

OTHER MODELS FOR TEACHING TRANSACTIONAL LAW AND SKILLS: STUDIO OR COLLABORATIVE WORKSHOP

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*What Law School Curriculum
Committees Can Learn from
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WHAT LAW SCHOOL CURRICULUM COMMITTEES CAN LEARN FROM ARCHITECTURE SCHOOLS

Howard Katz

Good Morning everyone.

I'm glad that you've come to this session. I'm going to be talking about what law school curriculum committees can learn from schools of architecture. Often, conversations about reforming legal education refer to the medical school model. Occasionally, there are references to how business school is taught. But there are very seldom any comparisons to architecture school despite some of the similarities to law school.

Architecture schools have an accrediting agency as we do, and architects must pass an exam to get a professional license. They are, of course, a profession as are we. They have an actual work product. The building has to stand up and things have to work. Also—and this is something that I didn't realize until I started thinking about this talk—architecture schools, because they are professional schools, fit into the university in a way similar to law schools. To give one example, they don't bring in grant money like, for example, the sciences or maybe an engineering school. Therefore, they have that uneasy relationship of being both a professional school and an academic discipline. So there are those similarities. Although there are fewer architecture schools in the country than there are law schools, they have suffered the same kinds of declines in enrollment (though from a much smaller base). And people still want to go to architecture school despite the job prospects, which have always been difficult in that business.

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So I started thinking about architecture schools and what we might learn from them. They have a signature pedagogy just as law school does. I don't know who exactly certifies whether a discipline has what is called a "signature pedagogy"; maybe there is an international commission on signature pedagogy accreditation. In architecture school, the signature pedagogy is the idea of a design studio and what is called a critical review (called informally in architecture school circles the "crit").

You have to understand that the study of architecture is set up somewhat differently than law. The normal architecture school curriculum is a five-year Bachelor of Arts, but it is a professional degree (and qualifies a graduate to sit for the licensing exam). I was going to hand out a model curriculum, but it's a little bit hard to compare apples to apples. I should disclose at this point that I didn't go to architecture school myself. But among the courses I teach are land use planning, and I'm a member of the Congress for New Urbanism. Therefore, I deal with and meet architects. And so, over time, I began to ask them about their educational experiences and started formulating the ideas that went into this talk. Also, as George Costanza famously said, "I always wanted to pretend I was an architect."

So the students in architecture school, as I said, normally have a five-year program. And they are taking courses that are often times very conventionally taught, like architectural history, architectural theory, structures, building systems, materials, architectural practice, and environmental considerations or sustainability. And many times those courses, particularly a course like architectural history, will be taught in a lecture format with slides. The idea behind the studio is that you take all of the knowledge that you learned in those other courses and pull it together in the design studio. That's the basic premise of the architecture school curriculum, and the basic idea that I started thinking about in terms of whether there are lessons that law school curriculum committees can learn from that model. Hopefully, you can already see some of the parallels and some of the differences between the way law school curriculums and architecture school curriculums are put together.

One of the major criticisms of the studio model within architecture school circles is that, despite the theory that there are numerous disparate considerations (such as: can the building stand up, what are the materials, how does it relate to architecture theory, and what does it look like – the aesthetics of it), the design and creative elements are traditionally over-emphasized in the design studio. Therefore, some of the more pragmatic concerns are emphasized less. I'll come back to this in terms of trying to draw out some of the possible implications for law school.

Obviously, the design studio is what we would call a form of experiential learning. And the term design studio refers both to the physical space (you have a space where individual students have desks and computer accessibility) and to the model of the education as well. In the architecture school curriculums I have looked at, there is at least one studio every semester of their five-year program. They begin with very simple exercises; drawing and spatial exercises. But in the later years, they tend to do a single project for an entire semester.

I want you to start you thinking about possible parallels or applicability to the law school model. For the projects themselves, particularly the ones in the upper level courses, the instructor will set certain guidelines or criteria. And sometimes there might be at least a real world site. Sometimes it might actually be a real world problem. In other instances, it might be a problem that has some parameters set by the instructor but is more hypothetical. This goes back to a discussion that we were having in the previous sessions, about the extent to which experiential problems need to be real world versus hypothetical and the advantages and disadvantages of each. I'll come back to that point, and invite you to begin to think about it.

The other central aspect of the architecture school curriculum, in addition to the design studio, is the idea of the critical review (or "crit"). If you ever talk to an architect, this is the thing they remember the most about the architecture school experience, even more than the studio itself. It has two aspects. One, which would be the equivalent of ongoing feedback as we would think of it in law school, is the desk crit. So on a week-to-week basis, the instructor will walk through the studio space that has, say, ten to twenty students, and will give feedback. The instructor will tell people whether they're on the right track. "Have you thought about this?" "Have you thought about that?" Two, at the end of the assignment or at the end of the semester, there is a pinup of the student's work, and the student makes a public presentation. Public in the sense that it is made to the other students in the class, to the professor of that particular class, and to anyone else who happens to be in the building. I've walked into architecture schools and just sat in on a pinup of someone's work. It's a very public review process. That is a difference from the way that most of us give feedback to our students, and it is a graded exercise.

So what are some of the implications of this? I hope that you're already starting to think of some yourself, considering the differences and the similarities. One implication of course is, "Who teaches an experiential course?" "Who teaches the equivalent of the design studio?" That is

something that is going to segue very nicely into the next presentation by my three co-panelists. In architecture school, almost all professors and instructors are also practicing architects. That is obviously very different from the model of conventional legal education. So the question is, at the extreme, “Would we ever shift law school to a model of practicing attorneys also being full-time or semi-full-time professors?” That’s probably highly unlikely. But we might want to think of the possibility, for example, of having a full-time professor coordinating a group of adjuncts or teaching with adjuncts. I mentioned to some people before the presentation began an article on my bepress site, based on my presentation at a prior Emory transactional conference, arguing that negotiation should be a required course in law school. One of the suggestions I make is how to effectively teach multiple sections of the negotiation course, using the model of a full-time professor setting out the basics of the course and then having adjuncts teach individual sections (a model that is not uncommon for teaching trial practice courses). So the idea of the equivalent of a design studio being coordinated between practitioners and full-time professors is one thing that we can think about.

Consider the pros and cons, the advantages and disadvantages, of simulation versus a live client clinic. The ability to do a more sophisticated kind of problem, if there isn’t a client whose interests are at stake, versus the reality and the other advantages of a live client. As I said before, most design studios have semi-real problems. The professor might choose an actual site, and say, “That’s where you have to design a building that will act as a transportation hub.” Or the professor might say, “You need to design low-income housing using everyday materials that would be available and could be easily assembled in a third world country.” And that’s a semi-real project, but of course, it doesn’t have a live client. Occasionally, design studios are linked to a community group or to a project that is front and center in a given community. But again, the parallel to the law school simulation versus clinic debate is fairly obvious.

One of the theories behind the design studio is that it models the practice of architecture. This is suggestive of one argument for experiential learning – that it is desirable to have transactional skills classes, or skills classes in general, that more accurately model the way attorneys actually work. Do we, for example, want to encourage collaboration? That’s one of the topics that has been brought up at a couple of different sessions at this conference. In architecture school, collaboration is much more common than in law school.

That raises a larger theme. I’ve talked to a couple of people who teach in architecture schools who have made the point that some of the important

skills that they are trying to teach their students are taught indirectly. As I said earlier, I believe that negotiation is a fundamental, foundational course. I believe it should be widely available to more law students, whether taught as a freestanding course or as a module in another course. And then upper level skills courses and transactional courses can build on the fact that students have been introduced to the basics of negotiation. But here's one of the things that the design studio does, for example: the pinup involves a student making a presentation of their work to their classmates and to professors. There is no separate course on public presentation in architecture school curriculums. The students learn how to do presentations by doing presentations. This raises the question of whether, in law school, we should break out basic components and give explicit instruction and then build on them in an upper level course, or whether we should teach things indirectly, infused in one or more courses. Negotiation is one such skill. Although that is one that I believe should be taught separately, you may disagree. And there are other skills (leadership? collaboration? public presentation?) that might be taught indirectly.

To return to the example of collaboration, teamwork is another thing that is taught in the studio indirectly. There is no separate course on teamwork in architecture schools. There are a handful of law schools that teach leadership, and that might include a component on collaboration. Whether that is a better model than having students receiving their exposure to collaboration indirectly in a skills-based course is something that we might want to think about. The point I would emphasize about the studio is that these two skills – presentation and collaboration – are extremely important to practicing architects and both are taught indirectly.

One of the significant aspects of the pinup, as I mentioned before, is that the feedback to students is public, and it's given both by the instructors and by other students. Public presentation and public criticism are central aspects of the studio. There is a huge debate in law school circles about whether students like or don't like other students seeing their work. But even that is far less intense than actually having a public critique of one's work. The equivalent in law school would be, for example, the professor teaching drafting who might put up on the screen examples of good or bad hand-ins from the class. But my experience with colleagues who do this is that usually they will just show the example and discuss it, but only the student who wrote the good or bad example knows whose it is. In architecture school, the student is standing there in front of the group, and everyone can offer their questions or criticisms, including other students. Now, is that model something that could create an opportunity in law school to teach other students how to offer more

effective and more collegial types of feedback? This is another example of the point I mentioned earlier, about an indirect method of instruction.

This also raises an issue which is often brought up at this and other conferences – the question of whether we need to introduce at least some basic components of drafting skills, negotiation skills, or other skills, in the first year. There's obviously a wide debate over this. I think the keynote speaker back at this conference in 2008 proposed doing it a little bit in the first year, more in the second year, and then a predominance in the third year. Of course there are different models. In architecture school, the first year students are in a design studio, already doing basic and foundational things. This raises the question, "Are there certain basic ideas, approaches, or skills that we could abstract out of our courses, and address as foundational tools in the first year?"

I guess the closest equivalent would be a legal methods course that teaches legal analysis, teaches statutory analysis, teaches basic drafting tools before or simultaneous with other first year courses. So, for example, what if we introduced a very basic unit on contract drafting in the first year of legal writing (rather than utilizing the traditional model that we have for legal writing, which would not address this subject, at least not early on)? Then I might raise an issue in my contracts class and say, "How could the lawyers have avoided this problem?" That question is at least raising the sensitivity of students to lawyering issues and to issues of prospectively avoiding litigation. But would my students understand that question better if they had tried to draft even one or two simple contract clauses, whether somewhere else in the first year curriculum or in my contracts class? This raises the issue of introducing certain skills earlier in the curriculum than is traditional, both to attune the student to the issue so it can connect to a skill the student has already been exposed to, and also - and this is very important - to send the signal to first year students that "normal" law school isn't just case and rule analysis.

In architecture school, they are seeing slides of old buildings and learning about architectural theory and architectural history, but they are also drawing and making three-dimensional models in their first semester of architecture school. So the larger issue here is whether possibly we should teach some parts of law school in fairly conventional ways, relying on other parts of law school to pull together the material covered in courses taught more conventionally. Or do we move in the opposite direction, where, in the ideal world, every course would have an experiential component? Would every course have a skills component? Now, there are some schools that teach, for example, capstone courses. Depending on what the work product of the capstone course is you could say that is the equivalent of the fifth year design

studio. More and more professors are trying to be innovative in legal education, and one of the ways we are trying to be innovative is to say every course or at least many courses should be experiential. "You should be thinking about doing small groups in your first year." "You should be thinking about one or two drafting exercises." Maybe there is a place in the curriculum for more experiential learning, either in separate courses or within courses. Maybe some days you might say to the class, "I am going to lay out some rules about torts law, and we are not going to play with the cases. We are not going to play with the application, but two or three weeks from now, we will pull it together." And that "pulling together" could be either in the context of the torts course, or maybe (and this might involve more complex curriculum design), in the context of some other part of the curriculum.

The differences between practicing architecture and practicing law are fairly obvious. For one thing, architecture is not as well-paid. They do not have billable hours. The main difference, and this may be something that the next panelists will address, is this - if the design studio emphasizes creativity and design at the expense of these other aspects, do we have an equivalent in law school? In other words, if you assign a drafting exercise and you have twenty people in your class, will those twenty draft contracts look fairly similar or will different students raise different issues? Will one student see something that another student did not even raise? In architecture school, the premium is on students coming up with different solutions. To the extent that in law school we want students to come up with similar solutions, the model may or may not be fully applicable. Yes, there are aspects of drafting on which professors and students may have different "takes" such as how much or how little should the plain language approach be applied. There may be other issues in a given drafting problem that one student would see and another would not. This all raises the question of how much adaption is needed to apply the studio/crit model, emphasizing creativity and different solutions, to law school. I will invite those with more experience teaching transactional skills to ponder that issue.

The final point I would make is that the design studio is very, very intense. It is more intense than anything we experienced in law school (even in our worst nightmares). People stay up all night. They sleep under their desks. That is an issue in terms of intensity itself, especially as more faculty members have begun to address the issue of "balance" and quality of life at law school in general, and stress in particular. It is also potentially an issue in terms of gender. At least until recently, there was a gender imbalance and, I am told, a greater dropout rate in architecture schools among females. This is one more

characteristic of the studio and crit that raises the question of whether we can translate and apply the positive aspects of this kind of comprehensive “pull together” curricular model, without replicating some of its perhaps negative attributes. That is an open question. So I look forward to your questions and comments later. Thank you.

***TEAMWORK IN TEACHING TRANSACTIONAL LAW AND SKILLS:
ACADEMIC, PRACTITIONER, AND BUSINESS CONTRIBUTIONS***

**Alexander M. (Sandy) Meiklejohn, Lisa Oak, and Robert A.
White***

I. INTRODUCTION

Sandy Meiklejohn

I’m Sandy Meiklejohn, and I’m here with my colleagues, Bob White and Lisa Oak. Together, we teach a course at Quinnipiac University School of Law called “Commercial Transactions Workshop.” We’ll talk about how we’ve worked together to design and teach the course and about some of the benefits that collaboration among an academic, a practitioner, and a businessperson can provide to students.

Let me begin with a few words about how the three of us joined together to design and teach the Workshop. Bob was a partner for many years in a 100-lawyer firm in Hartford, Connecticut, practicing mainly in the areas of bankruptcy and creditors’ rights. For some years, he has been interested in ways to ease the transition from law school to practice, and he has done some work on that transition within his firm.

Bob and I worked together on a project in the 1990s, and some of my courses touch on bankruptcy. So when the Quinnipiac administration hired him to teach Bankruptcy as an adjunct a few years ago, we renewed our acquaintance. I sat in on Bankruptcy the first time he taught it, and in his second year I gave him some help teaching a Bankruptcy Lab—a one-credit

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course that students could take while they were taking Bankruptcy or after taking it.

Our discussions about the Lab led to discussion of the possibility of a commercial course that would be broader in its doctrinal coverage. When we thought about creating and teaching the broader course, we reflected on the fact that, while I have a lot of teaching experience and he has a lot of experience working with deals that have become troubled, it would be good if we could team up with someone who had a lot of experience putting deals together. I immediately thought of Lisa, who was a student of mine while she was in law school. I knew that Lisa had spent years in the early part of her career negotiating leases for the company that franchises Subway restaurants, and I also knew that more recently she had headed a division of the company that acquired other franchisors as a means of diversifying Subway's business. I suggested to Bob that we invite her to join us, and he agreed enthusiastically. We did, and luckily for us and for our students, she agreed to do so.

We've taught the course twice—in the spring of 2015 and again this past spring, and because we're new to this kind of teaching, we're especially receptive to comments, questions, and suggestions for improvement. What we plan to do this morning is to begin by telling you about our goals for the course, then touch on a few points in the syllabus, and conclude with some examples of student takeaways as well as our own thoughts about collaborative teaching of transactional law and skills. We've saved some time at the end for discussion, but we're also open to questions and commentary as we go along.

II. GOALS

Bob White

Like all of you, we want to help students transition to practice. What kind of practice? Most of our students are not heading to BigLaw but rather to small law firms, midsized regional law firms, companies (especially in the sports and entertainment field), and government. In developing the course, we considered what practitioners think graduates should know. Like the teachers in Howard's example of the exercise called the "crit" in architecture school, we try to give feedback as we would to a new associate. We tell students that we want to set aspirations so they will know where they need to go. As in practice, we will hold them to high standards. We understand that they will make mistakes—better in the course than in practice. We will give them a chance to get some of the rookie errors out of the way, but we will also expect improvement.

As we gain experience in teaching the course, we are paying more attention to the competencies we are trying to teach. We try to teach written communications, problem-solving, ethics, and negotiation. We are reviewing the recent draft of business law competencies from the ABA Business Law Education Committee and will try to learn from the Committee's work.

We recognize that the transition to law practice involves not just the law school but legal employers as well. As part of my job at my firm, Murtha Cullina, I chair our Professional Development Committee. Like many firms, Murtha recently identified core competencies for all lawyers, and the Litigation and Transactional groups are working to identify departmental competencies. Both in the course and at the firm, there is a strong emphasis on life-long learning. In the course, we don't use the term "practice-ready." I see legal education as a continuum from law school through the first years of practice and beyond. The challenge is to decide what students should learn and when they should learn it. I know I am excited by this endeavor. It's challenging and it's also fun.

Practitioners bring experience and business context to the task of helping students with the transition. However, what they don't bring is much teaching experience. In that regard, I want to put in a plug for the care and feeding of adjuncts. I cannot tell you what a fantastic mentor Sandy has been. Just before I began to teach my first bankruptcy class four years ago, Sandy asked if he could sit in on the course since the subject came up so often in his commercial classes. After a panic attack, I readily agreed. His comments and guidance helped me get up the learning curve much more quickly. I will admit that for this to work we had to cut a deal: he agreed not to ask questions and I agreed not to call on him. It worked!

Sandy Meiklejohn

Especially because I didn't do the reading.

Bob White

In designing the Workshop, we've opted for breadth over depth. We emphasize (a) exposure to basic business documents, (b) contract drafting and some deal skills, and (c) negotiations. We do not address other deal skills such as interviewing and counseling. We were a little concerned about trying to do too much, but it seems to work and students have appreciated the mix.

We've collaborated in developing a common course problem that Lisa will tell you about.

III. THE OAK STREET DELI STORY

Lisa Oak

As Bob said, we've created one story line on which we build throughout the semester as the thread running through our transactions.

Coming into the first class, the students have already read about Oak Street Deli and its owners, Laura and George. Now in their 70s, Laura and George are ready to retire, and they have their sights set on a house in Florida. Selling Oak Street Deli is the next step for them to achieve their retirement dream.

Enter Hillary and Bill, who are in their 30s and starry-eyed! Each with some related experience, Hillary and Bill have big plans for Oak Street Deli. But first they have to make a deal and buy the business!

Since the lease is assignable only with the landlord's approval, and since there are only a few years remaining on its term, Hillary and Bill must negotiate with the landlord before deciding to buy the deli. Once they have an agreement with the landlord, they will need to consider their resources and financing needs before finalizing an agreement with George and Laura.

When all is said and done, and after due diligence by Bill and Hillary, they buy the deli in time for George and Laura to purchase their dream home in Florida. Hillary and Bill then focus on building the Oak Street Deli business.

As the story unfolds throughout the semester, we learn that Hillary and Bill enter into a food-supply contract with Hillary's friend, Susan Serious, who is a supplier of food products. Later, Bill and Hillary have a dispute with Susan. That dispute leads the students to consider the attorney's role in negotiating a contract dispute.

IV. SELECTED ASSIGNMENTS

Sandy Meiklejohn

Now let's turn to the syllabus. We'll briefly touch on a few of the assignments to give you an idea of how our different perspectives and contributions play out as we teach the course together. The assignments are similar to some of those that other panelists have described.

A. Understanding the Business Deal

We emphasize the obvious point that, to work on a transaction effectively, it's crucial for a lawyer to understand the transaction. Because the course begins with the purchase of a deli, we ask the students to spend some time doing internet research concerning purchasing a restaurant. We also ask them to describe in class any experience they have had in the restaurant business, and we introduce them to Tina's book⁵ as a source of guidance for contract drafting and a review of some of the concepts that they studied in Contracts.

We then introduce the concept of a term sheet, and at this point the students have the benefit of a discussion between Bob and Lisa about the advantages and disadvantages of a step in which a buyer and a seller first create a term sheet and then move on to negotiate and sign a comprehensive purchase and sale agreement. Bob has generally found that step to be very useful, but Lisa has often preferred to skip it because it can slow down negotiations. Her experience has been that time kills deals. Nevertheless, we emphasize to the students that they need to create their own term sheets to ensure that they understand important transactional points clearly and that they can do their drafting and other work systematically and thoroughly.

B. Basic Business Documents

Bob White

We introduce the students to three basic business documents: an asset purchase agreement, a loan document, and a lease.

We found an APA that was used in an acquisition of a chain of restaurants by a public company. The students read the APA, and Sandy asks them, as he often does in his classes, to diagram the transaction. He then leads a discussion in which the students identify provisions in the APA that exemplify the contract concepts and provision types that Tina describes in Parts 1 and 2 of her book.⁶ Finally, he asks them to answer a question about how a hypothetical situation would be resolved based on the APA.

This exercise highlights the benefits a full-time faculty member brings to the table. Sandy does a much better job than Lisa or I could in drawing out the students in the discussion. While Lisa and I contribute to the class, the full-time faculty member is really the anchor in this particular session.

⁵ TINA L. STARK, *DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO* (Wolters Kluwer Law & Bus. 2d ed. 2014).

⁶ See *id.*

We also want to expose the students to basic loan documents—a term note, a revolving note, and a security agreement. In class, we discuss the types of loans and lenders that are available in the marketplace. The students read some sample documents and complete a term sheet of the key provisions for discussion in class. Sandy highlights a few UCC concepts that the documents raise. Some students find the concepts somewhat hard to grasp. I paid special attention to the last panel on teaching financial transactions and will be interested, if time permits, in your thoughts on teaching business literacy.

Lisa Oak

Now on to one of my favorite topics, namely lease negotiations. We start this segment by providing the students with a standard retail commercial lease and asking them to focus on selected provisions that are primarily related to the business deal. In discussing these provisions, we intersperse role-playing and have students “flip sides,” so to speak, so they are challenged to consider the issues from the points of view of both parties. It’s fun to hear the students’ fresh perspectives on some of these points. It gives me the opportunity to talk about the value of having junior team members involved in negotiation preparation, as well as the technique of substituting a junior member of the team when the more senior member hits a road block in the deal. Fresh ideas and approaches can often save the day.

C. Client Memo

Bob White

The first major writing assignment we give the students is to draft a memo to a client, in this case the sellers, George and Laura. This is a graded exercise. Although there is nothing unusual about the assignment, I think the way we collectively provide feedback highlights the benefits of collaboration.

We give the students some provisions from a draft APA that has supposedly been prepared for the deli sale. The provisions are poorly drafted, and the students’ job is to advise George and Laura whether they should sign the APA without asking for any revisions. If revisions are necessary to ensure that the deli sale will close in time for their house purchase in Florida, the students are to specify the nature of the revisions.

We point out the examples of client memos in Tina's book⁷ and the guideline stating that the conclusion should be in the first paragraph. We limit the assignment to three pages. I tell the students that their first draft is to their supervisor and should represent their best work.

Sandy and I review the first drafts of the memos. I focus on organizational clarity and make the kind of comments that a beginning lawyer is likely to receive from a supervising attorney. Sandy also comments on clarity, but in addition he provides the students with sentence-level comments. In earlier courses, Sandy has emphasized the importance of good writing, including sentence-level clarity, to some of the students. I'm able to reinforce that message by noting that employers look at writing samples in or before an interview and, more to the point, demand good writing from associates. Lisa also weighs in, emphasizing a client's expectation of good writing. This is one of many situations in which Lisa and I are able to reinforce the message that Sandy and other academics have conveyed previously.

In teaching writing collaboratively, there is a tension regarding first drafts between the expectations of practitioners and the typical law school protocol. I emphasize the expectation of a supervisor in practice that a new lawyer's first draft will represent his or her best work. In their simulated role of new lawyers, the students should take ownership and not expect to be provided with much direction. At the same time, students expect and need an opportunity to provide a redraft. Sandy, Lisa, and I have noted the tension and settled on a practice of making critical comments on the students' first drafts and permitting them an opportunity to submit a second draft taking those comments into consideration.

After we provide written comments on the first drafts but before submission of the second drafts, we have a full class in which we go over the general comments that we have made on many of the drafts. I am as candid in my comments as a supervising lawyer would be. I think it makes an impression on students because they are not used to such a blunt assessment. What I tell them goes something like this:

Drafting a client memo is an assignment you will undoubtedly undertake in your first year of practice. Here the client asked you two specific questions. In reading over the drafts I have but one comment: answer the damn question. Most of you did what new lawyers and many senior lawyers do. You provided analysis without directly answering the questions asked. I don't

⁷ *Id.* at 541-42.

mean to be overly critical of you. However it's a mistake that I hope you won't make in practice. In practice, the memo is not an issue-spotting exercise. The client is not familiar with the legal process and wants to know the answers to questions that he or she considers important. A client will get frustrated when his or her lawyer doesn't do that. The frustration is compounded when the client knows that the lawyer is billing on an hourly basis. The client will see a three-page memo and conclude that you are being overpaid for what you did. So answer the damn question!

Lisa Oak

You are absolutely right, Bob, and as you will recall at this point I share with the class that, from a client's point of view, when I work with outside counsel, I want the headline up front. What is your recommendation? Of course, I also appreciate support of the position later, but in the first paragraph I need to know where we are going.

This year, after some pretty serious discussion in class about drafting documents, we decided to lighten the atmosphere up a bit. We had been discussing the importance of proper punctuation, and we posted this slide during a class break in the spirit of the recently popular book, *Eats Shoots and Leaves*:⁸

*Why are commas important?*I enjoy cooking my family and my dog.

I am sorry I love you!

Let's eat Grandpa!

Woman, without her, man is helpless!

Woman: without her man, is helpless!

Sandy Meiklejohn

There seemed to be a pretty clear consensus among the students that the second example didn't need any more punctuation.

Lisa Oak

⁸ LYNNE TRUSS, EATS, SHOOTS & LEAVES: THE ZERO TOLERANCE APPROACH TO PUNCTUATION (2004).

Yes, there was, Sandy, but I think we agree that the discussion was outside of the scope of the course syllabus!

D. Vendor Agreement

Now, the Oak Street Deli story continues. Having bought the deli and focused on increasing sales, Hillary and Bill decide to add a gluten-free line to their product offerings, and they reach an agreement on material terms with Hillary's friend, Susan Serious. We give the students the job of drafting a food-supply contract between Bill and Hillary, as buyers and Susan, as seller. After much debate, Bob, Sandy and I have decided to have the students draft the contract from scratch as opposed to utilizing existing forms. Some students are assigned to represent the buyers and some are assigned to represent the seller. Once they have drafted their agreements, we introduce them to resources that they will be able to consult for forms in practice and let them know how to access those resources.

Next, the students are paired off and lawyers for buyers exchange documents with lawyers for sellers. The exchange gives each student the opportunity to see how another student completed the same assignment, and it is often enlightening for each to see the other's draft. As an aside, we throw in a technology tip to be sure everyone knows how to use Compare Documents in Word, and the students really seem to appreciate that.

It was very helpful this year to have class visits from two recent graduates. One, who was a student in the Workshop in 2015, emphasized the importance of focusing on details in all aspects of her work. The second, a recent graduate who did not take the Workshop, candidly talked about mistakes he had made in his first year as an associate and how he learned the lesson of paying attention to details in drafting after being called on the carpet for leaving out a comma in the client company's name in a set of documents prepared for a closing the following day. Both graduates emphasized the importance of paying attention to all the details, including the need to look up any unfamiliar terms, thereby reinforcing Bob's message of lifelong learning. As is often the case, hearing from peers (or those closer to the students' stations) made a great impact, driving home points that we had stressed.

The exchange of drafts sets the stage for negotiation over the differences between those prepared by lawyers for Bill and Hillary and those prepared by lawyers for Susan.⁹ The negotiations take place in class, and Bob,

⁹ After the negotiation exercise, each student also receives comments on his or her first draft from Bob and Sandy and submits a second draft.

Sandy, and I are able to circulate and listen in. We've made a few key observations:

1. Depending on the extent (or lack) of their prior business experience, students may be unfamiliar with fundamental business functions, such as ordering a product or billing customers. The lack of familiarity makes it difficult for them to negotiate effectively. When they experience that difficulty, we reemphasize the importance of understanding the business deal, and the point seems to come across clearly.

2. Negotiating in pairs, the students tend to focus on coming to an agreement quickly and are, therefore, very agreeable and accommodating. Concerned that they are compromising their clients' positions, we periodically challenge them by asking, "Who got the best deal?" When we ask that question the first time, many hands go up, but then, as new ideas come to light from professors and students alike, the students start to think about the possibility that they could have done a better job for their clients.

Concerned that the exercise may not simulate many real life negotiations, the three of us conferred between classes this year and decided to change plans on the fly and give the students a taste of a less-friendly negotiation. To do so, we selected a student to participate in a mock telephone negotiation of the same food-supply contract with me. The student had no notice of our plans, but he immediately accepted and very skillfully responded to my less-than-collaborative approach to try to get his client's deal points across. The mock negotiation also gave the class the opportunity to consider the pros and cons of telephone negotiations (of which I am a strong proponent) as opposed to in-person negotiations.

To demonstrate the exercise for you, that same student and I recreated the telephone negotiation exercise on video. Here is a sample of our exchange:

[Show video for 2.5 minutes.]

I promise that I am not typically that difficult in negotiations, but I assure you we made the point!

E. Negotiating a Contract Dispute

Bob White

Transactional lawyers are often called upon to resolve disputes that arise during the term of a contract before the litigators are brought in. The scenario we've developed involves a falling out between Bill and Hillary and

their supplier, Susan. Each side has business issues, lending issues, and personal issues. Because of a dock strike, Susan has been unable to deliver a special sauce that has fueled the Deli's growth since the supply contract was signed. In response, the Deli has stopped making payments for goods that have been delivered. Drawing on our loan document summary, we give the students a hypothetical scenario in which each side faces potential defaults on the covenants in its agreement with its lender. Finally, Susan and Hillary, whose friendship had spawned the business relationship, have a shouting match. Susan accuses Hillary of having gone "legal."

Sandy, Lisa, and I supply a memo by an associate on the law and instructions from a senior partner on an acceptable settlement. Some students represent Bill and Hillary and others represent Susan. Of course, we have constructed the facts so that neither party is willing to agree to the other's best offer, so a quick resolution is not available. The senior partner representing each side instructs the associate who will negotiate to make the best deal possible and the partner will try to sell it to the client.

Lisa Oak

Working with a form we draft and provide to them, the students are challenged to consider each side's strengths and weaknesses from both business and legal perspectives. They are also challenged to consider what would happen if they were unable to come to an agreement on their client's behalf. What is their client's best alternative to a negotiated agreement?

In class discussion of negotiations, we emphasize the importance of preparation in all aspects of a lawyer's work, as very effectively explained by both former students who visited the class. Be prepared for negotiation; do your homework!

When the negotiations are completed, we list on the board the agreements that the students have reached so that everyone can see the various resolutions of the disputed terms. Each student is again able to consider the effectiveness of his or her negotiation strategy. This negotiation exercise completes the course.

V. STUDENT AND FACULTY TAKEAWAYS

Bob White

In addition to their written course evaluations, this year we asked the students for concise summaries of their major takeaways from the course. Here are a few of their responses:

1. Be the first to draft a document.
2. At first I didn't know what to do with the teacher's comments on my memo where I didn't answer the question; now I know it was a "tough love" approach to get me to answer the client's question.
3. Know your counterpart; become known in the legal community.
4. Pay attention to detail. The recent graduate who told his story about missing the comma in the client's name made a big impression.
5. In a client memo, put recommendations up front, get to the point right away.
6. I told an interviewer that I took this class and drafted a contract. He was impressed!
7. Former students said they were scared and unsure of what to do in practice, but they did it. I can do it, too.

Sandy Meiklejohn

So what do we think this kind of collaboration can accomplish? It can give students the benefit of different professional backgrounds; it can reinforce messages; and, if one of the teachers is someone like Lisa, it can show students an example of a successful career in business that began with the acquisition of a law degree.

We'd love to hear your questions, comments, and suggestions.