

ETHICAL ISSUES FOR TRANSACTIONAL ATTORNEYS HERE AND ABROAD

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Carol Goforth

Hi, I'm Carol (Goforth), from the University of Arkansas, and the topic that I'm going to talk about is how I go about appropriating ethical issues into transactional skills training.

I have more than 25 years of full-time teaching experience in the business associations area. I started with a very traditional pedagogical package. I taught business organization, securities regulation, and corporate finance in mergers and acquisition in much the same way that I had been taught. The classes were geared from traditional casebooks, geared toward somebody who's going to go to a larger firm, represent public companies, and in fact that is what I did. It is not what 95% of my students are going to do, in fact probably more than 95% of my students.

Over the past ten years, fewer than 10% of our class goes into some thing other than law firms or organizations that have 10 or fewer attorneys. Most of them, more than two-thirds, are attorneys. It is a very different kind of practice than I think I was prepared for, and it is a very different practice than what I started preparing my students for. So, my teaching package has morphed over time from that package to one that is geared towards closely held business entities. And the advanced corporations class, which is the upper level elective, deals with special issues applicable to public corporations. I do teach those, but my other two classes are skills and transactional skills, drafting based classes. I teach business lawyer skills and I teach transactional drafting.

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The class that I'm going to talk about today is actually the business lawyering skills class, which is an upper level three-credit elective. Arkansas currently requires that all students have at least three credits in skills classes that are simulation-based and graded on an individualized assessment of student performance on those simulated exercises. Because it's one on one assessment, it's pretty time intensive. We do limited enrollment. I have fifteen students every semester and usually students beg me to make exceptions, but I frankly just can't because of the time commitment it takes.

I do frontload the class so that the teaching in class component part happens earlier, and the actual big final project takes place over the last three weeks of the course, and that is when the class component and all of my class hours are done. I only have an hour of individual time left out of my class time.

What I do in that time is a series of simulation exercises. There are multiple simulated client interviews because I want everybody in the class to see different kinds of interviews, and I want everybody in the class to actually act as an attorney interviewing clients. Some of those are intake interviews. They are the initial client interviewer, initial contact. Further along and they will be given a client file and are supposed to collect information. Some of them have much more detailed client-counseling functions.

Everybody in the class will also participate in at least one mock negotiation and they will either participate in or watch a mediation or arbitration. Along with that there are multiple drafting exercises, each of which I individually mark up.

The reason that I embedded ethics into all of my exercises partly comes from my law school's propensity for putting me on self-student committees. I've chaired them twice. I just finished chairing another last semester, and you get to read a lot about what the academy is doing in legal education and what other people are doing. The same thing happens when I'm part of the strategic planning process that often goes on. There is an idea that ethics needs to purvey what we do because it purveys the practice. This really comes across loud and clear when you do that kind of review both of our accreditation standards and of the writing that is out there like the Craig Report and best practices and Carnegie Report.

I'm 25 years away from actually having been in a full-time practice, but I like to practice, unlike some of my colleagues, and I make a real effort to stay up with what the practitioners are saying. I belong to the American Bar Association. I go to annual meetings and I go to the state meetings. I go to local bar association monthly luncheons, and I talk to people about what they're doing, what they're seeing, what law school prepared them for, what it didn't prepare them for. If it's our graduates, what they wish they'd been prepared for.

I also bring to the class my own personal experiences. My very first business transactions project was representing a company that was going to go public. They went through an IPO, and they said here are the minute books. They didn't keep minutes for the past 23 years, and my initial response was "oh I can't make up documents". I can't just do something when it didn't happen. I then told myself "you don't know that they didn't have the meetings". If the client said they had meetings, they said they approved it, and they're willing to sign the (unanimous consent), all you're doing is memorializing what the client say they did. They just didn't formalize it. You just have to make peace with that war. I guess some people might not but you need to think about those issues and they come up all the time in all kinds of context.

So, I thought maybe I would give a couple of examples of the kind of ethical issues that I embed. One of my initial interviews that I have the clients do is an initial intake interview, where the client walks in and I see how the students set up the room. I see how they go out to meet them and how they do the mechanics of the interview. I have this client coached to be very concerned about the student telling them that they are not yet my attorney, but they're talking about an attorney client privilege. What if I tell you this and then you aren't my attorney?

I give them all of these rules of ethics in advance. They may or may not have had PR. I won't point out the specific rule and therefore it is the student's job to read the rules before class. Some years' students will have read that rule and understand that there is a rule that governs perspective clients. Some years the students will skip over that rule and will not know how to handle that issue. Either way, it's a wonderful learning experience and a simple way to introduce to the importance of thinking about potential issues before they actually come up.

A later problem comes up where I've got two potential clients who come in, and then you have the obvious issues of well if one of you says something you can't later then say I don't want you to tell my partner. And you've got are you representing one of them, are you representing both of them, are you representing the business. How do you disclose it? What do you disclose in the interviews? What do the rules of ethics require? Do you have to get the consent to that waiver of the conflict of interest in writing? And so what are you going to have to put in your client representation letter? I actually do a client representation letter as part of the assignment in this class.

One of the things that I love about this particular exercise is when I've had students come back afterwards and ask additional questions about dual representation, like they're now thinking about it. What if that or what if that or what if they want us to represent the business, and it hasn't been formed yet. Those are great questions to think about and to have answers for in your own mind.

The reason I have prepared a handout in the materials for you is I thought it might make more sense. It might make what I'm saying a little easier to follow along if I actually gave you a sample. And I have a series of I think 6 or 7 pages in there and those deal with -- I've got the recap of the PowerPoint that just says this is what I'm going to be talking about. Then on page 1 of my actual handout, I start with the materials that the students get. The students will get a letter setting up a client interview, and there's a fee schedule associated with it. Then there is a memo from me as the fabulous senior partner to them as the associate telling them hey you're going to do this intake interview.

Then the students also have the information about the law firm that they are an associate in and they have the information for that firm throughout the course of the semester so that they will have a context for how they can handle the clients.

The last couple of pages are the pages the students don't get. That's the information I hand out to our professors. So, the first page is the information about the firm, the client with the screening, and the memo from the partner that contains very minimal information. The client gets all of that plus a memo about the client.

The way I do this I go to friends, people who wish they weren't my friends. I go to colleagues. The legal writing faculty is phenomenal. The clinicians are phenomenal about helping me. I always ask, if you weren't going to be a law professor, what would you want to do. I have one of my friends on faculty that would be in beer brewing. So, we have his particular hypothetical involved with him setting up a microbrewery cause that's something he's interested in and he's knowledgeable about, and it also has my goals for the particular exercise.

So, they pick the business. I pick the ethics issue, and for this particular one you can talk to a real person, who's not a law professor because this particular professor is very good about sounding like down home folks. You want to sell the firm but not oversell. You don't want to lie. You need to practice saying I don't know, which law professors try their best to beat out of them in the first year. You can't say I don't know. I don't want to hear that. Give me an answer. Sometimes for clients I don't know what is the very best answer you can possible give. The information collection, when it isn't dispute-based, so what happened next is not a very good question

The handling of conflicts of interest is key in this particular problem. I set it up so that he wants the law firm to represent him and his wife, who has not accompanied him. So, there's the conflict of interest, the disclosing the risks, the warning about I can't take as a client somebody who I've not met and I haven't heard from that person that they want me as their attorney. Then the student is presented with all of the issues about representing both them and the business.

Now, you might be concerned about how do I choose which ethical issues to embed. Well, some of them come from my personal experience, things that I

experienced in practice. I do try stay up with the current legal literature, and on that flash drive that is given out to everybody, I understand -- I've got some source materials from these various issues -- things that I've looked at, sources that talk about ethics, ethics in transactional training, some of the sources that I've used to find ethical issues, so that's in my source material

I also ask my colleagues who teach PR what don't you cover, what you wish you could cover that you don't have time to get to, and pretty much if it's a business ethics issue, or it's multiple clients, they don't have time to cover those, so anything is fair game.

I go to my clinical colleagues and say okay when you represent businesses what kinds of things come up. Sometimes they'll bring along a friend as an interpreter. So what are the ethical issues of having somebody there who doesn't speak English. What are the ethical issues of having somebody who's not the client there and does that waive attorney-client privilege. So, I've been able to incorporate some of those kinds of issues that I might not have thought of.

I also look at practicing attorneys and talk to them to see what things they are facing in the real world, and I love that my PR colleague next door keeps on his office door posted a regular list of the ethics and admonishments and reprimands particularly of our alums. I tell all of our students they never want to come back to visit a law school and see their names on that list. Some of the complaints are very simple, you know, not contacting, not keeping in touch with your clients. So if you're the associate or the very young person working at the firm and the very angry client says I tried 18 times to get to your senior partner and I have these questions and what do you do with that kind of issue. It can be that kind of stuff too. It is a practical problem as well as an ethical problem, but it's still one worth thinking about.

Audience: You broached the issue right in your last point. Do you ever broach the issue to say no we don't want the client any longer? I mean if they're calling eighteen times, there's got to be a problem from a practical perspective.

C. Goforth: Well, it depends on whether or not the problem from a practical perspective is the client or the senior partner.

Audience: No doubt, but practically speaking it's normally a combination or a variation of both.

C. Goforth: I have not raised that. In my hypothetical, the reason I've not raised it from that way, I always set it up so that this is somebody who is a new associate so that they aren't expected to individually have the experience. They wouldn't normally be the billing attorney. It

certainly, if a student every raised it, I will be happy to talk about it and explore it either in class or more often they come to my office so we can do a one-on-one. So I don't have a lot of opportunity to do that in front of the class, but I will be happy to.

Audience: I find it interesting when a young lawyer, particularly me 30 something odd years ago, was always asking questions but they never let me talk to the client on the phone or at least six months because they wanted to see how I would react you know at the time. They'd put it on conference call or something so that I would be in there to listen to it. But, again, those were the days when you could double bill too. But, I think it's a very interesting dilemma for a young student because a young associate wants to be a people pleaser.

C. Goforth: Well, it is. It is. I do have, again based on my personal experience, one of the talking points that I use -- I make them read the ABA ethics opinion on billing, and some of the advice I got very early on in my career was okay well if you're going to the closing and you're flying to Houston, make sure you take the file for so and so. Take the title opinion. You can do those on the plane. Bill for the time for the closing and bill -- and what would I say now. And, "How badly do you want to keep your job, professor?" tends to be the first question I get and we do talk about that.

Audience: Just a real quick question. When you do the interview, do the students do it one on one with the client or does the whole class do the interview?

C. Goforth: The students are selected in teams of two, and they will interview in a team of two much like if they were doing a client counseling competition. I will do it individually if I have the time, but I don't. So, everybody does -- and then the other students wind up doing an evaluation of what were the best things about the interview, what were the worst things.

Audience: So you don't have each team interviewing during class.

C. Goforth: I don't have -- yeah. I sit there and watch everything. The clients usually get their feedback. The students turn feedback into me. I give feedback, and I will filter whatever the students have said usually -- usually it's pretty positive, but not always.

Audience: You had said you teach this in the business lawyering skills course, and you also teach a drafting course.

C. Goforth: I do.

Audience: And the question I guess if you pull drafting out of the lawyering skills and the ethical issues, are they folded into drafting class? Like how do you kind of allocate the different skills between the two classes?

C. Goforth: Well, my drafting skills class is not simulation-based in the sense that there are all of these different exercises. In that class every week they're drafting something else, and it goes from here's a sample letter that a paralegal has prepared and edited to signature blocks to here's the minutes. Here's this kind of contract. Here's embedding this issue. It's a series of draftings talking about legal drafting.

And I do have some ethical issues in there as part of the things that they are drafting, but it is not as simulation-oriented, and it's embedding the ethical issues into all of the simulations is what I really focus on.

Carol Morgan

I'm Carol Morgan. This is Usha Rodrigues, and we're going to change direction a little bit and talk about ethics from the perspective of the client and what is the lawyer's role.

The first question is why teach business ethics in law school, and we have several responses to that. One, after the scandals of Enron and World Com, reporters and commentators often posed the question: where were the lawyers? This question was also raised in a seminal report that the New York City Bar prepared in 2006. Some of you are nodding. I highly recommend it. The report was on the lawyer's role in corporate governance, and the question [where were the lawyers?] was prevalent in the report. And then, even last week in *Corporate Counsel Magazine*, there was an article about the GM product recall—the ignition switch recall—and the title of the article was “Where were the Lawyers?” We want to address that question and talk about it in law school.

The ethical issues for businesses, though, do not always grab headlines. They don't always involve scandals. In fact, they are raised everyday just in the ordinary, humdrum running of a business: how to treat employees, how to treat customers, how to advertise products and services, how to do business globally. And lawyers are often present for those conversations with their clients. A client's action or a client's inaction may be entirely legal, but then the question arises: is it the right thing to do?

The comments to Model Rule 2.1 offer a little guidance. The comments contemplate that in some cases legal advice is not sufficient, and they go on to say it is proper for lawyers to raise moral and ethical considerations when advising clients since these considerations -- and this is a quote from the comments -- “impinge upon most legal questions and may decisively influence how the law will be applied.”

Given the reality of practice that lawyers are present for these conversations, given the guidance that our own Model Rules provide, and given our profession’s recognition that ethical considerations are very important, we believe that law schools need to be addressing these issues with our law students and helping them understand that they have a role when there is an overlap between law and ethics, that just talking about the law may not be adequate, that they may not be representing the client as fully and as effectively as they should.

Towards this end, Usha and I designed a seminar course to help law school students be aware of these issues. For many, they haven’t really thought about business ethics. We want them to understand the ethical challenges that businesses face, but we also want them to understand that the lawyers have a role in these discussions.

We take students out of their comfort zone, which is the law, and we help them discover how they can actually guide businesses in recognizing and addressing legal and ethical issues.

So, how did we do this? Our method at Georgia is that we’ve limited our class to 16 students, 3L students, who’ve taken corporations. We think a smaller class allows more open and active and honest dialogue, and a course like this requires a lot of safety and honesty to have an effective discussion. We want students to have at least some exposure to corporate governance through their corporations course. We want 3L students, who have a little maturity and some experience hopefully. It’s a little unique in that our course is yearlong. When students sign up for it, they’re committing from August to April. That’s the only way they get credit. They have to be there the whole year. It meets every other week. It meets in the evening. We found that an evening class provides an environment where students may be a little more open to discussing some pretty difficult topics. Usha and I co-teach it, which is also a little bit different. Another difference you’ll hear from Usha is that students have a significant leadership role in this course. We serve more as facilitators.

The students are admitted to the class on a lottery basis. That just seems the fairest way.

Usha Rodrigues

So, I'll start by talking about materials. We don't have a casebook. We pull from several different sources and we're always tinkering on the margins. That's part of the fun, but it's basically books and case studies and videos.

One of the valuable components is a reaction paper. Students turn in 2 to 3 page reaction papers and there are two in the fall, one in the spring. And the students are reacting to the material for the day in a very disciplined way. They don't have to have an argument, but they need to have a theme or develop some sort of topic over the course of 2 to 3 pages, which is of course not a lot of space. And we tell them it is good practice for law practice, where clients don't want to read a lot. You need to get your points across concisely. And we find this sustained attention to writing and lots of feedback throughout the year are really useful.

Of course it takes time for us. Those of you who were at the prior session know that time is important to me. I'm concerned about instructor time, so that's where the 2 to 3 pages is key. This is short burst of disciplined writing.

The papers are posted on the West Educational Network (TWEN), and they are available for the class to read before the class session, and that becomes important because of the next component, which is discussion leadership.

So, for about three to four of the class sessions, each semester groups of four or five students lead the discussion, and they are supposed to be facilitators. They don't give a presentation, but they're just supposed to foster discussion, have questions to pose to get our discussion going. And one of the rules is you can't be a leader if you've written a reaction paper. So, the idea is that the discussion leaders know that a certain group of students have thought really hard about the topic for the day and have written about it. And we'll see the discussion leader say, "Steve I saw that you mentioned this in your paper. Can you talk more about that?" or "Joe you take a different position. Talk about that," so it really invests a lot of the class in the discussion.

And then the instructors reserve the last half hour of those discussion-led classes to offer our insights to cover things that haven't been covered, just sort of to round out the discussion.

And then the final component is the case study, which we'll talk more about in a few minutes. But that is really the culmination of the course.

The students are graded on class participation, on the reaction papers, and on their discussion leadership, but the single biggest component of their grade are these case studies.

So, now we move to exactly what we cover, and the theme for the fall is corporate governance. Students have more familiarity with that, so that's where we lead off.

I hate first classes. The first class is so awkward because you don't know who's going to stay and who's going to go, and I just hate them. So, of course it's law school so we've assigned them homework before the first class, and part of their homework is to read *Barbarians at the Gate*, which I'm going to get to in a minute, but it's a long book. So, they should have hopefully started reading it over the summer, but then the assignment for the first class is to turn in an anonymous one-page ethical dilemma, something that they saw in their life. Maybe it was a bartender, and they were offering free drinks, or they saw someone offering free drinks. Or they were a nursing aid, and saw see something unethical on the job.

So, we collect these, and then for the class we break the class into groups and they discuss a few of the situations. It's anonymous. The students don't know who's who, and they discuss the ethical problems, identify the stakeholders, and the interests that are affected, and what they should do.

So, we like this. It breaks the ice. It gets them used to talking, and it reinforces one of our themes, which is that ethical issues come up all the time. You're not just learning this in a class and then one day there will be some big ethical crisis. These things are all around us. That actually winds up being a really good first class.

Then the second and third classes we cover *Barbarians at the Gate*. If you haven't read this book, go out and read it. It is nonfiction. It is the story of the leverage buyout of RJR Nabisco, but it reads like a novel. And it is one of the best renderings I've seen of what a deal actually looks like.

So this is to Carol's point, there's no big scandal but there's this sort of humdrum this is what comes up in a deal. And you know what comes up? Corporate governance issues, corporate social responsibility issues, the ethics of deal making, what you disclose, what you don't disclose -- it's all in there. So, it's a really nice way to package it in this sort of normal course of corporate life.

Then we move to *Smartest Guys in the Room*, which is the documentary video of Enron, and it might not occur to you but Enron is ancient history to students these days. They know something bad happened at Enron but they have no idea what happened. And they're always shocked at what went on in this Fortune 500 company. So, that's a really fun class.

So, then we usually do a case study and this is part of where we tinker. We've done the HP pretexting scandal. We've done World Com. We've done some newspaper

articles on Arthur Anderson, and then every semester we try to have a speaker. In the fall, we try to have a good corporate governance speaker. I'm sure you know students love hearing from real-life lawyers, so that's always a very good class.

Carol Morgan

In the spring, we turn to the financial crisis because it is loaded with a lot of ethical issues from the issuance of the no-doc loans, to credit default swaps, to the rating agency conflicts, to the bailout. It's all there, and what we've used is a book, *The Big Short* by Michael Lewis. It's fairly understandable or easy reading for lawyers or law students who aren't as familiar with some of the financial concepts. And then we watch a movie, *Inside Job*. Those lead to some interesting reaction papers as well,

Again, they have heard a lot about the financial crisis but often have not studied or really are well versed about it. I think it's such an important part of our history that they need to be aware of it and see how things can happen that were not intentional. That means the consequences are not intentional.

Then we turn to global issues and what challenges companies can face when they do business globally. We examined Wal-Mart's activities in Mexico that are currently being investigated, so it's a very current issue. We use the New York Times investigative reports that were done in 2012, but there's stuff going on as we speak, so this is one that we can continuously update.

We have also looked at the Siemens' bribery scandal, and there's an article and a video clip on one of the actors in that scandal and what his perspective is on his participation.

Finally, after we've looked at the ethical issues in a variety of contexts, what we do is then try to understand how did this all happen and get behind the behavior -- the psychology that's associated with ethical and unethical conduct.

We read an article by Max Bazerman and Ann Tenbrunsel - some of you may know them - "Ethical Breakdowns." This is an article in the Harvard Business Review, and they're authors of another book that I think is very thought-provoking and I highly recommend, *Blind Spots*, which talks about why we fail to do what's right and what to do about it. We want students to realize they are capable of blind spots. We all are capable of blind spots. We've all had blind spots, and we've all rationalized our behavior. We want them to see this isn't just limited to the bad guys. While we may not intend to engage in unethical conduct, sometimes our conduct can create unethical consequences. I think the financial crisis is a good example: I don't think people got up in the morning and said, "I'm going to go out and hurt some people today and cause them some financial pain," but there were some business decisions that did hurt some people.

So, our hope is that students will become aware of these factors and that they will be able to take this knowledge, when they are advising their clients and also to protect themselves from situations that create unethical consequences.

We don't limit our focus just in our seminar. We try to involve the law school community as well, so we've brought in speakers every year and invited the law school community. We've had folks from Siemens come in to talk about how their bribery scandal happened and how they responded to it. We had the Senior Vice President and Chief Ethics and Compliance Officer at Hewlett Packard come in and talk about some of their issues particularly globally, and then this year we had some ethics and compliance officers from several companies, who are also lawyers. We want our students to see that role as well, for many lawyers. CVS-Caremark's attorney talked about their recent decision to stop the sale of cigarettes in their store even though they were going to take a \$2 billion hit to their annual revenues and what were some of the ethical decision-making processes for their company. So, we've tried to expand beyond the borders of our seminar to raise this consciousness level with all our students. Now, the case study.

Usha Rodrigues

The case study is the student's chance to explore an issue that really matters to them.

We give them some suggestions but usually they don't take our suggestions. They just pick an idea, and they run with it. Students are passionate about their topics. There've been things like corn and soy subsidies, the law school scam, for-profit education, and the decision to move the Braves Stadium to Cobb County.

So, they propose topics. We give them some input. They submit a rough draft, and then they post their final version to TWEN. So, the last two classes of the year, they present their case studies and we read them as a class, and we discuss them.

So, remember this class is composed of 3Ls, and by this time you've had a whole year together. The discussion is fantastic. We always learn a lot, and we're always blown away just by the quality of the case studies and of the discussion.

Carolyn Plump

Thanks and actually the wonderful thing I think when you put together a panel you don't always know how the talks are all going to fit together but this actually really builds on the other two, so this will be nice. It'll be kind of a continuation.

To your point about maximizing shareholder profits, this is the problem that I ran into. I'm an Assistant (Professor) at LaSalle University, and I teach graduate business

students. This is only my second year, I was in private practice for (20) years, so my experience is kind of the flipside of the other panelists' experience.

So, after my first year, I thought I did such a great job with teaching my students about ethics, including all kinds of perspectives, theories and philosophies. And of course then I get back on their examinations things like the only consideration is whether it increases shareholder profit. That was their answer. I was so frustrated by this.

So, I thought, okay, I'm supposed to be teaching the students about competing in the global marketplace, where you've got so many different factors. You've got different ethnicities, different religions, different countries, all this stuff. And at the end of the day, they're coming back with this very standard answer, how can I get them to open up?

So, I did what all lawyers do when we don't know the answer, and I went back and did some research. I realized clearly that I need to do a little bit more. Academia stuff is not so easy at first. I thought it was going to be a breeze. It's definitely not.

So, I researched and researched and I found all kinds of international treaties and ethical canons, and I thought all right but I can't possibly teach my students every single one of the things that they could possibly encounter. So, what do I do with them?

So, I was going through, and in a video I found four statistics that actually guided me, so bare with me while I go through three statistics cause you'll see why they impacted the way that I decided to teach ethics.

The first statistic claimed that in 2014, we as a world will create 3.500.000.000.000.000.000.000 (i.e., 3.5 zetabytes) of new information. That's a lot of information just to put it in perspective, more than the previous 5,000 years. So, just in one year, we're creating that much new information. So, hold that fact in your mind.

Now, again to put that in perspective, I thought, "well so that's new information but I don't see that much every day. That's kind of out there on the Internet and so it doesn't really apply to me."

However, I found another statistic to put in perspective that everyday as an individual I come across 100,000 bits of information. The novel *War and Peace* is about 400,000 words. This means every four to five days, I am basically absorbing the equivalent of *War and Peace* through media (e.g., television, text, Twitter, conversations with people, etc.). Again, an astounding amount of information; how can we possibly process all of this?

Third, the amount of new technical information is doubling every two years. This means the information that I teach my first year undergraduate students will be outdated by their third year. Again, I'm kind like bewildered what to do about this.

The fourth fact -- and this was the one I found most astounding, is that the ten most popular jobs in 2010 did not exist in 2004. Where does this all lead me besides screaming back to private law practice because it was a lot easier there.

So, what do I do? As stated in the "Did You Know" video, I'm preparing students for jobs that don't exist using technologies that haven't been invented to solve problems that they don't even know yet. That's a pretty daunting task. How do I do that?

I had an epiphany. Phonics was actually my guiding light on this, and many of you in the room may have had to learn to read, if you learn to read like I did, by memorization. That's how we learned to read, by rote memorization. You see a word, you recognize it, and then repeat it back. The problem with this that I found is that now when I stumble across new words, I have no idea how to pronounce them. I don't know how to sound them out. I don't know what to do with them. And I kind of stumble, thank God for the Internet. I can go the Internet and kind of click on where they have the sound and the pronunciation key.

But my children, by contrast, learned to read in a very different way. They learned to read by sounding things out. The difference between those two methods is that I was taught how to read in a particular situation (for example, when I encounter the words X, Y and Z, here's how to read them), my children were taught to read in any situation. So, when they encounter new words they have the skills to understand how to sound things out, they can read anything. This is exactly what I need to do with my students. I need to give them skills for addressing any ethical situation.

So, how do I do that? I had a two-pronged approach, and this took awhile to develop. The first approach -- the first thing I needed to do was I had students that were very grounded in telling me the right answer. They would say, "Tell me what the answer is. Tell me what I need to do. Tell me what font to use." I said, "Oh my gosh are you kidding?". Get a grip because nobody in the business world is going to tell you what font to use. Go do your assignment. So, what do I do with these students who just want me to tell them the right answer? How do I get them to possibly open up to this? And the answer -- believe it or not -- was poetry.

I took business students and I took law students that I teach and I spent a fair amount of time going over some poetry. I'll give you three examples of poems that I used. This first one was "An Introduction to Poetry" by Bill Collins, and it's in the materials if you want to see it later. I just say that for your information. It talks about switching on a light switch.

And when you read the poem, it's this amazing idea about kind of envisioning the possibilities of the world and calling on people to examine everything with this wholehearted view. And it's not to necessarily distill things down to one simple meaning or correct answer.

I like this concept because I like the idea of students understanding that there might not always be one answer. There are many answers and open your mind up to the possibility of this. Sometimes we have to make decisions with less than perfect information -- in fact virtually all the time. Sometimes we also have thoughts in our mind that compete with each other. I use this poem to start them thinking about opening up to multiple answers.

The next poem I use is by W.H. Auden called *Stop all the Clocks*, and I'll see if the clip I have for this comes up. Most people remember this poem from the movie, if you ever saw it, *Four Weddings and a Funeral*. He reads it just astoundingly well, and the reason I'll show it is so we can talk for a second about the meaning.

[Plays clip.]

I ask students after we watch this and they read it what they think this poem is about. I invariably they say it's about somebody's who's grieving about losing a loved one. And I say yes, absolutely that is the first thing that comes to mind, but it's not only about that. What else is it about? We get in a big discussion. We talk about public grief. We talk about the fact that it is about building one's life around one person, feelings of powerlessness in the face of death, and we go on and on and talk about all these different themes. But to reduce it to one thing would be like me saying Carolyn Plump is an attorney. Yes, certainly that is true. I am an attorney, but I'm many more things than that. So, I want them to be able to see the whole. I use that poem to talk about that.

And then finally, the last poem I use in my effort to open up their minds is by William Stafford, and it's called *Traveling in the Dark*. It's an amazing poem. And another reason I like poems is they are condensed -- usually ethical dilemmas that are in condensed form -- so I can hold people's attention usually.

And the idea here is that the author of the poem is weighing ethical decisions against some emotional decisions. He reaches a decision that seems really difficult but you understand it.

So, we use this poem to talk about different points of views (as one may find in business with stakeholders), and how from the poet's point of view he thought he was doing the right thing even though there are other valid options. For example, we look at it from the perspective of the mother deer, the fawn, the other drivers on the road, etc.

We look at kind of all these different people and animals involved and how they can come to different decisions and how there are all valid. It's just a different way of looking at things than their only one answer.

To summarize, I use poetry in that way, again as the first prong of teaching ethics to open up their minds. I find that it gets people talking who don't usually talk, which is really interesting. It also gets people out of the profit paradigm. They feel like they can more clearly express different views and they won't be pounced on by the rest of the class. And so, it's a really interesting dynamic, but it's only the first part.

Now I have gotten them to think differently and to open up their minds a little bit, but I still have to give them some structure in order to carry through with the next part, which is –, now that you've seen all the possibilities, how do you decide what to do in the situation? As a caveat, I don't get any money from "The Ethics Game" and I'm not connected with them in any way. But, I did a lot of research on different online tools, and this was one I found to be really useful, and there're three parts to it, it is called The Ethics Game. And, it's \$25. It's an online tool, so my students actually sign up for it individually, and I cut some things out of my custom book so my book wasn't as expensive. I felt like it justified asking them to buy the software.

The three parts to the game are this. The first part is that the students take an individual student questionnaire. It's about 20 minutes long. I make sure that I tell them at the beginning of it that there are no right or wrong answers. It's not that type of questionnaire. I want them to know I'm not going to necessarily judge their answers. All it does is put you into one of four different ethical lenses, and what happens then is I get a nice graph of where all the students fall after they take it. And the students get individual feedback on the lens they fall into, the strength--the things they automatically see right away in a situation and their weakness, the blind spots. Blind spots are the things that don't even come up on the person's radar when he or she look at things from a particular lens.

Typically, students are pretty well scattered around the four different lens. If somebody is right on the axes, it means sometime they're kind of indifferent about a topic or maybe they're in transition, but it provides me with a scatter point graph so I know where everybody is in the class.

The second part of The Ethics Game is explaining each of the four ethical lens. Because they just took the questionnaire, and they know which lens they are, we delve into what each lens is.

I'm not going to spend any time on this next slide, but I'll just tell you that as you can see from the two axes, the X-axis and the Y, they move from being individually focused to community focused, and from rational thinking (thinking with your head)

head to emotional thinking (thinking with your heart). It provides a good explanation that we work through and we talk about in class.

The third part involves dividing the class into groups. And I intentionally pick one person from each of the lenses and have them in groups and give them ethical dilemmas. The game itself gives you lots of what they call “hot topics,” so you can pull from the game if you want to. Sometimes I make up my own situations, and they have to go through it and arrive at a decision and an answer for each of the different lenses and explain why somebody would decide the he or she decides based on that lens. Then they present it to the class and explain. And I found that this is really helpful because they get a chance to kind of play a little bit with the different lenses to see the different points of view and hear the reasoning as they work through some ethical situations.

At the end of this year at least -- I've only used this for one year, but it's a semester course, so I've used it twice. I found that at least they're thinking about it, to your point about at least putting it on people's radar so now they're at least discussing it in business decisions or at least it's coming up. You know I would love to have “the right” answer for everybody in every situation, but I don't know the right answer, so I just like the fact that the students are talking about it now. This approach makes it more likely they will bring it up in business meetings.

So, that's the approach that I've used for this year, and it's gone well so far. So, if you guys have any questions.

Audience: Can you give an example of one of the ethical issues that you have used?

C. Plump: Sure, one of the hot topics they've used?

Audience: Yeah.

C. Plump: This is one I made up because I had a lot of sports fans in my class. I used one recently on Brazil with the Olympics and the World Cup and the protests in the country over the fact that the government is squandering some of the public's money to build these huge extravagant stadiums at a time when people aren't necessarily getting basic resources. For example, transportation costs are going up, different things like that.

The case asks students to decide whether to open a- another office in the country. Do you start one in Brazil or do you not and how do you rationalize it given the fact that the government is not helping its citizens. That would be one example of something I've used in class.

They had lots of different ones based on business. They have other ones too.

Any other questions?

Audience: How big is your class and what's the typical makeup?

C. Plump: You know it really varies because at the school they try and give everybody every option, so there are part-time students, full-time students, summer students, and night students. This means in some instances the classes are small. I've had four students, if you can believe it, in my class. And then sometimes I've had up to 25, so it just depends on when it's offered. It's been a little bit of a challenge because it's a very different class when you have four students versus 24. So, I've had to change some of the group exercises when it's been a smaller class.

Yes.

Audience: Great presentation.

Some of the issues that you've raised are so I would think diametrically opposed to a traditional engagement letter that a client can sign with a firm, and yet if the client had an in-house counsel, would the in-house counsel be the buffer? Am I making any sense? Why don't I just shut up. It's Friday.

Ethics to me also involves sometimes you just go to a certain point in your representation and you stop and you don't consider your morals or your moralities on the corporate client. Maybe I'm speaking Greek, no disrespect to the Greeks or what not.

U. Rodrigues: No, this is a tension that we struggle with and the students struggle with. It's where Carol started our presentation, which is that there is this sense from a lot of companies, and not the Enrons, but there's a sense with a lot of companies that they want to do well either because they have some sort of moral focus from the top and it's part of their culture or because they see in the headlines how it can come back and really hurt them. It can damage the bottom line, and that's demonstrable.

So, the question is does the attorney have a role and there certainly are companies who think that they should or if there is going to be this voice it's going to be valued if it comes from the attorney.

But what Carol also said was it has a lot to do with the relationship and the scope of the engagement. And certainly you're not, as a third-year associate, going to come in and say you know I think that cigarettes bad and you should get out of it. But there is that space.

Audience:

It's interesting you say it because CVS' headquarters is in Rhode Island, and when that corporate decision came up, it was on the front page of our -- we only have one newspaper in the state, but it was in that front page newspaper of the state I would say three times over the next ten days about among other things the issue of well if you guys were talking about at the beginning as far as you know return of shareholders, etc, there were a series of articles just on that in the paper, which I found fascinating.

But on the other hand, nobody -- for example, we have a law school in the state. I teach there, but we didn't -- you know no one went down and talked to them about that. No one went to a business school, and we have a couple of them. No one asked, and I found that interesting as well.

But this role of the -- again companies that have counsel that the young attorneys would interact with, I --

U. Rodrigues:

We had the compliance attorney from CVS. Carol Mark, come, and that decision did not come from the lawyers. That came from the business. It was a business decision.

But then also part of what we talk about, especially with this class of students, who are generally very business focused is that a lot of lawyers, especially those that move in-house, move over to the business side. It's not like you check your ethics at the door when you -- because you're a lawyer or when you move out of that legal role. So, we're sort of looking long-term in term of how the ethics will play a role.

But then there are also the day-to-day ethical issues that come up from you know back dating and options back dating. There were a whole lot of attorneys involved in that and a lot of associates involved in that as well. Marcia.

Audience: Marcia Norye, Saint Thomas University. So, one of the ways I think you could market it and just being very crass but also addressing our issue and addressing the discomfort some people have is I remember when I played two roles, which was difficult. As Deputy General Counselor -- everything was privileged -- and compliance officer, where nothing was privileged. Sometimes I needed to get a second opinion, which really was not a second opinion. It was something to validate my own opinion. And I needed outside counsel to come in and be able to say it because sometimes the legal stuff was easy. It was the ethical issue that was a little bit tougher.

And so to the extent that you are training young lawyers to think about some of these things and to have a frame of reference in which to kind of make these assessments, that's particularly important because it might just be the board member -- because you know the board sometimes is going to have its own independent counsel. They're going to be thinking about shareholders, socially responsible investors, any number of people where sometimes the ethical issues are -- like I said the legal issue might not be so difficult.

C. Morgan: I just wanted to respond to your comment earlier about imposing your morays on the company. And I actually don't look at it that way at all. I look at it as helping the client see all the impacts that these decisions have that they may not be looking at -- they're focused on one goal, and they don't realize that it can have consequences beyond that. The advertising issues, the fact that -- are you okay with the fact that you've got inconsistent advertising in India and in the West? This could come back to haunt you. Is that something you want to do? Just raising these questions -- the business decision may be that we're willing to do that. But at least raising the questions, helping them see consequences I don't see that necessarily as some heightened ethical consciousness but also just an analytical perspective. It's a little broader sometimes than a business person just looking at a particular economic goal. So that was one thing. I didn't look at it as imposing myself on the client. I'm just helping the client look beyond the issue.

And also one other comment on the CVS issue. They did come to the -- the business people did come to the lawyers to figure out how to accomplish their goal. They wanted to do something about cigarettes. They actually had several plans initially, and they came to the lawyers to say what's the best way to do it. And the lawyers helped them work through the issue. You know one was do we just

say you had -- what was the thing? You had to be a certain age. Could we ban or go above the law on who we could sell them to. And they would do a lot of different things to finally come up with these results. So, I think lawyers were involved in the decision making process.

Audience: My question for you guys is we don't really have the resources to have a full class of business ethics. I love it. I think it sounds great. Would you have a recommendation of how to incorporate some of that into the corporate governance seminar that's kind of more legal-based but I do have like a day or two focused on ethical dilemmas. Like, what would you guys recommend I do maybe incorporating a component of your class or how can I kind of scale it to an existing class?

C. Morgan: I was going to say that Seletha just did a presentation on that. You incorporate business ethics into your corporate governance class at the undergraduate level but it's the same concept. She actually uses *Barbarians at the Gate* in the example -- some video clips, and they may watch the whole --

Audience: They watch the movie.

C. Morgan: There's a movie and she uses clips from that, so you may want to talk to Seletha a little bit more about that. But I definitely include business ethics in all of my classes. I teach M&A and corporate counsel and business negotiations. And I always include business ethics issues.

U. Rodrigues: I would say a case study -- a good case study, and one of the nice things about it is it's so not the typical case in a casebook where there's a post mortem. The case study is here's the problem what do you do, and that is really powerful.

C. Morgan: The Hewlett Packard one.

U. Rodrigues: And the World Com.

C. Morgan: Yes. There are some good ones from Harvard Business School, which you can get very cheap.

Audience: Judy Rosenbaum from Northwestern Law School. When you were just answering about not imposing our view but sort of broadening the perspective, that rang a bell with me and I gather this may translate for some of you who teach contract drafting. What do I cover in teaching contract drafting in the sense that when you're thinking about, for example, a termination provision, you're actually trying to go beyond, oh this is going to be fine. There's going to be no problems. You know and you're really asking the client to brainstorm with you the various ways in which things might go wrong that have to be covered or should be covered in the contract to protect the client's interest. There's other places in the contract as well.

So, just as a matter of not even ethics but just lawyering advice, It seems to me that in a transactional relationship part of the job of the lawyer is to look outside of what the client directly tells you and to make sure that the things that the client wants or needs to accomplish the deal, even if the client has thought of the termination provision being one example are actually included in the contract. And so what you said fits very well within the roll of the lawyer whether law firm or corporate counsel as a counselor to the client and not simply the role that we sometimes have where lawyers are advocates. Even though ultimately, it is the client's decision to do one thing or another.

C. Plump: I think that's good, and I think what we're suggesting is not just brainstorming the legal impacts but also the ethical impacts.

Audience: Andrew Godwin from Melbourne Law School. Thanks very much for your presentations. Ethics, morality, unfortunately for better or worst they're not absolutes. They're relative concepts of change depending on one's perspective, on one's culture particularly in a global context to the extent to which different cultures bring different perspectives.

I'm interested to know what extent you take into account the different perspectives that arise out of different cultural traditions or what have you -- how you make allowance for that in class if you do and whether you're concerned at all about adopting a western-centric or U.S.-centric approach to teaching business ethics and whether that figures are high in terms of the way that you design the subjects?

C. Goforth: Certainly, in the MBA course that I teach, we actually do spend one of the weeks on culture and I talk about the -- the example I use is in

Saudi Arabia the women are not permitted to drive. It's not against the law, but if they drive the government has said somebody should pull them out of the car and beat them up because they shouldn't be driving.

So, I use that as an example. If you want to have a business there, what do you think about this law? It's very different.

So, my approach is to kind of go through all the different ways to look at it from different perspectives. So, we do talk about it. I don't know that we ever arrive at any particular answer. I don't know that there's a good one, but we at least talk about it so that they can be aware of it and have a discussion.

C. Morgan:

I think what we've done is we've brought folks in, some of the outside speakers, who can talk about some real dilemmas that they have faced. One example that I can think of is the child labor on farms. It's a family farm. They have their children and everybody working there. Well, the company has a policy against using or buying from sources that use child labor, but yet that's perfectly acceptable in this particular culture. And so how do they deal with that? So, they talk about that.

I know we had one with the whole issue of the conflict minerals. One company talked about they want some legitimate mines in the Congo and they wanted to continue doing business with them. But because of the conflict minerals disclosures, it would make them look bad if they disclosed that they're using these just because it's sort of tainted under this whole conflict minerals disclosure. But they had made a decision. It was helpful for this economy. They weren't going to back out, but it was a tough thing because you know there's sort of this cultural negative view.

Audience:

The skin whitening example is a very interesting one because it's very easy from a western perspective to say they want to become more western -- they want to look more western and in many respect that's the case. But in reality, there're a number of cultures in which the fairer you are, the higher your status. I'm thinking here of China amongst other countries where they've always had an aversion towards dark skinned people because it is those people who work out in the fields. So, a professional should have fair skin.

And you have this interesting dilemma for these juxtaposition of different perspectives and it's easy to jump to conclusions about one thing without realizing that there might be another perspective, and it's obviously a challenge that needs to be managed appropriately in the class.

(C. Plump): Truly a legal question that comes up is the FCPA [Foreign Corrupt Practices Act]. If you were doing business in a foreign country, than someone on the ground is going to say but this is your western notion. This is the way that this gets done here. So, how are we going to sell? But then you know we all know about the FCPA, and so there's that sort of struggle and that sort of brings the law perspective right back into the discussion -- the limits of where we can say well cultures are different at least in the U.S. As there are no more questions, thank you.

End of Session