

**PEDAGOGIC TECHNIQUES: MULTI-DISCIPLINARY COURSES,
ANNOTATED DOCUMENT REVIEW, COLLABORATIVE
WORK & LARGE GROUPS**

INTRODUCTION

This article details three separate ways to teach transactional skills. Professors Anthony J. Luppino, George W. Kuney, and Jamison Wilcox outline their methods and designs for teaching transactional skills, with particular emphasis on document drafting. Although their methods vary, the professors have a common message: to effectively teach contract drafting, professors and students must embrace group learning—even if this requires stepping outside of their comfort zones.

ANTHONY J. LUPPINO*

I. THE INTER-DISCIPLINARIAN

This presentation examines an inter-disciplinary course to be taken, in most cases, during the final semester of law school. The course involves law faculty, engineering faculty, business school faculty, and students from all three disciplines working together in organized teams.

A hard lesson for law students—one that helps explain why an increasing number of law schools are offering interdisciplinary courses—is that after their three years of full immersion into the law, they do not actually understand that when they work with clients, the clients' legal issues in business transactions are not necessarily the most important issues. The more experienced, accomplished lawyers appreciate how legal issues play into the bigger picture. Knowing what good “deal lawyers” actually do is important. These lawyers are “can do” lawyers, not just lawyers who know the law and say, “We can't do this,” but who actually work hard to figure out what can be done in compliance with the applicable laws. Some people call them “yes lawyers.”

The first class I was assigned when I began teaching full time was Business Planning. I inherited the course materials, such as the very good Franklin Gevurtz *Business Planning*¹ text, drafting exercises, and simulations about deal structure, from

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someone else. As we were talking in that course about valuing businesses, and all kinds of “business deal” stuff, I began thinking, well, there is this business school, literally a lob wedge from where I was teaching business planning concepts to law students, and realized that various aspects of the course would probably be better explained by a business school professor. I also thought it would be interesting to have some business students in the course, and see how they are learning some of the business school vocabulary. I wandered over to the business school, which at UMKC is the Henry W. Bloch School of Business & Public Administration. Henry and his brother Richard started their company a long time ago, initially to give holistic business planning advice. As I’ve heard Henry Bloch explain it, the initial business plan was to advise people on not just tax return preparation, but business planning in general, accounting, book-keeping, etc. After a little while, the brothers figured out that the plan was not working, but people would pay them a few dollars apiece to do tax returns. *Voila*—H & R Block.

At the UMKC business school I met with someone I thought would be a logical choice of professor to combine classes with me. The business school taught business law for MBAs, and I taught business planning for law students. I asked, “Can we maybe get together at least once in a while?” In response I heard something to the effect of: “Well, I don’t know; that sounds kind of awkward because we don’t teach over here the way you teach your law students to pass the bar exam.” That limited and inaccurate view of what we do in a law school curriculum was troubling. Of course, I was teaching things like tax planning (and there is zero tax on most of the bar exams), client counseling, and other skills in addition to substantive law, and business school faculty member really didn’t have a full picture of law school education. My original plan was not working out so well initially. Then I got lucky.

Our law school in Kansas City is adjacent to the Ewing Marion Kauffman Foundation. I understand that Mr. Kauffman, another noted entrepreneur, essentially started a little drug company in his basement. His company eventually came to be making about a billion dollars a year in sales revenues after some number of years, and Dow Chemical bought control of the company (renamed Marion Merrill Dow). Mr. Kauffman also owned the Kansas City Royals, supported Kansas City with amazing philanthropy and energy, and in his business endeavors made a lot of people prosperous through his commitment to profit-sharing approaches. He was a tremendous force for entrepreneurship, as is his foundation now. The

and Securities Regulation, and co-teaches Entrepreneurship & New Venture Creation. He also serves as Faculty Co-Director of the UMKC Entrepreneurial Legal Services Clinic.

¹ FRANKLIN A. GEVURTZ, BUSINESS PLANNING (4th ed. 2008).

Kauffman Foundation started a program in 2004 specifically in which is assembled faculty from several different disciplines to get together to design courses for interdisciplinary education and to promote entrepreneurship. I was thrown in with 10 other faculty from our university and three other schools. I was the only law professor, which was interesting because, in the initial meetings, some of the stereotypes that business lawyers hear and feel were expressed right there in the room.

Some of the people thought, “Well, what are you doing here?” But a few of them had been entrepreneurs in their own right and benefited from legal counsel usually “can do” lawyers who actually helped them get their deals done. I naturally gravitated towards those folks. One of them, Dr. Walter Rychlewski, who is a serial entrepreneur and professor of computer engineering and entrepreneurship, taught at William Jewell College in Liberty, Missouri when I met him, and later joined our entrepreneurship program at the UMKC business school. He and I became buddies, and we thought we could get together and design interdisciplinary classes. We started out modestly. He came to my business planning courses just as a guest lecturer and said, “As an entrepreneur, I am comfortable with the ambiguity.” He said this to law students who had just seen all these cases about people fighting over uncertainties in their first and second year of law school. They are scared to death of making a mistake, fearing that anything ambiguous would be malpractice. The students ask, “What do you mean you are comfortable with ambiguity?” I thought, “Well, good, this is a good way to get the business perspective and the legal perspective.”

One thing led to another, and Walt and I eventually sat down and designed an interdisciplinary course. I recently published an article about law school and business school collaborations across the country.² There are some terrific programs across the country. Vanderbilt, for example, has nine business law courses that are jointly taught by law and business faculty. Emory has the TI:GER Program, where the school works with Georgia Tech on innovation labs. There is a long list throughout that article of some examples of the very interesting things people are doing with business schools on their campuses. In some instances, though, there is no business school, and they have found one nearby. I have also written in that article about some of the obstacles to be overcome in establishing interdisciplinary initiatives.

Now to get to the heart of the course. I have had the most fun teaching this course to upper-level law students since I started my teaching career just seven years

² Anthony J. Luppino, *Minding More Than Our Own Business: Educating Entrepreneurial Lawyers Through Law School-Business School Collaborations*, 30 W. NEW ENG. L. REV. 151 (2007).

ago. We recruit law, MBA, and engineering students. The course has been offered now three times. The first two years we had about thirty-six to thirty-eight students, of which nine or ten were law students. This past semester, we had approximately seventy-five students, with fifteen law students and about thirty engineering and thirty MBA students. Three professors (one each from law, business, and engineering) are there full time and co-design the curriculum. The students are broken up into teams with, ideally, one law student, two engineering students, and two MBA students on each team.

Although other things are done in the course, one of its main areas of focus is working together to develop a business plan for the commercialization of an invention. The inventions come from professors at our school, professors at other schools, and some local companies. This is not hypothetical. They are real gadgets, largely beyond my comprehension in terms of the science or the engineering. We are required to work out special agreements with some of the providers. Some are student projects, some are generated by the teams themselves, and some are from outside project providers. For the outside project providers, we do non-disclosure and other special agreements with them acknowledging their ownership, but the students still work together. As discussed in detail in the aforementioned article, with citations to observations by many other law faculty as well, teamwork is often missing in the traditional law school experience. Sometimes law students are in study groups, but that is headed toward an individual grade. Sometimes they work together on competitions, such as moot court and negotiation competitions, and client counseling. They also work together on journals. However, true team projects on which there may be a team grade component are really a business school thing more than a law school thing. A little time is required to get them used to that.

Probably the single most valuable exercise that students do from the law school perspective involves having a law student lead his or her team through the “founders’ term sheet.” When you deal with entrepreneurs, especially when there are two or three founders who start up a company, they tend to put all kinds of energy into how they are going to beat the rest of the world, how they are going to have a market, and how they are going to make money. The deal between them often ends up neglected. Sometimes they have thrown together a corporation or limited liability company using Google, and they are assuming that the default rules on everything are going to take care of all their problems. To have a more orderly organizational structure involves much more care.

There are a lot of choice of entity issues, and there are a lot of questions about which business deal is best on various points. The law school student’s job in this initial exercise, which happens right after the teams are set, is to craft a term sheet just on business terms. I tell them, “I don’t want to hear about choice of entity

yet. Don't start talking about complicated legal concepts. I want you to sit down and talk to the founders of this hypothetical company using real technology." I encourage them to ask questions such as: "What if our budget is off and we need more dough?," "Is anybody going to agree to put that in ahead of time; is that going to be optional; can we all participate?," and "What if somebody says, 'I have had it with this; I want to leave. Cash me out.?' " Then I explain that they have to tell their teammates that if we are going to have to cash someone out we'll also be required to know how we are going to value his or her interest. Other typical questions would include: "Are we going to pay them in installments over time?" and "If somebody wants to transfer his interest to, say, his brother-in-law, can they do that?"

We train them to ask real world questions. The law students go through it with their teammates, who are MBA and engineering students who have some grasp of where they might head with their technology-based product or service but do not know much at all about a number of important details regarding rights and duties among owners of a business organization. Then, the law students have to commit that to an outline-format term sheet. I intentionally do not give them much of a form. However, I do say I want to see a lot of sub-headings that make sense. I want to see that they are hitting key business points, avoiding legalese, and boiling the deal down to a few pages. Then, I review it, mark it up, and have them do it again just so they have some immediate feedback. This process gets them to do what a lot of lawyers do in transactions. For one reason or another, lawyers often become the quarterback, pulling different pieces together. Other people may be the experts in various areas, as many different professionals are involved in a transaction. Often the organizer, however, is the lawyer.

The project has worked very well. Most of the students were recruited out of a business planning course. They have a little bit of a head start. The rest of the semester, they participate in some individually graded assignments and some team projects. The midterm is a critique of a business start-up that had some pitfalls and some success. The law students have performed very well on the midterm because they are accustomed to really paying attention to facts and applying concepts they have been taught in the class.

One of the things they tend not to like so much is the use of a certain amount of background reading. For example, at the beginning of the course, we will provide a book with stories of some start up ventures and how they had to evolve. Some of those ventures did not work, and some of them did work. The stories were required to be read as background. The first year the course was taught that was fine with some of the other students, but the law students said, "You mean, you are going to make us read something, and we are not going to dissect it in the classroom?" They are not used to that. We have had to adapt a little bit because the truth was,

once we explained that to them, meaning now they had notice, they have been tempted to think, “Well, unless I am going to be called on, maybe I won’t prepare.” So now we moderate it. We say, “We are going to go over some key aspects of that background reading.” Of course, we do not tell them which of those aspects will be covered. Hopefully, they are doing all of the assigned reading.

The students get very involved in the business plan itself. First, they identify what areas of law are at issue. For example, if they are doing a plan for a drug invented by a professor, they must understand the need and procedures for FDA approval. We are very careful to have tons of disclaimers so that nobody thinks we are giving actual legal advice to the university or anyone else. We have that worked out with legal counsel. Also, we have a number of guest speakers from different disciplines. People come in and talk about particular legal issues, such as intellectual property. We also have business consultants and scientists come to speak. A professor who has created bio-medical devices comes and talk about what the FDA’s approval process looks like from the inventor’s end of things. It has worked pretty well.

Educators have published literature over the last ten or twelve years saying that some students in interdisciplinary courses have anxiety from the involvement of different student groups. Sometimes other students are intimidated by the law students because they think that the law students are miles ahead in resolving legal issues. Similarly, the law students, not being trained in marketing and finance, wish they had taken such courses and are thus a little bit worried about the MBA students having an edge, but, by and large, those complaints have been few. Nobody has really complained much about the grading, just an individual student here and there. The professors have had a good time, not only teaching their material to the students and to one another, but also sparring once in a while. It is not true that all entrepreneurs are wild-eyed risk takers. But some of them have more of a risk appetite than we are reasonably allowed to have as lawyers, and that plays out in the classroom. Sometimes we will be talking about a particular scenario, and we will have a difference of opinion on what is close enough. That is interesting for the students to witness.

The bottom line is that the course is built around teamwork. It is built around taking the tools gathered in the first two and a half years of law school and trying to use them with students trained in other disciplines. Each law student has to make a presentation in an area of law. I always threaten to throw tennis balls at them if they use too much legalese. I do not actually have tennis balls, but I will interrupt them and make them explain things. For example, the first time I tried mock presentations, somebody asked a group of non-law students how they felt about “continuity of life.” It sounds deeply philosophical, but it simply means something

about whether your business entity goes away as a legal matter if an owner dies or otherwise withdraws. Well, they assumed everybody knew the meaning because we gave them all this vocabulary, and they want to use it.

The students are integrated into the context of legal problems. The course is a lot of fun. Law faculty also speak at the entrepreneurship boot camp, which is all business students and students from other units. The law students do not attend that course. (It is largely undergraduate students who attend.) Law students need to be trained to know what transactional lawyers do. Non-law students really do not know, so several of us from the law school tell them about how the law and lawyers fit into planning.

GEORGE W. KUNEY*

II. THE REORGANIZER

The next topic can be called “taking it apart and then putting it back together” skills. I am a restructuring lawyer. I don’t actually originate deals or go into all the nuances. I get deals when they are broken, and then I have to somehow take them apart and put them back together, usually at a very quick pace. When I was first in practice, what I really loved doing was being exposed to different deals that were beautifully documented by firms, such as Skadden and Simpson Thacher,³ and taking apart and figuring out what these documents did.

How does a multi-borrower lending facility actually work? How does a shopping center reciprocal easement agreement or a collaborative lease agreement actually work? How do these things fit together? At The University of Tennessee, students take on these questions, as a part of the contract drafting or representing enterprises course. Students actually take apart documents, and that means annotating existing documents in addition to drafting them. The Internet is a wonderful thing. There is all this information there. EDGAR is out there, and EDGAR has sophisticated documents that are available to everybody.

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³ Skadden, Arps, Slate, Meagher & Flom LLP and Simpson Thacher & Bartlett LLP.

Also available are news flashes from various financial sectors describing these deals as they go on. For example, in one advanced contract drafting course, for the first assignment, I took an excerpt of an acquisition of a motorcycle company. One student wanted to research the business press that covered the transaction. Interest encourages students to see what the business press is saying a transaction is about. This is a good start because one of the most interesting things for budding lawyers to understand is that often the financial press does not know what is really going on. The first thing to do is to test critically whether or not the reporters have gotten the description right. In most cases they get it about eighty percent right, but they miss some things. They do not notice changes in the deal structure that arrive after hiccups hit. Their coverage of those hiccups in a deal progression and evolution is somewhat lacking.

After students have looked at what the press descriptions of the deal are, they go and pull the final documents on file with the SEC. These are in the “material contracts” portion of the disclosure filings and are easily accessible. Students can find them online and copy them into Word. They have now done what everybody else does in practice: stolen other people’s transactional documents. The students then critically analyze the documents.

When students and lawyers see an exemplar, they should remember that it is a negotiated document, and that they need to reset the document. Somebody negotiated that document for a particular deal. That’s one of those basic things that law students do not necessarily know, and we have to remind them of it. As they go through the document, I have them critically analyze the purpose of each of the provisions of the contract. I mean each and every provision. That includes dissecting them from a drafting point of view. Is this actually the proper tool, contract drafting-wise, to use for the concept that it covers? Does it cover too much? Should it have been split into multiple areas? How does it interact with other provisions in the contract? Document that for me in annotating footnotes. What my students’ work product ends up looking like in a course like this is the ABA’s model asset purchase agreement or its M&A agreement or other, similar items.

Those ABA documents, while useful, are products of committees, and, as a result, the provisions and commentary are sort of like reading the New Testament and Old Testament, with talk about a God of love and of a more vengeful, jealous God.

At this point, we have students who have adopted a position on the analysis of the agreement. They have really pulled the whole thing apart. The students then have to go and look into the law governing the transaction, to see if there are any

questionable provisions. This includes things like a *Revlon* duty and the evolution of “no shop” provisions into “go shops.”

We tend to meet one on one after they have gone through one time and I have marked things up. We identify the issues that they think they have found and maybe uncover other issues that they have not. Then, it is back to the drawing boards. The final piece is to look for “transactional window dressing.” These are the provisions that are often put in acquisition agreements from entrepreneurs that look good and very enticing to the entrepreneur. They may be the things that lured the entrepreneur into the deal. These are the provisions that say if certain success hurdles are met, then you will suddenly get these great bonuses and can retire forever to the south of France. Most of the time, these provisions do not work out as planned, but then entrepreneurs are optimistic folks that always think they are going to hit their targets. After all, the market for their product is so huge, how could anyone fail?

During the course the students are asked to identify business issues that should be flagged for the client as risk analysis points. These are the issues they really have to look at critically and ask themselves if their expectations are really justified or if this is just window dressing.

The final benefit of this whole process is that it produces a library of documents for you to use in other courses on contract drafting. We produce the materials that can be used again and again, and we can compare them over time to see the evolution of various disclosure provisions, various MAC provisions, indemnity provisions and the like. That has proven to be very useful. So that’s “taking it apart.”

“Putting it together” in simulations and through collaborative work is the next step. This is mainly done in the third year. Second-year students are still at pretty loose ends. My students often do not know they want to be transactional lawyers until the second semester or the second year. Only then do they figure out that litigation practice is not all “Law and Order.” As a result, they begin to focus on getting the skills they need to really participate in a transactional simulation with any complexity or detail.

Improving group-work skills is a key focus of our transactional simulations. There are a lot of solo actors in law firms, and there is a lot of top-down mentality. There are a lot of power partners in the corner office who are good at barking and being displeased with how things come together, but they are not good at planning sessions on how to put something together. This is not the way that Honda designs a car. There is a certain amount of deal technology in putting together things like

cars. Cars may be customized, but that is something to look at. The idea is to get small groups of students together to think about the process of how to do the deal and the simulation from the beginning, rather than just throwing them a term sheet and sending them through it.

Small groups are good. Three is a great number on each side. Two works well, but a third person in there can ease the workload and improve the work product as long as all three are really participating. Otherwise, you get a third wheel that is free riding on the process. We grade this on a group basis. There is a group grade, with a plus or minus depending on how your teammates rate your performance. So there is the opportunity to “rat out” a partner if they have decided not to do their work. That method usually prevents problems, and very rarely do we have people flaking out on the teams. We go through an organized planning session for the transaction at hand. The session takes about one class, and the students review their plan with the instructor afterwards—it is basically critical path training. Look at where you want to get the end of the deal, assemble all the component parts that are going to have to be put together, produce a time line all the way back, and then give the assignment out to folks. Sub-divide, separate, but coordinate your efforts.

There is no need for anybody to sit there and hold a flashlight. Professors do not like holding flashlights. Students do not like holding flashlights. That is what your dad does when he has to do something in the garage, and he wants some company. He has you come along and hold the flashlight. That is a waste of valuable time, and it is something that we try and avoid. We also try to avoid the tradition in law firms of the “fire drill.” Really, there often is no reason for the fire drill, and fire drills are expensive. By planning through as much as possible, people can see the fire coming, or at least find the spark and try to put it out.

This process also focuses students on interpersonal work skills; skills at which most law students who have not been out in the real world are horrible. Give me a few more bartenders, food service workers, and folks who have worked at American Eagle—these students have collaborative skills and interpersonal skills. But most law students who go straight from college to law school do not. They have excelled, maybe have even hijacked a study group, and become the teacher of the study group that got A’s where everybody else got a B. Those types of skills take away from the group experience and are not really useful in practice. It is a very simple matter of actually running some tests, MBA-style, and giving them graphs of personality types. Let them see the rest and say, “Oh! I am a ‘driver,’ and that’s a ‘slow and steady’—a person who, if I push her, is going to hold up this whole deal.” In recent years, e-mail and the “track changes” and “comments” function on Microsoft Word have become invaluable for this process, as they allow students to

work in their own time and share their thought process with other team members who can respond in kind.

Some groups of students are actually able to work twenty-four hours a day, seven days a week on stuff by coordinating their schedules and passing the documents around. I get carbon copied on things at eleven o'clock at night. The next installment comes at four in the morning; and the next installment comes at ten o'clock in the morning, moving around the circle. A lot can get done in a fourteen-week semester. Usually, I try to have three teams involved in a particular transaction. This can be done by adding a third party lending agency or escrow agent to the two primary parties to a deal (such as a purchaser and seller or landlord and tenant). The three-way dynamics provide you with additional viewpoints on the documents. Most deals are not one-on-one deals in real practice.

In sum, the two techniques I have been discussing today are, taking it apart with annotated document review and then putting it back together in collaborative team work.

JAMISON WILCOX*

III. THE DRAFTER

Students love the experience of working on realistic legal documents. Like the last two speakers, I suspect, I find satisfaction in seeing “hands-on” student work, as compared with work seen in the typical classroom, where students are once again reading an appellate case and expected to discuss it. Typically, they are bored that way, at least after the first year (when they are instead often terrified). With “hands-on” experiences, they aren't bored. They're interested, and they *learn*.

I aim to teach students the basics of legal drafting. These are foundational skills. Every lawyer needs legal drafting skills—and most of the students know that. Students are eager to participate in a drafting course that gives them hands-on practice in these skills. Most students in my course have had very limited experience in working with documents before. Yet every practicing lawyer, even one who never expects to do a deal other than a house closing, needs to know how to draft and redraft documents.

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Students know that. They are embarrassed by the fact that they went through a contracts course but, in most cases, never saw a contract in the process. Students know that when they get out into practice, they will have to prepare documents: revise some, and create others. They do not know how to do that, and they are desperately eager to learn this sort of thing. So they do get involved in learning this subject. They are willing to put in the time and the effort. And they are much better prepared for the sophisticated transactional courses about which we have just heard if they have already mastered at least the basics of this too-little taught legal craft of drafting.

My course is in some ways a modest one: it does not require enormous resources, student teamwork, or even a sophisticated understanding of business deals on the part of the instructor. And—a fact amazing to most law professors—it does not require spending every weekend marking up student papers.

Anthony Lupino has described an ambitious inter-disciplinary course involving law faculty, engineering faculty, business school faculty, and students from all three disciplines. I'd love to be involved with a course like that. But, as he acknowledges, it's not easy to organize such a course. And at my university, we don't even share daily course time-blocks, let alone semester schedules, with those other schools.

George Kuney has outlined another wonderful-sounding course that teaches students to understand business deals and to work in teams. Again, I'd love to teach such a course—or take one myself!

But our students also need, and know that they need, very basic skills in creating documents—skills that I have argued are largely lacking even among very good lawyers.⁴ Certainly those skills are lacking among students. My aim is to have students focus on these crucial basic skills. By the end of the course, they have learned in good measure that they have to make proper use of the drafter's tools to analyze the task to be performed, decide what concepts are involved, express those concepts clearly; and organize a document—all while keeping attention on the needs of the readers of the document. Thinking about documents in these ways is new to them. Indeed, thinking about drafted documents at all is new to many of them.

Partly to encourage young lawyers to be more thoughtful in dealing with litigation (and with law reform in mind), I always include at least some attention to

⁴ Jamison Wilcox, *Teaching Legal Drafting Effectively and Efficiently—By Dispensing with the Myths*, 57 J. LEGAL EDUC. 448, 450-51 (2007) (expounding on many of the topics discussed here).

jury instructions. When told that attention to jury instructions' comprehensibility may help them to win a case,⁵ many students' ears perk up.

Drafting skills are not limited to certain kinds of documents; the good drafter has a good head start on revising or creating any document, whether it's a contract, a will, an ordinance, or a complaint. But for those of us interested in transactional work, there are real benefits to students' knowing something about the creation of documents before they get into transaction-oriented courses. In a "deal" course, focus needs to be on the business transaction. The teacher should not have to stop too often in order to teach basic concepts of drafting or be impeded by students' clumsy drafting. And students need to have enough time to focus on drafting skills.

I don't pretend that this introductory drafting course is a transactional one. It is simply a drafting course—but it does succeed in helping the students learn how to revise and create documents, which is one sorely needed skill for the transactional lawyer. This course is very modest, then, in some ways. It does not require the teacher to have any special practice expertise or to engage in time-consuming coordination of teaching resources. The course, in fact, does not require any more resources than any typical law school course that uses only a classroom and one book. All that is needed is for the instructor to be a good user of language, and that is something we can assume is true about almost all law professors. In short, anyone on the law faculty should be able to teach such a course by using one of the teaching books already available.

I have said that the course is modest in all these ways. But the course is also ambitious—it aims to teach, to every student, skills that most experienced lawyers lack. (How's that for "ambitious"?) The subject is vitally needed in the law school curriculum, yet little taught, and this course proves that there's no excuse not to teach it. I aim to teach it—and to show others how to teach it—in a way so that every law student can study these skills. The course is scalable the way I teach it: it can be taught to a large class as well as a small one. The only difference is the number of exams to be graded. (I grade by exam, rather than punish students for their typically miserable results early in the course.) Every semester, I find myself impressed at how far the students have progressed by the end of the course.

⁵ See, e.g., Jamison Wilcox, *The Craft of Drafting Plain-Language Jury Instructions: A Study of a Sample Pattern Instruction on Obscenity*, 59 Temple L. Q. 1159, 1182-84 (1986) (suggesting that better attention to the comprehensibility of jury instructions can pay off for the litigator).

In the minds of most law faculty members, there are a lot of obstacles to a law school's offering a basic course in legal drafting. The course is thought to be too expensive and too labor-intensive to teach to many students. Indeed, so far as I have been able to see, the course is usually taught in a highly labor-intensive way. Like most legal writing courses, a course taught like that can be a killer for the teacher—especially if there are more than a few students in the class.

A drafting course can also be a killer for the students. If students are asked to draft from scratch as they are in many seminars, they usually suffer from the frustration of making every mistake in the book without ever really learning how they should have approached the problem. That does not make for the ideal learning environment. (And at the end of the course, the writing sample they had probably hoped to show potential employers is not really their own work because it has been rewritten so many times.)

There's a better way to teach the course. When I was first assigned to teach legal drafting, I looked at what master teachers of the past had done. (As a good lawyer, I respect even forgotten precedents.) I discovered a book for teaching drafting that had been put together by Reed Dickerson.⁶ He was one of the grand old men in the field of legal (and especially legislative) drafting. Dickerson first wrote a book on legislative drafting.⁷ Years later, he wrote *The Fundamentals of Legal Drafting*,⁸ which incorporated the earlier book. Dickerson's experience shows there is not all that much difference between legislative drafting and legal drafting in general; drafting skills carry across substantive areas. That's one of the reasons to have a course devoted to drafting alone.

Later still, Dickerson published his book for teaching law students. That was the first good textbook that I discovered for this subject. He also prepared other materials, including a teacher's manual, in which he argued that the course could and should be taught in large sections.⁹ According to Dickerson, marking up each student's assignment is unnecessary. Instead, Dickerson suggests giving a final exam.

⁶ REED DICKERSON, MATERIALS ON LEGAL DRAFTING (1981). I soon found out, however, that the book had gone out of print—one bit of evidence as to how neglected the teaching of legal drafting has traditionally been.

⁷ REED DICKERSON, LEGISLATIVE DRAFTING (1977).

⁸ REED DICKERSON, THE FUNDAMENTALS OF LEGAL DRAFTING (1965).

⁹ REED DICKERSON, TEACHER'S MANUAL FOR MATERIALS ON LEGAL DRAFTING (1981). According to Dickerson, "traditional approaches to teaching legal drafting have been unsuccessful in reaching more than a tiny few." *Id.* at 1. "Not only is drafting teachable to large classes, but the potential pay-

I also looked at what David Mellinkoff had written about teaching a legal drafting course. Before entering academia, Mellinkoff wrote a wonderful book called *The Language of the Law*,¹⁰ full of information and anecdotes that I find it useful to trot out in teaching drafting. After years of teaching legal drafting, Mellinkoff also wrote a book designed for the classroom.¹¹ I found that he too had taught legal drafting to large sections.¹²

Fascinating: here were two of the best authorities on legal drafting and on its teaching, and neither one of them thought the class had to be seminar size. Yet, most law faculty members still think that the “obvious” need to put a red pen to paper every week for a large group of students is proof of the impossibility of teaching legal drafting to every law student. But it turns out that neither Dickerson nor Mellinkoff did that, and I discovered that I do not need to, either.

Dickerson’s and Mellinkoff’s textbooks have fallen out of print; legal drafting was so little taught that the market did not support the books long after their authors stopped teaching. So their wisdom about how to teach this course was not general knowledge.

How, then, can such a course be taught (without overworking the professor or students)? I never have students draft from scratch in this beginning drafting course. I do not give regular written feedback on every paper (though I do give written comments on a catch-as-catch-can basis, mostly by sometimes (not always) returning the half-dozen or dozen student papers that I have carefully marked up while preparing for class discussion of them). Rather, I have students read about legal drafting principles from one of the excellent texts available (about one chapter a week), and I have them do at least one short draft—or, rather, one redraft—every week. They do some in-class assignments, too. But they do at least one “redraft”

offs for the drafting discipline, the law in general, and indeed the public good are prodigious.” *Id.* at v. He also states:

The keystone of the new approach is the decision, announced at the outset of the course, that the student will get no outside-of-class individual attention. . . . Even if class size is barely above the maximum for a seminar, [professors] should stay with the recommended approaches appropriate to large classes.

Id. at 4-5.

¹⁰ DAVID MELLINKOFF, *THE LANGUAGE OF THE LAW* (1963).

¹¹ DAVID MELLINKOFF, *LEGAL WRITING: SENSE AND NONSENSE* (1982).

¹² DAVID MELLINKOFF, *TEACHER’S MANUAL FOR LEGAL WRITING: SENSE AND NONSENSE 1* (typescript 1982; on file with Prof. Wilcox) (mentioning Mellinkoff’s UCLA experience in teaching both “seminars” of 10-20 students and “classes” of 30-35 students).

outside of class every week. We discuss student papers in class. I'm sure that this sounds like the lazy way to teach the course: not marking up the students' papers and then, having students read about the principles of drafting and draft something every week without giving them written feedback on their work. But I've found that in-class feedback is the best for this kind of course. It is not only prompt; it is highly effective because all the students have worked on exactly the same problem. In fact, I consider feedback through in-class discussion to be superior. Discussions about student papers illuminate the material for the whole class better than my most careful written comments ever could, and students get immediate answers from me to any remaining questions. (They don't have to ask after class or in my office; they can ask while the question and its context are on both our minds.) I've supervised upper-level paper-writing (non-drafting) work and have found that my carefully written, thoughtful comments are often virtually ignored in the student's next draft. But the passion with which students participate in class discussion of their papers convinces me that no student ignores the comments made in the drafting class—both my comments and those of the student's classmates. My students' improvement over the course of the semester proves that they have indeed learned.

This process, I want to stress, is very different from that of the seminar model, where each student does his or her own project, and there are a bunch of different topics covered. I give the students all the same text to work on.

Typically that problem text is as short as two sentences in length, maybe a short paragraph or more by the end of the course. That text is something that has problems in it. Usually, those two or so sentences are long and convoluted enough (with a bunch of phrases or clauses), that they are just plain hard to figure out. You can figure them out; there is legal sense behind them. But they are badly written. They are not going to serve the reader or user of the document very well, and they are likely to contain ambiguities. They are, in short, likely to lead to legal problems if uncorrected. (Texts that *have* led to legal problems often make good "rewrite" texts.)

I ask the students to improve a short passage (including by clearing up any ambiguities), and I try to choose a problem that is especially relevant to what we have just read a chapter about—say, organizational techniques, the use of definitions, or the conventions of setting up a contract. I say, "Use what you have just learned in making this next little revision. We'll talk about it next week or the week after. And don't forget what you've learned in past chapters and past classes as you work on this latest exercise."

The students send in or hand in their papers. Usually I have them do it the old-fashioned way: as hardcopies. I ask them to hand in their papers in 18-point

bold font, and I later have their papers put onto transparency sheets. (You can make copies of the students' assignments onto transparency paper very easily.)

That is a convenient way for me to do it (the Xerox machine is not too many steps away from my office), but you could also have the students submit their papers electronically. With electronic submissions, you could use either transparencies or PowerPoint to display the papers in class. (Indeed, my students occasionally submit their papers electronically. I make special use of papers sent by email because I can easily format them a different way than the student did, which allows me to show the class multiple formatted versions of the same words. This helps the class learn that formatting is an important part of drafting.)

In class, we devote some time to reviewing the reading assignments and the examples of documents in them. But at least half of our time is spent on going over different student solutions to the "redraft problem." In the process, we very much engage in the exercise of "taking it apart and then putting it back together" again, somewhat as Professor Kuney indicates he finds useful to study documents in his course. The difference is that most of the texts we take apart are not as carefully put together as the documents that Professor Kuney has his class study.

This is not the lazy way to teach drafting; this is the efficient and highly effective way to teach drafting. Students get feedback promptly, and they have the advantage of getting it partly by seeing how other students have worked on exactly the same problem. All these aspects of the course are valuable. And there *is* hard work for the instructor before class. (Sorry, to those of you who were hoping for a free lunch.) My class preparation consists not only in reviewing the chapter of reading, to lead discussion on that, and of course (very important!) in working out solutions to the assigned "rewrite" problem myself, but also in reviewing very carefully a number of student papers to consider how and in what order to discuss the different aspects of the "rewrite" problem. Working on redrafting—never on original drafting—is a highly effective way to teach the course, I believe, because the students are continually working the way we lawyers do. They are changing the wording of documents, not "reinventing the wheel" by trying to draft from scratch. They are deciding what in the document needs to be there, needs to be revised, or needs to be thrown out. And they are deciding how to organize.

I ask the students to *annotate* the drafts that they submit, and doing that is an important part of their work. The students' annotations are their explanations of *why* they did what they did—why they wrote the passage a certain way, why they revised it one particular way rather than some other way, why they left certain words out, or maybe why they jettisoned a concept entirely and created a new concept to get an idea across. Writing these annotations makes the students think more about what

they're doing. And discussing these student notes in class is often as educationally rewarding as discussing their drafted texts (their "rewrites"). I consider the assignment to write annotations to be central to the method I use.

The drafting course, then, is a realistic simulation course—limited and focused in its goals, but realistic within those limits. Typically, discussion of only three or four student papers is enough to give students very good, concrete feedback on what they have done right or wrong in their own papers. After all, every student has worked at solving the exact same problem, the same little puzzle. And it's fun—like a crossword puzzle or Sudoku.

The problems I assign to them are very limited in scope. Every student has time to focus on every word, and a student cannot pretend that, "Oh! This was just too much work. I would have noticed this error if I had had more time." They just cannot pretend that to themselves. I typically find that they leave out concepts that were in the original text even though it was only two sentences long. In their rewrites, they discover that they are leaving things out.

What does that mean? (This was the biggest surprise to me in my first years of teaching this course.) Students are hit in the face with the fact that they, as law students, have been careless readers. That realization in this course carries over to their other courses. They read appellate cases more carefully (or, if they fail to, they at least realize that fact). They read statutes, regulations, and court rules more effectively. They already knew in principle—because we have all taught them—that every word counts, that a single word may be the clue to a statute. But this lesson too often fails to hit home. In this course, it hits home time and again, because students repeatedly—and unintentionally—change the meaning of the text to be rewritten.

Often, my better students approach me and confess: "Professor, I am learning now—in my last semester of law school—that I haven't been reading carefully enough." That's one reason why I am so convinced that this course should be taught early in law school, probably about the third semester. Students learn that superficial understanding is just not good enough.

There are not a lot of drafting courses taught in this country; a basic introduction to drafting is given to maybe ten percent of law students, at best, before they graduate. But there are several excellent books for teaching drafting. Professor Kuney is the co-author of one of them, with Professor Haggard.¹³ Barbara Child,

¹³ THOMAS R. HAGGARD & GEORGE W. KUNEY, *LEGAL DRAFTING, PROCESS, TECHNIQUES, AND EXERCISES* (2d ed. 2007).

out of the University of Florida College of Law's writing program, put together another fine book,¹⁴ which I have used for a number of years.

And, as I mentioned earlier, David Mellinkoff put out a good book.¹⁵ Mellinkoff is devoted largely to helping students get rid of the legalese.¹⁶ That is a big part of the job; when students get into your legal drafting course, they are going to want to use legalese. That's most of what they've been reading, after all; what else could we expect? For instance, one of the first words you will strike out of student drafts will probably be the word "said," used as an adjective. Beginning students every time are going to use odd words, big words, and possibly obscure but "legal-sounding" words and sentence structures, instead of small and familiar ones.

During the first class, I typically give out a little inventory taken from Barbara Child's book, which asks the students, which of the two choices, A or B, is the better way to express this same idea. One is in plain English; it gets the message across, communicates effectively, and can be easily understood by the intended reader. The other choice is a stuffy, more formal-sounding legal document produced by someone with a J.D. (or someone who wishes he had one), probably put forth on a law firm's letterhead. For each of the A/B choices, about half the students choose the stuffy, harder-to-understand version at the start of every semester.

The students are used to reading stuffy language, and they parrot it. That's why using the "Sense and Nonsense" course book by David Mellinkoff, who makes a great show of laughing at legalese, is a great way to start the course whether or not you use his entire book. I encourage you to read his books and use some of his examples if you decide to teach a course like this. And emulate his attitude: *make fun* of stuffy "legalese." (Mellinkoff's teaching book is somewhat short, however, so I use additional materials, both to give the students more methodical treatment of some concepts and to give them more examples of successful documents.)

Getting rid of the legalese, then, has to be a good part of what goes into the course, especially in the beginning weeks. What *doesn't* go into it? Formal study of grammar doesn't. Neither does student research, nor substantive law. Nor even do materials on transactional work.

We deal with substantive law as it comes up, but I keep it in the background to the extent possible. Students are learning substantive law in most of their other

¹⁴ BARBARA CHILD, DRAFTING LEGAL DOCUMENTS (2d ed. 1992).

¹⁵ MELLINKOFF, *supra* note 12.

¹⁶ I use Mellinkoff's book first, then move on to other materials.

courses in law school, and much of that substantive law will be superseded in a few years. I am not there to teach them substantive law. I'm in the classroom to get students to learn skills that they'll use for their entire careers—just as Professors Luppino and Kuney are.

The things that we do not do are not worth doing, I believe, as part of an introductory course in this area. The ideal law school curriculum does include research, seminars, and certainly transactional courses of the type we have been hearing about in this get-together. But an introductory drafting course should focus students on learning drafting skills. Learning some of these vital skills is plenty enough for one course.

There are other wonderful books that discuss, with examples, the skills involved in drafting. Students can and will learn from these (though they're generally surprised, at first, to learn that such books even exist). I commonly use, in addition to Mellinkoff's *Sense and Nonsense* book, the Barbara Child book and the nutshell book of which George Kuney is a co-author.¹⁷ But George and others have written other fine legal-drafting texts, too.

I do give back some marked student papers on an apparently random basis. I never let the students know ahead of time whether I am going to be handing their papers back. I want them to be mentally present in the classroom when we are talking about the papers that are up on the screen. My suspicion (mostly from other supervision experiences) is that if they think they are going to get their paper handed back marked up, they will be tempted to be less attentive in the classroom. Probably half of the class time is spent looking at and going over each word, sentence, phrase, and concept of the students' drafts. This gives every student feedback on the work that they have done, because—again—they have all been working on the exact same problem.

My students pay attention in the classroom. They know it is their opportunity to get excellent feedback—not only from me, but from their fellow students, as well. They want to know how to solve the puzzle that they worked on, and how others have tried to solve it. We mostly display and discuss student drafts, but I am careful to make sure that students get back at least one example of a very good draft. In some cases, that means that I have to display a draft that I made myself. If I do, I typically put it up last. When possible, I have a student's draft serve as the fully acceptable draft. When I use my own, I seldom mention that it's mine.

¹⁷ THOMAS R. HAGGARD & GEORGE W. KUNEY, *LEGAL DRAFTING IN A NUTSHELL* (2007).

In my years of teaching, I have been mostly a traditional casebook teacher (though I have also recently taught an advanced legal writing course) of civil procedure, federal courts, conflict of laws, and so on. But the course that I am most satisfied with is the legal drafting course. That is the course in which students have come to me time and again and asked such questions as, “Why isn’t *everyone* taking this course?”; “Why isn’t this a *required* course?”; “Why wasn’t I given this course before my third year of law school?”; and “Why wasn’t it even available to me before the fourth semester of law school?”. Students get a lot out of it, and that shows by the end of the course.

I am very interested in hearing your thoughts about this subject—especially if you want to quarrel with my supposedly unorthodox approach, because to me this seems to be an extraordinarily successful course. If some of you have objections to teaching a course like this—or just can’t understand how some of the things I am talking about could actually work—I would love to hear your comments.

IV. LESSONS FROM THE TRANSACTIONAL COURSEWORK FRONT (FROM A QUESTIONS AND ANSWERS SEGMENT)

GEORGE W. KUNEY

Legal drafting, be it either transactional or advocacy drafting, is hard work. You learn by doing. How do you keep the energy level up in your course so that you get people really engaging in the materials? Do you have any secrets you want to share?

ANTHONY J. LUPPINO

The course I talked about is self-operative, because there is a lot of pressure from each of the instructors. The course has three instructors and many student teams. The project is often from outside people who want to see progress. These things help keep up the energy level, so that people are really engaging in the matters. The same scare tactics used in a business planning course can be used in a legal drafting course too because you encounter many of the same challenges. And they are pretty much scare tactics. I usually give students a list of common mistakes, which scare them because a lot of the mistakes had to do with defining terms and using defined terms.

Technology is terrific because students can find some great on-point clauses to copy and paste into their documents. But what if the borrowed language differs from the present transaction? Students do not see this until I give them an example.

There is a nice securities regulation case referred to in a congressional committee report in connection with the Private Securities Litigation Reform Act of 1995 where the Committee on Commerce beat up on somebody for taking a form pleading that had to do with suing a toy company and using it in pleadings against a tobacco company.¹⁸ One of the paragraphs in two complaints says something about the toy industry instead of the cigarette industry. I usually show students this pointed Congressional criticism to shake them up. I try to scare them.

JAMISON WILCOX

I suppose that if I have a “scare tactic,” it’s just having a final exam. I don’t grade students’ papers during the course of the semester, even when I mark the papers up and return them. You could give grades all along, I suppose, but I would not want to grade students based upon the drafts they hand in. I want students to feel fully able—and *encouraged*—to *experiment* as they work on their drafts. (I’m very up-front with them about that.) If they were going to be graded, they would tend to be even more “conservative”—i.e., to stick even closer than they already tend to stick to the bad texts that I give them to revise. If they want to do their draft in the form of a chart with circles and arrows, that is okay if it works. If they want to hand in something originally presented to them in the form of the two long sentences but that they redrafted as something with sections and sub-sections, that is fine, too.

However, they know that they are going to have a closed-book exam, three hours long, at the end of the semester. I make clear to them that, with the most minor of exceptions, every part of the exam will look like assignments they have done during the semester: assignments to rewrite short documents (or parts of documents) and to annotate their revisions with thoughtful explanations.

The exam is typically six or more short exercises that can each be done in five minutes each, plus three or four exercises that can each be done in a half an hour or so. (The last exam I gave, I got carried away with, and I gave students about fourteen short exercises and a couple of longer ones. But they still had enough time to finish.) If they completely screwed up on a particular weekly assignment (or even several, which many students did), they know that they have to learn how to deal with that type of issue before the time of the final exam, and that they will be rewarded by a good grade if they learn what they need to learn by the end of the course.

¹⁸ See excerpt from H.R. Rep. No. 104-50, Committee on Commerce February 24, 1995) as quoted in James D. Cox, Robert W. Hillman and Donald C. Langevoort, *SECURITIES REGULATION: CASES AND MATERIALS* (4th Ed., Aspen, 2004) at 639).

But I don't need the *in terrorem* effects of the exam, I think. Students work in this course for the same reason they work in moot court competitions: they feel that what they're doing is worth the effort. The fact that the students are actually doing hands-on work all the time keeps them interested.

When I teach Civil Procedure, I may see the eyes glaze over (first-year students find it hard to understand how vital procedure is), but when I teach Legal Drafting, I don't have that problem. Students know they are doing real lawyer-work. They know that papers from their very class are being put up on the screen, and their fellow students are talking about what is good and what is bad about their papers and others' papers. They know that, at the end of the semester, they will be expected to do the same kind of work—except, this time, to do a better job of it.

These are typically students who have never taken a transactions course or done any kind of legal drafting before. In many cases, they've never before seen a pleading or a contract—other than a standard-form contract, which they may have noticed while downloading music, but were never asked to study in law school.

My own evaluation is that, by the end of the semester, about half of the students are better drafters than the average lawyer out there in practice. (And I don't say that lightly.) The average lawyer never had any training in drafting; ninety percent of them never had law school training or any good on-the-job mentoring in drafting. What have average lawyers learned to do? They have learned to fill in the blanks and make adjustments. That is not a good approach to revising or drafting documents. I am very pleased with what the students are able to learn. And, by the way, the course gets excellent student evaluations. (Once, I deliberately made the experiment of giving almost *no* individually marked-up papers. The course evaluations remained as good as ever.)

GEORGE W. KUNEY

The first thing to know about peer cross grading, or team grading, is that, if you make it explicit at the beginning of the course that, if one student does not carry his or her weight, then a team member can give him or her a minus, even if the instructor likes the student on some level, the law student knows that it is rather important for him or her to get a buy in from a teammate because he or she is part of the rating group. Every once in a while we get students who really do, just to use the vernacular, “blow off” the assignments and let down everybody else, and, at that point, the peer pressure works its way through. That tale then gets told to next year's class. It gets passed around that I do not change a minus, and that the person deserved the minus. The result is reinforcement of the peer process. It is realistic in terms of what happens in an associate environment in which somebody just does not

carry the water or is terminally late with all work product, and they develop a reputation. Usually, my courses have three to four major transaction simulations. We do one rating for each of them, so the students get the chance to improve after getting a little spanked.

Usually, after the first few assignments, students are up to speed on things, like defined terms forms, tabulated style, or plain English. Students actually hand their papers to the person next to them, who does an in-class mark up of it. The reviewer's name gets put on the hard copy. What is turned into me varies. Either the paper gets handed back to the student, who goes home and redrafts it, turns in the redraft and the original draft with the reviewer's comments. The reviewer's comments and the final product receive a grade. If the reviewing student has been merely uncritically patting the author on the back, that actually results in a low "C" or "B" grade. In these days of grade inflation, if you throw a "C" on somebody's review copy, they get the idea they need to dig in a little bit harder. Since there are many assignments in many classes, the actual effect of the "C" is negligible on the final grade. However, it does have a little sting that seems to help.

ANTHONY J. LUPPINO

In the interdisciplinary course, the student's team does an evaluation at the end of the semester. They are told that they have a \$1,000 to spend on bonuses for their teammates, and they assign that money out. I have been impressed with their self-awareness. Occasionally, you will see one team decide to give everybody a flat piece of that amount. But ninety-five percent of them have actually differentiated between themselves and have marked themselves down. They are a little bit more straight with it than I might have guessed at the beginning. The course grade can also be adjusted a little bit based on that, but it has to be fully disclosed at the beginning. The students get a lot of work to do in these kinds of courses, and, if there is a freeloader on the team, that is a real impediment. So, they self-police pretty well.

For the first time this year, two team members both wanted to be in charge of their team, and I had to referee a little bit. I was able to show them that neither one of them was perfect any more than I was. I had to show them that each had some flaws in their reasoning as to why they should be in charge, and they eventually worked it out. That was more difficult to deal with than the freeloader problem.

I get a sore arm writing comments on every student paper. I have a business planning class where about thirty-five students draft an entire operating agreement for a limited liability company. I was going nuts, so I did an answer key. The problem is that students have to consciously work to match up the mark-up and the

answer key. If you give them the same assignment, it makes it so much easier. In class, show them the common mistakes they are all making. If you have to hand write them, it is difficult.

GEORGE W. KUNEY

This is the master list technique. I have up to twenty-eight standardized comments. They are all in macro form, so I review all my students' documents on screen, and I use the comment function. I insert comment bubbles with the standardized comment, and it blends the two approaches of having a list that is standardized and yet having the comment in their document, right in front of them to look at. Then, you can add some individualized comment, or you append it to a certain word. So technology can help a little bit in that regard.

As to the benefits of peer review of student work. It is based on my belief that we can all see faults in other people that we do not see in ourselves. When we see a problem in another's writing, we then think, "Oh wow! Wait, is that in my writing too?" The comments are not coming top down in peer review; it also avoids the "red pen of the teacher" problem.

JAMISON WILCOX

My students are not working in groups, and I am concerned that there's a danger of wounding someone's ego unnecessarily. I also don't want egos to get in the way of class discussion; I learned that quickly the first time I taught the course. So from the beginning I tell the students to write their names on the *backs* of their papers, so that the names aren't copied and shown on the screen in class. When I use a student's paper as an example, I always do it anonymously. And I tell the students, "when your own paper is discussed, please *do not* volunteer anything." Little that is useful comes out of oral student explanations in defense of their drafts—as contrasted with their earlier, written annotations.

I treat my own solution (or solutions) as one (or some) of the ways to handle the problem. If nobody else in the class has come up with a draft that is adequate, I'll tell them, "this is one way to handle it." I'll sometimes myself create two or three or even four different versions of a solution. There is always more than one way to draft something. By encouraging students to do things their own way, I see them come up with more varied approaches than I'd otherwise get. That is also a reason why I want them to see each other's papers: to see various ways of dealing with a drafting problem.

For class, I carefully choose papers that take different approaches, and if I do four different drafts myself, I may present, from my own versions, only one that uses an approach different from that of any student.

One of the themes that I use in the course is that we can all draft better if we think about the same project a day or a week later, so the aim is to do at least a “good-enough” job during the next try, but keep teaching ourselves as we do more and more work. The result is that five or ten years from now we’ll be better lawyers than we are today.

In class, a larger group works better than a smaller one. On any given assignment, students are coming from all kinds of different angles, and a student who has an idea that nobody else has raised will likely be present in the larger group, but maybe not in the smaller group. In the smaller groups, I have to do more of the talking. I don’t like to do that. I prefer to do enough talking to keep things moving along, but I let students make lot of the comments, and in a larger group, it’s much easier to let the students do most of the talking. I do make sure that I make any basic points that have not been made by the students.

Class discussion—like drafting itself—is a continually recursive process, so everything discussed already in the course is appropriate to discuss in each class. The course comes together very well as long as everything that has been discussed is game for future discussion.

GEORGE W. KUNEY

[Regarding student annotated document review.] It is amazing how many opinions are out there on the web. A whole bunch of people, with more time than I have, comment on all kinds of things that are going on out there. So the students can view the commentary and then grab the 10K and then pull, say, the actual purchase agreement off there. They use the commentary to analyze each of its provisions and vice versa. What has been drafted is an analysis of the contract in terms of things like defined terms. Nuances like the section where trademark has been defined to include service marks and trade dress, in order to expand the definition of that term from its classic definition, get noted. Students then give me a draft of this, and I go through to see if their comments are making sense and see if they are seeing how it fits together. Here is somebody taking sophisticated work product usually from a leading firm and finding how it works and how it does not. Sometimes we have found some very interesting drafting inconsistencies. The process allows you to give the students a cadaver to carve on and make field notes just like in medical school.

JAMISON WILCOX

I've just been asked a question about the size of my classes. Like most law schools, mine had no tradition of teaching drafting before I started teaching it. My large-format legal drafting classes have been varying sizes. Although I'm usually given a room that limits class size to about twenty, I teach a class of fifteen or twenty in the same way that I'd teach a class of fifty or a hundred: I put a paper up on the screen, and students comment on it as they volunteer or as I call upon them. If I have twenty students in the class, I typically read a dozen papers very closely. I will give a quick look over the others, but I'll take a very careful look at a dozen papers and decide, among those dozen, which three or four are going to be the focus for class discussion. On a couple of occasions when I've had only ten or fewer students in the class, I've given back most of the papers, marked—because I've had to study them anyway, to decide which ones to use for class discussion.

But I would be happy to have every second-year student in the school there in the classroom. It is easier, in fact, to teach when I have a bigger group; the discussions go more easily, because there are more good ideas floating around the room. The only drawback with a larger group is grading all those exams. (But since I haven't been grading during the semester, I'd have no more right to complain about that than any other professor with a large class.)

GEORGE W. KUNEY

In response to dealing with the differences in drafting fundamentals and skills versus the exclusion of substantive law, the courses described, the annotated document review and the putting together courses, are the second level of contract drafting. There is a first level contract drafting course during which the Haggard and Kuney book or the Kuney "Elements" book (or similar titles) are taught, depending on how many pages we want for this semester.¹⁹ So, they have already had the basics—but you do have to drop back to the basics because students are always forgetting basic things like "may" and "shall" distinctions, tabulated format, separating provisions, not letting provisions become gigantic, and not using provisions that have been provided without critically thinking about them. By dropping back to the basics, you are "grooving" the substance and skill into them, like laying down a track of music on an old-fashioned vinyl record. Most of the time, the substance that I need to explicitly teach on, that is novel to them is regulatory, like SEC problems, FTC problems, FDA drug approvals, and the like

¹⁹ See GEORGE W. KUNEY & THOMAS R. HAGGARD, *LEGAL DRAFTING: PROCESS, TECHNIQUES, AND EXERCISES* (2007); GEORGE W. KUNEY, *THE ELEMENTS OF CONTRACT DRAFTING WITH QUESTIONS AND CLAUSES FOR CONSIDERATION* (2d ed. 2007).

because real documents are being used and they reflect the context of real deals involving these matters, which are always more complex than the typical law school class hypo or simulation.

Students generally do not know anything about the substance of the business deal. You can select certain agreements that people will understand better. Having them self-select, however, means that they are interested in the deal. But, it also means that some substantive issues need to be addressed.

If there are too many topics to cover, just cut out whole sections. Just say, "We cannot handle that here; we are not going to look at the securities issues." The beauty of focusing on the hard-asset based stuff is that a lot of it really draws on contract law and property law, which students are supposed to have had and retained. It also draws on other fundamentals, so that they are in these complex deals. There are things you cannot cover, and you just have to say, "We cannot cover that." You can cover an awful lot, and the beauty of these annotated document exercises is that, once you have seen a materiality limitation in a basket provision that has been layered on top of an initial representation or warranty that is subject to a condition, you actually get an idea of how that kind of thing works.