Two recent events coalesced to generate this extended column. One is the magisterial “Reconstructing Construction Law” by Tom Stipanowich, a law professor at the University of Kentucky who formerly edited this journal. The other is the publication in June of the sixth edition of my Legal Aspects of Architecture, Engineering and the Construction Process. Let me begin with the more important, and then I will link them up.

Tom’s 115-page article is really a monograph. After Tom defines Construction Law, he asks that it be placed in the pantheon of accepted academic subjects. As a recognized body of law, it should be taught in the law schools (and in high quality colleges and universities that train architects and engineers). He wants it to be the subject of research, emphasizing empirical work (not surprisingly in light of his work with Dick Speidel and his decision to publish his “Reconstruction” in a journal published where Stewart Macauley teaches). He emphasizes construction contracts as relationships (not surprisingly in light of his close contact with Ian Macneil). He wants it treated as seriously as the old war horses (Torts, Contracts, and Property) and the newfangled sexy ones (Sports Law, Computer Law and Entertainment Law), not to mention the advocacy courses that combine “Law and” with the latest politically correct subjects.

Tom is, as he wrote me recently, envious of what the UCC has done for sales transactions. He is “intrigued by the idea of a ‘Construction Code.’” But his experience with the uniform code process and “every other bit of evidence” tells him that it may not be “worth the effort.” Instead, he suggests “less ambitious but more realizable goals, both in public law making and relational governance.”

This leads me to the second event, my sixth edition. As I worked on it, I reflected on what I saw out there when I started work on the first edition in 1967. In that year I was asked to teach a law course for architects. As I worked on it, I reflected on what I saw out there making and relational governance.

The Simpson book consisted of “black letter” rules (taken from his hornbook) followed by simplistic text, summaries of cases illustrating the rules and the text and reproductions of some simple cases. After a short introduction to law and legal procedure it went into substantive law. About one-half was contract law. That was followed by agency law, mechanics’ liens, worker’s Compensation, and a smattering of property law. I felt the coverage inadequate (no torts or professional liability). Even where a topic was covered, such as arbitration, discussion was perfunctory. Text was succinct and dogmatic, much like the principal author. No statutes. It just didn’t suit my needs. I wanted to expose my students to those areas of law with which they would have contact. I also wanted them to see the industry underpinnings, the struggles to get the laws to go one way or another and the increasing role of legislation, administrative agencies, and standard contracts. (Simpson did put AIA documents in the Appendix.)

At that time there were, to my knowledge, no law courses called construction law. I don’t recall a law faculty meeting where a professor asked, “Where can we get a construction law teacher?” as we often did for established academic fields. In the library stacks (for you younger readers, those were shelves in the library where we kept “hard cover”) at Berkeley there were perhaps ten dusty books that covered the space of a corner. No Forum. No Construction Lawyer. No College of Construction Lawyers.

What do I see three decades later? First, the published materials. The proliferation of stuff should be obvious to all of you, especially those of you who have to decide what to include in your libraries. Here I must acknowledge the Wiley Redbooks (now Aspen), an apparently inexhaustible series of “how to do it books,” mostly gathered together by the indefatigable assembler, Bob Cushman. Most are collections of individual papers done by hard-working, dedicated practitioners who cluster around some practice-oriented topic. They had the strengths and weaknesses of such collections.

I should note that the Forum has begun to publish high quality, single author books on Construction Law.

Then there are the ambitious multivolume collections on construction law put together by the Patton Boggs
people in Greensboro, North Carolina, and by Steve Stein of Chicago. Of course, there are the newsletters, of which I prefer Marc Schneier’s *Construction Litigation Reporter*. Also, there are solid state-oriented books on Construction Law by my lawyer friends: Bob Rubin, Bill Postner, Jim Acret, and Steve Siegfried. I am sure I am leaving out others who labor in the construction law vineyards. My apologies.

Now a remark about the journal in which this Tower appears. *The Construction Lawyer* has some first-rate, practice-oriented articles. I cite them often in my sixth edition. But I think we could learn something from our brethren in the Public Contract Law Section. They publish two products. One is *The Procurement Lawyer*, and more importantly, there is the *Public Contract Law Journal*. Much of the Journal’s stature in my view relates to the fact that, though published by the ABA Public Contract Section, it is prepared in cooperation with the George Washington Law School. I suggest that the Forum try to expand its journal on a similar basis.

But that leads me to my next topic. There is a lacuna in construction law academic scholarship. There is a big shortage of high quality, carefully crafted scholarly articles in this field. To illustrate, there are loads of polemical articles on payment provision clauses. But where are the empirical studies of how they work? The classic subcontractor bid revocation empirical study was done in 1952 by Franklin Schultz. And the Schultz study didn’t really focus on Construction Law as such but on section 2-205, the UCC firm offer provision. See also my third goal later in the column for more on scholarship.

Now to the status of construction law in the law schools. As I mentioned, when I published the First edition of my *Lege Aspects* in 1970, to my knowledge there were no courses in construction law (except in schools of architecture or engineering) Now, to the best of my knowledge, there are at least twenty law schools that offer courses in construction law. Tom lists them in his article. Most are taught by practitioners. Most are taught to third-year students. Most are “how to do it” courses. Lecturers receive a nominal salary. I do not know how the classes are taught or whether the courses culminate in an examination or a seminar paper. (Mine culminated in seminar papers, some very good.)

These are the educational goals I see for construction law:

1. A cadre of well-trained lawyers. (I would like to see them emerge from all schools—the elite, as well as the state and local schools.)

2. Full-time law teachers who devote their teaching and writing to Construction Law. (When you see how full-time teachers are selected, like the old boy network for choosing Supreme Court clerks from Harvard, Yale, Chicago, Stanford, and Berkeley, this may be a very hard nut to crack.) Looking into the future, I would like to see clusters of construction law academics who can attract students from all over, just as we have clusters of Law and economics, technology law and environmental law teachers and courses.

3. Solid legal scholarship. (When was the last time you saw a first-rate, unbiased scholarly piece on waivers of subrogation, mechanic’s liens, liquidated delay damages for in construction or “flow through” clauses in prime contracts?)

4. A serious, continuing education program that can hone the skills of those who are construction specialists, including private practitioners, house counsels, and public lawyers. I want to improve on what we have today. I want more depth, more intellectual speculation, more explorations of principles and policies, more comparative and more international material. (I don’t want to disparage what is out there, but I think we can do better than a parade of worthies advertising their skills before hundreds of customers willing to part with their cash to hear the latest from the most famous.) To make advances, we need more state bar associations that have special sections for construction law.

5. Recognition of the top flight construction lawyers. (The College of Construction Lawyers is a start.)

This is a full plate. But like Tom, I also want some respect (see Rodney Dangerfield) accorded to construction law. As I wrote in my *Sweet on Construction Law*, we hear a lot about sticking to core competence, comparing outsourcing doing things “in house.” Yet rarely does this theorizing and pontificating draw upon subcontracting in the construction world. We see a lot of scholarships on ADR but almost never building on ADR in the construction world. I think the world of scholarship believes that nothing can be learned from the dumb, hard hat construction world. This is a shame.

Now that we have looked at the “big picture, a term left over from my army days, and presented so well by Tom, let me offer some practical advice on some things I know something about, how courses get into the law school curriculum.

When I described these courses (third-year “how to” courses taught by practitioners), I did not mean to disparage them, even though I would like more regular law school courses in construction law. I think we can get more than the twenty or so out there. But how does such a course get started?

On occasion, impetus for such a course comes from a petition by a small group of students who spent a summer clerkship tangling with construction law. But most are generated by an approach to a law school dean by a dedicated practitioner with the time and skill to teach. Our prospective lecturer must convince a law school dean that there is a demand for such a course (a petition from students can help), that it will not cost the school real money (be prepared to work for nothing), that you are the one to do it. If the school wants to be sure the teacher is not a dis-

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from the viewpoints of multiple participants. It also discusses defending against owner counterclaims. Although written from the point of view of the contractor, much of the analysis would also help the owner who reviews a claim.

Chapter 10, “Analyzing Schedule Delay and Acceleration,” is an eighty-page synopsis of the subject. Although certainly not an authoritative treatise, it does provide an excellent starting ground and a comparison to Chapter 11, “Phase 4b—Computing Damages,” which describes the fundamentals of cost analysis and how to avoid common mistakes. Chapter 12, “Proving Inefficiency,” in thirty-five pages discusses major methods of proving this amorphous element that often causes project costs to hemorrhage.

The last two chapters emphasize style, not at the expense of substance, but in recognition of the fact that presentation determines outcome.

Chapter 13, “Phase 5—Comparing Exhibits and Assembling a Claim,” is a worthwhile addition because its “picture is worth a thousand words” argument is hard to refute.

The last chapter, Chapter 14, “Phase 6—Presenting a Claim and Negotiating an Equitable Adjustment,” has a number of good, common sense pointers without being too dogmatic.

The book is attractively presented and organized, but I would have preferred a more detailed table of contents. For instance, the table of contents only divides a chapter (or example, Chapter 6) into four capital letter segments, while the chapter itself is broken down into two levels below. The numbering system is also a bit confusing. The book does have a detailed fourteen-page index that does not just refer the reader to other sections (“see”) as if in a scavenger hunt. Instead, it gives numerous page citations at each listing plus additional references (“see also”).

Although this book covers a subject that has been plowed well and often, a good guide to changes does not go out of date in a year as do excellent law-related treatises in many other areas. In that sense, its lack of case and statute citations is no oss.

Endnotes
1. See, e.g., CUSHMAN JACOBSEN TRIMBLE, PROVING AND PRICING CONSTRUCTION CLAIMS (2d ed.); BRAHMS, LERNER, CONSTRUCTION CLAIMS ORGANIZATION SYSTEMS; CONSTRUCTION CLAIMS PREVENTION AND RESOLUTION (Robert Rubin et al., eds.).