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Preparing the Transactional Lawyer: From Doctrine to Practice

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PREPARING THE TRANSACTIONAL LAWYER: FROM DOCTRINE TO PRACTICE

CAROL NEWMAN,* GEORGE W. KUNEY,* M. JAN CONNELL,*
& DENNIS R. HONABACH*

Carol Newman

Good morning. We're going to go ahead and get started. We're actually running behind, and as a result, I'm going to refer you to the bios for our panel. But I want to tell you a little bit about why we have selected our panelists, who will be able to provide us with three different perspectives on the theme of this conference, *Preparing the Transactional Lawyer* – with an emphasis on *From Doctrine to Practice*.

George Kuney had a very successful practice as a partner in a law firm, and then moved to teaching. He is now the Lindsey Young Distinguished Professor of Law and Director of the Clayton Center for Entrepreneurial Law at the University of Tennessee. Jan Connell had an entire career as in-house counsel. She was one of those unusual people who went straight from law school to in-house, and she was in-house counsel at several companies. Jan is now retired from practice and has been an adjunct for the past several years at Emory Law, where she has participated in the development of two different transactional skills courses.

After our first day and evening of discussions, one might ask, “Well, what’s left to say today?” After all, yesterday was filled with great discussions and great conversations about preparing students for transactional practice, and we continued those conversations when we honored Tina L. Stark at the special dinner for her last night. When we were describing Tina’s stellar career and leadership in preparing the next generation of transactional lawyers, we were honoring the very essence of what we need to do to move students from doctrine to practice.

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* George W. Kuney is the Lindsey Young Distinguished Professor of Law and Director of the Clayton Center for Entrepreneurial Law, The University of Tennessee.

* M. Jan Connell is a former general counsel of Medicine Shoppe International and Medicap Pharmacy Inc. She is now an Adjunct in the transactional certificate curriculum of Emory Law’s Center for Transactional Law and Practice.

* Dennis R. Honabach is Dean and Professor of Law, Northern Kentucky University Chase College of Law.

Let's begin today by focusing on how we can prepare our students to move quickly and successfully *beyond* the first day of practice. What do we need to do to prepare them for practice through the years?

When you ask a successful transactional lawyer about what that lawyer enjoys or what that lawyer thinks clients appreciate most, you often hear the words "trusted advisor." One of the goals – one of the satisfactions – of being a transactional lawyer with some experience is to become that "trusted advisor," that lawyer whom clients seek and other lawyers admire. With that goal in mind, I have asked each panelist to give his or her thoughts about how we can prepare the future "trusted advisor," the person who can integrate skills and legal knowledge to give meaningful and appropriate advice to his or her client.

Let me begin with George, by asking him how we can develop our students – not only for that successful first day of practice, but also for success in becoming trusted advisors as they continue their careers.

George W. Kuney

Well I'm not sure there is all that much that is *new* to say after the discussions that were had yesterday. There may be different ways to spin it and to connect the thoughts, so let me try with that as a goal in mind.

I think that the summary of what I was hearing, especially at last night's dinner, was that we are entering into the era where law graduates are going to be required by the marketplace to be increasingly specialized and possessing an integrated set of substance and skills as they graduate, so that they're "ready to practice." Now thinking about that, I'd like to put out on the table a couple of thoughts about how we might get there, and some of these are – well they may be foolish and radical thoughts, and I'm perfectly happy to have you call me a fool or a radical. I'd probably prefer the second.

The first thing to ask is what does "ready to practice" mean. It sounds great. It has sounded great since at least the 1990s, as legal-writing and research programs took off and really started to try and produce people who could at least write office memos and maybe basic pleadings and motions going forward. But there are some structural items that I think we have to achieve in order to obtain something that really can be called "ready for practice" because most of the folks that we graduate from the University of Tennessee are not people that, in the words of one of our adjuncts, you would want to send out on a deposition on the first day of practice and then have them handle a jury trial next week. That's somewhat of an unrealistic goal.

I suggest that, however, within three months, they ought to be able to go and take a deposition. I know I took my first deposition when I was two months out, and I was told what to go and get, what questions to ask, and what subject matters there were to probe.

And I reviewed the Rules of Evidence, and I went and did it. I didn't do a *great* job, but I got everything that I needed to get. And I came back, and I learned something from it.

Similarly on the transactional end, I was thrown into a transaction involving the hardware retail piece of a large conglomerate that was being reorganized – spun off, really -- in a Chapter 11 case in Denver. And we had to handle the due diligence on a bunch of franchisee agreements, and loan documents, and leases and how those all interacted and came together. That would have been within eight months of joining the firm. My time was billed and collected. It was a bankruptcy case, so I got to see that it was billed and approved by a bankruptcy judge and then collected. So I guess that was “ready to practice” too. Was I a brilliant transactional lawyer, at the time? I doubt even if I'm a *brilliant* transactional lawyer now, but it was successful. And I came back to my home office, in San Francisco, and I learned something from it.

I think there are some things that we can achieve in the academy. The first is to pull back the learning that has traditionally been expected in the first or second year of the firm experience into the third and maybe even the second year of law school. I think that's what a lot of the course work that was the subject of panel discussions yesterday is really aiming to do--to get it more real, sooner and faster. To a certain extent, the sooner you plunge the students into the deep end of the pool and stand there with a net to pull them out as they're about to drown, the faster they learn to swim. And our goal really is “ready to practice” -- ready to swim.

Second, I think we need to look at our admissions criteria. The business schools for years have been trying to turn out people who are ready to be business people from day one, hitting the ground running and being successful, and as a result, they've adjusted their admissions criteria to make sure that they give a preference, a very strong preference, to people with at least two to four years of actual work experience. Anybody who has taught mixed classes of law students knows that there is profound difference between students who have two to four years of actual full-time work experience or even juggling multiple jobs during their college years and those that have gone straight through from college to law school without that experience. The ones with work experience are faster, more efficient learners. They understand what a 40 to 50 to 60 hour week is. These are all broad generalizations, but they're based upon my experience of twelve years at the University of Tennessee and another ten years before that as an adjunct professor at both Hastings and California Western. So we really ought to think about that. In fact, at UT, I'm the Chair of the Admissions Committee, and we do put a lot of stock into those kinds of pre-law school, post-undergraduate experiences – things that may not be captured in an applicant's UGPA or LSAT.

I think we also have to really think about teaching -- staffing our classes with teachers with appropriate experience and a deep experience in the practice of law and the

subject matter that they are teaching. I think legal education is too important to be left to traditional, doctrinal law professors. It's not that they don't have a role in it, but that type shouldn't occupy the entire field of what our students are exposed to. There's a saying going around, in some research, that it takes 10,000 hours or so of working at something to become an expert, and I would suggest that one way of assessing suitability of folks who want to produce ready-for-practice associates is to have people who got about 10,000 hours (or five years at a 2,000 per hour year pace) worth of experience after law school, either in clerking experiences or for law firms, government agencies, or what not. There is a difference if you've ever worked in a law firm and trained and worked with young associates. You know that there's a breakpoint between four and six years out when suddenly they become really responsible and really able to act as foremen on a job and take more work off your plate than they generate by putting it back on your plate.

I think we also need to develop ways to co-teach and push partnerships of doctrinal faculty with practice-based faculty, be they full-time or adjuncts. And that sort of team teaching takes more coordination than those in the academy are used to displaying in some cases. A lot of people are very use to just doing it their way. I know that I work up what I'm going to do in my Contracts class and I walk in and do my show, and I don't have to pre-clear it with anybody else. That's a freedom that may have to be somewhat modified in order to make it more effective of a course when involving another instructor. We need more people that play well with others.

I think there ought to be some alternatives to the independent adjunct model, where we take a course and we turn it over to an adjunct professor. Most of the time, unlike Tina's experience, we don't have a doctrinal professor who sits in and watches every class. In fact, just the opposite is true. You may have one or two doctrinal faculty who drop in for a visit in the first few years, and then if the teaching evaluations don't show any blips, if every number is above a three or so (out of five), they're left to go their way. I think there can be, again, more of an integration of those adjuncts into mainstream courses, and they can be brought into the curriculum, as a whole, rather than just an appendage that's out here, however beneficial the appendage may be.

I also think that it's going to be time for deans and associate deans and program directors to reach out to firms that hire within their area and say, "okay we get the message. We understand that you want more functionally trained associates to hire. We will be able to do that. We can use part of the third year, maybe part of the second year, in order to achieve that end, but we need your help. We can provide you the overhead for the experience. We've got a building. We've got lecterns. We've got seats. We've got light. We've got heat. We have doctrinal faculty that are available here, but we need you to support us with adjunct support, guest speaker support, in an organized fashion. And we need you to actually give some credit to the people who are doing that within your firm." And, by this, I mean: treat it like pro-bono work. A good number of firms, including most

of the firms that I worked for or with, would count pro-bono hours. Now did they really count like a full hour towards your 2,000 billable hours a year? I can see some people smiling. They were an affirmative defense, really, but if you got to 2200 and you had 150 pro bono on there, that was a good thing. And I think that model probably is still somewhat pervasive out there. But let's have those folks come in and teach, partnering with the law schools.

The benefits of that are huge. Number one, they know what they're doing in terms of practicing law. Number two, they know the skills that they want to hire for the practice of law. Number three, it becomes a mentoring relationship, which can stimulate everything from professionalism to just general business know-how of how things work. Number four, they can write excellent letters of recommendation, not just the basic letter of reference --, "Billy Johnson was in my contracts class, did very well and attended and was frequently participating" -- Those don't do students any good. Instead, we can talk about how they've achieved certain projects that they've worked with the adjunct or visitor on and get into real specifics that demonstrate that the candidate is "ready for practice" or at least some version of "ready to practice."

I guess the only other thing that I'll add-- it ties in here somehow, and I'm not sure how it does, but it does. There's an increase in a phenomenon that I've seen, at least in our market at the University of Tennessee, which is not primarily the mega-firm market; although we do place some folks there. We are largely placing our students at regional large to mid-size firms all the way down to small firms of 3 to 10 lawyers. The increase of the practice of law involving multiple practices, as if it was a neural network of independent actors or semi-independent actors, is something that's increasing. Technology has made the ability to communicate over vast differences quickly and transparently -- made it possible for networks of attorneys to form and to band together for a certain particular project, transactional or litigation, and then disband, with each attorney or small firm covering its own overhead. The plaintiffs' attorneys, are perhaps the best example of this for a long time now, bringing in as many plaintiff litigators as are needed to organize cases in mass and the like. But it's spreading on to the business side. I know it's spreading on to the reorganization and workouts side because I get calls from people who are involved in that kind of thing -- they want to pull me into their project for a specific task or they want a referral to someone that is perfect for this particular job, for this particular facet of a matter. So it's a moving, changing business model out there, and our students need to be prepared for a business model that includes them being rather entrepreneurial service providers of limited scope, within a constantly shifting team of service providers. So those are the first thoughts I have as to how we move this forward.

And I can't emphasize enough the B-school model as something to learn from. Both their admissions policies and their case method, which differs from ours. I'll confess I have an MBA that I went back for after practicing law for 5 years. I found that the insights

into my clients that I got were excellent and my ability to talk with and relate to business people vastly improved. (And I used less Latin afterwards.) So that's something I think we ought to take a look at. We should look at what's been successful for other disciplines that impact the business world and see if we can't take the clue from that.

Carol Newman

May I interrupt – first to ask Jan to talk a bit from the perspective of being a client (since she was in-house).

Jan Connell

So, I'm picking up on some things that George said and focusing, as Carol said, on having been the in-house counsel, and also I am a mere adjunct here. So I have those two perspectives of what it is to have been a client, to have been an in-house counsel, and hopefully the trusted advisor, and then turning those experiences into a teaching experience as an adjunct professor.

And I think one of the difficult things or maybe not so difficult but the -- at the inception-- is to determine what it means to be a trusted advisor, so before we can even determine what it is we're going to try to teach these students or what kind of program we're going to develop to turn out a trusted advisor, what is that? What does that mean?

As an in-house person, put quite simply, it means people actually want to talk to me, as opposed to "oh my god we've got to run it pass the lawyer," which is what happens quite often in the in-house world. And so it is a real uphill battle to become that -- one of the business gang, one of the gang, one of the people that becomes part of the team because people want you to be part of the team, not because they have to put you on their team.

So what does it take to get there? It primarily takes the ability to speak the speak, to get -- move out of what you have been so trained to do, which is to talk like a lawyer. And instead of talking like a lawyer, rather to learn to listen like a lawyer and talk like a business person. So as an adjunct, my task was to figure out how to do that and to break down this concept into components that can be taught.

I will tell you that as an adjunct, who's always been a practitioner, that's so much easier said than done. You know what are those components? And I would propose that those components are very basic. We're talking about simply the ability to get enough information that you can actually be useful on any given issue.

Now to give you an example. I'm sure anyone who has practiced has had this experience. You start with maybe reviewing a contract. You know kind of what the transaction is--that we're going to license this piece of IP. Okay great. Here's the form contract we've always worked with. You look at it. You get a little bit of information from the business people, and the first thing you do is you go back to the business people, and

you say, "We can't do this." And you really don't have a good reason for why you can't do it, but your reason is, "Because well there's risk here. There's risk there. If we do this, we'll be exposed or dah, dah, dah, dah, dah," and not realizing that as the practitioner that it's not your job to say you cannot do this. Our job is to identify risk and to say how can we do this. But in order to do that, the lawyer has to understand the most basic principles of communication.

So one of the things that we have done, and I think it's helpful, is to incorporate some really basic communication skills into our substantive classes. To use deal skills, as an example, right at the outset, we start with a very simple client meeting, the goal of which is to -- for half the class-- to help the client sell a small, closely-held business. The other half, of course, is to help a client purchase a small, closely-held business. And in order to do that, they have an initial meeting with a client. The client is an older gentleman, who wants to retire. He wants to sell the business. He's divorced. He's got a love interest in another state. He wants to get out. He -- the wife has a little bit of an ownership in the business. Oh, and by the way, he's not quite 65. He's got a few years to go, so he doesn't have any health insurance. And oh, by the way, he's got some real health issues that may prohibit him from getting private insurance. And this is the basic fact pattern that the students are dumped into. The senior partner has to flee or can't get back into town, and this young associate has to interview this witness. Typically what they get is well how much money do you want for this, when do you want this to take place-- the sort of basics of what you might be put in to a contract.

The goal here is for them to learn to go way beyond exactly what they might see in a form contract I work with but to understand their client, to understand what is motivating the client, and some very important issues come out of some of this background that could affect a sale of a business, which you don't want to find out towards the end. A, what will happen after I sell this business? Will I be able to have health insurance? Oh, by the way, I don't own 100% of the stock. My wife has an interest in it pursuant to a divorce decree and so forth. So there are built-in things in a problem that a student has to find out, and so they have to learn to just talk, to just ask some open-ended questions, to listen to what is behind the question and the answer that has been received. That's pretty basic, but I think that's a skill-set that young lawyers, or lawyers we -- law students that we're turning out don't necessarily have. And so the next step is, as an adjunct or anyone, you know how do you teach that? How do you develop these situations or scenarios where you can teach those skills?

I would suggest that these are the types of skills that need to start not necessarily in a contract drafting class or in a deal skills class or a corporate counsel class, as I have taught, but these are skills that could be integrated very early on. And I think we overlook some really, really basic skills.

I'll pass it on now.

Dennis R. Honabach

Well I'll have to start off by making a confession, and that is that as Carol indicated, I am not a deal lawyer. I'm not a transactional lawyer. But I did stay at the Emory Conference Inn Hotel last night, so I'm ready to talk. And I also have to say I'm from Northern Kentucky, not Western Kentucky. My president would shoot me if I didn't say that.

You know from a dean's standpoint, I've sort of been playing with this question of teaching transactional law for a long time. I think my first iteration of this was in '96, when I was at Western State University College of Law and sort of cutting edge at the time, and we started an entrepreneurship law center. That was cutting edge at the time. And then I went to Washburn in 2001 as the dean, and we started the Transactional Law Center there, and I had the opportunity to work with some extraordinary people including Janet Thompson Jackson. Jenna (Tauk) from Jackson, who many of you know runs the clinic there, Brad Borden, who teaches tax now at Brooklyn, and Rob Rhee, now of Maryland who many of you heard last night, who's has just published got a tremendous book in business finance which accounting, and I highly recommend it to you, and Joe McKinney. That was a tremendous It was, you know, a really super group of colleagues. .

And then I've moved over now to Northern Kentucky where started , and we know have a our Transactional Law Practice Center, and we've been able to bring in some very good people, including two stellar, recent hires Barbara Wagner and Eric Alden, both of whom are in the audience. So for the past sixteen years I've had an opportunity to try to build a transactional law program, and despite a lot of hard work by many talented people, we haven't been totally successful. At least I don't think so, and I want to suggest a little bit a -- what I believe are some of the barriers to success and there, very quickly, and then I want to talk a little bit about professionalisms.

Many of you already know what some of the barriers are. the barriers are the ones that Several have been mentioned by a number of people, but just to reiterate quickly some that strike me. First, what I see is first of all many, many of the faculty are like me and have little or no prior practice experience - transactional or otherwise - whatsoever. Some of us didn't even go to law school to become practicing lawyers, We went to law school somehow for some other reason. I can't really articulate what my reason was, I do recall that but we were at war in Southeast Asia at the time, so that might have had something to do with it. Of those law professors who do have experience, most of their experience is on the litigation side, so their experience, such as it is, is rich and deep on that side of practice but not on the transactional side.

A second barrier, The second thing is frankly is you just get some resistance from those in the academy. So many people have come from the litigation side that it just doesn't

seem smart to be talking about transactions., and it's reputable to write about why courts do what they do, but it's not so reputable to write about or think about why or how organizations or particular corporations operate the way they do. Then there is the That blends in a problem with workload; as George as indicated, you know that teaching transactional law, as George has indicated, can be very time-consuming. It's much easier to go in and pick up a casebook and teach students them how to read cases.

In the I mean I take the traditional model of legal education has been to use the first year we to teach students how to read a cases in the first year, to think like a lawyer. .

Then we send them home for summer vacation, and you might wonder why we do that. At one time, it was we sent them home so they could harvest the crops. We aren't worried about the crops now. Instead, as I jokingly said in other settings, now we send students them home so they can forget how to read a case so that those of us who teach second year courses, can teach them how to read a case all over again. And then we send them home, again, after the second year; they forget how to read a case and we repeat the same problem so that in the third year courses, we can teach them how to read a case again. Of course, I am overstating the claim to make a point – that we tend to do much the same thing in the second and third years of law school that we do in first. (And one of the curious things is that I believe that if we tested students' ability to read cases, we'd find that their case reading skills haven't improved much since the first-year, which is sort of a weird phenomenon.

But it does — if you are going to abandon the case reading model and if you're going to do this real transactional teaching, and if are going to team teach those courses with practitioners as some recommend, you are going to find that co-teaching and the like, it takes a lot of time. And it's difficult, much more difficult than teaching case reading for a second or third time. Teaching a transactional course takes away from the things that the academy values; it makes scholarship more difficult because it just takes time.

Another barrier The other one that people don't tend to mention, but I want to, is that at least in my experience, there's resistance from students to some of this. I mean, we often talk about how eager and wonderfully satisfied and charged the students are in our transactional courses, but I've run into a whole bunch of students who would much rather read a case in their second and third year because they know how to do that. They're comfortable with that setting. As disappointing as it sounds, even when we talk about it in legal education, students are comfortable with the case model of education. They can sit back. They can read a case. It's not hard for them to both state the holding of the case and the court's reasoning while they search the web at the same time. You can get through a traditional class this way. Not so in a transactionally based course in which they have do some real problem solving. So we have to work with that. And I've had students tell me they didn't take a course taught using a transactional approach because it was too much

work, or because it interfered with their work downtown, or it interfered with any of a number of other things. Activities on their schedule. These are so you know some of the problems we see, and I think that's just the beginning of them. Eric Gouvin's has published got a great piece discussing these problems; I recommend it to you. I think many of you may have run into at least seen one of these barriers, and Professor Gouvin does a far better job laying them out than I have. How do you solve some of those problems from a dean's standpoint? Well, obviously you hire for experience, and we've been doing that very successfully, and that's worked very well.

The second thing is, you know, many of the folks in law school that -- particularly our law school but I think elsewhere -- are really getting excited about this transactional teaching. They just don't know how to do it, or more importantly, they will articulate the following: I use to know how to do that, but my skills have gone stale. That's usually a kind of I forgot how to ride a bike argument because I've never been on a bike.

How do you solve that problem? I think we have to set up some ways for training people. I mean training lawyers -- the law teachers. The nasty word in legal education today is redeployment. I mean we have a lot of assets committed to -- human capital assets to doing litigation model, and we aren't going to be able to go out and hire another cadre of folks to supplement those. So what's going to happen is some people are going to have to move from teaching one way to teaching another way, and they need to do skills training. I am for one, for example, would be willing to send to any of our faculty members up to Harvard for the two-week negotiation skill, if they were going to teach negotiations. Now it's easier for me to say that because I should admit I'm stepping down at the end of this year, so all the promises I make are binding on my successor, but I think we need -- I think we really do need to do some training for faculty members, who really want to get into this.

The third thing directly relates to my background; we need to have some experiential training for law professors. We talk about how great it is to get the students out to see the officers work and be mentored and the whole bit. Well if you haven't done this for a long time, or if you're like me and you've never done it, the question is--how do you get someone like me into a law firm to actually see a deal without embarrassing me because I have that same problem the students have? We want to be safe. We never stop being students, as faculty members, and so providing safe havens, if you will, where faculty members can go and spend a semester in sabbatical in a law firm and observe. Those who have done it are very comfortable going back. Those that haven't done it, we need to figure out ways to get those people in so they begin to do that redeployment. So those are kind of I think the big issues.

One of the big questions that I deal with is the question of professional responsibility and ethics. As a dean, you get to go to many conferences. I'm on some ABA stuff as well that does that, where we look at the whole question of professionalism and

professional responsibility, especially for transactional lawyers. And the one thing, if you take a look at most PR books, they're very skimpy on materials that are relevant for transactional lawyers. They're much heavier on materials for litigation. And even if you do some things, for example I was looking at professional responsibility book just before I came here, it had a chapter on ethics for transactional lawyers. And it started off with ethics negotiations, and then the cases and materials were all about settling the law suit, which is different from doing a deal with four parties, all of whom can walk. And so there's just a miss -- there's a connection problem here, and I think we need to have -- develop some materials to do that.

The second thing, even if you do the rules and you do them well in a class, I think we all have to recognize, and I think everyone in this room recognizes, that rules are easy to learn; no big deal. And if you haven't learned them, you can look them up on the web really quickly. Learning how to use those rules, learning how to do it, isn't so easy, and the -- you know the analogy I often talk to my students about and some of my colleagues is that I've been learning the rules of golf for years. You should see my knowledge of the rules of golf. How is my game? Well at Washburn, they got me golf balls. It says Washburn Law on one side. On the other side, it says if found please return postage guaranteed. It's a little bit of a joke.

So how do we get people to actually get out and know what those rules mean and how to work with them? Well one of them, obviously, and I think the best way -- the best two ways are mentoring situations. If you can line students up with great mentors, there's nothing that beats that. That's not easy to do. It takes a lot of resources, and as a dean, you have to commit the resources. I think a lot of mentor programs fall apart because resources aren't committed, and there's just so many other things to do that I think if you want to -- that it's easy to push it to the background. And you really need to do that.

Obviously the things that everyone here, or so many of you do here-- getting people into transactional practice settings, the externships, clinics, and the like are fabulous, fabulous ways to teach ethics and professionalism. Professionalism, by the way, I'm describing as -- I write that down -- professional responsibilities are the things you have to do or can't do. Professionalism are the things you should do, the kindergarten kind of rules, the ways you're supposed -- you don't have to do this, but you should do this and work with that.

And then the last comment I would make here is you've got to bring professionalism home, and I mean that at the law-school level. One of the things that I think I see in students is they're all going to be professionals when they start practicing. They're not so hot right now, and I'll give you the most classic example there is: reporting up. They would never, ever let a lawyer, who was incompetent, drunk, inebriated, on drugs, or utterly, totally unprepared represent a client, and they all tell me they would turn that

person in. If they saw wrong doing, they would turn that person in, but I can't do that to my colleague because if I do that, she'll get an F. Well if you can't do that at law school, where the consequence is getting an F and learning, you're going to do it in practice, when the consequence is pulling the license. And I think that law schools really need to spend some times bringing ethics home into the law school setting, and I think that takes a whole faculty commitment. And I've worked with a number of faculty members, many of whom are very committed to this. Others would say I think there was cheating, but I'm not going to look hard.

I once had a situation, with a colleague -- I told the colleague, when I reviewed his paper, that his student, who he'd given an A to, cheated. And he said, "Oh what makes you think that?" And I said, "Well first of all, when you read the paper, it's 40 pages, and the first 20 pages sound like a Harvard Law Review article, and the last 20 pages sounds like it's from the American Law Reports." And he said, "Well that could just be an incident and maybe the student just gave up and started thinking." And I said, "Well the other curious thing is that the footnotes start over at the same point," to which his response was, "Well I told you it was good material. That's why I gave it an A. You handle the discipline problem, Dean." I was associate dean at that school. So I think we really need to bring that home.

So there a couple of things about my points -- maybe I'll save my points till later. But I think those are the sort of issues we're facing. I think we have an incredible talented group of people, who are doing tremendous work. We're a small part of the academy when it all plays out right now, and trying to get the rest of the world to coming around to seeing it our way is not going to be easy. We have to work really hard to do it. And I commend you all for your efforts because I know you're doing great stuff.

Carol Newman

Thank you. I would love to keep asking questions of all of you, but this has gone by very quickly, and hopefully we'll keep this dialogue going. To conclude, I'm going to turn to our final question for each panelist: What charge would you like to make to us as a group, a charge that we can work with during the next year and a half, and hopefully be able to report progress when we reconvene in 2014?

Dennis R. Honabach

Well actually, if you let me -- I couldn't come up with one good idea, so I came up with four semi- good ideas, I think. You know the first one is to develop the mentorship programs. There's only one thing, I think, that would help develop professionalism in school and that is develop a really strong mentorship program.

The second one, and it's sort of personal on my part, is find the right dean. When you do dean searches, you really ought to look for folks who are committed to this. I'd like to think you don't have to be a transactional lawyer to be reasonably decent as a dean. But

you have to find someone who's willing to look a scholarship and at practice differently, so I think that's important.

The third one is sort of my pet is that I need, as a dean, and I wish you could help me with this, to find a better public role model of a transactional lawyer than Tom in the Godfather. The Robert Duvall character is an incredible transactional lawyer, who knows the business, knows things, how to work, does preemptive law in a very strange setting, but does well, and it's sort of a model in some ways. I think we probably can come up with a better model than that.

And the last one, Carol forgive me, but get involved in the business law education committee of the business law section. Carol and I have been co-chairs of that committee. The ABA has a committee for business law education that is really designed to both educate those of us in the academy but also lawyers about the things we're doing and the way we can do stuff. And the interaction that I have found, with the interaction between that section and all of the other sections in the business law section -- all of those committees of the business law section provides incredibly fertile ground for scholarship, for thought-provoking materials, for assistance, so I really encourage you, if you're not a member of that committee, please join.

Carol Newman

Thank you. I'm going to move to Jan.

Jan Connell

I think I would like to see a shift in law school teaching philosophically that would move from teaching our students to be the consummate risk identifiers, to taking it further into being not just the risk identifier but the risk solver, the problem solver or at least suggester of problem solutions.

Carol Newman

Okay, George?

George W. Kuney

Well this actually a great progression here. You've got the strategic on one end and I will move down towards more the tactical stuff. I will echo what's been said and say that it's got to be a focus on going beyond "issue-spotting across the curriculum." And I almost hate to use the words "across the curriculum." What I mean is from the first day of law school and the first year. I think that it doesn't take too much structural change on the big macro level, and also think that, at least from my prospective, as a program director, big macro change is not something that I can achieve with the tenure system, with the current system. We're going to have to wait for some attrition in the professorial ranks to provide

the opportunity for change and strategic hiring of a diverse set of professors with substantial practice experience to build toward “ready to practice.”

But what we can do today is find ways to make it easy for existing faculty to embrace and execute change successfully, and that’s one of the key things. Whenever you want to change something, you make it easy for faculty to make that change, to incorporate practice-based problems across the curriculum at all courses, and to increase the amount of mid-semester written work product that is evaluated in a thoughtful fashion. And then promote group and team work, which has long been ignored in law school to the point that law students are hostile to it. And yet group and teamwork is what it’s all about once you get out there and are practicing law, especially transactional law.

Carol Newman

Thank you. Today’s discussion has focused on expanding the continuum on which we see our topic, *From Doctrine to Practice*, starting with day one of law school (as opposed to day one of practice), and on extending far beyond day one of practice into a successful practice as a trusted advisor. I thank each of you, and I look forward to continuing this discussion when we reconvene in 2014.

Our time is up, but I do want to take a couple of minutes to see if there are any questions for the panel. Any questions?

Question: [Question cannot be heard. Person is not at a microphone. It dealt with the role of clinics and clinicians in all this.]

G. Kuney: Let me just grab that at the start. I think there’s a lot of cross fertilization potential between small business clients, be they for community-development style clients or entrepreneurial-law style clients--for profit, not-for-profit, all of that. I think that clinics provide a perfect place to develop problems based upon case files, which can then be used and reused in doctrinal classes or simulation classes so that you can leverage the educational yield from having provided that representation maybe two to five years ago. You can keep on teaching. And it provides a way for clinical teachers to integrate themselves into a more standard doctrinal or simulation class without a lot of effort on that clinician’s part because clinicians are working hard -- they have a schedule that looks much more like a full-time lawyer’s, which means that their schedule is not their own, and they are dragged in many directions. So finding a way to, again, make it easy for the clinician to share the experience and build it into a more traditional style class would be my suggestion. I think that’s the big opportunity that I see there, as at least the low-hanging fruit that ought to be grabbed first.

D. Honabach: And I would also say that first there's incredible work going on in the clinics, and I do think there's really a strong linkage between the development of transactional law teaching and the development of the clinical wave.

I think one of the ways to do this is to get a transactional law team together, to get all the folks that are teaching transactional law together in the same room and start talking. We've done a little bit of that at our school, and I know that some of my colleagues have -- because of the conversations that have occurred mostly outside those meetings but they're part of the same process -- have volunteered to help in the client and get involved and provide some advice to come in as sort of, of counsel if you will. But that's that beginning of crossover where you begin to start redeployments. Folks begin to say, "Okay what I'm saying in the classroom actually makes some sense in real practice." And what you found in practice really makes some sense for me to do some more thinking about in my classroom setting, and I really encourage that conversation. I think you have to get that conversation going. If you stay in your own room--that's the traditional faculty pattern, in many ways this sort of loner, who stays late at night writing articles or whatever--if you can get people to start thinking and talking to one another, I think you can break that down. But clinic is a great way to start what I'm talking about getting traditional teachers into the transactional setting.

C. Newman: Any other questions? Let's thank our panel again -- thank you very much.

