

# SKILLS IS NOT A DIRTY WORD: IDENTIFYING AND TEACHING TRANSACTIONAL LAW COMPETENCIES

**SUE PAYNE,\* BARBARA WAGNER,\* ANN-MARIE MCGAUGHEY,\* BILL BATES,\*  
& DANNY BOGART\***

Welcome to our keynote panel. Thank you for all of your wonderful presentations yesterday, and we look forward to a really full day today.

I would like to begin by introducing the members of our panel. On my immediate right is Barbara Wagner. She is an Assistant Professor and the Director of the Chase Small Business and Nonprofit Law Clinic at the Sammon P. Chase College of Law at Northern Kentucky University. Before joining Chase, Barbara practiced law for over 20 years. She is currently a Member of the Business Law Education Committee of the ABA, Business Law Section, and is Co-Chair of a Taskforce on Competencies for Business Lawyers.

To Barbara's right is Ann-Marie McGaughey. She is a Partner here in Atlanta at McKenna, Long, and Aldridge. She focuses on general corporate representation of publicly and privately held companies in a wide variety of industries. She is Co-Head of McKenna, Long, and Aldridge's Mergers and Acquisitions Group and the Atlanta Hiring Partner. She is also on McKenna's Professional Development Committee.

To Ann-Marie's right is Bill Bates. Bill retired from King & Spaulding in New York in December of 2013. He was a Partner in the Corporate Practice Group and Co-Head of the firm's Merger and Acquisition Practice. He served on the firm's Lawyer Development Committee for 13 years and as Chair of that committee since 2005. He also served on the Associate Evaluation Committee for two terms.

Then to Bill's immediate right is Danny Bogart. He is Associate Dean for Academic Affairs at the Dale E. Fowler School of Law at Chapman University, where he holds the Don Lee and Marjorie Bollinger Chair in Real Estate Law. His primary

---

\* Professor Sue Payne joined Emory Law in 2012. She now serves as a Professor of Law, as well as the Executive Director of the Center for Transactional Law and Practice. Payne came to Emory from Northwestern University School of Law, where she had been a Clinical Assistant Professor since 2005. At Northwestern, she taught basic contract drafting to upper-level law and business students and pioneered a contract drafting module taught to all of the first-year law students. Her book, *Basic Contract Drafting Assignments: A Narrative Approach*, was published by Aspen Publishers in 2011.

\* Barbara Wagner is an Assistant Professor and the Director of the Chase Small Business and Nonprofit Law Clinic at the Sammon P. Chase College of Law at Northern Kentucky University.

\* Ann-Marie McGaughey is a Partner at McKenna, Long, and Aldridge in Atlanta.

\* Bill Bates is a former partner at King & Spaulding in New York.

\* Danny Bogart is Associate Dean for Academic Affairs at the Dale E. Fowler School of Law at Chapman University.

interest is transactional practice. He has an upper level book on commercial leasing that some of you may be familiar with, and he has actually co-authored five books, including the most recent *Property Law: Practice, Problems, and Perspectives*.

Those are the members of our esteemed panel, and I am thanking all of them in advance for agreeing to do this and for being here with us this morning.

The title of our panel is Skills is Not a Dirty Word: Identifying and Teaching Transactional Law Competencies. Perhaps it should have been Competency is Not a Dirty Word, but it didn't sound quite as sexy so I didn't call it that.

When I was getting ready to moderate this panel, I tried to find out about the origin of the word "competency" in the context of developing talent. On the internet, it's attributed in many places to a psychologist named David McClelland, who wrote a paper in 1973 called *Testing for Competence Rather than for Intelligence*. He wanted to find out if, everything being equal -- people are equal in intelligence and all other ways -- why some professionals wind up being more successful than others. He believed that there were certain specific common abilities that successful individuals had or possessed, and he called those "core competencies." He thought that these core competencies could also be identified and taught.

According to McClelland, competencies are skills and traits that top performers demonstrate most often. With that, I would like to begin with our panelist Barbara, and I want to ask her about the ABA's focus on competencies.

### **Barbara Wagner**

Okay. Thank you Sue.

Let me say that I am one small cog on the taskforce that is part of the Business Law Education Committee of the Business Law Section; I am not an expert on everything the ABA is doing, which includes the Taskforce on the Future of Legal Education, which is ABA-wide, and many other initiatives. But I'm happy to share what we are doing on our task force on competencies for business lawyers.

Our taskforce met at the ABA's Business Law Section spring meeting in Los Angeles in April and had a presentation and discussion about whether competencies for business and transactional lawyers can be defined, and if so, who should define them?<sup>1</sup> So far, we have not decided who should make the final decisions, but we have at least decided to go as far as we can in defining specific competencies for transactional lawyers. You should be aware that the Business Law Education Committee includes both practicing lawyers and law professors who teach business law, with many variations, such

---

<sup>1</sup> Note that the session was recorded, and can be accessed by ABA members through the ABA website.

as practicing lawyers who are adjuncts and professors with significant corporate practice experience. So our goal is to define competencies and then address who is or should be involved in implementing or teaching them.

There is a handout I pulled together for this conference, which includes some materials prepared by others on competencies; the materials are by no means exhaustive. I wanted to give them to you to read at your leisure. I am not going to go through them in any detail. They're a selection of how different people have looked at and defined competencies. Some of them are specifically for business and corporate lawyers, and others are much more general.

I do want to point out two things from the materials. The first is an excerpt from an article by Marjorie Schultz and Sheldon Zedeck,<sup>2</sup> which has a good listing of competencies for lawyers generally. Their summary is a very useful resource, but note that it is not focused specifically on transactional lawyers.

The other thing will not come to a surprise to anybody in this room. There is an interesting chart that was put together by Eric Talley, the Rosalinde and Arthur Gilbert Foundation Professor of Law and Director, Berkeley Center for Law, Business, and the Economy, at UC Berkeley School of Law.<sup>3</sup> Talley prepared a survey about competency training for law students in connection with testifying for a task force of the California Bar Association, which is also looking at defining competencies. As an aside, everyone should be aware that lots of states are looking at competencies and competency training, separately from the ABA.

Talley's survey was administered to a fairly broad sample of practitioners and academics. But it was a relatively small sample and may not be statistically significant. What I found most interesting was his slide reporting on responses to the question "What is your degree of support for the efforts underway to mandate minimum skills/competencies training for law students?" Among academics, the responses basically form a reverse bell curve; in other words, they were either strongly in favor or strongly opposed, and opinions in the middle were not as highly represented. In other words, there is no consensus at law schools (and closer to a sharp divide) about the value of teaching competencies.

Now I will turn briefly to my thoughts about competencies. There are lots of different ways to define them. Some of the other panelists have different experiences that they will share. I think depending on the resources you consult, competencies can be defined as ranging from things that are really part of your nature and makeup to very

---

<sup>2</sup> See Marjorie Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 LAW & SOC. INQUIRY 620 (2011).

<sup>3</sup> Note that because his wife was recently named to be Dean of Columbia Law School, to take effect in January 2015, I understand he will have a new role at Columbia.

skills-focused. For example, there are personality components, which may be revealed in a Birkman or a Myers-Briggs evaluation. We all know lawyers who are by nature either very litigious or very interested in making the deal; these tests reveal those who are people-focused or analytical and many other attributes, all of which may be components of a good lawyer. Some of these attributes may be more important in a transactional lawyer, but they can't necessarily be taught. On the other end of the spectrum, there are a lot of things that you learn long before you go to law school, or at least could learn, such as skills like Excel and good English composition. In between these extremes are both the legal-focused competencies, like applying law to fact situations, or completing a closing, and the business-competencies, like reading and understanding financial statements or valuing a business. Thus, it is important to define what is meant by competencies when you discuss them.

In the area of competencies for business lawyers, I think some people define them like the title of our presentation - very skill-focused. It could be how to do black lining or how to write a business letter. Some of them focus on traditional legal doctrinal areas, and one of the presenters at our ABA task force program basically said nowadays there is so much substantive law students need to learn, they should learn as much doctrinal law as they can in law school, and let the law firms worry about training them in skills. My opinion is that that may work at the largest 50 or 100 or 200 law firms, and the law schools which send a lot of students to those firms, but I teach at a law school where that is really an aspiration for very few of my students. Many of them either go to very small firms or hang out their own shingle. So I think we have to think about what competencies each law school has to define and teach based on the particular law school, who their students are, and what competencies those students need.

There are other substantive areas that are not typically part of the law curriculum, such as accounting and finance, which may or may not be a competency, depending on how you define them. But these are certainly knowledge areas that students and practicing lawyers need.

Then, there are the real practice-ready skills like contract drafting, project management, oral presentation, and broader legal skills ranging from ethics, like identifying conflicts of interest, to how to run a law office, client development, and managing a workload on a given day. All of these belong somewhere on the menu of competencies, whether taught by law schools or law firms or bar association CLE programs.

One final issue that everybody needs to think about is that we cannot focus only on what should be taught in law school, or what training should be provided to first or second year lawyers, because I think it's really a developmental thing, and the necessary skills and competencies change over a lawyer's career. This is not just getting more skilled; there are real differences between more senior lawyers and more junior lawyers.

Managing a large law firm or managing a team of lawyers on a major transaction requires different skills from drafting a set of bylaws or interviewing a small business client. So that's a component that must be included in defining competencies.

In addition, we have to be mindful that some of our law students are not going to be going into practice, some by choice. So if we tell them they all have to learn certain particular skills, and they want to be a lobbyist or executive director of a nonprofit or do something totally unrelated to actually practicing law, we cannot force too much down their throats that some of them will never use.

In sum, my main takeaway is, whatever we come up with in terms of defining competencies, we have to realize that there's no one size fits all.

Sue: Can I ask just one follow-up question? What is the taskforce going to do next?

B. Wagner: Well, the Business Law Section is now starting to meet three times a year. I am not sure that the taskforce will convene at each meeting, but we are trying to pull together a summary of what was discussed and what came out of our April meeting. We had a list of people who were physically present in Los Angeles. If anyone in the room is interested in getting involved, feel free to let me know.

We hope to have a small working group define exactly how far we want to go and how broadly we want to define competencies. Are we focusing on competencies in terms of law school? Are we focusing on competencies in terms of lawyers in their first five years? And how broadly do we define business law, because someone who only does real estate is going to need different competencies from someone who does M&A work in a specialized practice area in a major city, and someone who does a general practice in a small town where they may do anything from a residential real estate closing to a bank loan to drafting a contract or advising on laws like alcoholic beverage licensing or construction general contracting.

Sue: Thanks Barbara. Ann-Marie, I know McKenna Long has been using a competency model to evaluate its associates for a while. I wonder if you can talk about why you started using that model and how you developed it.

A. McGaughey: Sure. Thank you for asking me to participate.

We decided at the firm several years ago that, as a part of the associate training and evaluation process, we should make it as objective as possible and not have the subjectivity that you may get if you do not have clearly defined objectives for associates to meet as they advance. Our previous evaluation process was based on evaluating an associate by asking whether he or she met expectations, exceeded expectations, or did not meet expectations. The expectation was the subjectivity part. Some partners are known as hard graders and some are easy graders, probably not unlike professors, and maybe students steer toward the easy professors and not the hard professors, depending on their personality. At a law firm, you're kind of stuck with who you are assigned to, so we wanted to have clearly defined objectives for them to meet.

We came up with this. There was a large firm in Texas that had started this. I think we may have been one of the first in our region. It took a lot of time. At a law firm with a lot of partners, it is always hard to get consensus. I am sure professors agree on everything when they are determining curriculum.

And so, we had many discussions. We decided that we would have firm-wide associate competencies, and every associate in the firm (I'm not sure how many we have now but probably close to 300) would meet those competencies. We have competencies at a department level, so the corporate department has its competencies, and the real estate department, the litigation department, our IP department, and our government department each have their competencies. I cannot speak for the other departments, but within the Corporate Group we have a few specialty areas, like tax. So, the competencies for a tax associate would be a little different. If you were not a tax associate, you would not be required to know the details of the I.R.C. Section 338(h)(10) Election. You would have to know what it is, but you would not be responsible for making sure that the client gained that benefit.

It sounds like a lot, but each of those competencies has four levels. We have moved away from your first year associate, second year associate, third year associate and the sort of lock-step compensation. This was then reflected in our compensation system; you would be a level one, a level two, a level three, or a level four, and you would have to achieve substantially all of the competencies within level four to make partner.

This also helps when people ask what it takes to make partner. You would give all of the associates the competencies in writing from day one. So, it's not like you don't get to see level one or level two until you've reached level one. They have all of them.

We've also gotten buy-in from our Associates Committee. It was part of putting the competencies together. The firm-wide competencies are divided into five categories -- skills, client service, work management, interpersonal traits, and firm citizenship.

There are subgroups within each one of those categories. I'll just give you an example. Under skills, written and oral communication would each be a skill. Under interpersonal traits, teamwork and cooperation would be a competency. Then within the department, they are actually specific. A level three would be required to draft a legal opinion with very little editing. A level one would be required to know how to form a corporate entity. A level four would be expected to have at least one, maybe two, small clients, where they're considered the go-to lawyer.

It is broken out almost as a roadmap, and it helps us in the evaluation process to be very specific about what training they will need to move forward.

Sue: Thank you. Bill, at King and Spaulding, I think you used the competency models a little differently.

B. Bates: Oh we did. I will give you an example. When I started practice, I was assigned to matters that the client would pay for me to learn how to do. Those no longer exist in the modern world. And so, from a training and development standpoint, we basically wanted to spend more time making sure our associates got valuable experiences and developed as good lawyers.

Ours basically developed at the practice group level and started with one or two practice groups at the firm. Then, the lawyer development committee recommended that most practice groups develop their own competencies, and most have. Most use them to a greater or lesser extent, and they often combine them with great coordination.

But what we tell people when they use them is that they are not for evaluation. They are not a guarantee that you will get assignments for

each of the type of matters on the list because that is always client-driven. There is no assurance that if you do each of the matters or the types of matters, you will be assured promotion. But what the lists do is set forth skills, experiences, aptitudes, behavior and personal characteristics that help one develop into a strong lawyer.

While each practice group I named has a different skill and competency list, if you looked at them, they obviously were drafted from a similar template, and they tend to be focused on junior (first and second year associates), and mid-level attorneys (third through fifth year associates). We really do not focus on the senior level because, by that time, you really need to be running deals and have already accomplished most of what was on the first two.

If you look through the materials that were handed out, the categories are often different; the broad categories when I sorted through ours were: general legal skills, professional work habits, interpersonal skills, work skills, firm and community involvement, and external profile. As a young associate, you can always become involved in the latter two through firm activities, but obviously external profile takes a little more seniority as you practice.

Just to give you an example, the general skills include: intellectual curiosity, basic knowledge of the industry, and as you start working with clients, specific knowledge of your client. One thing, I went to the University of North Carolina School of Law, and Delaware corporate law had not been as well established as it is now. Understanding Delaware corporate law, and the law of the jurisdiction in which you practice, has become very critical and that needs to come from an early stage, as well as understanding basic documentation and basic research and drafting skills.

Professional work habits - I used to think you did not need to teach people this and that law students are particularly very gung-ho, but we found it important to tell associates that they need to be available 24/7, they need to return voicemail promptly, and they need to check their email and respond promptly, whether it's a client, a partner, or another colleague in the firm. You need to learn how to make decisions appropriate to your level. We do encourage associates to take initiative, but a first-year associate is not going to make a structuring decision on a transaction. We expect people to take ownership of the matters, but obviously that is a learned technique. But we expect you to come in with basic organizational



skills, and the bane of most lawyers is timesheets. So we must make sure associates do that on a timely basis.

Interpersonal skills have become even more critical as time has gone on. That includes such things as being courteous with staff, clear communication skills, and the ability to interact well with clients and work cooperatively and constructively with others. For firm and community activities, you get involved in your practice group. What has become more important these days is business development, and firms are all the time responding to requests for information or requests for proposals, so associates can play a great role in that.

Work skills - there is no reason that a first-year lawyer should come out of law school not knowing how to handle a closing and what a closing is.

Drafting basic contracts - in our list we will sometimes list the specific types. You start off with a shareholder agreement, and then you do a purchase agreement, and then a complex merger and acquisition agreement, but it varies. In the energy group, we have standby purchase agreements and the like.

Ability to identify structural issues - that is something more prevalent in the mid-level than the junior skills lists. We actually have modules that teach delegation and feedback, and we present those to some of our associates in the sense that, while you're not giving feedback, it is important to know how to take feedback.

Professional development is obviously developing a public profile if you want to be successful in the practice of law. Sue had asked me how we do that in recruiting. We do not really use this competency model in recruiting, but there are some similar concepts that we use when we look at hiring first-year lawyers. One is obviously academics, which is a given, but we focus on demonstrated leadership skills because we have found these traits to be important to successful lawyers.

Demonstrated leadership skills - I mean it is easier if you have had some work experience, but even if you have not, in various student activities you can demonstrate cooperation, an ability to work with others, and then establish problem solving skills because you do not all of the sudden become a problem solver the first day you become a lawyer.

Sue: Thank you. Now for an entirely different perspective from Danny. There has been all kinds of talk about creating competency-modeled curricula. Danny you are a dean and a professor, so maybe you would like to tell us about what you have been doing at your school as far as curricular review.

D. Bogart: Thank you. First of all, my initial reaction to this kind of panel is that there is a time for professors to talk and then there is a time for us to sit back, listen and absorb. I fall into the latter category here. When attorneys talk about what they look for in students who have graduated, this informs law school faculty and administrators what they need out of those students so that they become successful lawyers. In other words, this kind of conversation tells us what we should be shooting for with outputs. It is a reality check in many respects.

At our school, over the last several years, we have engaged in a thorough curricular review of our entire academic program. I will say this for the faculty in the room, short of tenure, promotion and perhaps appointments, nothing draws out emotions in the way that a curricular review will because it touches upon what the faculty do on a daily basis, how their courses are constructed, what is expected of them, and what is deemed to be useful to the school. It is a statement about where the law school world has gone, where the legal world has gone and whether law faculty are in touch with these changes.

It can be a rather arduous process. We engaged it and I think everyone at our school came at it in good faith and resulted in what I hope will be a good program.

Every academic program is a work in progress. If you engage in any change, individuals on your faculty are going to be thinking that this is a risk. Members of the faculty will say: "I know what I've been doing; you are asking me to take a risk, and I am not sure it's going to be successful." This kind of process is hard on faculty but it is worth it.

When I was searching for my first job in law teaching, I was asked to show a writing sample to interviewers. I showed the law faculty on hiring committees a mortgage that I helped to revise, and they looked at me like I was crazy. They were all litigators with very little

practice in background litigation. This document was entirely foreign to them. As a transactions professor, I am happy to report that the law school world has changed and for the better.

My colleagues on this panel are experienced transactional attorneys and I have listened carefully to their comments. It seems to me that the big question is how can we translate what you have just heard into an academic program. You have heard a number of things. One of the things you have heard is the law firms want individuals with an ability to deal socially with clients, that is, to interact in an effective manner; to interact effectively with their colleagues; and to solve problems. My colleagues on this panel not only want young lawyers to write clearly, but to speak and react clearly and to react in a way which seems judgmentally sound. Well then, what do we do in law schools that help students achieve that? What can I do in my 1L Property course or most classes for that matter to accomplish these objectives? In most courses, after all, teachers present doctrine and test students with exam at the end of the semester.

Translating what you have just heard into an actual academic program is the hardest element, and it may be the reason why a good bit of this is relegated to law firms and to practice. It is actually very hard to for law school faculty to do this in the four walls of a law school.

Numerous pressures are focused on a law school and its faculty at any given time. At this moment in the history of American legal education, economic pressures are intense. The law school marketplace is changing radically as a result of the reduction in class sizes and the reduction in application levels to a level close to 1975. It is amazing the degree to which applications are contracted. Everything has changed for our economic model.

If you view law school as a business, it is not the business that it was five years or ten years ago. That is a huge pressure and it has implications for any school trying to modify and enrich its program in a way that would respond to the demands of my colleagues on this panel. But there are other pressures, some of which are often overlooked. For example, the Department of Education and the regional accreditation agencies, impact legal education significantly. (In our case, the Fowler School of Law at Chapman University is accredited by which the Western Association of Schools and

Colleges.) Every law school is subject to these regional accredited agencies. It is not simply the ABA.

When an accrediting agency comes to the university, it demands that schools demonstrate that they are assessing learning outcomes. In other words, the agency will demand that each individual unit, including the law school, show, *in every syllabus and in every course*, that it has identified learning outcomes and that are then actively assessed. This is a separate source of pressure from the seven year ABA site visit.

This is why, for example, at our school we have identified objectives for every course. These include client counseling, our legal writing and legal doctrine. These are key elements to a law school academic program, and it makes sense that we would assess our ability to convey these abilities and knowledge to students. But if all we asked of our program was to cover these three bases, we would not come close to responding to the demands of the lawyers on this panel. Still, we must meet those elements in every single course to some degree and we must show how.

As an aside, most law schools do require a modicum of legal writing, and do this by including among graduation requirements a demand that students take a writing course. But if you think about it, a minimal writing requirement of this kind is an admission of failure. By doing this, law schools say to students that in all the other course you are not writing. But we guarantee that our students graduate with one writing course.

If every course contained writing elements, you would not need that kind of requirement. It is a failure of law schools we have not incorporated writing into the regular pattern of what we do.

We have tried to solve this problem, but in a different way. Although we have a heavy set of required courses in the school, we have done several things. The first is that we now require that all students graduate two practice oriented writing courses, and those courses require each student to deliver work that looks like a lawyer work product, but it must be something a student can show a prospective employer. But we have tried to create a curriculum that drives students to take more than the minimal number of writing courses. More and more of our classes include significant writing components. For example, in my commercial leasing course, a

student will be asked to produce five to six projects. At the end of the course, students will have a portfolio that will include a lease review, which is 10 to 15 pages long, along with a review of lease and other assignments. This is something that a real estate lawyer would say oh my goodness! You did this in law school? No, it is not the quality yet of a first year associate, but it is not something that we are used to seeing coming out of our law school.

An upper level course such as leasing does give a teacher an opportunity to help develop some of the judgment that my colleagues have mentioned in their comments. But I can say after many years of teaching the course that I spend a tremendous amount of time covering basic transactional issues. This has been a problem and it is systemic. Law Schools do not always create bridge courses that ready students for more advanced practice oriented courses. As a result, we decided to require a springboard transactions course. My colleague from the Fowler Law School, David Gibbs, is here with us at the conference. David has been working hard on a course called Practice Foundations-Transactions, which we hope will be a requirement within a year to two years for all second year students. The idea is that prior to taking an upper level course such as M&A, it would be nice if a student knew what a rep and warranty was, if the student knew the basics of transactional drafting, if the student knew the order of a closing from front to back.

In addition, we are adding lab courses to many of our elective doctrinal courses. Our M&A course is taught by an adjunct professor, Tom Crane, the former managing partner at Rutan and Tucker in Orange County. Rutan is probably the largest regional firm. Susanna Ripken a full time professor and teaches, among other things, Securities Regulations. That is a very doctrinally rigorous course. Susanna and Tom have worked carefully to add a one-hour lab to Securities Regs, which is taught by Tom. That lab meets throughout the semester and incorporates securities assignments and security regulation assignments at appropriate moments throughout the course. As a result, we can integrate doctrine and practice skills. This only works because the two professors collaborate, and because the adjunct is a wonderfully skilled practitioner.

This brings me to a delicate point, however. We do not always have the right army when we are going to war. The people who are our faculty right now do not necessarily have the practice skills of the very skilled attorneys sitting with me at this table. Therefore, the

demand that we teach these things is an interesting one because we're asking people who have not reached that level of mastery to do so, and that creates a huge problem for us, one which is hotly debated. Can law schools teach legal practice with faculties comprised largely of individuals who did not achieve mastery of practice before entering teaching? Our approach admits this concern, and brings practitioners into the academic program in a different way than they have been used traditionally.

Therefore, the problem is implementation and translation. How do you take this demand for a well-rounded lawyer who knows how to respond to clients and how do you teach that in an environment of a law school? I think clinics do it for sure. And we have some wonderful clinics. But we also want to incorporate simulations, and we also want our doctrinal courses to include practice orientation.

One last comment. I had a son who took baseball camp for many years. I am a bit melancholy right now, by the way, because he is going off to college and it is the end of baseball, and baseball by the way in California is year-round. It does not ever stop. It is not like Georgia. It goes on all year.

He was lucky to attend great camp run by a former Dodger catcher. You see kids start out at 8 years old, and they start with basic exercises in running the bases, making cut-off throws, and so on. Now, if you go back later and you look at 14 year old kids at the camp, right before they try out for high school, you will see them run through the same training exercises on base running and everything else. Although they do not use the words, the coaches are teaching "best practices."

I have always thought we should try to teach basic best practice for law practice to law students. And I think that this would go a long way to developing the kinds of lawyers my colleagues on the panel desire. For example, there are best practices for understanding a deal and how to close a transaction, and these are going to be the same for a first-year associate with a simple transaction as for more senior lawyers and more complex transactions. I think the goal for a law school should be to expose students to some of those basic practices and best practices, with the understanding that we will get nowhere close to mastery.

Sue: I want to turn this over to the audience for question and answers, but I wanted to add one thing. Ann-Marie, if you would, talk a little bit about your talent assessment program that you use when you're recruiting.

A. McGaughey: Before you evaluate and before you train, you have to hire. At the same time, we looked at our hiring process and said you know we are looking at great kids, with great grades and high ranks, and everyone is on law review, and president of this and involved in this. How do we kind of translate what somebody said on the competency side? So while we do not test for competencies, we do have our recruits take a talent assessment that is done by a third party. The way we came up with it was by determining which traits made an associate successful at our firm. So, it was specifically designed for what we were looking for.

The categories that it assesses are work management, team player, drive, and judgment. That is what we are looking for, and the partners that are part of an interview schedule have specific questions to determine whether that candidate would have one of those traits that we are looking for. So, for instance, if they take the assessment, and it seems that they may not be strong in the team player category, we are given four or five different questions to elicit response in any one category.

But the questions would be: What team have you been a part of? What role did you play on the team? What did you do to fulfill your role? Tell me about a time that you worked on a team and not everybody pulled their weight. What did you do? That type of thing. I was very leary of having this assessment. I have been on the recruiting committee, I think, since as soon as I could qualify. I took a brief respite when I had my children, and it was long enough to get back on when I came back. I just thought that you cannot assess somebody by giving them a 30-minute or 45-minute assessment. Well, the partners took it, including myself, and I got the results and looked at it. I said oh my god, this is me. I sent it to my parents and they agreed.

Was it 100% accurate? No. Eighty percent? Yes. So if it shows that someone might have a substantive deficiency in work management, which would mean balancing priorities, you ask the question, and it helps us, all things being equal. I mean if you are in law school and you are doing well, then you're smart. We are not

testing IQ. If you are smart you can figure it out, but it's been very helpful.

I also thought that associates or candidate law students would not want to take it, but they do. I mean if we could text it to them, they would probably take it even faster. I mean they take these things. They turn it around. They do not ask questions, and I said well, if somebody isn't going to take it, then we're just not going to hire them. And they are all taking it. In fact, we have people that are not even applying for jobs that want to take the assessment. So, for us it's been a real asset.

Sue: Thank you. Can you just repeat what those four categories were?

A. McGaughey: Sure, work management, team player, drive, and judgment.

Sue: Thank you. We have two microphones out in the audience there. If you have a question, I ask that you step up to the microphone, identify yourself, and ask your question.

Audience: Hello, my name is Todd Starker. I am from Ohio State University. At our school, I see courses that would seem transactional, wills, trust, and estates, or even mergers and acquisitions, still taught with traditional casebooks, all through analyzing cases in the Socratic method. I would argue these are more litigation courses with a subject of litigation as a transaction. Would you support, at least for some percentage of the curriculum, sort of ditching the casebook method, ditching the Socratic method and really teaching more of the transactional skills?

Sue: Maybe Danny and Barbara.

D. Bogart: Okay, well I will answer that question. It is funny that you mention those two specific classes. This last year we began the process with wills and trust; although, we did not do it with every section because it's a bar tested subject. Students in California are heavily focused on the bar. We have many sections of wills and trusts, but we have a full time primary full- faculty member, Celestine McConville, who teaching one section of wills and trusts. She is a wonderful, wonderful teacher. Celestine now teaches the course it in conjunction with a very experienced estate attorney. The estate attorney teaches a one hour separately graded lab in conjunction with the primary course.



In addition to the three-hour wills and trust course, the two professors worked carefully to create a one hour laboratory, one hour a week for 14 weeks. Students who take the are also required to do the lawyer work product. Essentially, students receive assignments, then receive feedback, and go over assignments in class. They spend quite a bit of time developing the course. This is a well-integrated module.

But the point is that the primary wills and trusts teacher continues teaching her doctrinal course, even though she has helped incorporate the lab. Therefore she keeps using a traditional text. If the question is do you ditch it entirely, the book, that is precisely where most professors at most schools would probably draw the line and say no I'm not ready nor do I wish to give up this textbook. But you can encourage them to find alternative methods of incorporating practice and doctrine, and this was successful.

M&A is another course. We hired, as I mentioned, an individual who had a successful practice. But in hiring the adjunct required the teacher to teach the course to meet our course must meet practice writing requirement. This means the teacher can have a quiz or an exam, but the primary material on which these students will be graded will be something akin to lawyer work product. I have made this a requirement of most of the courses we have added over the last several years, essentially making it impossible for students to duck practice oriented writing. These professors retain using a traditional text in most cases but the material on which students are graded needs to look like what a lawyer would do in practice and what you would give to that lawyer as a writing sample.

Students can be wary of these kinds of courses by the way. They can vote with their feet, and even if it's a successful teacher who has had tremendous success in attracting students in the past, students do not know whether they should take courses that require writing and not simply an exam. These kinds of courses are more demanding. They have a hard time anticipating how they will be graded. They have a sense when they take an exam of what's going to occur. They wonder what is going to happen in a six person writing course.

Yes, I would say that we have made an attempt to make these changes. But if you ask me personally if I think we should be ditching texts entirely, the answer is probably no. Additionally, I

would say even more fundamentally that I do not think faculties will allow that.

B. Wagner:

Well, I am a neophyte in the academy; I run a clinic. I do not have a casebook, but one of the first things I did when I started teaching two years ago was observe classes of some of the professors who have taught for a long time, to see what they do well. One of our best teachers has taught traditionally from a casebook, but is able to use it in ways to get conversations stimulated in the class and turn even some of the cases they have been discussing into a discussion that requires a lot of problem solving and asking, "What would you do if a client asked this?"

I think, as Danny said, a lot of law schools are institutions made up of the people who are there, people who are fairly well practiced in what they do, and to say you have to throw everything out and start over is not necessarily going to be a very successful strategy. However, if law schools begin to focus on competencies, it will probably be necessary to find ways to encourage faculty to change and adjust.

If I were personally asked to teach a doctrinal course, at least having a casebook would help me make sure I cover the areas I need to cover. I mean, I would not want to design a course from scratch myself, but I'm personally a little scared of casebooks, because I have not looked at one since I was in law school myself and in my career as a business lawyer, I never went to court and read very few legal opinions.

B. Bates:

To give you a bias of a 35-year practitioner and securities lawyer, I do not understand why someone who takes an M&A course does not have a very basic understand of how deals get done. For securities regulation, many associates have never heard of Form 10Q or Form 10K, and they need to understand how those are put together and how to do a form check on a client's 10K or 10Q.

With respect to M&A transactions, in particular public M&A transactions are pretty simple. There are only a few things that you really negotiate. But I think students need to understand what those areas are. I am not discounting the doctrinal aspect; I think that is important. Just remember that by the time that person is making a significant decision on a transaction, as a senior associate or a partner, the law probably will have changed.

A. McGaughey: Yeah, I probably would just add that I think it is a hybrid. I think if you spend 8 weeks on what is a security, it is not really helping the students in all the cases. In the M and A world, we will look to Delaware cases sometimes for fiduciary duties or if there's some nuance that has changed. But for the most part, it is sort of the art of negotiation. When we have recruits come in and they are deciding between corporate and litigation, I explain that they do not draft any memos. You will not have to look at any cases. Sometimes that appeals to people, and sometimes it really scares them because that is their comfort zone.

So, I think you do need to have a basic understanding of what is truly a security because sometimes that is the question in a certain situation, but you also have to know what a Form K is and 10K and 8K, and you must know the basic vernacular. So, if you could kind of take the cases with you, like what Danny said. If I had a recruit who knew what a representation and warranty was, they may not know how to negotiate one or how to draft one or even maybe how to revise one, but the fact is that some of these kids do not know what 401Ks are if they have not worked. So, I think it is a hybrid.

Audience: This is a fascinating panel and conference, and if it were possible, I would love to know what is the sum of all the years of experience in the room because it's quite high. I mean even up there it is really quite astounding.

I have a question and comment. Really I congratulate you on having the law school casebook publishers here, but I wonder, are they in the room? Can you raise your hand? So, they are not in the room. But if they were in the room, it would be quite interesting to see how that might influence their conversation with casebook authors. I teach securities and business associations and on that issue of 10K and 10Q being primary, those are at the back of the casebook. Pretty much all of the casebooks start out with a 33K still, for those of you who teach in this area. What you are saying is, well no, practice has changed. Of course practice has changed. The law has changed, but the casebook editors need to engage, I think, in a conversation with the publishers and with the authors, and that might change things substantially. If you all can talk to the publishers about what matters and ask them to talk to the authors in doing their revisions, that will help the teachers know what matters because, as you know, some of us are pretty far away from practice or some people have never practiced.

The second thing is one thing you have not talked about, which is the difference between different practice settings and the kind of competencies, skills, and knowledge that are required. Maybe the answer is there isn't a lot of difference. Maybe it does not matter if you are on your own or you are in a two-person firm or in-house, or on your own in-house, only one lawyer in-house versus working with 100 lawyers in-house, versus working with King and Spaulding in New York. Maybe you need the same experience. Maybe law schools should approach all students the same way, but I would be interested in your comments about that. And I am Carole Silver from Northwestern.

B. Bates: Well, I think there is a big difference between a large law firm corporate law practice and a small practice. I think the soft skills that we have talked about are absolutely critical. Client development skills, if you are on your own, are probably the most critical because you need someone to pay you, whereas you come into a large firm and generally have an established client base into which you can work.

Is that lawyer going to do a large-scale diligence project as a sole practitioner? Maybe if they go in-house they might or if they are at a large law firm. They won't have to do that, but understanding basic negotiation skills and basic communication skills are all endemic to any practice.

A. McGaughey: I completely agree. I think on the soft skills you need to be able to communicate, whether in-house, outside, one person, 1,000 lawyers. You need to be able to write clearly. We do so much by email, and it is just basic, I don't care where you are. Do not use emoticons when you are talking to a client.

B. Bates: That is more of an issue than you think it is.

A. McGaughey: It is. We have an internal training class, what every first year should know. It used to be called how to survive your first year, and that's just one of the basic things. But I agree. I think probably department level competencies that I talked about would need to be different because you may not be writing a legal opinion. As Bill said, the practice is going to be different, so again I think it is a combination. In order to be a good lawyer, you should be responsive. You know when you are in-house, your client is right

down the hall. You need to be responsive, so I think there are things that apply to any lawyer.

B. Wagner:

I just want to throw out this point. I talked to a recent Harvard law graduate, who works at a major firm, who said he never would have wasted his time in law school taking a clinic or a skills course because he learned all of that on the job. I have students that I have taught in my clinic who have said they have always wanted to have their own practice and this is not because they cannot find another job. They are going to take the bar exam and hang out their own shingle. And yes, they are going to be looking for mentors and advisers, and one in particular already has some mentors lined up. But for that student, he won't get much on-the-job training. It will be sink or swim. Just walking through the motions of some of those basic skills in law school will be very helpful for him. He was very happy to have the clinic experience. In short, I think there is a huge variation.

I have a question for the other panelists that gets into a variation of this. I am dating myself, but there was an *American Lawyer* article published when I was a junior associate. It talked about partners in law firms and defined three categories: the finders, the minders, and the grinders. The finders were the ones who went out and found the clients, the minders were the partners who were the main day-to-day client service contact, and the grinders were the ones that did all the work. The article basically said there is room for all three, and some people are good at some roles and some are good at other roles.

I have known a lot of lawyers over my career. A lawyer who I worked with several years ago is now a general counsel at his company. People love him. He was never the one that I would rely on for the most thorough legal analysis before he gave an answer to a question, but he always was engaging with clients and they listened to him. People felt comfortable in his presence, and his personality was a really big component. I am not saying he did bad legal work, but I didn't think he dug into the little details carefully. And it may be a good position for him to be general counsel because he can rely on outside counsel to dig into the details. On the other hand, I have known tax experts whose legal analysis I would trust without question, but they might not be the best at entertaining clients. They would be more comfortable talking about some interesting wrinkle of the Internal Revenue Code or regulations than about the star players on the local football team.

So, I am wondering whether this new set of defined competencies in law firms is still permitting people to develop so that some of the partners may be the finders or minders and some may be the grinders, or is everyone trying to become a one-size-fits-all within a law firm by all adopting the same set of competencies?

B. Bates: I am retired, so I cannot screw up. I think the legal industry has evolved so that if you want to be an equity partner at a large firm, you have to not only develop business for yourself and others, but you have to be excellent at delivering legal services. I look at the most successful people over the years at King & Spalding. They have had both.

Now, there are people how have different strengths, so you can do well if you are a great finder and you have got good young partners behind you that get the work done, and those people can be successful. But the most successful people are the ones who do both. The truth is, if you are only a grinder, you probably do not have any long-term career at a place like King & Spalding.

A. McGaughey: I have been agreeing with Bill all day, but I agree. I think it is not necessarily a one-size fit all, but the practice of law is so much more competitive, I think, particularly with firms and clients and fee pressures. I have been practicing for over 20 years and I think back then, if you stayed at the firm for the requisite period of time, then you would make partner. You know you become the sixth year, seventh year, eighth year, and that just is not the model anymore. That is why we have the competencies. It is not a negative if you do not become a partner at a law firm. You know, that is the great thing about a law degree - you can do so many things. So I do agree. If you are the grinder, you may not make partner, and if you do, you probably will not stay very long. You really have to have all. You have to be well rounded as a partner, just like we want our associates to be well rounded. If they tend to fall in any one of those categories, then maybe they transition into a legal career outside a big law firm.

B. Bates: I will just add one post-script. One thing that has changed particularly in the last 10 years is that we actually train lawyers as partners. We have very sophisticated client development sessions for our partners, and we have hired someone full time whose job has a fancy title, but his role is basically that of a coach. I mean, he helps

on responses for proposals, but he basically helps coach partners because we want people to be successful. So, if you have what it takes to be a partner, we want you to continue to develop. You do not just become partner and then you are off on your own trying to do something.

Sue: Time for one more question.

Audience: Hi, Rick Friedman from USC. Ann Marie, I really liked your list of the four competencies, and the one that I wanted to ask about was the teamwork competency. As we are thinking about structuring classes, what are the things, successful practices in the classroom, that put us in a position to be teaching or mentoring students on these skills? Sort of best practices and doing practice assignments and group assignments? I would be interested if you had any comments on that.

A. McGaughey: Well, obviously working in a team is a lot of times great if you have a law school class where they are working in teams, and it is the type of project where everybody really would have a role. My daughter is in high school and she always gets picked to be in these teams by boys, not because of any other reason besides that they do not want to work, and she will work. She will not be a lawyer. She will be the first to tell you. But she is dependable. So, I think it is good if you do not get to pick the team. That would help.

Specific things that we look for in teamwork is the ability to treat others with respect. This would be a level one. You regularly attend meetings of the team. You can demonstrate an ability to actually work within a team. We have found there are people that you would think they can work in a team, but they just do not. The way our firm is structured, we actually have teams. I was a team leader. We have team leaders, and the responsibility of the team leader is to make sure that the work amongst the associations is spread evenly. We do not want somebody there until 9, 10 o'clock, and someone else leaving at 5 or 6 because they do not have anything to do. So, we will monitor that work.

But one of the things that we assessed in the interview is, if you have a star performer, some people just like to work better on their own. Give them their part of the assignment. They will go figure it out. They will come back and give it to you, and that is just not the way we work. So do anything that you can do in the law school setting,

whether it is problem solving or giving a presentation. I mean they work in teams in business school all the time and most of what they do is in teams. That generates not only camaraderie, but also goes back to the importance of diversity as well. You know the more thoughts that you get on a project, the more efficient it's going to be.

We also think of ourselves as working as part of a team with a client and not just the outside advisor. We want to be part of their team. When you're actually part of the team, and moving along together and not at different paces, it's more efficient.

Sue:

I just want to add that I recently had the chance to teach a contract drafting class at the business school. I broke them into teams, and it took a matter of seconds and boom they were in their teams. They were ready to work, and they had chose a leader, which is really different from when I put my students in teams here at the law school. They are still not as comfortable with the whole concept and they resist. You have to kind of herd them around, come on, come on, four over here and four over there. It was an amazing difference. I think we need to continue to work on that in the law school environment.

Thank you.

**End of Session**