

## TEACHING TRANSACTIONAL SKILLS THROUGH SIMULATIONS IN UPPER-LEVEL COURSES: THREE EXEMPLARS

ROBERT C. ILLIG\*

### INTRODUCTION

At the University of Oregon, we have undertaken an experiment regarding the teaching of transactional skills and deal sense. For the past two years, students enrolled in my doctrinal course on mergers and acquisitions (or my colleague's course on real estate finance) have been eligible to enroll simultaneously in an associated "Transactional Practice Lab." I teach the law and policy in the foundational course and, at the same time, a team of practicing attorneys teach the craft in the lab. Other schools may be doing something similar—I don't know—but we are having good success with the program and I believe it's worth sharing.

### I. A STORY

Now, because this is a conference on teaching, I feel that I should treat the whole thing as one giant teachable moment. In other words, I have to start with a story—something clever and insightful to help you understand our program on an intuitive level. I certainly can't just jump in and *tell* you about the theory behind the labs! Instead, I have to try and show it to you.

When I was in college I played squash. Squash, if you remember, is a sort of "New Englandy" sport. Nobody really plays it much outside of New England or, more importantly, outside of college. That means you can go to college and be a decent athlete, maybe play a little tennis, and you can learn squash and play very competitively and at a high level. In this way, it is a little like learning business law. In my day at least, most squash players, like most law students, arrived on campus filled with desire and talent, but without a clear understanding of how the game is played. Squash, like transactional lawyering, is something that many people practice and try to master without ever having seen it done.

So, I spent three or four years trying very hard to become good at squash by practicing the individual strokes. I practiced forehands, backhands, drop shots and lobs. I studied all the different strategies and theories and worked diligently to hone

---

\* Rob Illig is an Assistant Professor at the University of Oregon School of Law where he teaches Mergers & Acquisitions, Business Associations, and Private Equity & Venture Capital. Prior to joining the academy, Professor Illig practiced corporate and securities law in New York and London. His email address is [rillig@uoregon.edu](mailto:rillig@uoregon.edu).

my skills. Over the years, as you can imagine, I improved substantially. However, the single day when I went from being a solid player to a true proficient was a day I did not play squash, did not practice, and did not even hold a racket. It was a day I watched.

My senior year, we hosted the individual nationals. So, the absolute best squash players in the country at the college level were there—people who were going on to go on and play in the pro circuit (and yes, there is a pro squash circuit, if you can believe it). While watching, I had this moment of epiphany when I realized: “oh, *that* is what I’m trying to do. *That* is how the game of squash is meant to be played.” I remember thinking that if somebody had showed me this two or three years ago, maybe not the first year I was playing, but at least the second or third year, I would be out there playing today. *I* would be headed for the pro circuit.

When I woke up the next day, not having practiced for even a minute, I could do the pieces better. They made more sense—forehands and backhands and the like—because I understood them in context. I could see why and how the individual elements of the game fit together. Then, when I went out and played with friends, I was simply and obviously a much better player. I had seen a glimpse of the future and of what the game was really about. I had been given an opportunity to see how the pieces interact with and reinforce each other. And that glimpse, that opportunity, made all the difference.

## II. THE GAP

It is clear that the academy has begun to take more seriously the teaching of transactional deal-making skills.<sup>1</sup> We have started to incorporate planning, drafting, negotiation and even risk assessment and deal logic into our traditional curriculum. However, we rarely teach them as part of a comprehensive whole. We teach the pieces of dealmaking, but not how they fit together. Hence, the concern we had at the University of Oregon was that teaching the pieces—no matter how well we did it—was not enough if the pieces existed only in isolation.

So what are we doing right? We have an in-house small business clinic where students meet with real clients and learn client interviewing and planning skills. We have negotiation classes where we videotape students to help them with their

---

<sup>1</sup> I have always thought that “skills” is an unfortunate word given the historical tension between the teaching of law as a craft versus something more lofty and theoretical. *See* WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 47, 105 (2007). However, to understand dealmaking, one must learn more than just the law—one must learn deal sense and deal logic. If these count as “skills,” then it is skills that we must teach.

negotiating skills. We have business planning courses where students learn to plan for an unknown future and to assess and allocate risk.

We have a course over the summer where we put MBA students together with our law students and give them access to proprietary technologies to see if they can commercialize those technologies and craft appropriate business plans. We even have a popular accounting course that is a prerequisite for studying securities law.<sup>2</sup> Most importantly, however, we seek to incorporate concepts of finance and risk management into our doctrinal courses. We review and analyze real contracts.

We have all the pieces, in other words, but nothing to help students put it all together.

The way you draft a contract impacts how you negotiate the deal and in what manner the negotiations will proceed. Likewise, the negotiations will impact the subsequent drafting and planning, and it all comes back together in a sort of legal-skills feedback loop. In the same manner, when I play squash, it is not just one shot or the other that creates a winning game. It is how you put them together.

So, to address this fundamental gap, we decided to try and provide students a glimpse of their future. We wanted them to see where they are headed so they can learn the pieces better by learning them in context. We wanted them to hone their skills more quickly by helping them gain a better understanding of how and why deals proceed as they do. Our goal is to provide students with a mental picture of what deal lawyers (outside of the movie “Wall Street”) actually do for people. And we are trying to give them that glimpse upfront, early in the educational process, so, as they learn the pieces, they learn them in relation to each other.

### III. CHALLENGES

The real challenge, of course, is how to accomplish this goal if you cannot change the whole curriculum overnight—if you cannot easily obtain buy-in from the litigators and the deans and all the other constituencies and require that they change the way they teach their courses.

---

<sup>2</sup> The only downside to the course is that, in my opinion, we spend too much time on debits and credits.

If you cannot do a comprehensive overhaul, what you need to do is *add* a set of simulations. Add a program of courses where students actually experience first-hand the interface between the law and the craft.

This is easier said than done, however. Firstly, simulations and other experiential learning opportunities are extremely expensive on a per-student basis. For example, as I mentioned earlier, we offer an in-house small business clinic. Originally, we had eight students enrolled in the clinic each year. Now, with great fanfare, we have increased that to twelve. However, the University of Oregon has about one-hundred eighty students in the first-year class. So we are still only reaching less than ten percent of the class. The amount of resources we put into the clinic—including dedicated faculty, support staff and physical space—is clearly disproportionate to the experience of the twelve students. We think the clinical business experience is a good thing, but we, like most law schools, do not have the resources to replicate it for all students.

Another scarce and therefore expensive resource is faculty. Many law professors do not have practice skills. Either we went straight into academics or we practiced for too short a period of time to have developed true dealmaking prowess. Indeed, even many in academia who began their careers as dealmakers only practiced for two or three years and so never advanced to the point of running a deal. And if you are like me, the longer we remain in academia, the more we begin to lose what practice skills we started with. Moreover, attempting to stay current with the craft necessarily means spending less time on scholarship and other important faculty pursuits.

What this means is that it is expensive to have simulations and similar experiential learning opportunities because either you need to have dedicated clinical faculty or you need to have doctrinal faculty members who bring those skills and then continue to exercise them by staying current on developments in the *practice* of law.

A second major problem with simulations is that they do not easily fit with the teaching of doctrine. My fantasy when I arrived in academia was that I would teach a three-credit-hour merger and acquisition simulation. We would assign students into small groups, recruit some MBA students to act as the clients, and actually transact a deal over the course of the semester. However, even if I could put in the energy, prepare the materials, and stay current on the practice, it is impossible to teach the deal if students do not already know some tax law, some accounting rules, certainly the corporate law, and a whole group of other associated topics such as antitrust—basically the whole curriculum. You have to understand the law—not just the deal—to be a deal lawyer.

So how do we integrate the doctrine? And how do we do so in a cost-effective way? What we decided to try over the past two years was to integrate several doctrinal courses with associated labs.

#### IV. A THIRD WAY: LABS

I teach Mergers and Acquisitions in the fall in a fairly traditional format. I certainly have a transactional lawyer's bent, so we approach the topic from a risk-analysis standpoint. I have students look at actual contracts and we spend a week or so trying to figure out how they work and how different provisions fit together. Otherwise, however, it's still a fairly traditional doctrinal and policy-oriented course focused on the law of corporate combinations. Likewise, in the spring, we offer a real estate finance course which is also fairly typical. What makes these courses unique however, is that we have appended to both the option for students to enroll in an associated lab.

The labs are taught by adjuncts at the same time as my colleague and I teach the underlying doctrinal courses. We the theorists teach the doctrine and policy, while the adjuncts who are practicing lawyers teach the practice. In this way, we have divided and harmonized our approach to the theory and the craft. This structure also makes supervision and cooperation between tenure-track and adjunct faculty quite easy.

Though taught by adjuncts, the labs are each sponsored by a law *firm*. In fact, this aspect of the program has been essential to its success. We began our experiment by approaching several senior partners for support, and then they assigned a team of senior associates to teach the course. Having a senior partner as supervisor, it turns out, is an effective way to ensure that the adjuncts show up, prepared and eager, no matter what work conflicts might arise. It also allows the instructors to recruit others from their firm to assist at various points. Although they, as M&A lawyers, are not experts at every body of law, they are experts in knowing who in their firm is.

During one class session, for example, the students are confronted with an employment law issue. The acquisition that is the focus of the lab involves some vacation accruals and it is not clear who is going to pay for them. Instead, it is a point that the students must come together and negotiate. So, the instructors pull out a speakerphone with the class all gathered around and they dial up an employment lawyer in the law firm who is in another city. The employment lawyer is expecting the call, but nobody has told her what the issue is. The class then has to look at the speakerphone, explain the deal, explain the issue, learn the law, and work

together with the employment lawyer to come up with a possible solution. Then they hang up the phone and draft the contract language.

In addition to seeking a firm sponsor, we also decided to make the simulations small and manageable. This is so obvious and so simple, but it makes a huge difference to the program's overall success. Instead of trying to bite off a highly complex simulation, which would have been quite a big deal and nearly impossible to replicate, we structured the labs as one-credit add-ons and graded them pass/fail (based largely on demonstrated student effort). We did not require the lab, so out of one-hundred eighty students we had about thirty enrollment requests. I generally have about thirty students enrolled in Mergers and Acquisitions, of which twelve or fifteen choose to take the M&A lab. The same for the real estate finance course. Notably, however, the number of interested students has been going up each year.

Instead of trying to teach students to perfect every individual aspect of a deal, we decided that our goal was to give students a glimpse of how the pieces fit together. Had I watched the squash game and left to go get a snack and come back to watch the end, I might have missed some drama, but I would not have missed the glimpse of what my future held. The point isn't to teach the individual skills or even to be comprehensive in our approach. These goals can be pursued in other courses. The point is to demonstrate deal logic and cohesion.

We scheduled the labs as five meetings over the fourteen-week semester. Also, we did not start at the beginning of the semester, but paused to allow the doctrinal portion of the experience to get a head start. Then we added on the lab on a once-a-week basis.

Students began with a simulated term sheet and were asked to draft the purchase agreement. We structured the deal as an asset purchase, which is the bread and butter of most deal lawyers in a city like Portland, Oregon. Students then worked through various aspects of the deal, including the employment law issue described above, and finally ran a closing (during which our dean acted as one of the clients). Because of time constraints, students did not engage in every aspect of the deal, but they got to see how the pieces fit together and form a comprehensive whole.

Another way we toyed with doing the labs was as a smaller transaction, such as a CEO's employment agreement—something with real legal issues and some meat to it, yet fairly small and without too much novel doctrinal law. This format might also allow us to expand the lab format beyond M&A and real estate transactions.

Overall, we've found that by keeping the labs small, by having a law firm sponsor them, and by having them appended to a doctrinal class, we managed to solve most of the issues we encountered, including with respect to resources. Indeed, the sponsoring firms have thus far done their part for free—neither law firm charges us for their time, though we did take several key personnel out to dinner.

## V. SIDE BENEFITS

In addition to addressing important pedagogical concerns, the lab format has also provided a number of side benefits. Working with prominent law firms to sponsor labs, for example, has clearly helped us deepen our relationships with those firms. In the Oregon market these are significant law firms who we hope will employ a number of our graduates. In addition, they are alumni and friends of the law school. Thus, pedagogy aside, we are pleased that the partnerships we have forged with respect to the labs have only brought us closer.

Location is also an issue for us. We happen to be situated in a small college town—Eugene—with the major nearby legal markets being in places like Portland and Seattle. So, what we are facing is a gap in distance. The labs help address this because they encourage (or really force) the lawyers in those firms to come south to Eugene for two or three of the classes. They come south to Eugene and they are reminded that the two-hour drive is not all that onerous. They walk our hallways and get comfortable with our students. Indeed, we try to schedule the meetings on home football weekends and we provide free tickets and tailgates for the adjuncts and their families. We want these prominent alumni and friends to become used to coming to our law school and to think it a natural thing.

Moreover, on the flip side, because we require that the first and last class meetings be held in the offices of the sponsoring firm, the labs also force our students to drive north to Portland and see first-hand that two hours is not all that long a commute. After all, if they are going to be successful deal lawyers, they are potentially going to be jumping on airplanes and traveling long distances on short notice.

Meeting with practicing attorneys in a formal setting also provides lessons in professionalism. We require the students to wear business suits and to spend the day in a real law office with secretaries and wood paneling and all the trappings of a modern legal practice. This is also implicitly a lesson in job interviewing skills. Indeed, the labs connect the law firms and our students in a way that we hope will someday produce job opportunities, either for the students currently enrolled or for their more junior colleagues.

More broadly, I do not think there is a single second- or third-year course in the curriculum for which we could not create a lab. For example, as described above, there is no reason why we cannot approach an employment law professor and ask her to sponsor a lab wherein students negotiate a complex employment agreement. The response we might fear is “well, no thank you—that’s too much effort for me.” However, to sponsor a lab, the doctrinal faculty really don’t have to change their courses at all. Because the labs are offered only as add-on courses, there is no reason for sponsoring faculty members to change the way they are teaching. Plus, the adjuncts and their sponsoring firms will do most of the heavy lifting

Thus, the labs are scalable in the sense that we could spread the concept throughout the curriculum. Indeed, in that respect, the format constitutes more than just a different style of course. It potentially represents a new model for teaching law school.

Faculty have a vested interest in what they teach and how they teach it, and that is certainly fair. They also have different opinions as to curricular needs, and that is fair as well. However, the labs are not meant to replace the existing curriculum, but to complement it. Ideally, transactional skills would be integrated throughout a student’s law school experience, but to the extent this is impossible, we at least wanted to develop a course structure wherein students can put it all together—theory plus doctrine plus skills plus deal sense.

### CONCLUSION

The labs are not perfect. The content of the classes could be refined, and we could improve the integration of the labs and the underlying doctrinal material. We have trouble communicating the structure of the course to new students. We also have trouble integrating it with our registrar’s system of enrolling in classes online. However, these are very practical, nuts and bolts problems that do not affect the viability or vitality of the model.

Enrollment in the labs has risen every year and, according to the written evaluations, students appear to love the format. Indeed one of the sponsoring law firms likes it enough that they actually proposed that they integrate their new hires into the course alongside our students. For some reason, the firm in question seems to think that to the experience of taking a lab will have a measurable impact on the participants’ development as lawyers. They see our students’ experience in the labs and think “wow, these people are learning something that I want them to learn.”

**Therese H. Maynard\***

## **EDUCATING TRANSACTIONAL LAWYERS**

### **INTRODUCTION**

I am currently writing a casebook with my co-author, Dana Warren. Our casebook is titled, *Business Planning: Financing The Startup and Venture Capital Financing*,<sup>3</sup> and is scheduled to be published early next year by Aspen Publishers. As part of this panel devoted to teaching “deal making” in the upper division courses through the use of simulations, my presentation will focus on the Business Planning course that we have implemented at my law school, Loyola Law School-Los Angeles. In addition to providing a description of this new innovative curriculum as reflected in the approach we adopt in our forthcoming casebook, my presentation will also address the broader controversy concerning the delivery of legal education to those students who plan to practice law in a transactional (rather than litigation) setting.

My co-author and I are currently teaching the Business Planning course from a set of materials that we have collaborated on over the past several years. These materials are now sufficiently developed that we are offering multiple sections of the Business Planning course by using experienced lawyers as adjunct faculty who teach Business Planning using our course materials.

Our casebook offers a unique and innovative approach to teaching the traditional law school course on business planning in that it relies on the use of a simulated deal format that is designed to integrate theory with practice. We developed this approach to teaching the traditional business planning course in order to better prepare our students for the real world of practice and the expectations of the senior, more experienced lawyers who will supervise their work.

My presentation will describe the collaborative development (with my co-author) of this “simulated deal” approach and how this approach is responsive to many of the concerns that were raised by the Carnegie Foundation Report on Legal

---

\* Therese H. Maynard is Professor of Law and Leo J. O'Brien Fellow at Loyola Law School- Los Angeles. Prof. Maynard earned her law degree from the University of California Los Angeles before entering private practice specializing in securities litigation with the firm Gibson, Dunn & Crutcher.

<sup>3</sup> THERESE H. MAYNARD & DANA WARREN, *BUSINESS PLANNING: FINANCING THE START-UP AND VENTURE CAPITAL FINANCING* (Aspen Publishers 2010) (publication forthcoming).

Education that was published in early 2007.<sup>4</sup> At the risk of oversimplifying the conclusions reached by the authors of the Carnegie Report, I believe that a fair and succinct summary of the thrust of the Report is as follows: Legal education today does a fairly effective job of educating our students “to think like a lawyer” by virtue of the traditional and well-established case method approach used in the first year law school curriculum. However, the remaining two years of law school are woefully inadequate in that the upper division courses do very little to educate our students as to what it is that lawyers *do* in their daily professional life.

When I first read the Carnegie Report, I was struck by the fact that the recommendations in the Report seemed skewed in favor of what I view to be the long-standing bias in legal education, which is that law school traditionally promotes an educational environment that is grounded on the assumption that our graduates are going to end up practicing as trial lawyers of some variety, whether it is civil rights, product liability, employment, criminal defense (or prosecution), or commercial litigation. Notably, all of these practice areas were touched upon to one extent or another by the authors of the Carnegie Report,<sup>5</sup> but I was struck by the fact that the authors largely ignored the needs of those students who plan to practice as transactional lawyers, whether they are going to represent business clients in the context of a large Wall Street law firm or as part of a smaller Main Street law firm.

Our Business Planning casebook project is a direct outgrowth of what has come to be a passion for me as an academic lawyer, which is to improve the delivery of legal education for those students who are going to practice business law in a transactional setting, whether it is on Wall Street or Main Street. Even more importantly, our casebook addresses what I perceive to be a fundamental weakness in legal education that is essentially ignored in the Carnegie Report. My view is that the Carnegie Report does little if anything to address the formation of professional identity for our students who are going to end up practicing law in a transactional setting. Let me explain the basis for my criticism of the Report.

The Carnegie Report identifies “three apprenticeships” for legal education.<sup>6</sup> At the outset, let me say that the use of the term “apprenticeships” is terminology that I am not fond of and which others have criticized as being reminiscent of a

---

<sup>4</sup> WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (“Carnegie Report” or “Report”).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 27-29.

trade school mentality,<sup>7</sup> and, as such, undermines my own view of the law as a noble profession. Indeed, I frequently remind my students (in all of the corporate law classes I teach), that as corporate lawyers we are part of a noble profession. Having said that, I do believe that the “three apprenticeships” identified in the Carnegie Report have the virtue of capturing what I believe to be the essential goals of legal education. According to the Report, the first apprenticeship is the intellectual or cognitive, focusing on the knowledge and the way we think as lawyers.<sup>8</sup> The second apprenticeship described in the Report is the forms of expert practice that are shared by competent practitioners.<sup>9</sup> Finally, the third apprenticeship, referred to as identity and purpose, introduces the law student to the purposes and attitudes that are guided by the values of lawyers as professionals.<sup>10</sup>

As it turns out, our Business Planning casebook addresses each of these educational goals (or “apprenticeships”). However, since we were developing our course materials long before the Carnegie Report was published, our casebook did not have the benefit of the terminology used in the Report. Nonetheless, we identified educational objectives that are consistent with the “three apprenticeships” described in the Carnegie Report. Our Business Planning casebook, however, addresses these three objectives from the perspective of educating our students to be transactional lawyers, a perspective that is largely ignored in the Carnegie Report. In order to more fully appreciate how the simulated deal approach that we adopt in our Business Planning casebook addresses these “three apprenticeships,” let me provide some general background as to the origins and development of this new curricular initiative for educating transactional lawyers.

While I believe that the learning experience in law school—in terms of mastering substantive law—is as relevant to those law students who end up “doing deals” as it is to those students who will practice law as litigators, I am of the view that the typical law school classroom experience emphasizes internalizing this knowledge from the professional perspective of a litigator rather than the perspective of a transaction planner. My ongoing frustration with this traditional and well-established law school emphasis on the “litigation” perspective eventually led me to

---

<sup>7</sup> See, e.g., David Chavkin, *Experience is the Only Teacher: Meeting the Challenges of the Carnegie Foundation Report*, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1008960](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1008960) (American University & Washington College of Law, Research Paper No. 2008-16).

<sup>8</sup> See Carnegie Report, *supra* note 4, at 28.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

write my own Mergers & Acquisitions casebook,<sup>11</sup> which adopted the transaction planning approach as the focus for teaching this area of substantive law. As part of my Mergers & Acquisitions casebook, the students studied a real world transaction in order to understand the real world significance of the legal doctrines and concepts that are part of M&A law.

Given this heavy litigation emphasis in legal education in general, I have also come to the conclusion that the *professional identity* of the law student as a first-year associate in a corporate law practice is much less well developed than the identity of a first-year associate in a litigation practice.<sup>12</sup> My perspective is informed based on experiences from “both sides of the table,” so to speak. That is, my perspective is informed based in part on anecdotal evidence provided by my former students who commiserate with me about their work experiences as first-year corporate law associates. In addition, my perspective is informed by those lawyers on the other side of the table who hire and (hopefully) mentor these young lawyers. In designing the educational approach that became the foundation of our Business Planning casebook, we received and incorporated input from “both sides of the table.”

First, from the perspective of my former students (most of whom were young corporate law associates, primarily first-year lawyers), our Business Planning casebook is designed to address what many if not all of my former students described as a big “gap” in their legal education. These former students felt that this “gap” left them at a loss as to how to tackle work assignments given to them by senior, more experienced lawyers when they started working as junior corporate lawyers. I refer to this “gap” as the “deer in the headlights look.” In other words, these first-year lawyers are generally at a total loss as to what is expected of them as young lawyers and thus are at a loss as to how to tackle work assignments given to them by more experienced lawyers. Moreover, these young lawyers often have no idea as to what to expect in terms of the day-to-day work of a practicing corporate lawyer in a transactional setting.<sup>13</sup> Our Business Planning casebook was deliberately

---

<sup>11</sup> THERESE H. MAYNARD, *MERGERS & ACQUISITIONS: CASES, MATERIALS & PROBLEMS* (2d ed. 2009).

<sup>12</sup> I have been teaching for over 20 years and thus my perspective is informed by countless conversations with my former students as they make the transition from law school to the demands of modern law practice.

<sup>13</sup> Many of these young lawyers report that, after spending a couple of years as associates in a corporate law practice, they seek to move to litigation because they have come to realize that their skills and temperament are better suited to law practice as a trial lawyer rather than a transactional lawyer. In designing our new business law curriculum for the upper division law student, we deliberately set out to create a course that would offer a realistic perspective on the practice of corporate law and the day-to-day work responsibilities of the corporate lawyer so that the law student

designed to address this expectations “gap” in order to better prepare today’s law students for the reality of practicing corporate law.

On the other side of the table, we talked to a number of hiring partners as part of developing our educational approach to teaching business planning. Not surprisingly, these experienced lawyers lamented (on a fairly regular basis) that today’s first-year corporate law associates were largely clueless as to what was expected of them when they were given projects such as reviewing documents or drafting agreements. This observation is supported by the conclusion of the Carnegie Report that legal education does little to prepare law students for the work that lawyers actually *do*.<sup>14</sup> We consulted with experienced lawyers who serve as hiring partners at both large and small law firms because we wanted to make sure that our new casebook would offer solid preparation for practicing in a transactional law setting on *both* Wall Street and Main Street. All of these senior lawyers were uniformly critical of what they perceived to be the heavy emphasis in the legal academy on the conceptual approach to the material covered in most business planning courses in law school. They viewed this traditional teaching approach as one that leaves law students ill prepared for the expectations and demands of practice as young transactional lawyers.<sup>15</sup> However, consistent with what ultimately came to be one of the conclusions of the Carnegie Report,<sup>16</sup> the goal of our Business Planning casebook is *not* to eliminate the need for law firms to continue the mentoring function that they have long assumed in the professional development of young lawyers.

Indeed, I have told all of the experienced lawyers that we talked to in developing our Business Planning casebook that our new curricular approach is *not* going to eliminate the need for the experienced lawyer to continue to provide that

---

would be able to make a more informed decision as to whether to practice as a trial lawyer or a transactional lawyer.

<sup>14</sup> See Carnegie Report, *supra* note 4, at 1-14.

<sup>15</sup> Consistent with the experience of my co-author, Dana Warren, who served for several years as the hiring partner at a major Los Angeles law firm, many of the hiring partners that we spoke with regularly commented that today’s law student “appreciates the big picture”—that is, the law student understands the terms of the deal in the abstract and has a thorough mastery of the relevant legal doctrines—but is virtually helpless in executing the tasks that the senior lawyer expects of a junior lawyer who is helping the senior lawyer staff a particular financing transaction. Our educational approach to teaching business planning has been deliberately designed to address the “expectations gap” from this perspective as well in order that the first year corporate law associate is perceived as prepared to “hit the ground running” by the senior lawyers who work with our students.

<sup>16</sup> See Carnegie Report, *supra* note 4, at 126-44.

mentoring function as part of the continued professional development of the young corporate lawyer. At the same time, I firmly believe that we in the legal academy have a responsibility to “close the gap” so that the first-year corporate law associate is much better prepared to “hit the ground running” in a transactional practice, much in the way that the graduates of my law school who ended up as trial lawyers are well-known for being able to hit the ground running.<sup>17</sup> As a direct outgrowth of writing my M&A casebook<sup>18</sup> came the idea of using a simulated deal approach to teach an advanced “deal planning” course, where the instructor could assume certain foundational knowledge about the law had already been mastered by the law students. However, as is the case for many in the legal academy who wish to include this type of real world perspective as part of their law teaching, the dilemma for me was that I had been in law teaching for over 20 years and as such was not currently “doing deals.”<sup>19</sup> The next section describes how I solved this inherent (and intractable) dilemma, a dilemma that I believe faces any academic lawyer teaching the practice of “doing deals.”

### I. DEVELOPING THE BUSINESS LAW PRACTICUM

About five years ago, Dean Burcham came to me and asked me to develop an educational program that would produce young transactional lawyers who would have the same reputation as our graduates who have completed our trial advocacy program. Loyola’s trial advocacy program has achieved a national reputation for educating law students to be able to “hit the ground running” once they start as trial lawyers. Dean Burcham asked me to create a program that would be the equivalent

---

<sup>17</sup> At this point, I have to acknowledge the leadership of my former Dean, David Burcham, and my current Dean, Victor Gold, without whose support and institutional commitment this project never would have gotten off the ground. Like many law schools, Loyola is a law school that has traditionally committed substantial resources to the development of our students as trial lawyers and consequently has developed a trial advocacy program that is well-known for preparing law students to be able to hit the ground running as trial lawyers. Both Dean Burcham and Dean Gold are committed to developing an educational program that prepares our graduates to be able to hit the ground running as transactional lawyers. I am exceedingly grateful for the institutional support that they have offered, especially given the unique and innovative approach that we have adopted. In light of the fact there was no casebook precedent that adopts the educational approach that we have developed as part of our BUSINESS PLANNING casebook, the support of both Dean Burcham and Dean Gold has been vitally important to the success of this project.

<sup>18</sup> See *supra* note 11 and accompanying text.

<sup>19</sup> Indeed, as reflected in the other presentations on this panel, I am not alone in realizing that the pace of deal-making is constantly changing as market practices and terms continue to evolve. Moreover, there is a diversity of educational approaches that can be adopted to address this inherent problem in educating law students to be transactional lawyers, as is also reflected in the presentations of my colleagues on this panel.

for transactional lawyers. In response, my colleague Dana Warren and I have developed a new educational program known as the “Business Law Practicum,”<sup>20</sup> and the capstone course for this new curricular initiative is the Business Planning course using the materials that Dana Warren and I developed together.<sup>21</sup> Before describing this new course in more detail, I thought it would also be helpful to describe the institutional constraints that guided us in developing this new curricular initiative.

In designing this new curriculum, we also had to be sure that our approach was cost-effective and capable of serving a large number of students. My law school, Loyola Law School-Los Angeles, is a very large law school with approximately 1200 students in both the day and evening divisions, and it is a tuition-driven law school. As such, this means that we had to develop a new curriculum that could be scaled to accommodate in excess of one hundred students a year, much the same way that Loyola’s current trial advocacy program at Loyola accommodates about one hundred fifty students a year by offering multiple sections of the course. Moreover, Dean Burcham made it abundantly clear that this new curriculum had to be designed in such a way so as not to place any upward pressure on tuition. Both Dean Burcham and Dean Gold are committed, as am I, to controlling the cost of legal education, and therefore, the administration was not prepared to raise tuition in order to fund this kind of curricular reform.

As a result of these budgetary constraints as well as the size of the student population to be served, we decided the clinical model was impractical. Even though expansion of clinical opportunities ended up being one of the central recommendations in the Carnegie Report,<sup>22</sup> we decided that this was not a financially viable model for our law school. We reached this conclusion based on the limited number of students that could be served through a live clinic model as well as the substantial commitment of financial resources required to launch and maintain a live clinic.<sup>23</sup>

---

<sup>20</sup> For a more fulsome description of this new program, please visit the Business Law Practicum website at [www.lls.edu/businesslaw](http://www.lls.edu/businesslaw).

<sup>21</sup> See *supra* note 3 and accompanying text; see also Loyola Law School Business Law Practicum Faculty Information, [www.lls.edu/businesslaw/faculty](http://www.lls.edu/businesslaw/faculty) (discussing the important development role played by Molly M. Coleman).

<sup>22</sup> See Carnegie Report *supra* note 4, at page 160.

<sup>23</sup> Indeed, based on several recent conversations with my colleagues at other law schools around the country, our reasoning presages many of the concerns expressed by others in considering this recommendation of the Carnegie Report.

The solution that we ultimately settled on borrowed heavily from the success of Loyola's trial advocacy program and led to the development of a new capstone course, Business Planning. This approach had the advantage that it could be offered in multiple sections and could be scaled to accommodate increasing student demand as the new program gained traction with students by adding more sections of the course. The goal was to offer a curriculum that would provide every Loyola student who wished take the capstone course with the opportunity to enroll. Student demand for the Business Planning course has grown dramatically in the short time since this capstone course has been offered on a regular basis, as reflected in the following enrollment numbers. In the 2006-2007 academic year, we offered two sections enrolling a total of 38 students. In the 2008-2009 academic year, we offered five sections of this capstone course, enrolling a total of 72 students.<sup>24</sup> The success of the innovative educational approach used in our Business Planning course is clearly reflected in these enrollment statistics and the explosive growth that we have experienced in such a short time period clearly reflects the strong student demand that exists for this type of educational experience.<sup>25</sup> Moreover, I do not believe that Loyola's enrollment experience is unique; instead, I believe that these enrollment numbers reflect the intense level of interest among law students throughout the country in taking a course such as our business planning course—a course that offers students a real world perspective on the practice of law as a transactional attorney.

However, the problem in my law school, as I suspect is the case at many law schools around the country, lies in staffing sufficient sections of the course. Historically, this problem has been compounded by the simple fact that the Instructor tends to be a dedicated corporate lawyer with a busy practice who is more than willing to commit the time to teach the course, but generally does not have the time nor the resources to craft the type of teaching materials that are necessary to teach law students about the life cycle of a deal, even though the instructor himself has intimate knowledge of the issues and complications that are typically associated with successfully completing the organization and funding of a start-up business. So, our goal was to design a casebook that would provide the Instructor with an "off-the-rack" set of teaching materials that we hope will make it easier for law schools throughout the country (including Loyola Law School) to recruit experienced lawyers to teach Business Planning. In addition, as part of our "off-the-rack" set of teaching materials, our goal was also to make it easier for these adjunct Instructors to evaluate

---

<sup>24</sup> In addition, there were several students who were waitlisted but could not be accommodated because we could not staff a sufficient number of sections in the 2008-2009 academic year.

<sup>25</sup> The success of our innovative approach to teaching business planning is also reflected in the very positive testimonials that we have collected from our graduates who have taken this course, as well as from experienced lawyers who have worked with our graduates in their first year of practice.

students in a manner that is similar to the way young lawyers are going to be evaluated when they graduate and start practicing as transactional lawyers.<sup>26</sup>

Thus, the initial objective of Loyola's Business Law Practicum has been to complete our Business Planning course materials and demonstrate the efficacy of the unique and innovative pedagogical approach utilized in this new course.<sup>27</sup> That process is nearing completion. Our next objective is to use the same pedagogical approach and course structure we used for Business Planning as the basis for developing other course materials for other subject matter areas in which transactional lawyers practice. These new subject matters may be as varied as real estate leasing and financing or intellectual property licensing and transfer.<sup>28</sup>

## II. GOALS OF THE BUSINESS PLANNING COURSE

As we went about designing the framework for this new educational initiative, we did not have the benefit of the Carnegie Report, although we did come to many of the same conclusions about the current state of legal education that the Carnegie Report did. Consistent with the three apprenticeships described in this Report, our new capstone course integrates (i) the teaching of new substantive knowledge about financing a start-up business venture with (ii) the development of the skills required for the law student to be prepared to "hit the ground running" as a first-year corporate lawyer in a transactional practice.

The Carnegie Report places a heavy emphasis on the concept of "experiential learning." However, we did not have the benefit of this terminology as our efforts at implementing curricular reform at Loyola pre-date the publication of the Carnegie Report and the rich body of educational research collected as part of this Report. Consequently, in designing our new Business Law Practicum, we described our educational approach as one involving "integrated learning," a concept which I

---

<sup>26</sup> The course materials are designed to reduce the time that a new Instructor spends on the mechanics of the instructional process so that more focus can be applied to giving feedback on the students' graded assignments. See *infra* Part II of this article, describing this aspect of our Business Planning casebook in more detail.

<sup>27</sup> It bears emphasizing that this casebook project and the educational approach that it adopts is the direct outgrowth of my collaboration with my co-author and professional colleague, Dana Warren. Dana's vast experience as a Los Angeles-based deal lawyer representing entrepreneurs seeking start-up funding as well as venture capital financing has proved to be invaluable in developing the foundational approach of our Business Planning casebook.

<sup>28</sup> See *infra* note 31 and accompanying text.

believe is consistent with the “experiential learning” approach that is at the heart of the recommendations set forth in the Carnegie Report.

Our approach to “experiential learning” is to teach new substantive material about capital raising transactions using a simulated deal format. In this way, law students will be able to study the life cycle of a deal on multiple levels: First, students would be exposed to the “big picture,” which would allow them to appreciate *both* the business and the legal issues that must be addressed and reconciled in order to successfully complete the business transaction at hand. Second, it allows the students to appreciate the role of the lawyer as an advisor in a transactional setting, as opposed to the litigation context that dominates law school. Third, it allows the students to study the various stages of a deal, from inception to negotiation to closing on a particular transaction. These stages characterize virtually any business transaction that lawyers are going to get involved in. Therefore, even if our students never do a venture capital financing “deal,” they are still going to be exposed to the ways in which a “deal” gets done, as well as the ways in which lawyers help move the “deal” from inception to completion.

Finally, the use of a simulated deal format has provided us with the opportunity to develop homework assignments and graded exercises that approximate the tasks generally required of lawyers—particularly junior lawyers—in order to move the deal from inception to successful completion. The next section explains how we structured our Business Planning course to implement these course objectives of integrating the teaching of new substantive learning about capital raising transactions with the development of the skills necessary for law students to be prepared to hit the ground running as first-year corporate law associates.

### III. STRUCTURE OF THE BUSINESS PLANNING COURSE

To promote the development of the skill-set that law students need to be successful as first-year corporate lawyers, we ask our students to complete weekly homework assignments, which have been built into the structure of our Business Planning casebook. These homework assignments are specifically designed to reinforce the student’s understanding of the reading material that was assigned for that particular unit. Even more importantly, these homework assignments emphasize and hone the skills that are required of young lawyers who are asked to either review and/or prepare documents to implement the terms of a particular business transaction.

In addition to the weekly homework assignments, the student’s grade is based on three written projects that are representative of the kind of assignments that first-year corporate associates do under the supervision of a partner. So, the

materials included in our BUSINESS PLANNING casebook reflect that their grade is going to be based on the following components: weekly attendance at class, punctual, regular, ready-to-be-prepared attendance, timely completion of the weekly homework assignments, and then the three graded memo projects. We assign twenty percent of their grade to class participation and homework. We have found that this allocation adequately incentivizes the students to do the weekly reading, come to class prepared to talk about the reading, and to complete the homework assignments.

In addition, that allocation should minimize the weekly workload of the Instructor. While these homework assignments are turned in weekly by the students, these assignments are not separately graded by the Instructor. Instead, the students' performance on the homework is evaluated based on the effort made, and that evaluation is then folded into the student's class participation grade, which means as a practical matter that these weekly assignments are not actually graded and returned to the students. Instead, the students keep a copy of the homework that they turned in at the beginning of class and then during the course of the class session the students and the Instructor review the homework together in class.

The three graded memo assignments are weighted in such a way that those students who do not excel on the first assignment are not precluded from scoring well on subsequent projects and thus (hopefully) are not discouraged from making their best effort on subsequent projects. In addition, the assignments are designed so that the students can use the feedback they get from earlier assignments and the knowledge and skills they have developed over the course of the semester to improve their performance on subsequent graded memo assignments, which we believe reflects the real world professional development of young corporate law associates.

Finally, the three graded memo assignments are deliberately designed to be progressively more difficult. That is, they are more difficult both in terms of the substantive knowledge that is required to analyze the issues that are presented, as well as in terms of the skills that they need in order to complete memo assignments two and three. In addition, we have prepared a detailed grading rubric for each of the three graded assignments. Our grading rubric reflects that the law student is going to be evaluated according to the criteria and expectations of a busy senior corporate lawyer in a transactional practice who is looking to the work product of junior lawyers to provide them with analysis and recommendations that they need in order to give appropriate legal advice to their clients. For many law students, long accustomed to writing law school exams that reflect their mastery of a particular subject matter, our innovative approach provides many of them with their first opportunity to be evaluated as they will be when they enter the practice law of

corporate law in a transactional setting. In this way, the law student is introduced to the writing style that is required to be successful as a young transactional lawyer, which is typically very different than the analytical approach and writing style required to be successful on the typical law school exam.

As may be expected, many law students who have been successful in law school are often reluctant to take our Business Planning course. Due to the non-traditional nature of the course, many students often perceive that enrollment in this course might jeopardize their class ranking. We generally respond to these concerns with the following: Where do you, the law student, want to make these mistakes—mistakes that we believe are virtually inevitable and which are of the type that most young lawyers are bound to make (and, not coincidentally, are of the type we find in most of the memo assignments we grade)? To push this point a little further, we ask the reluctant student to consider: Do you want to make these mistakes in law school, where all that is on the line is your grade? Or, would you rather make these mistakes out there in the real world in front of your employer, where your client, your reputation, and your professional career ultimately are on the line? As you might imagine, some listen, some do not.

In this same vein, use of a simulated deal format allows the Instructor to run the classroom along the lines of a corporate law department in a modern law firm, with the Instructor serving in the capacity of the senior, supervising lawyer and the students assuming the role of junior associates who are working with the Instructor-lawyer in the representation of the law firm's business client. By organizing the lectures in this way (and grading the memo assignments from this perspective), law students are sensitized to the expectations that senior lawyers have of junior lawyers and the nature of the working relationship between senior lawyers and junior associates—and their business clients—in the corporate law department of today's law firms, whether the law firm is on Wall Street or Main Street.<sup>29</sup>

Finally, we recognize that in order to implement this non-traditional approach to teaching the Business Planning subject matter (i.e., using an approach that integrates a significant skills component into the class presentation of the reading material), a detailed set of teaching notes and supporting materials is vitally important for the Instructor. So, we have developed a detailed set of teaching notes to accompany each unit in our Business Planning casebook. We recognize that more often than not the Instructor is likely to be a practicing lawyer (and not a full-time faculty member) and as such faces severe time constraints in terms of class preparation because of the demands of modern law practice. In an effort to provide

---

<sup>29</sup> To drive this point home even more concretely, we ask students to keep time sheets, recording their entries with the level of detail that will generally be expected of them in modern law practice.

a set of teaching materials that is as helpful as possible to the busy practitioner, we have prepared a detailed set of lecture notes that are scripted in such a way as to help the Instructor move the students through the material in a timely manner each week.

Significantly, in developing the teaching notes we have deliberately created opportunities for the Instructor to raise ethical issues for the student's consideration. The use of the simulated deal format offers a real world context for analyzing these issues, as opposed to the more abstract treatment that these issues typically receive, if they get considered at all, in the traditional law school curriculum. The simulated deal format allows the Instructor to guide the students through the often subtle ways in which these ethical issues surface over the course of completing a business transaction. Thus, we have made every effort in our Business Planning casebook to integrate ethical considerations in to all of the units/topics that are included in our casebook, rather than confine it to a discrete lecture, which we find to be a not-very-satisfying presentation of the ethical issues that face deal-making lawyers, particularly in our post-Enron world. In this way we believe we are addressing in a most meaningful way the third apprenticeship identified by the Carnegie Report:<sup>30</sup> the formation of professional identity for those students who are going to practice law in a transactional setting.

#### IV. "INTEGRATED LEARNING" AND THE CARNEGIE REPORT

Let me focus briefly on how this course addresses the "three apprenticeships" identified by the Carnegie Report. We address these educational objectives by utilizing what we refer to as the "integrated learning" approach to teaching the subject matter covered in the traditional form of business planning course. As explained in detail above, our approach to "integrated learning" is to adopt a simulated deal format as the focus of our Business Planning casebook. Thus, our casebook involves studying a capital-raising transaction for a new start-up business—including the use of venture capital financing, as well as the possibility of financing this new business with funding provided by "friends and family." We believe that this is the kind of recurring transaction that corporate lawyers will get involved in, regardless of where they practice, on Main Street or Wall Street.<sup>31</sup> By

---

<sup>30</sup> See generally Carnegie Report, *supra* note 4, at Chapter 4.

<sup>31</sup> I realize that the focus of our course—and thus of our casebook—is admittedly on transactional lawyers who plan to practice as general corporate lawyers, as opposed to those transactional lawyers who specialize in real estate or entertainment or banking law. However, we believe that the template that we have developed as part of the integrated learning approach we adopt in our Business Planning casebook can easily be expanded into the teaching of courses in other business law related practice areas, such as commercial leasing, real estate financing, motion picture production financing, to name but a few. For example, we are now working with an experienced real estate lawyer who is interested

adopting this simulated deal format, we believe that we are meeting the challenge set out in the Carnegie Report by preparing our law students to *think*, to *perform*, and to *conduct* themselves as professionals.<sup>32</sup> However, unlike the Carnegie Report, our focus is on preparing them for the transactional practice of law. Let me explain how our vision for teaching Business Planning serves to meet this challenge.

To enroll in our Business Planning course, students must complete certain prerequisites listed on Loyola's Corporate Law Track. As the capstone course of our Business Law Practicum, we require our students to have taken Business Associations and Securities Regulation, although we have taught this class successfully without requiring Securities Regulation as a prerequisite. As part of our integrated learning approach, we ask the students to synthesize substantive doctrinal material that they covered in these other classes along with the teaching of *new substantive doctrinal law* relating to a corporate equity financing transaction, using the exemplar of the typical venture capital financing for a typical technology start-up business.<sup>33</sup> So, with respect to the first apprenticeship identified by the Carnegie Report—promoting the *cognitive* or intellectual development of the law student—we believe that our course introduces new substantive professional knowledge by covering the topic of venture capital financing, which at many law schools is the topic of a separate freestanding upper-division course and which is an area of the law that is certainly not covered in my law school as part of the core classes listed on the Corporate Law Track.

The second and third apprenticeships identified by the Carnegie Foundation<sup>34</sup> are the *practical* and the *formative*. Again, we address these educational goals through the use of a simulated deal format where we ask the students to complete assignments that are representative of the kind of work they will do when they are first-year lawyers working under the supervision of a more experienced senior lawyer. So, we developed the materials in our Business Planning casebook on the assumption that the course would be taught by an experienced lawyer who is

---

in using our educational approach to develop course materials that would walk law students through the life cycle of a real estate financing transaction using a simulated deal approach.

<sup>32</sup> See Carnegie Report, *supra* note 4, at 27.

<sup>33</sup> We encourage students to enroll in our Business Planning course in their third year of law school in order to maximize the opportunity for our students to synthesize substantive legal doctrines that have been covered in other law school courses with the new material to be learned in this course. Thus, our Business Planning casebook carries forward the tradition of asking the law student to integrate their understanding of distinct areas of the law—such as employment law, executive compensation, intellectual property, remedies—in a transactional planning context, going beyond what we are fond of referring to as the “silo method” of teaching these traditional law school courses.

<sup>34</sup> See Carnegie Report, *supra* note 4, at 189-91.

familiar with the lifecycle of a capital raising transaction and thus would be in a position to offer feedback appropriate for the law student to develop the skills necessary to be successful as a transactional lawyer. Along these same lines, we assume that this experienced lawyer would treat the classroom much like a law firm setting, with the Instructor serving in the role of the senior lawyer (law firm partner model) and the students assuming the role of first-year corporate associates working under the supervision of the instructor/partner. In this way, students would have the opportunity to absorb the professional values of the business lawyer practicing in a transactional setting.

### CONCLUSION

So, by way of conclusion, I hope I have been able to communicate to you a sense that, long before the Carnegie Report was published, my law school resolved to do something about what we perceived to be the failure of law schools to teach students to be transactional lawyers. Our educational solution, though not perfect, did anticipate many of the educational concerns laid out in the Carnegie Report and tried to implement a cost-effective approach to respond to the needs of those law students who aspire to be deal lawyers while working within the financial and other constraints that legal educators face today. Our goal in developing the Business Law Practicum, including Business Planning as the capstone course, is to educate our students so that they are prepared to “hit the ground running” in a transactional practice once they have crossed the all-important hurdle of passing the bar.<sup>35</sup>

---

<sup>35</sup> While I have not dwelled on this point as part of this presentation, it bears emphasizing that in designing the pedagogical philosophy of the Business Law Practicum, we were careful to consider the intense demands facing today’s law students who must pass the bar exam in their respective state before they will be allowed to practice as either trial lawyers or transactional lawyers. While we in the legal academy may dispute the wisdom of requiring law students who aspire to be transactional lawyers to take all of the subjects tested on the bar exam, I believe that the practical reality is that the law student is well-advised to enroll in all of the bar classes in order to best prepare themselves to pass the bar exam on the first try. In light of this strong bias, we designed the Business Law Practicum at my law school so that our students may complete the course work required as part of the Practicum without jeopardizing their ability to enroll in all of the bar subjects necessary to prepare them for the rigors of the California bar exam.

**CHERIE O. TAYLOR\***

### **INTRODUCTION**

I am a doctrinal teacher. I teach International Business Transactions Skills, International Trade Law, Civil Procedure, International Civil Litigation and a survey course on International Business Transactions. From the beginning of my career, which is, by the way, in its seventeenth year this year, I was frustrated by the fact that if you are going to teach all the things you want to teach in an international business transactions course, you cannot also teach negotiating and drafting at an appropriate level. So, for years I just complained about it and tried to figure out a way to add a fourth hour to my International Business Transactions course—something that was not going to happen with my Curriculum Committee. Finally, a colleague of mine came up with a brilliant idea for what is our version of the capstone course, which led to my being co-opted into our transactional skills program.

My colleague and co-teacher is Irene Kosturakis, who is an adjunct, and has eighteen years in IP licensing experience, specializing in exactly what is the core of our transactional project.

### **I. DEVELOPING THE CAPSTONE COURSE**

We started with the capstone course concept when Professor David East of South Texas developed the idea. He created what he thought was the perfect course based on a leveraged buyout problem and started offering it in 2002. Professor East started by himself and then after the first year realized he had to have an adjunct practitioner teach with him. He later began building a group of adjunct practitioners to go along with future courses. After that, we added a real estate transaction problem course, which also uses the dual teaching model. Finally, I was the second faculty member to join, and began teaching an international business transactions capstone course with Professor Kosturakis.

As part of developing that course, Professor East's mission was to expand the courses South Texas would offer focused on transactional problems. Our ultimate goal was to take this model out from three to five or six. South Texas is a bigger law school, like Loyola, Los Angeles. It also has a strong tradition of advocacy training and clinical programs based on a litigation model. Our notion was that South Texas needed to counter its litigator-only image by developing a

---

\* Cherie O. Taylor is a Professor at the South Texas College of Law. She earned her J.D. from the University of Georgia and her LL.M. from Georgetown University.

transactional skills curriculum and reputation that would model and mirror what we have in the litigation area. The development of the capstone course led to the idea of establishing a Transactional Practice Center at the school. From that came the notion that South Texas should develop a certificate program in transactional skills. In 2008, STCL graduated our second year of certificate students. To qualify for the certificate, a student must take a certain number of elective courses as well as required courses in the business law area and one contract drafting course. A certificate student must also complete his or her substantial writing requirement for graduation with a business-related topic approved by the Director of the certificate program. Finally, a certificate student must successfully complete one of the capstone courses.

Right now, South Texas is graduating between twelve and fifteen in the certificate program. We are in the beginning stages of our program. Nevertheless, we field at least two capstone courses in each semester and in the spring we offer three to four. That describes the model of the transactional skills program at South Texas. To qualify for the certificate program a student must maintain a grade average in overall work and then a higher average within the transactional skills program courses. I do not know if our program provides a model for every law school, however, it seems to be working for our students. Our certificate students as well as other participating students are quite serious about the transactional program, the capstone courses, and the idea of being committed at the level required by the program.

One of the things that STCL's Transactional Practice Center is thinking about doing is getting law firms involved. Our notion is to have law firms tell us what they want us to teach their new hires as a way of developing an even better transactional skills capstone course.

## II. GOALS OF THE TRANSACTIONAL PROGRAM

What are the goals of the program? In our capstone course, the goal is to teach international business transactions by focusing on three core transactions: foreign direct investment, intellectual property licensing, and distribution arrangements, which are the three topics that you need to teach your students if you are doing a survey course in international business transactions. These transactions cover just about every aspect of how a lawyer would work in a trans-national practice, even if it is done in multiple countries. Our initial thought was that the focus had to be on those transactions in any skills course. When it started, Professor East said, "Well, you get to design what you are going to put into the course, but you have to teach financing at the end." This scared me because I do not know anything

about financing. So, the first year, Professor East taught the financing part of the course. Now, Professors Kosturakis and I have learned, and we teach the financing of our transaction at the end of our course. When I told Professor East that the transaction at the center of this capstone course needed to include intellectual property licensing, he said, “Do I have the woman for you.” That is how Professor Kosturakis and I came to form our partnership.

### III. ASSIGNMENTS

Our course requires the students to draft six major documents. I know, it sounds amazing that they could do that much work, and it is. You just cannot imagine the level with which we review the students’ documents. The financial documents at the end are much shorter and we have incredibly good models—developed by the Texas Bar and by the practice bar—that we are allowed to use. We have structured the course so that we require that the more difficult international documents be drafted by the students first. We make them do the joint venture agreement and the licensing agreement first. In this way, we have longer to work with students on those drafts. Next, they draft the distribution agreement and the simpler financing agreements towards the end of the course. Professor Kosturakis and I also require them to do a legal memorandum on the relevant investment and intellectual property laws of the two countries involved in the problem. That requirement ensures that the students will fully read the intellectual property and investment laws of Mexico and Brazil and NAFTA Chapters 11 and 17. This also forces them to analyze, understand, and write about the laws. This requirement also teaches them to write a legal memo to a client, because frequently students go through all of their courses at law school without having that experience. A skills course offers a good place to fail and learn best practices.

What I have set out represents the contents of the International Business Transactions capstone course. We, of course, wanted to have students work on these transactional documents through a simulated problem. We, therefore, had to create the back story for our simulated transaction. A lot of energy was put in figuring out how to create our deal, what our product would be, who our clients would be, and what kinds of issues would arise given the transactions we would teach. When Professor East does this in the leveraged buyout course and in the real estate financing course, he keeps to one central deal, so that the students get the art of the whole deal. With an international business transactions simulation course it does not work the same way. Well, I did not think it had to work the same way. We decided to keep one core client and who would do deals with different parties. This actually allows each major document to be in some way self-contained, although they reference each other at crucial key points. By varying some of the parties, it is more realistic and you can give the students a greater understanding for the integration

through which a lawyer would work by doing these various projects for one central client.

Our problem focuses on a central U.S. client who wants to invest through a joint venture in Mexico or Brazil. Yes, we chose Mexico because it is next door to Texas and also because of NAFTA. We chose Brazil because it is in South America. We wanted to build grey market issues into the course and so it was perfect to go with these two countries. However, we think this idea can be taken on the road. We therefore are going to move it to China next time we teach it. China makes sense because it is becoming the key place to which Mexico is losing investment these days. This will allow us to rejuvenate the course and add in new issues.

**IRENE KOSTURAKIS\***

The hypothetical transaction we selected for our class involves a U.S. high-tech company who wants to have its high-tech product manufactured in a country with a cheap labor market. Having the product manufactured in another country will require granting a license of the intellectual property rights to the manufacturer, which a joint venture company, the U.S. company creates with a local partner. The intellectual property (“IP”) assets are the U.S. company’s contribution to the capitalization of the joint venture entity, whereas the other joint venture partner, either Brazilian or Mexican, contributes the construction of the manufacturing plant and monetary capital contribution. This gives us the opportunity to lecture about substantive IP law, patents, trademarks, copyrights, and trade secrets because the product that is going to be manufactured by the joint venture entity is protected by all of these intellectual property rights. We also have trademark licensing issues in our distribution arrangement, which gives us an opportunity to talk about licensing trademarks for marketing and advertising purposes in a transaction involving distribution of products.

**CHERIE TAYLOR**

The beauty of our deal is that the U.S. company buys back all the production because it wants to distribute using a different party. It does not want the Mexican/Brazilian joint venture partner involved in the distribution. The U.S. client is worried about quality control standards and, because it is also concerned about grey market issues, it buys back the entire production of the joint venture entity, but is not sophisticated enough to distribute internationally, which is a realistic scenario.

---

\* Irene Kosturakis is an Adjunct Professor at the South Texas College of Law as well as Chief Intellectual Property Counsel for BMC Software, Inc., in Houston, Texas.

So, the U.S. company must find a master distributor. Adding this additional party, the distributor, to our hypothetical to distribute in Europe, Asia, and the Middle East, which are the relevant markets, allows us to bring into the course other issues like anti-boycott and export control regulations. When dealing with Mexico or Brazil, or any developing country with corruption problems, a simulation course must mirror the problems and issues that can exist in a deal. When I teach the IBT survey course, the students believe me when I tell them such issues are crucial. However, they really understand it when a whole class lecture in the IBT capstone course is devoted to the Foreign Corrupt Practices Act, and I explain that prosecution of these corruption cases has become the top priority for the Department of Justice Fraud Division (“DOJ”) in recent years. There have been seventeen major prosecution cases this year and almost every one has gone to conviction, a fine, and for some, a prison sentence. Now, the DOJ is even prosecuting cases involving distributors. A class like this on the FCPA and how to draft a useful and workable contract clause on the issue makes the students take foreign corrupt practices seriously.

In our hypothetical problem, the U.S. joint venture partner contributes the IP rights and some specialized equipment to the joint venture. The other partner builds the plant and has the capitalization to set everything up, but then there is no money. The parties have to go to a Texas bank to borrow money and that is how we fit financing issues into the hypothetical. We deliberately decided to keep the financing simple because we are not financing attorneys. So, we chose a promissory note, a guarantee, and a third party opinion letter, as the final set of documents that the students must draft. In the problem, the foreign joint venture entity borrows from a Texas-Chartered bank to keep it as simple as possible, with the realization that in the real world should there be a default, the bank would never go against the Mexican joint venture, but would go against the U.S. high-tech company as guarantor of the promissory note to the joint venture entity. That is how we pull the financial issues into the course. I feel satisfied that students like that connection back to Texas. The students can imagine a Texas lawyer doing this project and see how they might one day help a client do a similar project.

#### IV. TEAM TEACHING

Team teaching was part of our focus from the beginning. We believe the course had to involve both of us. I understand the arguments about resources and how we cannot get full-time faculty members to do this, but you just have to pick adjunct professors carefully. You have to get somebody like me, who believes they can bring a lot to their doctrinal courses by teaching through a transactional skills course. After the first year that I taught with Professor Kosturakis, my teaching of IP licensing was so much better in my International Business Transactions course and in everything that I taught. I understood things at a level that I never did before.

I think people like me should be taken out on the road to other law schools to persuade doctrinal professors that they must continue learning in their career. Sitting and listening to a lawyer who does deals every single day teaches you why a clause has to be written exactly in a particular way. Teaching a transactional skills course changes the way a professor approaches and employs model documents and the way in which he or she talks about cases and materials in class. Teaching a transactional skills course makes a huge difference in how you teach all of your other courses.

## V. STUDENT TEAMS

We have learned a lot from team participation by the students. We tried to be kind and let them do the course alone or in groups of two or three or four. We learned that groups of two are terrible. Twos have fights and divorces. Never allow a group of two. One student working alone is actually surprisingly better because he or she is really committed to the course heart and soul, but they kill themselves doing all the work alone, and then you end up feeling sorry for them. So, now we have decided to ban the small groups and require everyone to work in groups of three or four, which requires true collaboration reflective of actual practice in a law firm, and seems to work better. The killer part of the course for the professors is the document review sessions. Having groups of three or four also helps in that there are fewer document review sessions required.

## VI. CREATING COURSE CONTENT

In order to determine course content, you have to figure out what you want to teach. Well, actually, I think two things are important. You have to figure out if you can get people committed to a transactional skills course. One doctrinal person must be willing to put in the time and then an excellent adjunct must be found to go along with the doctrinal professor. This search requires finding a professor who is willing to put his or her ego aside and share. I was not sure I could do it. I thought all the class sessions would be me talking and cutting her out. However, it turned out that every time I knew she had something better to say I would just stop talking. I do not think students understand the level at which I am a co-learner in absolutely every session of the class.

So, the person matters, but when designing a transactional skills course, you also have to figure out the transactions you are willing to do and what you think you can do realistically. Then, you have to figure out the substantive law and what you know you can handle and what you cannot. You have to come up with some practical concerns about the business that will make the legal lessons pop up in real terms. Finally, you have to include as much on drafting as possible into each class

session. We are still working on incorporating drafting exercises into each class session, so that when the students begin drafting the major documents they are not so shocked. Right now there is still a shock factor when they are doing their first drafts.

### IRENE KOSTURAKIS

When we developed the course, we had to think as though a transaction was actually going to occur. This meant that we had to identify the parties and determine who would be involved in the series of transactions as well as each party's concerns. A challenge we faced was how to convey all that information to the students in a meaningful way? We have several ways of doing that. We have a handout that introduces the problem. We also provide several updates to the problem, each time giving the student a little more information.

We also have the students role play, using scripts that we provide them, containing facts about each of the parties to the potential joint venture transaction. At this point in the class, the students do not know whether we have picked the Brazilian joint venture partner or the Mexican joint venture partner. We have two versions of the role plays: one that involves the U.S. company and the Mexican party, and another that involves the U.S. company and the Brazilian party. The students are not allowed to add facts or change the facts in these scripts. We also provide the students with a set of questions that are critical for the role-play parties to understand. For example, the potential joint venture partners will ask the U.S. party, "What is the volume of product that you expect us to manufacture for you?" The answer to that is found in the U.S. company's script. We want to stress that this is not a simulated negotiation; this is an information-gathering exercise to get the students familiar with the facts of the transaction. The idea is for them to have all the information they need at the end of the role plays to go to the next step and receive the next problem update. The reason we developed the role play exercise is to force the students to read and become familiar with the problem's facts.

By having the role plays and getting the students actually talking to each other and extracting the information from the other side, they also gain a good knowledge of the information, internalize it, and start to think about the transaction. This is crucial. It is not a role play without a goal. Furthermore, this exercise actually simulates what transactions attorneys do on a day-to-day basis. When I start working on a transaction, I meet with the clients and I ask those same kinds of questions to determine what we are trying to achieve with the transaction, such as what is the product that will be manufactured, how is it going to be designed, who is manufacturing it, who is designing it, what intellectual property is in the product, have we protected it, do we have a non-disclosure agreement if in place prior to

disclosing the confidential information about the transaction, etc. We simulate that largely through the role plays. We also have drafting exercises. For example, prior to the role play exercise, we hand out the non-disclosure agreement form and tell them to fill out the blanks in it, prior to starting to exchange the confidential information in the role plays. Finally, we have document review sessions in which Professor Taylor and I sit down and give them feedback on the documents they draft and on whether the draft truly reflects or addresses the concerns of the parties.

As mentioned, we chose one central client, which hypothetically is a small hi-tech U.S. company located in Houston, Texas. They design and offer for sale security devices embodying technology protected by patents and trade secret protection laws and software protected by copyright and trade secret laws. The hi-tech company will market the product under a trademark, which will be printed onto the product. The product also has an industrial design that is protected by trade dress laws. One of our updates to the problem is a memo from the Chief Technology Officer of this company to the law firm explaining all of the crucial intellectual property aspects about this product and all the intellectual property protection that the company has already obtained and requesting advice on what else the company must do in light of the license to the joint venture.

We introduce the Mexican and Brazilian joint venture partners and discuss who their management will be because in the joint venture agreement, they need to draft provisions regarding the management of the joint venture entity. In the process, we are able to discuss with the students to think about the information they will need before they can draft the provisions of the joint venture agreement. For example, the joint venture entity will need a manager of human resources, and because all of the entity's employees will likely be in the foreign location of the joint venture, the senior manager responsible for human resource ("HR") issues is obviously not going to be named by the U.S. company; it is the Mexican or the Brazilian joint venture partner who will name the manager responsible for HR issues.

Another update to the problem focuses on the distribution of the product and describes the anticipated distributor of the product, which is hypothetically a sophisticated U.K. distributor. This distributor is described as being experienced in marketing, selling, and distributing electronic products in Europe, the Middle East, and Asia. The last party to the problem is the Texas-chartered bank, who has a relationship with the hi-tech Texas company. This bank is described as being the hi-tech company's bank, which holds all the accounts for the hi-tech company. The bank's function is to provide a loan to the foreign joint venture entity for its operating capital. The bank requires that the U.S. high-tech company guarantee the joint venture entity's loan.

Our role as instructors is to introduce the problem, talk about the product, and describe the provisions that should appear in each of the contracts that form the transaction. We talk about dispute resolution because that is in every single contract. Termination sections and non-disclosure provisions are things that must be addressed in each of the agreements. We talk about all of those, and we have the students draft as a class exercise particularly difficult provisions. For example, the licensing provisions are extremely difficult provisions to draft. We show them how to draft a license grant and then ask them to try drafting a licensing section on their own. We discuss what they have drafted on the classroom's whiteboard, pick out the elements, and show them how to perfect the license grant they drafted. Professor Taylor and I could just let them try to learn it by themselves, but we learned the hard way that when we sit in on these drafting review sessions we end up having to teach it there. So, we might as well teach it ahead of time in the classroom and give them a chance to try their hand at drafting a provision in class where they can receive feedback on what they drafted and the whole class can benefit from the discussion.

We, as professors, also perform the function of voicing the concerns of each of the parties, which in a real situation they would know by talking to the client. For example, the U.S. party's major concern is protection of its intellectual property. They want to protect the crown jewels of the company. The second thing is grey market issues. They do not want these inexpensive products to dribble back into the U.S. market through some unknown source because it is going to ruin the market that they have in the U.S. where they can charge higher prices for the products. They also have quality concerns, such as making sure that the joint venture entity can actually come up with a quality product.

The joint venture entity itself and the foreign joint venture partner want to make a profit. They want to make sure that they can meet the volumes and the capacity required. The distributor has its own set of issues. It wants to make sure that the hi-tech company can provide products at sufficient capacity. The distributor is responsible for training the sales persons and is concerned that the hi-tech company stand behind the products regarding the quality, issues with product liability, intellectual property infringement, and failure to obtain the required certifications in all of the jurisdictions in which the product will be sold. All of those things are eventually going to be addressed in document provisions.

Vis-à-vis the distributor, the U.S. party also has grey market issues. They do not want this distributor to sell outside their territory. They want to make sure that their trademark is protected and that it is not misused. The hi-tech company wants to make sure that its product is going to be sold and that the distribution is going to go smoothly. The distributor, being a master distributor, is expected to set up sub-distributors and retailers to distribute the product in the foreign jurisdictions of

Europe, Middle East and Asia. Finally, the bank providing the loan under a promissory note to the joint venture entity is concerned with the guarantee of the loan that is going to go to this foreign entity, the joint venture entity that has been created, and they want an opinion letter. They want the attorney for the hi-tech company and for the joint venture entity to come back and give an opinion to the bank that everything is as represented. All of these concerns are addressed in the agreements.

Attorney ethics is also an issue. This particular U.S. company, being a small, privately-owned company, does not want to spend money on having two or three attorneys on the deal. The students are told that they have to handle the entire deal and are representing both parties of the transactions. Ethically, that is very difficult. We show them a video that deals with conflict issues and we talk about the position in which attorneys representing multiple parties in a transaction are placed. This provides the opportunity to discuss how to look at a provision and make it as equally balanced as possible. It gives Professor Taylor and me a chance to talk about which party has more leverage vis-à-vis a particular issue. For example, we know that the hi-tech company is not going to give up any protection of its intellectual property. They would rather not do the deal. By discussing this with the students, they get the sense for leverage and for parties who have more strength in a transaction on particular issues. The distributor does not want the hi-tech company interfering in its business. It does not want that company to have any relationship with its sub-distributors. So, we talk about how the distributor is hands-off with the sub-distributors and other issues there. Ultimately, I think that the students go away with a feel for what would be important to each of these parties in such transactions. Discussing these issues in our group meetings when we go over the documents, substitutes for simulated negotiations, which in my opinion are very difficult to pull off. Instead, by having Professor Taylor and me discuss these issues in class and in the document review sessions, the students get a sense for what they will be doing in the future, in a real transaction.

**CHERIE TAYLOR**

## **VII. COURSE MATERIALS**

One of the trickiest things about shaping the capstone course was developing the materials because there is no book for this type of transactional skills course. There really is no good International Business Transactions survey book, to be honest. I have taught the course long enough to be able to say that definitively because I have used most of them at one point or another. The existing IBT books focus on problems with too many readings, or they do not have enough documents,

or their documents are so perfect that no one can learn from them, or their documents are so flawed no one can learn from them. Consequently, developing materials requires gathering materials from everywhere and also creating your own. We write our own handouts. I wrote a little handout on grey market goods discussing how it matters, how you can control it, what the government can or cannot do, what you can do contractually, and how it applies to the problem. That is passed out in class and we discuss it. Discussions about grey market issues exist in books, but they are rarely well done and usually just provide the regulations. Students usually are not going to read six pages of regulations.

On the other hand, students in the capstone course must read the intellectual property laws, the foreign investment laws, and Chapters 11 and 17 of NAFTA. We make them read those and that is why we make them write the memos. This makes them analyze whether Mexico or Brazil would be a better protector of intellectual property rights and to ask whether one is a better investment market than the other. We did an amazing amount of downloads from government and practice websites when developing the course materials. The Departments of Commerce and Justice have amazing materials devoted to assisting practitioners. The materials are online so professors can download them and show the students how they are useful.

*WIPO* has an amazing international arbitration center and a website with complete information on model arbitration clauses. For our intellectual property licensing deal, it is a perfect place to go for help in drafting an intellectual property licensing dispute resolution clause. We have pulled from amazing sources and then use the law school's integrated database and web page system to post all these documents. I provide materials from PLI, ALI-ABA, and model documents from wherever I can get them. Professor Kosturakis brought some great document model templates from her practice. No model, however, is perfect. But the students love the models and are slavish to them. No matter how hard you work with them on the limits of models, they want to stick with them.

The students will do their drafts and come back with these clauses that are completely irrelevant and we ask them, "Why is this in here, our deal does not involve this issue?" Then they say, "Oh, but it was in the model," as if the model is sacred. One difficult aspect of the course is trying to break students from a model habit while still giving them something to emulate. We use a video to teach the ethics and conflicts class, and it is actually really good, except it is kind of dated. We are thinking about developing our own video presentation because South Texas has a media department and can actually produce one. For class assignments, we have developed PowerPoint presentations that we provide to the class. We give each presentation to students before class so they can look at them. Then we use them to present the class, discuss them in-depth with regard to hypotheticals during class,

and post them after class. We put sample clauses into these presentations and a lot of information about the laws and regulations we expect the students to keep in mind as they draft all of the documents. We do not teach all repeating issues again for each document. Instead, we tell the students to refer to the posted PowerPoint presentations. It is wonderful to be able to archive the materials they need.

Basically, the core of this class—other than the class sessions on the legal issues raised by our problem—are the document review sessions. We have done this in two different ways. We had two years where we did two different document review sessions and one year where we did three. Three almost killed us. We are talking about eighty hours of out-of-class time with groups going over documents. So now we use larger groups and have three document review sessions. We are talking about three sessions that are two-three hours long where students turn in their drafts two days in advance and we take them apart. The drafts bleed after Professor Kosturakis and I have reviewed them. Consequently, the students get the experience of seeing materials rejected by a partner in a law firm, but also getting helpful comments and input about how to improve the draft. It is so much better to have that experience as a person in law school than to have it at a law firm. Reviews like ours teach the students how to write like law firms want associates to write. The document reviews take lots of hours and absorb intensive resources. A course built around our model requires such a commitment. The topics are all fun and we build the problem around getting in issues like anti-boycott, export controls, and grey market goods because they would really happen in a lot of deals. So, we build the class around pulling in these issues.

#### **IRENE KOSTURAKIS**

We actually like the team concept, with groups of three and four, because we believe that mimics real life. For a transaction of this size, in the real world, people are going to work in teams. It is not going to be a single attorney doing all of these agreements, although we do allow some students who really want to do the whole thing by themselves to do it. In real life, however, people work in teams and people use model templates to start off, and every attorney has his or her own stash of agreements that they use as starting points.

We have them turn in six documents and submit five annotations per document, not including the memo. These are the big six documents: the joint venture agreement, the license, the distribution agreement, the promissory note, the guaranty, and the attorney opinion letter. The annotations are supposed to be based solely on the choices they made vis-à-vis legal issues, not the transaction's business issues. We want to see legal issues discussed in the annotations, such as why they

choose to word a particular provision as worded. That causes them to think about why they picked arbitration over a potential litigation provision. The ultimate benefit is that in future years, when they look at their binder of course materials, they will be able to think through some of these annotations and be reminded of the other options that they might have had. That is the value of having them annotate. The transaction binder, containing the six documents they have drafted, is a very valuable tool they can take with them in their career. They also have a CD with the documents in electronic form as templates to use in the future. These documents have been cleaned up through the document review sessions that we conduct.

**CHERIE TAYLOR**

### **CONCLUSION**

What we try to accomplish in our simulation course is probably too much, however, we found that at least with regard to the core international documents an intensive approach works. The students understand the value of the experience, particularly since they get enough feedback so that they must make substantial changes from their drafts to their final documents. The level of change achieved by the student groups determines largely how the documents are graded. Eighty-five percent of the grade is the final notebook of documents with annotations for each document. We use the memo and class participation for fifteen percent of the grade and that is where we penalize the students who do not show up, do not participate in the collaborative process, who show up at document review sessions unprepared, or send in documents at the last minute, expecting us to do our thorough review right before a session. The entire course experience allows students to produce a body of transactional work and leave law school thinking—"I have drafted real documents."

### **QUESTION**

How important is the collaboration between a substantive class and the add-on component?

**ROB ILLIG**

I think our idea of having these labs is only a partial answer. The point is not to substitute the labs for teaching other classes, but to offer them as additional learning opportunities. Being able to offer simulations like those just discussed is absolutely terrific.

Realistically, although I am quite passionate about experiential learning, I have other passions as well. Therefore, I personally am probably not going to spend eight hours on document review in advance of each class. And even if I did, I don't think a lot of people on my faculty would. It's not that there is resistance to such efforts, but I don't think I am going to convince lots of professors that this is the best use of their time. Therefore, I still worry about our ability to reach large numbers of students and I am concerned that this not become merely another niche learning opportunity.

Our in-house small business clinic still only serves twelve students each year. Our lab, by contrast, instantly serves thirty with almost no extra effort or cost. Moreover, if we actually manage to spread this idea to some other courses, I think we would reach a lot more students quite quickly.

#### QUESTION

Very effective simulated drafting exercise is very difficult and it requires trial and error. Finally about the second, third, or fourth year you feel like you have a good one and use it, and then the second and third year after that you learn that every student in the law school has a good example of the format from students who have already taken a course. How do you deal with that problem?

#### ANSWER

My goal is to administer to as many as I can. Once you make that your goal that is your issue. I have taught business planning from other products for over fifteen years and I do not want to give away my trade secret, but we have figured it out. It is the use of precedent. We used to teach this class by asking the students to draft a stock purchasing agreement. You get twenty different versions. How are you going to make principle distinctions on which one is going to get an "A" and which one is going to get a "C"? My job is to give grades. Out there in the real world that is not how it happens. Out there in the real world, the lawyer who assigns the project says, "I want you to check this, this, and this." They are all precedents and deals that are similar to this one, but different. The genius is that we limit the precedent they can use. We embed provisions that are not relevant to the deal we have, provisions that are flat-out wrong, and provisions that are overreaching. Then they have to use that precedent to draft a very short agreement. It is not a merger agreement, it is a stock purchase agreement for a founder that is going to be hired by the technology startup. So, it is much more contained. If you are going to roll one hundred people through the course and you are worried about the law review office handing it down, the solution is to create different versions of it. It is sort of like a

lawyer who incorporates fifty new businesses a year. You are using the same precedent, but each set of incorporation documents are slightly different. So, we have created a slightly different variation and the students do not know which variation they are getting. I could not do this without the deal files of these lawyers, but I just keep creating a bigger and bigger library of these. Currently there are three graded exercises and they all involve a different document or a different skill. We have currently developed three variations. So, we figure that if we offer one of these a year we can get through a three-year cycle of law students before we have to go back to review.