

# CONTEXT MATTERS WHEN MOVING A SKILLS WORKSHOP FROM THE CLASSROOM TO ONLINE

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In this piece I share my recent experiences in moving a Drafting & Negotiation Skills Workshop from the classroom to online. The term “context” appeared in the titles for so many of the presentations and panels at the 6<sup>th</sup> Biennial Conference on Teaching Transactional Law that it seemed to be a sub-theme for the Conference.

I am a transactional real estate attorney and spent much of my career representing the developers of planned communities and office parks which means that my transactional perspective and the context in which I practice is that of the attorney for the developer/owner/landlord.

For me context is important, and for me the term “**Context**” refers to the extra information that helps one to better understand something. Information about the time, place, situation, history, property or people involved—the details that help make sense of something. Context is all about the facts and how the facts relate or connect to other aspects of the transaction at hand. It is all about connecting the dots.

Providing context is especially important when teaching online and even more so when teaching a course where students have little or no experience in the substantive law. When being introduced or exposed to something for the first time, students have difficulties figuring out what is relevant and what is not.

When I look back at my law school experience at the University of Chicago Law School, nothing was said about the context of the cases we studied or even about the course itself. It was law taught in a vacuum. It is what I work to avoid when teaching.

## CONTEXT IN WHICH I BECAME AN ADJUNCT PROFESSOR

In the mid-1990s while still practicing real estate law, I enrolled in a Master’s Program at Northwestern University to earn a degree in Communication which I completed while continuing to practice.

After I received my degree I became part of a group of advisors from practice working with Professor Celeste Hammond who was then

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establishing an LLM in Real Estate Law at John Marshall School. I also became a member of the Real Estate Adjunct Faculty.

The first course I taught as an Adjunct was a Drafting and Negotiations Skills Workshop which drew heavily upon a course on negotiations which I had at Northwestern. Since my Northwestern course utilized negotiation materials with a communication/social science focus, that was the context for my Workshop. It was not the optimal context for a Drafting and Negotiations Skills Workshop for a transactional LLM Program in Real Estate Law.

I used *Negotiation Readings, Exercises and Cases* by Lewicki, Barry & Saunders published by McGraw Hill which is now in its seventh edition as the text. It included well-designed role-play negotiation exercises which I used even if they lacked a transactional focus.

After a few semesters, I turned the Workshop over to another member of the Adjunct Faculty who taught it for many years using my communication focused negotiation materials but added a series of "Drafting Workshops." He also was absolutely convinced that negotiation skills could not be taught online and was not interested in exploring online education.

I, however, realized that online LLM courses would dramatically expand the pool of potential students since trying to get to classes that meet at 6:00 is difficult for anyone who is not practicing in downtown Chicago. I waited for an opportunity to get involved in distance education while continuing to teach substantive real estate courses in a classroom.

When John Marshall started to put its LLM and MJ programs online, the opportunity that I had been waiting for was finally in hand. But before that happened, I had what I now would describe as **A Quasi Online Course Experience**. In the fall of 2012, Celeste Hammond and I became visiting professors at a distance at the University of Louisville Louis D. Brandeis School of Law to teach a synchronous class from Chicago to students in Louisville.

It was an opportunity to work with students in a context where it was necessary to communicate by e-mail and use Blackboard to give instructions for and receive completed drafting and skills assignments. It also provided an opportunity to try an e-mail interviewing exercise which worked very well.

### MY FIRST ONLINE COURSE DEVELOPMENT EXPERIENCE

In 2014, Celeste Hammond was authorized to develop an online version of an advanced real estate course: Leasing Ownership and Management which we had been team teaching in a classroom using as our text: *Commercial Leasing: A Transactional Primer* which she co-authored.

The context for the Leasing course was provided by the text itself which was written to look at an office lease transaction from the perspectives of the landlord, the tenant and the lender. It also included—with permission—the ABA's Starting Point Office Lease so that students had a form of lease to use.

Leasing, Ownership and Management, in retrospect, was a very easy course to move from the classroom to online. We had a syllabus, a text and lectures which were substantially ready to audio tape and have posted on the course page. We already had materials for drafting assignments and a final project. We did need to add some discussion forums and provide written instructions for the drafting assignments and final project.

We also added a role-play interviewing exercise with students playing the role of the law firm associate who must obtain facts from a new client's VP of Real Estate—a role that I play—about the client's proposed use of the premises because of client concerns that the use of the premises provision in the landlord's lease is too restrictive.

Since I am traveling, the interview exercise is conducted solely by e-mail. When the interview exercise is over, the students—using the information obtained from the VP of Real Estate—are to prepare a revised draft of the landlord's Use Clause.

For this exercise, students are told that they can ask the VP three questions and one clarifying question if necessary. When I first tried this in Louisville, students were told that they could ask up to six questions which they all did. They had trouble coming up with six questions and I had difficulty coming up with answers. Three questions are sufficient.

We also realized that the interview exercise was an opportunity for students to practice the skill of communicating with clients when emails were received that began: "Hey Professor: Here are my three questions."

In both the classroom and when Leasing was taught online, we used a final project instead of a final exam. For this project, the students

were to negotiate the terms of several open lease provisions and then to prepare a final form of lease which was to be submitted jointly to the faculty.

Students were told that they could handle the negotiation however worked best for them—on campus, by phone or by e-mail or by a combination of phone and e-mail. Students figured it out and having online students based far from Chicago was never an issue.

### **MY SECOND ONLINE COURSE DEVELOPMENT EXPERIENCE**

In early 2016, Professor Hammond and I developed an online course on Climate Change Law without first teaching it in a classroom. We came to this project with a knowledge of many aspects of climate change and its impact on real estate having worked together on two academic conferences: Adaptation of the Built Environment to Achieve Resilience to Climate Change in 2013 and Fracking, Energy Sources, Climate Change & Real Estate in 2015.

The context for Climate Change Law was science. Since we did not know to what extent students had backgrounds in science or environmental law or were students of “climate change,” we wanted to make sure that students were aware of the scientific context for the course. Thus, a lecture on the science behind climate change was part of the first module.

We also populated the course site with numerous downloadable resources and assigned law review articles from the symposium issues of the *Law Review* after the 2013 and 2015 conferences as part of the reading assignments.

### **AN OPPORTUNITY TO DEVELOP AN ONLINE DRAFTING & NEGOTIATIONS SKILLS WORKSHOP FINALLY COMES ALONG**

In the fall of 2017, I was asked to develop an online version of RE 608 - Drafting & Negotiations Skills Workshop which is a required course for those in John Marshall’s LLM and MJ programs and for JD students in Joint JD/LLM program.

Students would include practicing attorneys, law students and non-attorney real estate professionals who were interested in a degree in real estate law from a law school. Since I had already taught classes with LLM, MJ and advanced JD students, I knew what to expect from that mix of students and that the JD students would benefit from the opportunity to work with LLM and MJ students.

It was my goal to develop a Drafting & Negotiation Skills Workshop with a transactional context grounded in real estate law and

practice. I also planned to use the big lessons that I learned from previously developing online courses.

The **Big Lesson #1** from Leasing Ownership & Management is that having the right text that supports the goals of your course is key. Since *Commercial Leasing: A Transactional Primer* was authored by professors who not only were committed to the transactional perspective and who include the word “transactional” in the title, it was the perfect text for the course both in the classroom and online.

The **Big Lesson #2** from Developing Climate Change Law was not to develop an online course that has not already been taught in a classroom. Having a text, materials and a syllabus makes going online much easier since you can focus your attention on making the modifications that are needed to make the course materials work in the online environment.

#### **THE CONTEXT FOR THE ONLINE DRAFTING & NEGOTIATION SKILLS WORKSHOP WAS GOING TO BE TRANSACTIONAL AND REAL ESTATE FOCUSED**

To provide a context for the Workshop, I created a mythical multi-building office park which I called Anderson Highway Office Park, or AHOP, because the life cycle of any development, be it an office park or mixed use planned community, generates many occasions when negotiation is required.

I had a great deal of fun developing facts about AHOP and the town and county in which it was located. Information was provided about the developer of AHOP, the uses of the surrounding properties and the restrictions imposed by the town during the permitting process. The facts were rich, detailed and reminiscent of projects I had worked on.

From the perspective of a transactional attorney, combining the skills of negotiation and drafting is not only appropriate, but normal, since what one drafts is typically based on the outcomes of negotiations.

#### **APPLYING THE BIG LESSONS**

**Teach the course in a classroom first.** Before I jumped into developing an online Workshop, I decided to first teach a Drafting and Negotiation Skills Workshop in a classroom. This explains why I found myself at John Marshall Law School on Tuesday nights from 6 to 8 pm during the Spring term of 2018.

Teaching in a classroom would provide immediate student feedback about course content and materials. This was important since I was creating my own role-play negotiation exercises and wanted to find out what worked, what should be dropped and what needed substantial reworking.

**Select the Right Text.** The first challenge that I faced was selecting a text and potential resources. I knew I did not want to use the communication materials that had previously been used because the readings were not that helpful to practitioners and while the text did contain role-play exercises, they did not focus on real estate transactions.

I looked at many publications before I decided to use William Ury's *Getting Past No – Negotiating in Difficult Situations*—published in 1993—and the *Power of the Positive Yes – Save the Deal, Save Relationship and Still Say No*—published in 2007. Together these books show the evolution of Ury's thinking and include sections where he discusses his experiences as a negotiation advisor and conflict mediator.

Ury is a social anthropologist who became internationally known when he served as Roger Fisher's coauthor for the groundbreaking book on dispute resolution, *Getting to YES*. Ury is a cofounder of Harvard's Program on Negotiations and currently a Senior Fellow of the Harvard Negotiation Project.

**Enlist the Students in the Course Development Process.** When the class met in the classroom for the first time, I explained to the students that I was in the process of developing an online version of the Workshop and that their input was going to be very important as I moved the Workshop from the classroom to online.

As the term progressed, it became clear that students thought that my description of AHOP was confusing and provided much more information than they needed for exercises and assignments. The very detailed description of AHOP that I had so much fun creating was put into the trash.

Students also reported when debriefing the role-play exercises that they were overwhelmed by the amount of information that they were given. Context is important, but too many details defeats the purpose of providing context. As a result, common facts and confidential role materials for the negotiation exercises were revised to provide only the facts and information relevant to the role-play exercise.

My efforts to create an interviewing exercise based on the exercise used in the Leasing course crashed and burned. As one of the LLM students said, "When a client calls and leaves a message, my

response is to contact the client and ask the following two questions: “What is the problem? How can I help?” The interviewing exercise works well in the Leasing course because the attorney is contacting the client to gather additional information and facts to enable them to complete an assignment rather than to determine what the client’s problem is.

**Have the Workshop “Meet online” to the extent permitted under ABA rules.** In designing my syllabus for the classroom, I scheduled 3 of the 13 classes to be taught online with audio taped lectures. It turned out that I could audio tape my lectures using the voice memos feature of my iPhone. After saving and naming the lectures, they could be e-mailed to John Marshall for posting on the course page.

I also assigned a role-play negotiation exercise which students were to complete solely by the exchange of e-mails. To prepare them for this negotiation, I gave a lecture on “Things to Consider When Negotiating by Email.” The students were able to successfully complete their negotiations by e-mail.

#### **LOOKING TO THE FALL OF 2018**

The online Workshop is scheduled to be taught in the fall of 2018. While it covers the topics and uses materials and exercises comparable to those used in the classroom, the Workshop also addresses issues not present when teaching in a classroom.

How, for example, do you know if students are attending? The benchmark for attendance is the timely submission of an assignment or report or making postings to a discussion forum. Each module on the Moodle course requires that students timely do something which also counts toward the final grade.

Administration is an important part of teaching any course but more so when the focus of the course is developing skills and being taught online and includes role-play negotiation exercises which requires pairing students to play the roles and providing them with their confidential role information.

Making sure that students know what is due when is a challenge. I post a schedule of reading assignments and a separate schedule of due dates for assignments on the course page. While this information is included in the syllabus, which is also posted on the course page, students

do not seem to view the syllabus as the place to go for answers about what is expected of them.

To make myself “a presence,” I regularly send e-mails to students reminding them that assignments are due. Students have so many things on their plates these days that it is easy to forget about the requirements of an online class with submission deadlines.

### **COMPONENTS OF THE ONLINE DRAFTING AND NEGOTIATION SKILLS WORKSHOP**

**Activities to Get to Know the Students.** Learning about the students is important when teaching in a classroom or online. Requiring students to make postings on an Introduction Forum provides an opportunity to “meet” others in the class and to learn something about them. These postings become a resource to learn about the people that they will be negotiating with during the term.

An initial out of class activity inspired by Ury’s opening lines to *Getting Past No* (“We all negotiate every day. Much of our time is spent trying to reach agreements with others”), provides another opportunity for students to learn more about each other.

For this activity students prepare a list of all the negotiations they have with others during a designated day. My classroom students were amazed at the length of their lists, I noted that dogs were the topic of many negotiations and this activity helped students learn more about each other.

**Discussion Forums Based on Reading Assignments.** The Reading Assignments from William Ury’s *Getting Past No* and *Power of the Positive Yes* proved to be a great basis for Discussion Forums. Ury’s materials are rich with details and examples and give students an opportunity to discuss and reflect on issues raised in the Reading Assignments.

Getting students to participate in a meaningful discussion of issues raised in the Reading Assignments in the classroom is a challenge. However, the online discussion forums included in the online sessions of the Workshop worked. The student postings were insightful and illustrated by their own experiences. A real exchange of ideas was taking place.

Students told me that they liked responding online because the online environment gave them the opportunity to think and then write—a lack of urgency that they felt when something was discussed in the classroom.



**Lectures on the Negotiation Process.** The Workshop has a series of Audio Taped Lectures on the Negotiation Process. The initial lectures introduce student to distributive bargaining—"I win, you lose" negotiations—and to integrative negotiations where the parties attempt to achieve an outcome that meets the needs of both. The lectures I gave in the classroom were updated before being audio taped to incorporate student comments and suggestions.

Negotiation Lectures relevant to the negotiation exercises or a drafting assignment are scheduled before or during the week the exercise or assignment is due. In the classroom, some lectures were created and given after the fact to respond to student questions raised during the post negotiation exercise debriefings.

A lecture on the Role of Trust was created after the students completed a role-play exercise which could become a distributive bargaining exercise or an integrative negotiation depending on how much each of the parties was willing to trust the other.

My audio lectures begin "Welcome to the Drafting & Negotiation Skills Workshop. This is Virginia Harding." I then give a very short explanation of what I will be covering and how the lecture connects to an upcoming exercise or assignment. To indicate that a lecture is over, I have started using the phrase "Thank you for your attention" as my sign-off to let students know that the lecture is over.

**Drafting Workshops & Lectures.** Drafting Workshops comprised of Audio Taped Lectures with copies of the documents being discussed are posted on the course page. Drafting Workshops cover contracts for the purchase of vacant land, due diligence and contingency provisions and contracts for the purchase of rental property.

**Drafting Assignments.** Drafting Assignments give students an opportunity to prepare documents covered in a Drafting Workshop or enable them to prepare a document which was discussed in one of the lectures. What started out in the classroom as a negotiation to change the terms of a "standard form contract" has at the suggestion of students been, turned into a drafting assignment to add new terms and revise to an outdated form of contract. Drafting assignments include engagement letters, Notice of Option Exercise and updating a standard form of landscaping and snow removal services agreement. The Drafting Component of the Final Project is preparation of a contract for the sale of a rental building.

**Role-play Negotiation Exercises.** Role-play Negotiation Exercises are a key part of the Negotiation Component of the Workshop because they give students an opportunity to experience the negotiation process in a controlled context.

Each role-play negotiation exercise involves the resolution of at least one issue which arose in connection to the development, leasing and operation of AHOP. The due date for submission of a Negotiation Outcome Report establishes the time for completion of each exercise.

For each role-play students are assigned a role that they will play which will vary based on the issue that is being negotiated. For example, if the issue involves a tenant's request to expand the leased premises, students will be assigned to play the role of the attorney for the landlord or the tenant.

A memo with Common Facts and Instructions for each exercise is posted on the Course Page. Depending on the complexity of the issue, students may also receive copies of lease provisions or contracts that relate to the issue. The instructions may also indicate which lectures should be listened to before doing the negotiation.

Each student receives "confidential information" relevant to their role by e-mail. Students are told that confidential information is not to be shared with those who are representing the "other" party to the negotiation.

Except for one negotiation which must be done exclusively by the exchange of e-mails, students are able to decide which technologies—phone, e-mail, etc.—they will use for the negotiation. They may, if schedules permit, meet and negotiate face to face.

While much negotiation is conducted today by e-mail, the negotiation process often begins with a telephone call where the parties have an opportunity to exchange information and talk about what they view as the major issues. This is a practice that online students will be encouraged to follow.

**Virtual Breakout Sessions.** Since talking with others about one's plans for an upcoming negotiation is an important part of the planning process, breakout sessions in the classroom were held before each role-play negotiation exercise. Students reported that this was very helpful.

To give online students a similar opportunity, there will be an option for virtual breakout sessions where students can contact those whose have the same role-play assignments.

**Negotiation Outcome Reports.** Since there is a deadline for submitting the Negotiation Outcome Report for each exercise, students need to manage their time so that they have time to complete the negotiation and timely submit the Negotiation Outcome Report.

The Negotiation Outcome Report form includes a space for students to give comments about the exercise which they have just completed. Comments about how the exercise could have been better structured or what addition information would be helpful is very important.

Role-play negotiation exercises include: a purchase price negotiation for a parcel needed to develop AHOP, resolution of a dispute between the accounting department and the e-commerce department of an AHOP tenant, resolution of parking issues faced by building tenants, and a multi-party negotiation involving a restaurant tenant, a hotel tenant, the food court operator and the AHOP landlord. The Negotiation Component of the Final Project is a negotiation which can become a situation where one party wins and the other loses or it can become a situation where both parties achieve their goals.

**TAKING A COURSE FROM THE CLASSROOM TO ONLINE IS A  
CONTINUING PROCESS**

Further changes and revisions will no doubt be made after the Fall term ends. Thank you for your attention.