

DEAL SKILLS THROUGH SIMULATION: IMMERSION INTERSESSION OR SEMESTER-LONG COURSE

Jillian Gautier¹ &
Vickie Germain Kobak²

*Learning by Doing: Blending
Simulated Deal Work with Lectures,
Exercises, and Commentary*

Katherine Koops³ &
Jeff Alperin⁴

*Skilled Dealings and Transactional
Pragmatism: An Approach to
Teaching Real-World Deal Skills*

Jill Gautier:

Welcome to Deal Skills Through Simulation. We're going to start with a quick introduction of each of us. My name is Jill Gautier. I'm the Program Director of the Heyman Center at Cardozo. I also teach Contract Drafting and ITRANS, which you'll hear about today, and prior to that I was in private practice as a debt finance attorney, with most of my time spent at Kirkland & Ellis.

Vickie Kobak:

I'm Vickie Kobak and I am an adjunct professor at Cardozo teaching ITRANS. I also am an adjunct professor at Fordham teaching Contract Drafting and Intro to the Deal. My career includes over 15 years in private practice at a large firm and in-house, and then 15 years in lawyer professional development.

Jeff Alperin:

I'm Jeff Alperin. I'm an adjunct here at Emory. I'm a recovering lawyer, with a pretty good prognosis for a complete recovery. I haven't practiced in 20-some-odd years. I've been a client for many years, and I bring the client perspective to class. When I was practicing, I was in both a large firm in Atlanta and in-house.

Katherine Koops:

I'm Katherine Koops. I'm the Assistant Director of the Center for Transactional Law and Practice here at Emory and thank you all for attending this conference. I had 26 years in private practice and made the full-time jump

¹ Benjamin N. Cardozo School of Law.

² Benjamin N. Cardozo School of Law.

³ Emory University School of Law.

⁴ ccClients, LLC; Emory University School of Law.

to, as we say, “the Academy” this past October. I was an adjunct for about five years before that.

*LEARNING BY DOING: BLENDING SIMULATED DEAL WORK WITH
LECTURES, EXERCISES AND COMMENTARY*

Jill Gautier & Vickie Kobak

Jill Gautier:

Before we get started, we want to ask how many of you teach some sort of deal skills course? Okay, so most of you. What we want to focus on today is how we all share a common goal when we’re teaching these courses. When Vickie and I were talking to Katherine and Jeff to prepare for this presentation, we learned that we have different methods of teaching these courses. We want to share with you how these different methods have worked for us and some of the things that work better in one format than the other.

This is my first time at this conference and it’s really energizing to see so many like-minded people with the same goals and what we all share in common, and what we’re trying to get across to law students. I just came out of practice and was teaching first-year, second-year and summer associates how to do their job, and to bring that down into the law school level is going to make these law students better lawyers. We are going to reserve a little bit of time at the end to hear from you about other methods that you use or other ideas you have.

First, Vickie and I will speak about Learning By Doing, and specifically we’ll walk you through our ITRANS course, which is an intensive intersession course that we teach at Cardozo. Jeff and Katherine will be talking about a semester-long deals course.

Our goal in ITRANS is to prepare students to be effective transactional lawyers by teaching them to (1) understand transactional legal practice, (2) think like a transactional lawyer and (3) gain transactional lawyering skills, all the things that you teach as well.

As you know and as we’ve talked about here at the conference and elsewhere, it’s long been a struggle to get law students the requisite exposure to transactional legal skills before they are in practice. I learned almost everything that I did in my practice on the job, and there’s still progress to be made. What we do at Cardozo is try to attack that with a variety of different measures as a lot of your schools do, not only through courses, but also through clinics, externships and competitions like LawMeets®, where students can really get their hands dirty and get into real problems and not just learn through a theoretical framework.

Today, we’re going to focus on ITRANS, which is one of the courses that we use to teach these skills and achieve these goals.

What is ITRANS? ITRANS is an intensive three-credit course that we teach over the course of ten days (two weeks, Monday through Friday, all day). We just finished our third year of teaching it and it's been wildly successful. We have people on the wait list, so going forward, we're thinking about different ways to scale it, which is another common theme we've heard throughout the conference. Students receive three credits on a pass-fail basis, which we do because we're trying to encourage the students to be creative and collaborative and not worry so much about fighting their classmates for their grade.

We currently cap enrollment in the course at 32 students. It used to be smaller, but we've been scaling upwards. We're going to continue to look at that. Within the 32 students, we pair them so that throughout the course they have a partner. When they do negotiations, they pair off two-by-two.

We have two Cardozo faculty members teaching the course who are there for the duration. We also bring in 25 experienced practitioners throughout the two weeks in addition to four practitioners who give luncheon talks. That really is a critical part of what makes this course so successful because it's not only folks like me and Vickie who are there talking with the students all day for two weeks, but they also then have people who are currently practicing come in and they get exposed to so many of these people throughout the course to get different perspectives and to learn from them as well.

Vickie and I were joking that sometimes we tell them something and it goes in one ear and out the other. But then a practitioner says it and they think, "Oh, that's great!" We want to say, "We've been telling you that," but we've learned that it helps to hear it from people who are out in the field, so that's been an important part of the program.

We like to arrange the luncheon talks so that there is a good variety in the people who are speaking. Last year, we had a senior partner at a large law firm, a general counsel of a multi-national corporation, an in-house attorney at Google, and a junior associate at a law firm. So we try to cover different perspectives and practices so students can see the different ways that people approach transactional practice and, for example, that being a junior associate is very different from what it's like to be a partner.

Throughout the course we do 14 interactive lectures with 14 exercises, and we're going to walk you through our process of how we use those as we teach the skills in ITRANS. Really the common thread for the whole course is that we use one simulated deal throughout the two weeks. First, I want to highlight that we make sure we call it a "deal" and not a "case" because it seems that when people are doing competitions or simulated deals, they still tend to use the terminology from litigation, and no one ever called any of my deals in practice a "case". We want the students to learn the right lingo and to use that from day one, so we call it a "deal".

We use a mock M&A transaction for our deal, which runs through the course. From day one we split the students between “buyers” and “sellers” and they keep their role throughout the course, working in teams. The flow of how the deal works is as follows. First, we give them some instruction on communications and contract drafting, which does not replace the contract drafting class but does provide them with some basics. Then they draft an amendment and mark up a draft from a team on the other side so they can experience the difference between drafting and marking up. They prepare for a client interview and then conduct a mock client interview with a practitioner that we bring in to play the role of the client. After that, they redraft their amendment based on the additional facts learned in the client interview.

They next prepare for negotiations. First, they do a preliminary negotiation in front of just the Cardozo folks so that they can practice and we can give them feedback before they negotiate in front of the practitioners, which is the capstone of the course. After we do those preliminary negotiations, the students learn of new developments which change the facts. They have another call with their client to discuss the new developments and then they redraft their amendment, which ultimately leads to the final negotiations. For that, we simulate a business environment where they dress in business suits, and they negotiate in front of real practitioners. The observers don’t interrupt or provide guidance or feedback until after the students are done negotiating, so that it is a more realistic experience.

That’s the general flow of ITRANS. The reason why we initially did it as a winter intersession intensive course at Cardozo was because we have a program called ITAP, which has been around for many years and has been wildly successful. It’s a trial advocacy skills program, and we thought, why don’t we create a similar program for transactional lawyers? The winter intersession break was already known as the time when students come in and hone a particular skill and really pour themselves into it without any other courses to distract them. We decided to do that for transactional skills as well, so that’s how ITRANS has grown from the ITAP mold.

What skills do students learn in ITRANS? It’s similar to the skills that are taught in other deal skills courses, including basic contract drafting and review, and marking up, which is an important skill. In my practice, I was typically representing borrowers in debt finance deals so I did a lot of marking up and it’s a different skill than drafting. Although it’s very similar, it’s a different way of thinking. One of the things that I find that they miss a lot is not so much how to work with the language that’s already there, but how to identify what’s missing. So we teach them that, and that’s an important skill that you don’t necessarily have when you’re drafting. They also learn strategic issue analysis, client communication and consultation, and presentation skills.

At this conference, we’ve talked a lot about how to get students to collaborate and to learn how to speak. In my experience when I was practicing, it wasn’t so much that I was up in front of a room talking to people like this, but even just not being nervous on a conference call when you’re waiting for

some important person to join but there are already six people on the call. You need to learn how to break the ice. So one of the things we just did for the first time this last January was we had them pick an article from either *The Wall Street Journal*, *The New York Times* or *The Financial Times*, and they had to get into small groups and simulate this breaking the ice and feel comfortable talking about things going on in the world. Something like “I read about this the other day,” or “I listened to this interesting podcast.” So we get them talking and we had a lot of positive feedback. We had them debrief with each other too, so they can hear feedback from their peers both about how each student presented, but also how each student acted when they were listening to another presenter. It was helpful for some students to hear feedback about how it seemed like they were not interested in what the presenter was saying.

We also teach negotiation skills, matter management and closing preparation. These last two topics are not as glamorous as some of the other things we teach, like negotiations and contract drafting, but it’s so critically important for junior associates to learn these types of skills. I joke with them that if I were going to actually give them the experience, I’d have them work through the night and have to function and look nice in front of the client the next morning, but I don’t because I’m generous. So instead we tell them some war stories about crazy closings.

We emphasize basic business acumen. We’ve been talking a lot about this at the conference and it is great that it’s getting such attention here. I tell them they have to know the lingo, but I always try to disarm them by telling them that my background was in liberal arts, and that I didn’t have any business background. In fact, the only class I ever dropped in college after the semester started was accounting. So I went into practice not knowing any of it, but I learned it on the job. And I tell them it’s okay to learn it on the job. I also use cheesy clip art in my presentations to disarm them and get a little chuckle. It helps make them think it’s not as scary. I actually start the accounting and finance lecture with a poll: Coke versus Pepsi? It’s always Coke, so we end up using Coke as our example. I ask questions like, “What kind of assets would Coke have?” and “What kind of payments would you expect Coke to have to make?” These kinds of relatable examples help them understand and get them to be a little disarmed.

For us, the most important way for the students to really understand the skills we are teaching them is to see how they’re applicable in context, which is where our simulated deal comes into play. Everything that they are learning in class, they then practice through the context of our deal. We’re also trying to simulate this concept of learning on the job, which is how I learned it, and which is how I’m sure a number of you learned it because it’s only now that law schools are really starting to get a lot of steam with teaching these kinds of things. We’re bringing that experience into the classroom before they even get to the job so that they have a leg up.

So how do we actually teach these skills? We use a four-step method in ITRANS that we're going to walk you through. First, students learn the necessary doctrinal law and theory behind the relevant transactional skills. What does that mean? We do interactive lectures and readings with the students.

Second, they will practice what they've learned through foundational standalone class exercises. Before we jump into doing those skills in the simulated deal, we have them practice it so they don't feel like they're messing it up with our deal and our facts. We have them practice the skills because practice and repetition is how we really learn things and have it stick. Then, once they're comfortable with the skill, we move on to the third step. We apply those skills in context, which in our class is our simulated deal. Third, they continue learning and practicing the skills by "doing" it in the context of our deal. That really seems to make it stick for them because they've been living with the facts, they've been living with the client, and now they're applying the skill in a way that feels more "real world" to them.

Last, and critically important, is that the students obtain feedback. They get commentary and receive critique in real time from both the Cardozo faculty and all the practitioners that we bring in. And we really emphasize the practitioner involvement because it helps them get feedback from a variety of sources. I also tell them to be ready for the fact that people are going to tell them conflicting things, and this happens in real life and they have to be ready for it. But it's also important to pick up on when they see the through lines where everyone agrees. I'm sure all of you have dealt with this too, where you have one partner say, "*always* do X, Y, Z." and then you go to another deal with another partner and they say "*never* do X, Y, Z." So we tell them that and they're exposed to enough people over the duration of the course that they can kind of see that, but then they also see where people say the same things and agree on practices or techniques, and that really hits home for the students.

We use this method for each of the skills they learn, and now Vickie is going to walk you through our process in a bit more detail.

Vickie Kobak:

Thank you, Jill. We've chosen listening skills as the skill that we're going to demonstrate for you today. The reason that we teach listening skills is because they are so critical in all areas of transactional practice as you know, from getting the initial facts from the client, to drafting a contract, to continuing to advise a client on an ongoing basis, to negotiations, getting facts and information from the other side, from your client, through the negotiations and then responding. So it's a critical skill and it's not something that the students have necessarily been exposed to and learned specifically.

We want them to really think about this in the context of client service. Also, they're coming in thinking in what I'll call the typical law school student mode of thinking that they have to be persuasive and adversarial. And in transactional practice, that's really not what's going on. It's really about serving

your client, getting a mutually satisfactory deal that the parties walk away happy with but doing the best that you can for your client under the circumstances.

We discussed the importance of information gathering, and this is an example of one of our introductory slides to the segment. We talk first about questioning, and specifically about using open-ended questions versus yes/no questions and the importance of what we call in deposition skills, for those of you who have been on both sides, funneling, getting those broad questions and then narrowing down that information.

We then talk about listening, and how to really listen and not to be multi-talking or preoccupied, or thinking about your next question. We talk about understanding and reflecting that you've actually grasped what you've been told by using active listening techniques, including repeating back what you've heard to confirm and so on. And then we talk about informing, giving the client information on legal aspects of the deal and talking about legal risks, and that incorporates both the listening and the questioning skills and also the communication skills that we've also presented to them. So we're really preparing them for a client interview which is at the beginning of the program where they're getting the facts to draw their contract.

One of the things that we have experienced is that, as Jill mentioned, when you're doing a deal simulation not all the students are familiar with M&A, and not all the students are familiar with business transactions generally. We really want them to be comfortable enough with using the skill so that, when they get into the simulation, they don't just fall flat. So before we go into the simulation we do what are relatively easy exercises relating to what they know and what they're familiar with, because also we know the best way that adults learn is making connections with what they already know.

So we practice new learnings with a foundational class exercise, and what we're going to do here is have you experience what we've done as one of our foundational class exercises. We start first in questioning with "yes or no" funnel technique. ITRANS happens in winter break right after New Year's, so we have them talk about what they did on New Year's Eve. One person talks, the other person asks the questions, yes or no or open-ended questions, and then afterwards we debrief, and the students talk about what they learned as the questioner. Then the person who was questioned, the one who told the story, gets an opportunity to correct and clarify, and often the students see that while they thought they understood everything, they may have missed some things or may have misinterpreted, and it gives them some sense of how important it is to really be careful and listen. But even having done that, they still come in with more confidence than they might have and are less apt to really think carefully about what conclusions they're coming to.

For the exercise, I talk about what I did on New Year's Eve and then I give them an exercise with 15 statements based on what I just told them that they have to say are true, false, or I don't know, which means that the information wasn't sufficient in the scenario for them to pick. Now, I'm going

to read a story about my trip to Atlanta and then I'm going to give you 15 questions and we'll see how well you do.

It's great to be back in Atlanta and here at the Emory conference. I was here a couple of years ago for the last one and I found this one was even better than that one, and that one was amazing. So it's really great to be here. I've been to Atlanta a couple of times. Actually I was here a few weeks ago with my daughter Ellen. We were on a four-day Civil Rights educational tour and we went to Atlanta and we also went to Birmingham, Selma, and Montgomery. While we were here, we went to the Martin Luther King Memorial, we went to the MLK historic site, we went to the Ebenezer Baptist Church, and we also went to the Center for Civil and Human Rights. And if you haven't had an opportunity to see them, they were really a very powerful reminder of our nation's history, and I would highly recommend them.

Anyway, let me get back to what we did on Thursday. I came in with Jill on Thursday afternoon. We had a 1:48 flight out of New York and Jill likes plenty of cushion. I'm a real last-minute kind of gal, but didn't want to stress her out so we left at 11:00 a.m. Jill coincidentally only lives a few blocks away from me, so she picked up the cab, picked me up at 89th Street and York Avenue and then we headed to the airport. Shockingly, we had no traffic on the Grand Central Parkway and the Van Wyck Expressway and we got to the airport quickly. Then, I had TSA pre-check, Jill did not, but shockingly the regular security line was very short and we just zoomed through security in just a few minutes. As a result, we had two hours. We were early, we had two hours for the flight and we were both hungry and there's no food on the airplane of course, so we headed to find someplace for lunch. We were in luck again because there was a Shake Shack that's right near our gate. Now, I don't know if any of you are familiar with Shake Shack, but it is now a national chain of high quality burgers and shakes, and it started from a little tin shack in Madison Square Park in Manhattan.

So we picked up our food, we found a table, we ate leisurely, headed to the gate, and at Gate 34 we found an attendant to see if we could change our seats because we weren't together. Again, we got lucky. Not only could we sit together but the exit row, which is usually a premium cost, was open and free and they sat us together, so we got extra room. And not only that, I got my favorite seat which is the window exit toward the back of the plane where there's no passenger seat in front of you so I have plenty of leg room to spread out.

The flight was on time and uneventful. Jill read some legal and business publications and I read The Wall Street Journal and The New York Times, did my crossword puzzles and Sudoku, and then I took a nap. Before we knew it, we were in Atlanta, got our rollers and tote bags, headed to ground transportation, got a taxi, and got right to the Emory Conference Center hotel. At the advice of a security guard, we went to Marlow's Tavern for dinner and we had a very sweet waitress who introduced herself. I can't remember her name, but she recommended the shrimp and grits. We didn't have room for the chocolate cake she recommended but we did share some vanilla ice cream. We had actually intended after dinner to work on our presentation for today, but we were too tired after a long day of traveling, so we planned to do our preparation on Friday morning over breakfast. So we headed back to the hotel, got a good night's sleep, and all in all it was a great travel day.

Okay, ready for your questions? I'm going to make the statement. Just check off true, false, or I don't know.

1. We left our apartments at 11:00 a.m. on Thursday.
2. Our flight was at 1:38.
3. Jill had TSA precheck, I did not.
4. We had burgers and shakes for lunch.
5. I went on a great Civil Rights trip with my older daughter Ellen.
6. I live at 89th Street and York Avenue.
7. We had no traffic on our way to LaGuardia.
8. I did crossword puzzles on the flight.
9. Jill read *The Wall Street Journal*.
10. We ate shrimp and grits for dinner.
11. Shake Shack started in Madison Square Garden.
12. Jill and I did not check any luggage.
13. For dessert last night, Jill and I shared a scoop of vanilla ice cream.
14. We prepared for this presentation on Friday morning.
15. There was no seat in front of me on the airplane.

All right. Now we're going to see how everyone did, and please no cheating.

1. We left our apartments at 11:00 a.m. on Thursday. True.
2. Our flight was at 1:38. False. Our flight was at 1:48.
3. Jill had TSA precheck, I did not. False. I had TSA precheck, she did not.

4. We had burgers and shakes for lunch. The answer, I don't know. I didn't tell you what we ate. I only told you where we went and what they make. And actually we didn't have shakes, so ultimately if you asked enough questions you'd find out that was false. We had burgers and iced tea.

5. I went on a great Civil Rights trip with my older daughter Ellen. Answer, I don't know. I didn't say whether my daughter Ellen was older or not. In fact, she is, so ultimately if you asked me questions you'd find out that it was true.

6. I live at 89th Street and York Avenue. The answer is I don't know. If you asked me questions you'd find out it's false. I live at 89th and East End and I walked a block to get the cab.

7. We had no traffic on our way to LaGuardia. This is a tricky answer. For those of you who are from the New York area you should be answering false because the Van Wyck means that I went to JFK, not LaGuardia. For those of you who are unfamiliar with New York, the answer would be you don't know.

8. I did crossword puzzles on the flight. True.

9. Jill read *The Wall Street Journal*. Correct answer, I don't know. However, if you asked more questions you'd find out it was true. She did read *The Wall Street Journal*.

10. We ate shrimp and grits for dinner. Correct answer, I don't know. She recommended it but I didn't tell you what we actually ate.

11. Shake Shack started in Madison Square Garden. False. It started in Madison Square Park.

12. Jill and I did not check any luggage. Answer, I don't know. We actually didn't check luggage but I didn't say whether we checked or not; I just said we had rollers, and you can check a roller also.

13. For dessert last night, Jill and I shared a scoop of vanilla ice cream. Answer, false. Last night we were at the dinner. It was Thursday night that we had the ice cream, and last night they served cake.

14. We prepared for this presentation on Friday morning. Answer, I don't know. I said we planned to prepare for our presentation but I didn't say we actually did it.

15. There was no seat in front of me on the airplane. This is kind of a trick question. I think most of you probably said true, but I said there was no passenger seat in front of me and there was actually a jumper seat, so the answer to that should be I don't know.

Did anyone get them all right? How many people got over ten right? Very good. Most of you, you see, didn't get as many right as you thought you might have.

When the students do this, they start to understand that listening isn't as easy as they thought, and that there's often a need to continue to ask questions for clarity and completeness. So it's really something as simple as a little story that makes them think.

Now what do we do with that? We go to the simulation. We have a client meeting. Just so that you understand the way that that works, we have two practitioners: one is a buyer, one is a seller. We break the students into 2 groups depending on who they represent, so 16 in each room with their client, to ask questions. We do it this way for a couple of reasons. One, logistically we want everyone to have the same information so we want them to have one client. It's easier to have one room rather than 16 different rooms. And more importantly they learn from each other. They hear each other ask questions and they start to recognize what is a good question, what is not such a good question, what they should do next, and they really learn from each other.

We do it in a drill format. They're prepared ahead of time. We start at one corner of the room, and then we go student by student. The first student asks the opening question, which they know by now is an open-ended question. The client, played by a practitioner who stays in role, answers the question. Then we move to the next student, who, based on the previous question, asks the next question. We've prepared them beforehand with a list of potential questions and issues that could come up with the client. In our fact pattern, there's some litigation that's outstanding, there are some business issues on price, and so on, so they understand some of the issues before they go in, and they've thought about what questions are important and how to funnel.

Even so, they don't necessarily get all the information. At the end, still in role, I ask whether anyone has any more questions and they'll say no, and then I'll ask whether they are all able to go back and draft a contract. And then they all think a minute and then they all say no because they haven't gotten enough detail. We have the practitioner client in role fill in the rest of the information which the students will then get in writing so that they have it for reference for the rest of the simulation.

After that, the client steps out of role and gives them feedback both on the questions and also gives them some color on the process and on how this would work in real life when they would be working with a client providing information on drafting a contract. So the student is getting a real feeling of what it's like. We try, though it doesn't always work out this way, to have the practitioners playing the roles of the clients be in-house counsel so they really know what it's like to be a client.

After that, Jill and I have been in one or the other of the rooms. We give our feedback and we've been taking notes. What we'll do is we'll give them our feedback on what they have done well and not well. So without mentioning names because we don't want to embarrass any particular student, we'll say,

remember when a student asked a question and a client said this, and then the next student picked up a little hint that the client dropped and they asked a question to expound on it? That was a great example of questioning and listening. Then we always have more than one situation where a student sitting there supposedly listening asks an unrelated question on something that may or may not be important. So we talk about that particular question and how they answered it and show them the difference so they're able to get helpful feedback.

The feedback they receive is in real time so they are able to go do their drafting and then later on in the simulation they have a second client interview so they're able to then practice the skills again on a conference call with the same practitioner. By that point we can see the growth in the way that they ask their questions.

That's our four-step method. We learn the necessary doctrinal law and theory behind the relevant transactions, which they need. Not all of them come to class with it and even the ones who take business organizations don't necessarily understand the fundamentals, so we give them whatever basics they need for the simulation and for the course. Then we practice the new learning with simple foundational exercises that they relate to in their own lives so they can understand how the theory applies and how it works. Then they flex and apply the skills in the context of transactional practice participating in the simulated deal. That's using that skill in a different context. Again, it's through practicing and learning that you use the skill in multiple ways and really become comfortable with it. And finally, the students obtain feedback by hearing commentary and receiving critique in real time from the faculty and from experienced practitioners. And as Jill said and as I said in one of the breakout sessions yesterday, that feedback from practitioners is crucial. We do not use them to teach but rather to give the students a real understanding of what it's like to practice. So we give feedback on the skills themselves, and the practitioners do some of that but also talk about how those skills get applied and what practice is like. By the end of ITRANS when the students have their final negotiation, they are acting like first, second, third-year associates, not like law students. But we also know that we learn from our mistakes and we all need to keep learning, so we're always improving. And Jill is going to explain a little bit about how we do that.

Jill Gautier:

To wrap up about ITRANS, we're always striving to improve the course and over the last three years we have adapted based on different feedback and what we've seen that works and what doesn't work quite as well.

Before we even begin teaching students, we have them all fill out a detailed questionnaire. It sounds like some other folks do this as well. It's such a helpful tool because we elicit from them information about their backgrounds, where they've worked before this, whether they have an MBA, whether they have a business background, whether they have taken contract drafting. We don't have prerequisites for our course so we want to know this kind of detailed information, and then based on that we're able to pair them in their teams well, and we're able to put them against a negotiation pair so that it is more evenly matched. This also helps us because there are work sessions during the course where, for example, we have an hour and a half for the students to work on a drafting assignment. We have two separate rooms so that all the buyers are together and all the sellers are together and they can speak freely without worrying about the other side hearing their facts or their strategy. During these sessions, we walk around and help them. And there are students where they really struggle with some very basic concepts so we spend time helping them with that, but then we also have students that are way beyond that and are coming up with creative structures so we help them keep going from where they are. That way, no matter what your level is, you can really get something out of the class and improve the skills you already have.

Throughout the course we receive student feedback about what they think, where they're having problems, where we should spend more time, what are they missing, what they think of the reading and so on. Also, at the end of the course, in addition to the regular evaluations that students are required to do for every course, we give them a detailed survey about what they thought about each exercise, each lecture and each session, and we also ask what else they want to see, what they liked the most, etc. And it's surprising because some of the things that at first they are really intimidated about (like learning about accounting and finance at 9 in the morning) can turn out to be rated highly because they come away from the experience understanding some basic concepts and some of the lingo. So it's helpful to see their feedback. It's fairly simple to solicit this kind of information and feedback from students. We just use Survey Monkey because it's free and it's easy to collect the responses. In the past, we've also just used paper, but use whatever works best for you. Jeff and Katherine are going to talk about a different method that works better for a semester-long course, but this works better for us in our short intersession course.

We also solicit feedback from the practitioner faculty. The last day of the course when the students have their final negotiations is when we have most of the practitioners in a room since the bulk of them participate by observing the negotiations. After the negotiations, we all sit together in a conference style room and talk about what they think about the course and what they saw with the students. Generally, they're very impressed, but we also solicit information about what else they think we could be doing in the course and what else they want to see as practitioners when they have first years coming in. So it's very helpful for us to receive so much feedback.

Vickie Kobak:

Let me just interrupt for a minute. The way that we get them to stay is CLE and free lunch.

Jill Gautier:

Yes, we don't pay them but we give them CLE credit.

And then last we do a Cardozo faculty debrief. We sit down, we relook at the syllabus, we look at all the surveys, we look at feedback from the practitioners and we write up a debrief so we can plan for the next year.

So that's ITRANS and now we'll turn it over to Katherine and Jeff.

***SKILLED DEALINGS AND TRANSACTIONAL PRAGMATISM: AN
APPROACH TO TEACHING REAL-WORLD DEAL SKILLS***

Katherine Koops & Jeff Alperin

Katherine Koops:

Thank you. We're going to sort of compare and contrast a fairly limited universe of two models among many for teaching simulations and deal skills. What we mean by "deal skills" I'll get to in a moment, at least in the context of our class. We will not walk you through our particular syllabus, although that is available to you on the flash drive provided with your materials. We have provided a form of syllabus that we use for a semester class, so can use that as a base should you want to develop something similar. But we will give you some of the basic structure and themes that we cover.

First of all, the "nuts and bolts." We have small classes capped at about 12 to 16. We team teach each class. We are fortunate here in the metro Atlanta area to have a very strong local private bar that really gives back, and we have some of our adjuncts here in the room today who have helped us do just that. We get transactional practitioners with a variety of specialties-- M&A, IP, lending, all kinds--which is helpful because two profs provide a diversity of background and experience for our students. We also learn from each other as we teach based on that.

With two professors, it's less boring, especially for a three-credit-hour class that meets once a week. It's a lot for anyone to stand in front of a class for three credit hours' worth of time. This gives the students a diversity of voice, as well as viewpoint and experience. We sort of model an "interrupting style," so Jeff –

Jeff Alperin:

I'm just going to interrupt you, but actually I was trying to behave. We will disagree with one another at times in front of the students, and the first

time they kind of sit back and look concerned and we have to say, “It’s okay; there’s often not just one answer.” My memory of law school is that you learned there were only shades of gray. This generation of law students seems to see things or would like to see things in black and white. They want to know “What’s the answer? Don’t give me all this conversation; just tell me the answer.”

Katherine Koops:

That’s right. When we do some of our due diligence exercises, it’s sometimes a bit of a learning curve for them to understand that the answer can be, “We don’t know.” They can get very unnerved by that. They kind of feel that if you have a homework assignment and you’re asked some questions, you should come up with a definite answer and do all you can to make everything you know fit into a definite answer that you can deliver. They can sometimes go off track in assuming things when really all we’re looking for is, “We don’t know.” So that’s a little bit of an adjustment.

Deal Skills has pre-req’s of Contract Drafting and Business Associations. Here’s just a quick word about how it’s structured at Emory Law. In our Transactional Law and Skills Certificate Program, we have a “pyramid” of experiential courses. The base is Contract Drafting, which is also a graded, three-credit, one-semester course. The second level up is the Deals Skills course, which we’re going to talk about today, and then at the top of the pyramid is what we call a Capstone course. We have a whole series of offerings that are specialty capstone courses: commercial lending, private equity, venture capital, general counsel, complex restructuring, and more. These are more along the lines of the simulated courses that Jill and Vickie were talking about. They are all adjunct-taught, so for those of you thinking about this from a resource standpoint, it’s a big recruiting effort to get these folks because it requires a lot of time--and as those of you who are adjuncts know, it’s not remunerative, but it is very valuable.

We combine collaborative and individual student work because both are, of course, valuable. We used to do things much more frequently in groups, with group homework assignments. Over time, it’s evolved to individual homework assignments with a few group graded projects. Our classes are small, so it’s not that big of a grading effort, and there is student anxiety about having a grade, as opposed to pass-fail credit, tied to somebody else’s work in a significant way. I would say that probably about 25% of their grade is in some way collaboratively based.

Our course involves several in-class exercises, group presentations, and *Wall Street Journal/New York Times* oral reports. Jeff is going to talk a little bit more about how we manage some of those things from a demonstration perspective. We also have a negotiation project that I’ll talk about in a moment, and weekly written homework assignments.

The grade we give our students is based in part on homework assignments. Once a week, they get a homework assignment on one of a variety of things. We structure it to provide a very practical, real-world sort of emphasis. We expose them to all kinds of different documents and types of deals throughout the course and give them targeted assignments that develop a skill based on a scenario that may vary from week to week. Sometimes it's a due diligence summary report; sometimes it's drafting resolutions; sometimes it is evaluating some loan documents and proofing them for errors—all kinds of different things. It's a different approach from the ITRANS sort of unified, simulated deal structure. It's more, "Let's expose you to a lot of different things," because it's mostly second-year law students who take this. They're going to be going out into their summers and encountering a lot of different things. We want them to at least have the vocabulary and the context to know what they're being asked to do as they're sent off to do due diligence and, let's say, review a bunch of leases that are online in a data room.

We teach a combination of soft skills and technical skills. Soft skills include listening, interviewing, counseling, and giving oral reports. At the beginning of the course, we start with a lot of those activities. It promotes a sense of community in the classroom and provides a little bit of an ice-breaker. For example, we give students a simple set of facts for a sale of a business and allow students to play a client role for one side of the deal and the attorney's role for the other side. Half of the students first play the client and then switch and play the lawyer (with the other half playing the lawyer first and then the client) so that they get perspective on how to answer questions in "client mode" and on how to answer, advise, and ask questions in "lawyer mode."

On the technical side, we cover a variety of "nuts and bolts" with lots of different kinds of due diligence. We teach students how to review things like corporate records, organizational documents, leases, and loan documents (very simple loan documents—for example, a basic note and guarantee). We assume no background in anything complex. We're introducing these concepts. We talk about indemnification, again at a basic level, but we do get into caps and baskets. We introduce them to a lot of vocabulary and concepts they are going to run into pretty darn quick if they are in a corporate practice.

We combine technical and soft skills in a couple of different ways. We have a negotiation project in which the students negotiate and draft a contract, and we have an in-class group presentation where they work in groups of maybe three to review LLC organizational documents and records. They are given a very simple set of standard, fundamental reps on existence, organization, purpose, authority, and no violation—it started as an opinion backup lecture. We used to focus on how you support these aspects of a legal opinion, and we've kept that basic content but switched the context to how you support fundamental reps and warranties. Your client is going to look at the reps and say, "We were duly organized--yes, of course! We're very organized. Oh, yeah, none of this is a problem." And you as the lawyer have to translate these fairly sophisticated concepts that can be hard to explain to a client and

decide based on the documents you have in front of you whether you have the appropriate support and what you still need to do. Then as a group, you figure out how to present that report to the instructors who are in role as the partners who are taking the meeting with you and ask, “Well, what did you find out? What do we still need to do? Are we okay on these reps?” The students make a presentation and we ask them questions both in role and out of role.

So that’s one way we combine some of the soft skills on how to report back to a supervisor with a drill-down into some pretty technical issues of corporate law. We do this with a set of LLC documents--we really try to incorporate and introduce students to LLCs. One of the things I’d like to find out from this conference is how we can do more. LLCs are so important, but they’re so complicated in their own way. I don’t know if it’s a separate course that just focuses on LLCs or whether we might introduce them into our curriculum even more, but I think it’s certainly something important we need to do.

Finally, we emphasize ethics and professionalism throughout. We try to build in both by giving some basic mini-lectures on who’s your client, common representation, and other things you will run into in transactional law. In the negotiation project, each professor plays a client, so you have a prof who’s in client mode and in feedback mode. We give the students a client secret, and then we see if that client secret is revealed during the negotiations and whether the questions they ask elicit that secret. Sometimes they do and sometimes it never comes out.

At the very end, we debrief the negotiation exercise and ask the students, “Okay, what was your client’s secret?” and the other side gets really indignant that there was this client secret that they did not know. But sometimes they get to it right away—it’s very interesting. Part of the discussion is saying, “Okay, how do you get your client to understand that this information they don’t want to give up might need to be given up, and in what way, and how do you counsel a client through that touchy and difficult discussion?”

Jeff Alperin:

Katherine, just a brief interruption: this semester for the first time we had two teams that ganged up on us. They traded client secrets with one another. We’re not quite sure how they decided that keeping client secrets was less of an ethical obligation than improving their Deal Skills grade.

Katherine Koops:

Some other things you’ll see in our assignments are non-disclosure agreements, non-solicitation provisions, and letters of intent. We have students draft these, using a PLC form as the base, which allows us to teach them the benefits and dangers of using a form. We also cover corporate and LLC

organizational documents; resolutions; the differences between minutes, resolutions, and consents; and stock certificates, which Jeff will touch on in a little bit.

We have them practice diagramming a transaction, which is always fascinating to me. I've done this for so long that I kind of have this view of, "How could anyone do it a different way?" but oh my goodness, you will see all kinds of artists' renderings of these transactions that are very interesting. We also have students review some of the standard "big documents" --stock purchase and asset purchase agreements—as well as sample real estate leases, license agreements, and loan documents.

I'm going to turn it over to Jeff, who has the more interesting part of our Deal Skills presentation and will talk about some of the demos that we do.

Jeff Alperin:

It may look like I'm about to walk out, but I actually have a few little demonstration things I'm going to use. What I'm going to do is talk about some tips, tricks, techniques, and stunts that we use to keep it real--that is, to keep it "real world" -- for the students. We want things to be practical and pragmatic and to not feel stuffy and academic, so when we can do things that aren't just us going "yabber, yabber, yabber, yabber" in front of a class, we try to do that.

We have a number of exercises we use throughout the course. We try to schedule these classes (which typically have 12 students and two teachers) in a very large lecture room just like this, which may seem insane, but we are often breaking students up into groups or putting them in pairs, and we actually need the space.

There's been a lot of mention, both in our presentations here and in one I attended yesterday, about simulating client meetings. We do have client meetings that we simulate, and Katherine mentioned reporting out to a supervisor. There are a number of ways one could go about doing that. I'll tell you the way we do it. You could just call on the students in their place and say, "Pretend I'm the partner. You've just taken a client meeting. Tell me what happened at the meeting." What we do instead is call somebody up to the front of class, but we don't just have them sit in front and deliver a speech. No, we say, "I've really only got about three minutes—walk with me", and then we walk around the classroom while conversing with them, just like in real life. And just like in real life, we play the obnoxious supervisor. We stop and make calls; we send texts. The student at first is like a deer in headlights. but they end up rolling with it, and they're great. They generally get a round of applause when they return to their seat because it's so unexpected. It's really a lot of fun for the pros, too. And we are emphasizing the super-duper important skills of prioritizing, of getting the answer up front because you never know how long you're going to have to actually get the answer out, and being super concise.

Another thing we practice is the difference between client meetings and client reports, on the one hand, and supervisor meetings and supervisor reports, on the other. The vocabulary is different, and the level of detail is different, so we work on that with them.

We often will ask the other students to give feedback to the student in the demo. Instead of being critical, we say "Tell us two things that this student did well," so there's some non-threatening peer review. The peers have to pay attention because we may call on them to give the feedback, and it's generally a positive thing. Of course they're terrified during the first few weeks because there's a lot of getting up in front of people. I know--even when I came yesterday, I made for the very back of the room. I think that's still ingrained from law school: never be at eye level, you might get called on.

Another technique that we use with students, and the ITRANS course does something similar, is what we call a *Wall Street Journal* or *New York Times* report. We do it a little bit differently. We start class with it. We let the students self-select a partner and they pick a story that's in the news about some kind of business transaction. We ask them to send the article to the profs the day before so we have some notion of what they're going to discuss. We tell them that they'll need to do some research beyond the single article that they've selected and then make some kind of presentation to the class. Tell us what the article is about. Tell us why we should be interested.

So, why are we doing this? It's probably self-evident. We want them on their feet. We want them to become accustomed to making presentations, whether they're formal or informal. We want them reading what their clients read. We tell them they've got to be adding value. You can't just be spouting black letter law, and you can't add value if you don't understand the business world and what business people are thinking about. And if you're not reading what business people are reading, you can't even have a conversation with business people.

During the first few weeks, there's a lot of groaning and moaning. "I've got to sign up for another subscription to something...grrr." There are very inexpensive student subscriptions, 20-ish dollars a semester, for either *Wall Street* or the *Times* if you're doing electronic delivery only, so cost shouldn't be an issue. But by the end of the semester, they tend to really enjoy it. They do their little pitch, and some will do PowerPoints. The profs will generally break in and ask some questions, not to embarrass, but generally to be sure everybody in the class understands some of the vocabulary that's being used, like, "So what is a venture capital firm after all? What does that mean?" Sometimes the students know, and sometimes we just talk a little bit about it. It ends up being a 10- or 15-minute-ish exercise at the beginning of every class. It's not graded per se, but we look at it as part of the overall class participation grade.

It also gets students working in teams, and I guess everybody's had this experience: they really do hate working in teams. We have homework pretty much every week, and occasionally, selfishly, to lessen the grading burden, we'll

say, “Would you like to do this one in teams? If you’d like to do it in teams, you can—in teams of two.” No one does it in teams, and yet when we force them to work in teams, the work is always better. Students often assume, “Well, this other student is stupider—they’re going to drag me down and my grade is going to be worse.” Actually, when you get two perspectives, you’re more likely to get to the right answer—at least that’s been my experience.

We also use some non-lecture means to get even the doctrinal “black-letter law” information to them. Students hate lectures. They hate PowerPoints. When we have PowerPoints, we will often say, “Here are some PowerPoints that are on Blackboard, go read them. We’re not wasting your time by reading them to you.” Then we’ll look for some other things to do.

Here’s an example of a demonstration that I do. Even though they’re required to take Business Associations, it seems the only thing they learn there is the business judgment rule and variations on that theme.

If you ask students, “What’s the difference between an LLC and a corporation?” they have no idea. If you ask them, “What’s the difference between an asset acquisition and a stock acquisition?” they don’t really get it exactly. They get it sort of, and when we draw boxes on the board and show if you’re buying the stock then you get all the stuff here, including all the assets, it just doesn’t take.

So I developed “The Box”. [Shows small cardboard box] What is The Box? This is my demonstration. We have a lot of exercises involving trees and forestry companies, so this one is Jan Jeff Trees, Inc. Jan was supposed to be on the panel today but is not, and this is what we use. You can see I spared no expense creating this thing, so you could create one of these, too.

So we say this box is a corporation. If you’re buying the corporation’s stock, you get everything that’s in the box. What’s in the box? Well, there are some hard assets like cash. [Shows play money] There are, let’s see, liabilities like bank loans. [Shows papers labeled “loan agreement”] There are customer contracts. [Shows papers labeled “customer contracts”] There are hard assets like equipment. [Shows small tools] A new addition, employees. [Shows Fisher-Price “Little People” figures] Yes, employees, which could mean unions, it could mean ERISA plans, it could mean who knows what. I’m going to have a lot of cleanup to do here! And there’s the mystery box. [Shows small, closed box labeled with question marks] It could be anything. It could be good stuff, it could be bad stuff, it could be lawsuits that are pending. It could be scary monkeys. [Opens box and shows monkey figurine] There’s no telling. But if you’re buying the stock, you get all this.

What if you don’t want all that? What would you do? Well, maybe you leave the monkey behind. Maybe you only buy the customer contracts. Maybe you only take the cash, maybe you leave the cash behind. Anyway, you understand. Once they’ve seen the box, they seem to get it. It’s so funny. It’s not really any different from a diagram, except that it’s 3D.

You may say, “How do I know they get it? And how do I know that that’s not just a stupid waste of time because it’s pretty basic?” Let me tell you about a feedback mechanism we use. I don’t like waiting for the end of semester to get something from the registrar that purports to give feedback how the class has gone, so I discovered a little technique that a number of us are using now called “Quick Questions.” At the end of every class, we hand out an index card to each student. It takes three minutes to do. Tell every student, “Don’t put your name on the card, just put the class number so we’ll remember what this relates to. On the front of the card, answer this question: “What did you learn today? What’s your takeaway from today’s class? If you’re going to tell a spouse or significant other, your mom (on how you spent her money for law school), what did you take away from class?”

Why do we do this? Well, it makes the students stop, focus, and maybe consider that they did learn something in the class. And we’ll have a sense by flipping through the cards later if everybody was really on the same page. I tell them, “Please, please don’t leave it blank. It makes me really sad if you learned absolutely nothing.”

On the reverse side of the card, we ask them to answer the question, “What questions do you still have from today’s class? What was confusing? Or perhaps you’ve got some ancillary question and you didn’t want to raise your hand. Put that down for me.” We then take those, may reword some of them, and answer them at the beginning of the next class.

Sometimes when we’re trying a new technique like the Box, I’ll say, “Okay, there’s a third question, put it on the third side of your card. Was the Box helpful? Did you understand the concept already? Was that too basic?” And interestingly, I always ask about the Box because I’m convinced it’s stupid, that they shouldn’t need it. And every semester out of 12 students, one will say, “Yeah, it was stupid,” one other will say, “I think I understood it, but it was really helpful,” and all the other students will say, “Very helpful. It was worth the time.”

So that’s our little quick question technique for getting students’ feedback along the way. We may be bold enough to give you cards at the end of this session, so think about what you’re learning now and what your takeaway is going to be when you report because we’re going to make you put something on a card.

That’s the Box. Another area where we end up gap-filling for skills students don’t have is around how stock is issued and how that works. It comes up because we have them do some due diligence. They look through a simulated corporate minute book that contains copies of stock certificates, but they have no idea what “authorized” means, or “issued,” or whatever. So we make sample stock certificates. We fill them out, make a little simulated stock register, sell stock, and show certificates being cancelled and reissued. Then they understand. I won’t do that for you here.

We're trying to use other techniques, as I said before, other than just talking to the students to transmit information to them, in order to convey substantive information that otherwise you would receive through lecture. One of the things we teach is negotiation through a multi-week negotiation project. So let's do an exercise.

Katherine Koops:

You need to pair up with somebody near you.

Jeff Alperin:

We're going to do it in pairs. So find yourself a partner. Please don't take as long as the students do. Yes, and the discipline goes totally to hell and everyone is talking.

[Hands out sheets of paper containing the following chart and instructions:]

X'S AND O'S

Instructions: Divide into pairs. One person will mark X's, the other O's. Alternating turns, each partner marks his or her letter, trying to get five in a row (either horizontally, vertically or diagonally).

Okay. Everybody ready? Use one sheet per pair. I will read you the instructions. These are simple, even simple enough for law professors. Divide into pairs; you've done that. One person is going to be X and one person is going to be O. You don't have to negotiate that; just decide it. Alternating turns if you're the X, put an X down. If you're an O, put the O down. Try to get five of your letter in a row. On your mark, get set, go.

Okay, we're probably close enough. Tell me: who won? Who got five in a row? Did anybody get five in a row? Okay, two groups. The ones that did get five in a row, did it look something like this? [Holds up the following:]

X	X	X	X	X
O	O	O	O	O

What are we proving? I didn't say this was a competition with only one winner. It usually pays to do this with groups of lawyers, law students, and law professors because we're all hard-wired to compete. This is how we start off the negotiation unit without telling them it's part of the negotiation unit. We say, "You know, negotiation doesn't have to be zero-sum. Everybody can be a winner." We teach *Getting To Yes*⁵, the whole principle of negotiation, and this is the way we introduce that beginning concept.

Another thing that we do is find some podcasts that are helpful. As interesting as we are, students get tired of hearing our voices, so we've edited down some podcasts. These are audio, not video. We're going to play one for you that is another super-duper introduction to the whole principle of negotiation thing.

[Replays a portion of NPR's *Planet Money* podcast: *Episode 425: An FBI Hostage Negotiator Buys a Car, first aired December 21, 2012, at 1:59 PM. Replayed portion begins at 4:49, with "Technique No. 2—Expanding the Pie."*]

Anyway, we have them read *Getting to Yes*, which is cheap and short, but this is "Getting to Yes in Three Minutes," really, and even if they haven't read it, this gets them along the way.

There's another podcast that I edited down. The one I just played is from *Planet Money*, which is an NPR podcast that presents economics in a really accessible way. It's really interesting. I listen to it routinely. There's another one that's interesting, too. It's called "Startup." In its very first season, the *Startup* podcast was about starting up a company, the company that was producing this *Startup* podcast, which was filmed with a bunch of ex-NPR podcasting and radio people. As a part of that, they taped the negotiations between the two founders as to how to split up the initial equity among the founders. Not only did they tape themselves negotiating, they taped themselves

⁵ Roger Fisher, William Ury & Bruce Patton, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (3d ed. 2011).

talking to their wives about the negotiation and how they felt about it. They didn't listen to it all; they didn't each listen to the other side until later. This podcast is longer. The part we do in class is about a ten-minute or so excerpt, and I stop it and comment as we go along. What makes it even more relevant is that one of the two founders is an NPR radio guy who's been there for years and years and years. He is a terrible business person, but a very, very good journalist. The other guy is an ex-Bain or Boston Consulting Group consultant. He's been trained at the Harvard Negotiation Project. You can tell he's at least read *Getting to Yes*, and I actually reached out to him to find out because he uses some of the language from *Getting to Yes*, and I said, "Did you?" and he said, "Absolutely. I did the Harvard negotiation course." You can tell in the podcast that he's trotting out the terminology and he's trotting out that framework, so we play that for them, too, at a later point in the semester.

So those are some of the things we do to try to keep class interesting, and we were cheating by using some of this to keep this time interesting for you. We've got about 7 minutes and 32 seconds.

Jill Gautier:

I'll add about the podcast—I listen to podcasts on my commute and I love Planet Money. When I did "Coke versus Pepsi," it reminded me that I just listened to a Planet Money about the price of Coke and how it has changed, and it ended up coming down to a bad contract negotiation. So I mentioned it offhand when I was talking to the students, and for some reason when I mentioned podcasts, they all perked up and were like, "Oh!" And then I ended up having two or three students write to me, saying, "Oh, now I'm addicted to Planet Money." So I don't know, for some reason that really sticks with them.

Jeff Alperin:

One of our "quick questions" one week was, "What other podcasts do you listen to?" So we spent one minute talking about that at the beginning of the next class.

Now, are there questions or comments for the whole panel? I'll just moderate.

Class participant:

I'm just in awe of the breadth and depth of what you all have here. My big question would be that I would like to hear about how you, for the ITRANS, have 25 practitioners for 10 days--just the process of getting all that up and running, getting the practitioners on board, and carving out the time, I'd like to hear how all that process works.

Jill Gautier:

On the process side, it is very intensive, so we start very early. We call on a lot of alumni to participate, and also our former colleagues and friends who would be good coaches or negotiation observers. It helps when you can offer CLE credit. They're not there all day every day for two weeks. So they are usually willing to participate when the time commitment is under five hours. There is a lot of preparation and management of the process that goes into it.

Vickie Kobak:

I was part of the group that developed the program and having had a professional development background and running litigation programs and transactional programs and events, that experience was helpful and comes very much into play. It's also not a program that I could do myself as adjunct faculty. We have basically a two-person team that does it. Jill and before that Val Myteberi as a staff person at Cardozo took care of the administration, and in addition to teaching, I spent a lot of time developing the lectures, the curriculum, putting together how the modules would flow, what the exercises would be, and so on. We collaborate in earnest from as early as September about every week or so to talk and find out what's going on.

Now in our third year, we have a list of practitioners we can use, but our first year we coordinated with the alumni department and worked with a list of alumni, then approached them with this wonderful course. We developed a brochure that's a few pages long that tells them how great the program was after its first year and we send that around. We contact people who are in charge of professional development at their firms because they can help identify people who are good at teaching and who like to teach. We reach out to our friends. So we do a broad push and ask people to ask other people. We emphasize that the time commitment is limited to five hours or less and that they'll get CLE credit. Many of the times, as I said, they get a free meal, and I have found in any event that there are a lot of practitioners who are content with practice and think they want to teach but have never done it before. So I market this as an opportunity for them to see what it's like.

There is a lot of organization and by now we have checklists. You really have to have an organizational project management structure. You can't just wing it. We have checklists for the different segments, when we need people, who's going to be teaching what, what our PowerPoints are, what our materials are for each segment, and we let the Registrar's office take care of enrollment. They enroll through the computer system as with any other course. And the last month of December we work very intensively to get the program started. And I'm correcting papers from another semester, and Jill's working full time. She has other things, too, so it's not a full-time job that month of December but it is a lot of work.

The biggest amount of time is when you're actually doing the program because we don't have a lot of other people instructing. When we originally designed it, the thought was that each of these modules would be taught by different people, and we had arranged with someone in the negotiations department at Cardozo to teach negotiations. There was someone else who was a litigation expert who was going to do the listening aspect. And then the person that was supposed to teach negotiations had a granddaughter and had to go out of town, and then the person who was doing the litigation section had to go do something else, so I ended up doing most of it myself. And having been in teaching and professional development, I was used to that.

There's a lot of down time when the students work in pairs during drafting sessions, so you're on in the sense that you're there for them, but you're not up in front of them every day. The third day in, I think, of the program, they're sitting and drafting with each other in two different rooms. We're going and advising them but they're working by themselves. We have them there so that they can get their credits and that we know that they're working on it. And you can make this flow. You can cover as much or as little as you want. We cover the client conversation. We do the drafting. We have the students switch drafts, do preliminary negotiations, consult with the client and learn new facts, learn about matter management, and then a final negotiation. You can take some of those elements out. You can add elements and do a whole closing with a simulated closing. We do the final negotiation as a capstone because frankly for the students that's a lot more glamorous than doing a closing. So it is a lot of work but with organization, I think it's manageable.

Jill Gautier:

And fun. Once the practitioners come in and do it once, they typically want to do it again because they think it's fun. So the initial push is tough, but then they want to participate in future years.

Vickie Kobak:

And each year, many of the people who are participating come back and want to come back.

Jill Gautier:

And tell their friends.

Vickie Kobak:

And tell their friends.

[Inaudible question from class participant]

Vickie Kobak:

What we do with the practitioners--they have a packet. They have the simulation. They have the syllabus. They have a memo with instructions to them specifically about what they're going to do. We have a chart showing where they have to show up and when and for how long. So we make it simple for them.

[Inaudible question from class participant]:

Katherine Koops:

For our negotiation project, the students perform various tasks and homework assignments that are part of the negotiation. For example, at the beginning, we have them prepare a chart of the issues, listing in each case what our client wants, what we think the other side wants, and how important we think the issue is to our client and to the other side. We grade the quality and thoughtfulness of that project. We also grade the overall quality of their written and oral communications with their client and the other side, video them doing a ten-minute negotiation, and grade their collaborative draft of a final, as-negotiated agreement.

[Inaudible question or comment from class participant]

Vickie Kobak:

We do pass-fail in part because they're in teams and because of the whole collaborative nature, but we do have a rubric that we give all the practitioners who sit in a room, and it has I think three sections. One is how they did in terms of the substance of the negotiation, getting information, sharing information, how they did in terms of acting as a team person with their team member, whether they shared information and were working collaboratively, how they worked with the other side, were they respectful, were they listening, so on and so forth. And then we also add a component of how they presented themselves. Were they professional or weren't they – because there's always one student slouching in the chair. So they get feedback on that.

Katherine Koops:

We have rubrics, also.

End of Session