-away>; *Christopher Slobogin*, VAND. U. L. SCH. (last visited Sept. 4, 2017), <https://law.vanderbilt.edu/bio/christopher-slobogin>.

¹¹ IRMA S. RUSSELL & JOAN M. HEMINWAY, REPRESENTING THE ORGANIZATIONAL CLIENT IN ENVIRONMENTAL MATTERS, ETHICS AND ENVIRONMENTAL PRACTICE: THE PRACTITIONER'S GUIDE (Irma S. Russell & Vicki J. Wright, eds., Am. Bar Ass'n, 2017).

¹² See e.g., Joan M. Heminway, *Martha's (and Steve's) Good Faith: An Officer's Duty of Loyalty at the Intersection of Good Faith and Candor*, 11 TRANSACTIONS: TENN. J. BUS. L. 111 (2009); Joan M Heminway, *(Not) Holding Firms Criminally Responsible for the Reckless Insider Trading of Their Employees*, 46 STETSON L. REV. 127 (2016); Joan M. Heminway, *Thoughts on the Corporation as a Person for Purposes of Corporate Criminal Liability*, 41 STETSON L. REV. 137 (2011).

¹³ For example, after collaborating for several years to organize a white collar crime discussion group for the SEALS conference, John Anderson, *supra* note 8, and I successfully proposed and moderated a discussion group for the 2017 annual meeting of the Association of American Law Schools. See AALS Discussion Group, *Salman v. United States and the Future of Insider Trading Law* (last visited Sept. 4, 2017), https://memberaccess.aals.org/eweb/DynamicPage.aspx?Site=AALS&WebKey=2dac517f-22ab-4311-9706-073de8b32775&RegPath=EventRegFees&REg_evt_key=ae091c4d-08c4-4858-8d50-183c765acd20.

My first foray into the SEALS organizational governance realm was consultative. Chris Pietruszkiewicz¹⁴ and Gail Richmond¹⁵ (both experts in tax law and both former SEALS Presidents—Gail serving in that role twice) asked me, along with anyone and everyone in SEALS who would listen, to help review a draft of the SEALS articles of incorporation and bylaws before they were finalized. Ah, I thought; here is a more influential way to use my business law skills to help SEALS move forward. I had formed and served on the boards of not-for-profit entities in Massachusetts and Tennessee. This would be a relatively easy way to play a significant supporting role.

However, it turned out that the drafts were fairly far along, that the corporate structure was reasonably complex, and that the key decisions on governance had largely already been made. As a result, the best I could do was to highlight a few issues and locate typographical and editorial errors. I remember feeling as though I was more of a burden than a help because I asked Chris so many questions about the chosen structure. I was asked to review a revised draft of the documents, but my schedule didn't permit a second careful read-through.

My business law skills became more valuable once I joined the Board. In particular, at our winter Board meeting in 2008, Gail Richmond brought us news of changes to the Form 990 (the tax return filed by most tax-exempt organizations with the U.S. Internal Revenue Service each year) announced earlier in the year.¹⁶ The news included the need for Board action on a number of compliance matters related to the Form 990 changes. These included policies on sexual harassment, document retention, whistleblowers, and conflicting interests. Board members were assigned to subcommittees to draft up an initial version of each policy overnight. While the policies were not finalized and formally adopted by the Board at that meeting,¹⁷ my experience in corporate compliance did come in handy.

My business law skills also were important to my role as the President of SEALS during the 2011-12 academic year. The President automatically assumes that office a year after being elected as Vice President/President Elect by representatives of the institutional member schools of SEALS¹⁸ (who serve as a

¹⁴ See Stetson University College of Law, *Christopher M. Pietruszkiewicz* (last visited Sept. 4, 2017), <http://www.stetson.edu/law/faculty/pietruszkiewicz/>.

¹⁵ See Nova Southeastern University Shepard Broad College of Law, *Gail L. Richmond* (last visited Sept. 4, 2017), <https://www.law.nova.edu/faculty/adjunct-faculty/richmond-gail.html>.

¹⁶ See James J. Fishman, *Stealth Preemption: The IRS's Nonprofit Corporate Governance Initiative*, 29 VA. TAX REV. 545, 564 (2010) (describing the Form 990 as “an annual informational return that reports all receipts and disbursements and any other information that the [U.S. Internal Revenue] Service may require by forms or regulations” and noting that “Form 990 was substantially revised for tax years beginning in 2008.”).

¹⁷ We continued to work on the policies after the December Board meeting, and most were adopted at a subsequent Board meeting in March of 2009.

¹⁸ See ARTICLES OF INCORPORATION OF THE SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS, INC.,

“Steering Committee”¹⁹). One of the jobs of the President is to chair the meetings of the Board.²⁰ The Board typically meets in person during the annual conference and in December. Accordingly, the SEALS President chairs at least two sets of meetings of the Board during her term in office. During these meetings, the immediate past annual conference is assessed and the upcoming conference is planned. But other items, including operational and governance matters, also are raised, discussed, and debated.

During my term as President, we took up staffing issues. As the annual conference grew, so did the staff. The SEALS staff members all are, or were, employees at SEALS schools who provide services to SEALS, mostly at and in connection with the annual meeting. Setting appropriate levels of compensation had become a bit of a challenge. Among other things, the Board members needed to better understand what each staff member was doing for the organization. During my term as President, the Board conducted a thorough re-evaluation of staffing. John Plummer, then the Assistant Dean for Finance and Administration at the University of North Carolina School of Education,²¹ who coordinates the activities of the SEALS staff, identified and catalogued the evolving tasks performed by the staff at and between the annual conference meetings. This information was extremely helpful to the Board in its planning and deliberations.

We also reviewed and revised various policies on governance and operations that year. The introduction of discussion groups into the annual conference program—an innovation stemming from similar programs conducted

art. IX, § 6, <http://sealslawschools.org/wp-content/uploads/2013/08/Articles-of-IncorporationAugust2013.pdf> (“The Vice-President/President Elect shall serve as Vice-President for one year after election. Upon completion of a one-year term as Vice-President, the Vice-President shall serve as President for a one-year term.”). Elections take place at a meeting of the Steering Committee held at a luncheon during the conference. See BY-LAWS OF THE SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS, INC., art. V, § 2, http://sealslawschools.org/wp-content/uploads/2013/08/By_LawsAugust2013.pdf [hereinafter BYLAWS] (“Election of Vice-President/President Elect . . . shall occur at a business meeting to be conducted during the Annual Meeting of the Corporation.”).

¹⁹ See BY-LAWS, *supra* note 18, at art. IV, § 1 (“Each Institutional Member shall designate one faculty member to be a member of the Steering Committee. A member of the Steering Committee shall be entitled to vote on any matter requiring a vote of the Institutional Members.”); *id.* at art. IV, § 2 (“Each Affiliate Member may designate one faculty member from such Member who shall be entitled to attend business meetings of the Steering Committee as an Observer. An Observer shall not be entitled to vote on any matter requiring a vote.”); *id.* at art. IX, § 1(2) (“Each Institutional Member shall designate one faculty member from such Member who shall be entitled to serve on the Steering Committee. Each Affiliate Member may designate one faculty member from such Member who shall be entitled to attend business meetings of the Steering Committee as an Observer.”).

²⁰ See BY-LAWS, *supra* note 18, at art. VII, § 1 (“The President shall: (1) Serve as Chair of the Board of Trustees of the Corporation . . .”).

²¹ See UNC SCHOOL OF EDUCATION, *John Plummer, New Assistant Dean for Administration and Finance* (Feb. 9, 2009), http://soe.unc.edu/news_events/news/2009/090209_plummer_john.php.

by SEALS Executive Director Russ Weaver²²—gave SEALS another popular distinctive feature, but it presented challenges to (among other things) the SEALS “one-person, one-panel” rule.²³ During my SEALS presidency, the Board decided to exempt discussion group participation from the rule. Over the years, the rules governing conference participation, program submission and composition, and other related items have continued to evolve to better meet the needs of SEALS members.

The committee structure of SEALS received renewed attention during my term as President. As SEALS grew, so did the number of committees. New committees were introduced to fill gaps in programming and cater to new organizational objectives, including the more formal introduction of international activities for the organization. On a more basic level, the size of the various committees, together with the diversity, manner of selection, and expectations of their leaders and members, were of concern to the Board during that time.

The organization’s growth presented a number of predictable, but important, operational issues at and around the time I served as SEALS President. For example, as the membership grew, it had become harder to chase down members who failed to timely pay dues. A properly constructed and maintained website and communication platform for SEALS became essential. Increasingly, faculty members wanted to register and pay for the conference online, instigating Board discussion of and determinations regarding the desirability of online registration using PayPal or an alternative Internet payment system. Online program submissions became a reality. SEALS was handling more and more money in its operations, prompting a re-assessment of its banking relationships.

The reality was that SEALS was no longer merely an incorporated business entity; it was a *business*. The Board’s activities reflected that transition. I remember consciously noting at various points during my years of service on the Board, as that transformation was occurring, that I was significantly more comfortable with that change than many others were. Some of that can be attributed, no doubt, to my status as a relative newcomer to SEALS. I hadn’t lived through the early organizational life of SEALS—the days of, e.g., “the Homestead Seven.”²⁴ But I also believe that some of it had to do with my professional background as a corporate legal advisor.

²² See Weaver, *supra* note 3.

²³ The rule restricts each attendee at the SEALS conference to participation in one panel. See *Program Participation (Including Panel Composition) Policy*, art. A, §1(a) (July 31, 2017), SOUTHEASTERN ASSOCIATION OF LAW SCHOOLS, <http://sealslawschools.org/wp-content/uploads/2013/06/ProgramParticipationIncludingPanelCompositionPolicy.pdf>. (“Each participant in the Annual Meeting may serve (either as presenter or moderator) on only one panel. This policy is often referred to as the one-panel policy.”)

²⁴ See *infra* Russell L. Weaver & Gail Levin Richmond, *The Southeastern Association of Law Schools: A Thematic History*, 86 UMKC L. REV. 599, 612 (2018) and accompanying text.

My Board service and current role as an officer of SEALS have offered me multiple additional opportunities to provide corporate governance advice to the organization over time. Early on in my tenure as a trustee, the Board invited David Millon²⁵ to give a presentation on SEALS's corporate governance obligations (with a special focus on Board voting and governance, including fiduciary duties). I served as the informal liaison between the Board and David as he prepared for that presentation—supplying him with information (as needed or desired) about SEALS and its organic documents. More recently, in my capacity as Deputy Corporate Compliance Officer/Secretary, I was asked by the Board to serve as an *ex officio* consultative member of an *ad hoc* Board committee that reviewed the SEALS officer and staff positions and structures with an eye toward ensuring that the SEALS bylaws reflect the organization's actual and desired practices. As part of that service, I explained the roles of the Articles of Organizations, By-laws, and Board policies in corporate governance and answered related committee member questions about the law and related norms. It is in these types of situations that I provide a more distinctive value to SEALS. I have found that just knowing where to find the governance rules relating to a question—in the law, the chartering document, the bylaws, or a board policy—can make one incredibly useful.

Yet the whole of this was not part of any initial strategic plan that I had when I first engaged with SEALS. It was more happenstance. Having developed a loyalty to SEALS because of what the organization did for me, I just volunteered. And in that volunteerism, I seemed to find myself in the right place at the right time.

It's the people that make SEALS great. Those people include the leaders of SEALS over the years. I am proud and humbled to have been included in that select group and be part of the organization's history for that reason. On reflection, then, what is most important—more important than being in the right place at the right time—is that I was in a good place, a place in which I could serve, with great people at the right time.

²⁵ See Millon, *supra* note 5.

