

The Pitch: Teaching Client Impact, Board Governance, and Advocacy

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ABSTRACT

Law school has traditionally ill-prepared law students to advise organizational clients, to advocate for corporate clients in a non-litigation setting, or to counsel clients on ethical corporate governance. This Essay describes how transactional law clinics can utilize the “pitch” method, often seen in the context of entrepreneurial investment pitches and made popular through TV shows, in the clinic’s client intake selection process. The pedagogical outcomes of this experiential intake method demonstrate how its use can teach law students how to advocate in the corporate setting, to think long-term and holistically about organizational client selection, and to foster a deeper understanding of the discourse and processes required to engage in ethical board governance.

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INTRODUCTION

Law schools traditionally prepare students for litigious futures. Core first and second year courses often provide students with the analytical tools and practical skills befitting the representation of clients in the context of

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disputes in court and before criminal tribunals.¹ Even when teaching contracts, business organizations, and transactional law subjects, the approach embraces the backward-looking, case-study method.² Programs, however, focused on training lawyers to provide counsel to organizational and business clients in the transactional, forward-looking context, where maintaining professional relationships is vital,³ have recently proliferated in U.S. law schools.⁴

This Essay describes an innovative client intake and selection model that the author has developed and utilized in her transactional law clinics to teach law students advocacy in the transactional context. This client intake model borrows the use of the “pitch” from the entrepreneurship investment domain and made popular by television shows like *Shark Tank*,⁵ in which an entrepreneur must “pitch” her business idea or deal to a group of investors.⁶ In this model, the delivery of the “pitch” occurs in the forum of a simulated “board meeting.” This client intake model aims to provide law students with the opportunity to engage in advocacy in the corporate context and to also participate in the process of discharging the fiduciary duties of directors and officers of a corporation.

¹ ALVAREZ AND TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING 2 (2d ed. 2021).

² *Id.* For a further discussion of legal education’s primary focus on litigation over transactional work, see Rachel Arnow-Richman, *Employment as Transaction*, 39 SETON HALL L. REV. 447, 449–50 (2009).

³ See, e.g., John Lande, *Failing Faith in Litigation? A Survey of Business Lawyers and Executive’s Opinions*, 3 HARV. NEG. L. REV. 1, 18–22 (1998) (describing corporate executive opinions that litigators, by their natures, inhibit “future relationships”).

⁴ See, e.g., *LLM in Corporate Governance & Practice*, STAN. L. SCH., <https://perma.cc/TB9K-VUD2> (last visited Feb. 12, 2024); *The Rutgers Center for Corporate Law and Governance*, RUTGERS L. SCH., <https://perma.cc/F4BH-E6TD> (last visited Feb. 12, 2024); *Heyman Center for Corporate Law & Governance at Cardozo School of Law*, <https://perma.cc/YJW7-PALA> (last visited Feb. 12, 2024); *Center On Corporate Governance*, COLUM. L. SCH., <https://perma.cc/8ZWB-EKFU> (last visited Feb. 12, 2024); WENDY E.F. TORRANCE, ENTREPRENEURSHIP EDUCATION COMES OF AGE ON CAMPUS: THE CHALLENGES AND REWARDS OF BRINGING ENTREPRENEURSHIP TO HIGHER EDUCATION 1 (2013).

⁵ *About Shark Tank*, ABC: SHARK TANK, <https://perma.cc/X9X3-HT5C> (last visited Feb. 12, 2024).

⁶ See Hila Keren, *Women in the Shark Tank: Entrepreneurship and Feminism in a Neoliberal Age*, 34 COLUM. J. GENDER & L. 75, 76 (2016).

This Essay proceeds in three parts. Part I describes the “pitch,” and then discusses the need to teach law students effective advocacy and board governance in the corporate law setting. Part II describes the client intake process that the author has developed as a model to teach law students how to advocate in the transactional setting within the context of a clinic “board meeting.” This part includes the transcript from a pitch demonstration of a hypothetical potential clinic client situated in the Atlanta, GA, area, as well as the transcript from the Q & A session following the pitch. Part III discusses the demonstrated pedagogical outcomes of this intake pitch process and provides some suggestions for implementation, both inside and outside of the transactional law clinic setting.

I. BOARD GOVERNANCE AND THE PITCH

Recognizing the need to teach law students advocacy in the transactional and corporate setting, as well as the skills to then counsel organizational clients on proper board governance, law school transactional clinics can make strides on both pedagogical fronts. This part will explore and describe the use of the “pitch” in the business investment context and its adoption into the curriculum of business schools; will discuss the continued need to incorporate experiential methods to teach law students corporate governance; and will provide some background information on how I developed and implemented the intake model to select clients for a transactional law clinic.

A. Advocacy and the Pitch. Our Western fascination with entrepreneurship and the cultural permeation of the “pitch” in our economic society has impacted how we expect new businesses to “sell” their ideas and to demonstrate their value to potential investors.⁷ Television shows like *Shark Tank* glorify the art of the pitch. On *Shark Tank*, a founder or co-founders pitch a business idea to a group of investors, engage in discourse with the potential investors, all with the aim of convincing and striking a deal with

⁷ *Id.* See also Victor Tan Chen and Jesse Goldstein, *The Theatre of Entrepreneurship: Learning to Perform the Speculative Self in University Entrepreneurship Programs*, 71 SOC. PROBS. 203, 203–05 (2024).

one of the investors for, usually, a monetary investment and mentorship support.⁸ Although the process that the show uses is expedited for dramatic purposes, the show did help to pull back the curtain on what are otherwise confidential and private investment pitches and negotiations between private actors.

The popularity of teaching the pitch within the context of educating professional business students has not necessarily generated a corresponding proliferation of scholarship on the subject. While limited, however, existing scholarship is rich and includes descriptions on the taxonomy of pitch styles,⁹ what comprises an effective investment pitch,¹⁰ how the cultural discourse created by shows like *Shark Tank* have impacted the substantive contents of pitches,¹¹ and the demographic impacts of the pitch process and investment culture on female entrepreneurs and entrepreneurs of color.¹²

An interchangeable skill between lawyers and founders in the investment pitch context is the ability to tell a compelling narrative. In an ethnographic study of the impacts of the pitch narrative structure on identity-building and how these structures impact who is considered an “entrepreneurial type,” the authors provided a descriptive taxonomy of pitch narratives used during its university’s “Entrepreneurship Week.”¹³ These categories include:

⁸ Keren, *supra* note 6.

⁹ See Robert Faff et al., Pitching Research: A Pilot Experiment with UQ Winter Scholars 1–28 (Jan. 23, 2017) (unpublished manuscript) (on file with the University of Queensland); Katri Komulainen, et al., “How to Give a Killer Pitch?” *Performances of Entrepreneurial Narratives as Identity Models in Higher Education*, ENTREPRENEURSHIP EDUC. AND PEDAGOGY, 214, 214–235 (2020); Chen & Goldstein, *supra* note 7, at 204.

¹⁰ See David Clinginsmith & Scott Shane, *Training Aspiring Entrepreneurs to Pitch Experienced Investors: Evidence from a Field Experiment in the United States*, 64 MGMT. SCI. 5164, 5164–79 (2018). See generally Martin J. Bliemel, *Getting Entrepreneurship Education Out of the Classroom and into Students’ Heads*, 4 ENTREPRENEURSHIP RSCH. J. 237 (2014).

¹¹ Keren, *supra* note 6, at 77–79.

¹² Komulainen et al., *supra* note 9, at 229–30. See also Ellen O’Connor, *Storied business: Typology, intertextuality, and traffic in entrepreneurial narrative*, 39 J. BUS. COMM’N 36, 36–54 (2002).

¹³ Komulainen et al., *supra* note 9.

- Personal stories—the founder narrative. The study found that oftentimes entrepreneurs employed the personal narrative to tell a story about their work or life history.¹⁴ These types of narratives, the authors found, took two entrepreneurial identity constructions: the dominant narrative of heroic entrepreneur and the humane female entrepreneur.¹⁵ In the heroic narratives the authors present, they characterize this narrative pitch genre as “romance.”¹⁶ The individual founder is romanticized in his or her or their team’s quests as they conquered the “evil forces,” such as “bureaucracy,” “competition,” or “inability to overcome one’s comfort zone.”¹⁷
- Strategic and marketing stories. Less personally compelling and described as more “generic,” strategic and marketing narratives provide templates that describe the “overall planning, launching, and growing of the company.”¹⁸ On the one hand, strategic narratives “concretely present the trajectory of the company from launch to success.”¹⁹ On the other, marketing narratives, “plot the company against the competition and illustrate its superiority.”²⁰ The authors of the study note, “the experienced entrepreneurs delivered business strategy advice and warnings while telling their personal stories.”²¹
- Situational narratives. As described in the study, situational narratives provide a “broader temporal and spatial storyline[]” and situate the business within that storyline.²² These narratives “paint a picture of economic trends, competitive pressures, and technological and marketplace evolution.”²³

¹⁴ Komulainen et al., *supra* note 9, at 220.

¹⁵ Komulainen et al., *supra* note 9, at 221. See also Ulla Hytti and Jarna Heinonen, *Heroic and humane entrepreneurs: Identity work in entrepreneurship education*, 55 EDUC. & TRAINING 886, 886–98 (2013).

¹⁶ Komulainen et al., *supra* note 9, at 221.

¹⁷ *Id.* See also O’Connor, *supra* note 12.

¹⁸ Komulainen et al., *supra* note 9, at 224.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 226. See also O’Connor, *supra* note 12, at 41.

²³ Komulainen et al., *supra* note 9, at 226.

Additionally, TV shows like *Shark Tank* have impacted the scope of investment pitches, particularly adding a focus on market share, competition, valuation, and potential return on investment. While the narrative component of the pitch remains, pitches now also require proof of concept, valuations, and supported financial projections, for example. The narrative component makes an investor want to invest in the founder, while the informational and strategic portions of the pitch make an investor want to also invest in the business.

Lawyers who counsel organizational clients will often need to engage in non-litigation advocacy or counsel clients on why a particular course of action is in the organization's best interests. Practicing the investment pitch in the context of a board meeting or investment meeting will teach law students how to advocate for an issue to other lawyers and professionals in a corporate setting. Experiential courses in law school, transactional law clinics in particular, are primed to borrow from and build upon the pitch pedagogy and pitch skills taught to future corporate directors and officers in other professional schools. If we envision a future in which lawyers play an integral role in ensuring corporate compliance within the forum of a corporate board room,²⁴ where the rules of civil procedure do not apply, then it's time for lawyers to learn the art of the pitch.

B. *Board Governance.* Utilizing the pitch in the context of a law school clinic's intake process can also provide an opportunity to teach law students board governance and how to engage in proper corporate compliance.

While law school programs focused on corporate governance and counseling corporate clients have become more prominent and we provide board governance training to our organizational clients in the context of our

²⁴ See generally Veronica Root Martinez, *Public Reporting of Monitorship Outcomes*, 136 HARV. L. REV. 757 (2023) (arguing that corporations need monitors); Dorothy Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563 (2021) (discussing that corporate governance will come to an end eventually); Elizabeth Pollman, *Startup Governance*, 168 U. PA. L. REV. 155 (2019) (discussing the need to pay attention to the use of corporate governance in failed startups).

clinics,²⁵ few law students have experience themselves serving on boards. Doctrinal courses take care to ensure that law students understand how a court will interpret a director or officer's fiduciary duty of care in the context of an after-the-fact shareholder derivative suit. But few give them the opportunity to actively and experientially engage in exercising that fiduciary duty of care at the highest level of compliance in real time. Similarly, we expend time drafting and compiling conflicts of interest policies and conflicting interest transaction policies for our organizational clients, but few law students have experience working through a conflict of interest as a member of a board to gain those practical legal insights.

Teaching board governance and how to make decisions as a board also prepares law students for the future governance aspects of lawyering, such as discourse and voting amongst law partners in a firm. Allowing students to engage in the process of exercising the fiduciary duty of care, for example, in the context of selecting clients for representation in a law school legal clinic also provides law students with a thought process and system to determine which transactional clients to represent and how to work through client issues together as future professionals.

C. *Background Development of Intake Pitch Model.* I developed this intake process mostly during my time as the director of the Entrepreneurship & Nonprofit Clinic at the University of Alabama School of Law. However, the process pulls from two main inspirations: the Community Economic Development ("CED") Clinic at the University of Denver Sturm College of Law and the EDGE Center for Entrepreneurship and Innovation as a part of the University of Alabama Culverhouse College of Commerce.

²⁵See e.g., *LLM in Corporate Governance & Practice*, STAN. L. SCH., <https://perma.cc/L7RE-8SJG>; *The Rutgers Center for Corporate Law and Governance*, RUTGERS L. SCH., <https://perma.cc/R3UJ-T7D6>; *Heyman Center for Corporate Law & Governance at Cardozo School of Law*, <https://perma.cc/42UW-KEV5>; *Center On Corporate Governance*, COLUM. L. SCH., <https://perma.cc/U2FZ-YXDB>. See generally Hanen Khemakhem et al., *Teaching Corporate Governance in an MBA Class: An Academic Note*, 20 ACCT. PERSPECTIVES 171 (2021) (reflecting on three years of being an educator).

At least during the years from 2015-2018 when I served as a clinical fellow, working with the Director, Professor Patience Crowder, in the CED Clinic at Denver Law, we conducted a series of two pitch simulations in which the student attorneys, in pairs, had to “pitch” their already-assigned clients to the other student attorneys in a simulated “firm meeting” setting. The purpose of the pitch simulation in this setting was not for intake purposes as the clients had already been accepted and assigned, but instead was for the student attorneys to conduct specific industry background research and work on presenting a client to a group of their peers.

In transitioning to the University of Alabama in 2018, I was able to collaborate with Dr. Theresa Welbourne, the director of the aforementioned EDGE Center. The EDGE and UA Business School often held pitch competitions for undergraduate and graduate business students, both for the purposes of perfecting investment pitches and for winning actual seed funding for their businesses and start-ups.

For example, each fall, the EDGE holds the River Pitch Competition, in which UA students and graduate students are essentially grouped into “rooms” of seven or eight. Each student then has about five minutes to pitch his or her business to a panel of three judges. The winner of each “room” receives a \$1,000 US award, as well as the opportunity to win other, competition-wide cash prizes and support. On the more lucrative end of such pitch competitions is the EDGE’s spring ALDAG Business Plan Competition, which is a two-day event in which undergraduate and graduate students have the opportunity to win the \$50,000 US grand prize award to finance their (usually already existing and operating) businesses.

In borrowing from both the CED Clinic “firm meeting” simulation model and the experiential pitch pedagogy of the EDGE and its entrepreneurial educational perspective, I developed the intake pitch process which I used during my time as the director of the Entrepreneurship & Nonprofit Clinic at the University of Alabama. Upon my arrival there in 2018, the student attorneys clinic-wide are generally responsible for conducting intake interviews with potential clients. Buying into that process,

I developed the following intake model for determining potential clinic clients by borrowing from investment pitch pedagogy and the “firm meeting” simulation from the CED Clinic.

II. AN INTAKE MODEL

Transactional law clinics are in a prime position to adapt to and embrace the cultural and professional value of the entrepreneurial pitch in professional education. Through a process that the author has developed over the course of teaching in different transactional clinics, this part will describe the intake pitch process used to present potential clients to the clinic students and the simulated “board meeting” forum in which the pitches are conducted and voted upon. This part also includes a transcript of a pitch of a hypothetical potential client during an intake pitch simulation demonstration.

A. Description of Clinic Intake Process. During my time as the director of the Entrepreneurship & Nonprofit Clinic at the University of Alabama School of Law, the clinic ran as a one-semester clinic, with the seminar occurring twice a week on Tuesdays and Thursdays. Although the first half of the semester is generally devoted to teaching substantive legal topics and developing the students’ transactional skill sets through simulations and client-work, the Thursday seminar during Weeks 6, 7, 9, 10, 11, and 12 is when we conduct our intakes and hold our firm “board meetings.”

By week 6, the student attorneys enrolled in clinic, working in teams of two, have had for-profit clients assigned, have had a non-profit client assigned, and have, at that point, conducted a few meetings with their clients. They should have familiarity and a greater level of comfortability with interacting with clients for the first time as the lawyer on legal matters. By this time, the student attorneys have a better understanding on how to issue-spot in the transactional setting, how to explain confidentiality and conflicts of interest, and how to gauge what type of client experience this particular

organizational representative might provide to the student attorneys and the impact the organization might have in the future on the community.

In teams of two, the student attorneys “sign-up” for a pitch week. Depending on the number of intake requests received from potential new clients up to that point, the clinic director then divides the intakes up evenly amongst the student attorney teams. With an enrollment of eight student attorneys, for example, and a total of twelve intakes, each team would be responsible for conducting three intakes before their designated pitch week. Before their designated pitch week, the student attorney team must:

- schedule and conduct the intake meeting with the potential new client,
- discuss the potential client further with the clinic director to determine “pitchworthiness” (discussed further below),
- prepare a short intake memorandum addressed to the rest of the clinic student attorneys describing the potential client which includes a recommendation as to whether the clinic should accept the potential client for representation, and
- prepare a pitch presentation for each potential client to present to the rest of the enrolled student attorneys.

If a student attorney team signed-up to pitch during Week 7, the team must conduct the three intake meetings, draft and circulate three intake memoranda, and pitch each of the three potential clients to the rest of the student attorneys during the Thursday seminar session of Week 7.

B. *Contents of the Pitch and Pitch Styles.* Because most law students have little familiarity with pitching (other than what they might see on TV), and what their clients often endure in the process of acquiring funding, the student attorneys receive some general guidance on the contents of the pitch. The pitch itself can be no longer than ten minutes, but the style of the pitch is left to the creativity of the pitchers (with some pre-discussion and guidance). They are given a one-page document that explains how to prepare the pitch and what contents to generally include. This suggested content is:

- A “hook”
- Client introduction and background: origin, business plan, mission, and goals
- Founder profile
- Industry and market research
- Potential legal matters
- Impact on the regional community
- Why should we accept them?

During a presentation of this material at Emory University in Atlanta, GA, former UA student attorney Kyra Perkins, a 2023 UA graduate, presented a pitch simulation of a hypothetical potential client based in Atlanta. The edited transcript of that pitch is included below. You will see from the style of the pitch that she incorporates both pitch styles of a founder narrative and a situational narrative. But she also includes market share information and financial considerations. She also incorporated the visual use of slides and tailored her statistical data to a hypothetical client servicing the Atlanta, GA, area.

* * *

Hi, everyone. So, I want to thank you first of all for meeting and allowing me to pitch today on this wonderful Friday afternoon. I know we all love our weekends, so I thank you for giving me this time. Today I am here to pitch to you a wonderful nonprofit organization called Sacred Industry Nurturing Group. So, this past week I worked with owner, the founder of Sacred Industry Nursing Group.

Her name is Nema Priest, and she's actually a former nurse and a certified doula. The purpose of Sacred Industry Nurturing Group is to do several things surrounding women, childbirth, and things of that nature focusing on certifying doulas and protecting and educating mothers, childbirth, and the childbirthing process.

But before I get into more specifics about what the nonprofit actually does or plans to do, I want to give you a little bit of background about why this nonprofit will meet a need that is so desperately needed in the community.

First and foremost, the problem and the solution. Right now, as of 2023, these are 2020 statistics, but the trend is very similar, at this point black women are more than twice as likely to die in childbirth in comparison to other races. In the year 2020, you were looking at 55.3 deaths out of every 100,000 live births, which is a very high number.

When you get to breaking down the numbers, what you notice is women who have certified doulas with them are actually more likely to survive childbirth and have healthy children born. We all know the saying, “Happy wife, happy life!” But I would also like for you to remember, “Healthy mom, healthy babies.” Women who are emotionally, physically, and mentally supported in childbirth have a better outcome, and their babies, therefore, have a better outcome during the childbirthing process.

So what is a doula? A doula is trained to provide physical, emotional, and informational support to women before labor during birth, and in the immediate postpartum period. To clarify, though, this is very different than someone who actually performs birth. Doulas are there with women, with nurses, with doctors, or whoever is trained to actually deliver the baby.

Doulas do not themselves deliver the child, so there are no issues surrounding medical malpractice or anything of that nature. They are more so as Ms. Nema would describe them, advocates for women during childbirth.

With the support of doulas, many women are able to forego epidurals, avoid C-sections, and have less stressful births. They help to mitigate the potentially severe complications associated with births that have to have risky interventions.

So, what exactly does SING do? SING provides education to students and the public about the dangers in childbirth and how to mitigate them specifically. They look at how to support the mother during this time to ensure a healthy birth and a happy baby.

They are additionally planning on preparing women to become certified doulas, assisting with all documentation and certification programs that are necessary to become a certified doula. They host yearly conferences on education for current doulas and prospective doulas and provide certified doulas with resources and support, financially and educationally, to continue their education as well as their training.

So, what are the needs of SING that our firm can help with?

First and foremost, SING right now is registered online. They've registered their name with the Secretary of State, but they have not actually formed a nonprofit. So, they will need help with entity formation as well as becoming a 501(c)(3).

After that they will also need help in trademark intellectual property protections. Because Ms. Nema has decided that she loves the name, the acronym, SING. And she has named her nonprofit in such a way so that acronym reflects that she feels that that harmony and music are so integral into in providing peace during the birthing process. And so, she would like the theme of music to go throughout her entire nonprofit, and she would like to start that with a logo that represents both what SING does and the music surrounding the birthing process. So, she would love our help with not only coming up with a logo but helping with protecting that logo.

She's starting completely from scratch. So, all of the documents would be drafted with our assistance, helping her to form her nonprofit, helping her to get nonprofit status would all be done by this firm.

I think this provides an incredible opportunity for us to start from the ground up. A lot of our clients come in, having already been formed, and needing

legal advice on how to move forward, but we would really get in at the ground floor and help build this organization, this nonprofit to what it could be, which I think, is a phenomenal opportunity for this firm.

In short, should we accept SING as a client? Absolutely. Atlanta is known across the country for its rich mix of cultures and ethnic groups. It's an incredibly diverse place to live. And that's why many of us have chosen to stay here. We have a diverse population. We also have a large immigrant population. We know that these are some of the most vulnerable groups in our society, and there is no moment that you are more vulnerable than when you're seeking healthcare, and there is no moment where you need support more than in childbirth. This organization creates a benefit that would help these groups in a way that they are currently not receiving.

I believe that we, as a firm, should definitely be using our talents and our abilities to protect these marginalized groups, protect these underserved communities in a way that would also allow us to learn and to grow as a firm. SING would help us achieve that goal.

Atlanta is home to top notch hospitals and medical schools, such as Morehouse and Emory. We all know that Emory Hospital is one of the most prestigious, and they are on the cutting edge of medical developments.

With that being with us, being in Atlanta, we would be able to step into that role of assisting in the medical field without having to take the full plunge of learning medicine or having to worry about medical liability, which this firm at this point is not fully familiar with.

SING provides a number of opportunities for us to grow as a firm, and it provides a very strong support system to the community. It provides us with the opportunity to develop expertise related to a growing field, such as doula certification that protects women and children on a national scale and becoming the preeminent law firm handling those legal needs would benefit this firm greatly.

And, as Beyonce once said, “America has a problem.” Today, by accepting this client we can use our firm's talents to be part of the solution to that problem. Thank you.

* * *

C. *Board Meeting as the Forum.* On the Thursday morning of a pitch week, the two “pitchers” circulate the three intake memoranda so that the other student attorneys can review them in order to prepare for that afternoon’s clinic “board meeting.” The two pitchers pitch their potential clients to the other student attorneys, who act in their capacities as the board of directors of our simulated clinic “firm.” As such, when class begins on the Thursday of a pitch week, the author, acting in my capacity as the Executive Director of the clinic firm, calls the meeting to order. The student attorneys also enthusiastically attempt to adhere to Roberts Rules of Order when conducting the board meetings, my having given the student attorneys a one-page “cheat sheet” chart on meeting procedure.

The first order of business each pitch week is to elect a Secretary. The use of synchronous online voting platforms, such as a Zoom poll, makes this process efficient. Once a student attorney has served as the Secretary during a board meeting, that student attorney is no longer eligible to serve as the Secretary in future board meetings, giving as many student attorneys as possible the opportunity to experience the administrative and recordkeeping requirements of a corporate Secretary. The student attorney so elected will then need to keep the minutes of the board meeting.

The next order of business is, depending on the week, approving the minutes from the last board meeting. Again, the proliferation of online voting platforms makes this process efficient.

After completing these initial procedural and administrative processes each week, the two “pitchers” then proceed with pitching each potential client. As previously discussed, each pitch can last up to ten minutes. After each pitch, the other student attorneys, acting in their

capacities as board members, then engage in a Q and A session with the pitchers regarding the potential client. If they don't understand what the potential client's business model is or if they have questions about the impact of the mission of the business, for example, this gives the student attorneys the opportunity to exercise their fiduciary duties of care and to properly inform themselves about the potential client before engaging in the voting process. If the pitchers do not know the answer to a general informational clarifying question about a particular industry, for example, we often take the time to investigate and research the issue together as a class.

Following the demonstration pitch of the hypothetical client SING, the conference attendees were asked to step into the shoes of the student attorneys and act as the directors of the firm's board. The following is an edited transcript of the Q & A portion of the demonstration, which, while not entirely identical to a real pitch Q & A session in a law school transactional clinical setting, was in general very similar in scope and nature. You will also see me interject at this point just to explain to the audience the process a bit more:

* * *

Kyra: Are there any questions?

Host: Yeah. So usually the other students . . . all of their hands would shoot up, and I'm not joking. They all really ask questions. So, in this instance, what particular questions would you have about this client, or would you want to know more about before you said yes, we should definitely work with them.

Question: So where is their funding coming from?

Kyra: So that's something that they would like our help with is figuring out funding sources in a way that would not necessarily cause problems with their nonprofit status.

Ms. Nema does have several people who talked about donating, and she also has considered maybe coming up with some sort of program that current doulas could pay into where she would create some sort of resource list of certified doulas that could be given out in hospitals, or to pregnant women if they would like to hire a doula. In this recommendation list you would have to pay a fee to be listed on, and so funding would come from that as well.

Host: Any other questions? What else would you want to know?

Question: Do you think that the client understands sort of what our clinical process is compared to the timeline of filing a 501(c)(3)? Like the Form 1023, for example?

Kyra: I do not think that this client understands that difference. But I actually think that's a great opportunity for us, as student attorneys, to get a lot more experience in taking things such as those differentiations and being able to put them in plain English for somebody who may not necessarily understand those differences. So, I think that is actually a great opportunity for us to increase our communication skills with the public.

Host: All right. So, I'll ask a question that sort of goes more to the duty of care. (But, again, I'm playing the devil's advocate here.) But I don't know, Kyra, the doula stuff sounds a little . . . whacky to me, right? Is this the type of client or collective that that we should be supporting? I mean, what is mainstream science saying about the use of doulas in this context?

Kyra: What mainstream science says is actually that doulas are pretty beneficial when it comes to women, especially giving birth. If you think about a woman who is in the midst of childbirth, there's a lot of stress there. There's a lot of yelling. There's a lot of emotions. And that leads to accidents, right? That leads to issues of medical malpractice, that leads to health and medical complications. Having a calm and knowledgeable doula, who is not only familiar with the birthing process, but is also familiar with what the mother wants, what the baby needs and the birthing plan ahead of time is actually really good for everyone. Also, now the doctor has an advocate to talk to

who is maybe a little less emotional, who is a little more clear-headed, and is able to advocate for what that mother decided before she was in this stressful situation. So, it is a little different. I would say that doulas became more popular in the last twenty years. They weren't heard of as much in the last, you know, thirty years, but they are becoming more of a regular thing. And there's actually yearly conferences on a national scale. It's a growing field. Several hospitals actually now have doulas on the payroll. So, it's definitely growing. And I think, although it sounds whacky, it's becoming a lot more mainstream.

Question: Is there a certain licensure requirement or a certification level that she would require before she would refer her doulas out to potential clients?

Kyra: I have not spoken with the client about what the specific certification levels are, but I do know that there are certifications and classes required before you are a certified doula. And she would require all them to meet those national certifications before putting them on the list, but I would be happy to reach out to the client to get any additional information that you require.

Question: So how does your organization's mission or goals seem to address some of the issues or problems that you pointed out in sort of the beginning of your presentation?

Kyra: So essentially the way that a doula works is she would be there in the birthing room with the mother advocating for her. Science shows, I'm sorry, not science, research shows (my apologies) . . . Research shows that a lot of the issues surrounding the high mortality of mothers and babies in childbirth is quite frankly, because, unfortunately, our medical professionals do not listen to women of color as much as they should, so, having an advocate there who is saying, "Look, there is something wrong. There is something going on. You're not listening." And being able to advocate for her would increase awareness of medical issues which would allow for quicker diagnosis and hopefully lower those mortality rates.

Host: Okay, I don't know, Kyra. Don't healthcare workers do pretty well for themselves. Can't she afford legal services?

Kyra: Well, to my understanding right now. She cannot. She actually recently quit her job as a nurse and started trying to be a doula. Right now, she actually doesn't charge for her services as a doula. Because she's so dedicated to this idea that doulas and their services provides such a benefit to the community and to the mothers that she serves, that she doesn't charge for it. So, right now, she does not have an income. She's also not a medical professional, so she would not get the same pay that a doctor or a nurse would receive.

Host: And then, I would say, does anybody else have any other questions?

Question: Where does a doula assisted birth normally take place? Is it in the home, or a hospital, or someplace else it is wherever the mother wishes to give birth?

Kyra: So, this doula program is actually one where the mother would hire the doula and not the hospital, hiring the doula wherever the mother wishes to give birth. There are some hospitals like, I said, they do have doulas on staff, and so that would occur primarily in a hospital. But if you wish to have a home birth, then the doula would assist you in the home birth as well.

Question: Will the hospital allow an outside doula to come to the hospital with a mother?

Kyra: Normally? Yes. When I spoke to her, she said, it's usually not an issue. They usually actually are okay with having doulas because it helps them to make sure that they know what the mother wants, and they're doing what she would have requested if she were able to at the time. I have not found any research on any hospitals that wouldn't allow it because it doesn't seem to increase hospital liability. But that would be something that we as a firm would have to look into.

Host: Oh, question in the back? Yeah.

Question: So, we know that medical malpractice isn't really an issue that doulas need to be aware of, but what about other types of liability that they should consider?

Kyra: There could be certain liabilities that this room would definitely have to look into further. When I spoke to Ms. Nema, she acts in the same way that an attorney acts as an advocate in the courtroom. A doula acts as an advocate in the hospital or in the birthing process, but she did not tell me any further concerns. Perhaps, I could foresee there being an issue where a mother wanted something and the doula advocated incorrectly, but as a whole, since she's mostly acting just as an intermediary or a third-party advocate, I don't foresee there being a whole lot of liability there.

Question: So, when does the doula work with the mother? Is it just immediately preceding the birth, or is it time before that as well?

Kyra: So, for however long the mother needs the doula there, she will be there. So, if the mother comes in and says, "I'm 5 months pregnant. I would like for you to help me through this pregnancy all the way through childbirth and postpartum." The doula will do it. If she says, "Here's my plan. I'm supposed to give birth tomorrow." Well, then it can be as limited as that minimum time. The doula is usually there for these first couple of days leading up to childbirth, childbirth, and the postpartum period because those are really when you have a lot of the most issues or where they would need an advocate is during childbirth and during the postpartum period.

Host: So, I would say, any other questions, or comments, concerns? No. Okay, great pitch, Kyra.

* * *

Fiduciary duties satiated, the student attorneys then anonymously vote "yay" or "nay" to whether the clinic should accept this business as a client. As the Executive Director and non-voting member of the board, I do

not vote, except in instances of a tie. In a class of eight student attorneys, for example, I only act as the swing vote if the student attorney vote is four “yay” to four “nay.”

In conducting the vote for intakes, we use straight voting. However, during earlier seminar weeks when voting on simulated in-class exercises, I also ensure that we simulate and use cumulative voting.

We repeat this process for each of the potential clients that the two student attorneys are scheduled to pitch that week. If the client is voted in, we then, as a firm, must determine whether it is a matter that we have the need and capacity to take immediately or if the accepted client is acceptable for the waitlist for future representation. If a potential client is not voted in, then we also discuss if alternative referrals may exist to assist the business. In both scenarios, it is also then the responsibility of the two pitchers to inform the potential clients of the outcome of the clinic firm vote.

If no other intake-related matters remain, we then move to adjourn the meeting, noting the vote counts and adjournment time. The student attorney elected Secretary that week then must edit and circulate the minutes for approval at some point before the next board meeting.

III. PEDAGOGICAL OUTCOMES AND IMPLEMENTATION SUGGESTIONS

This implementation of the intake pitch process over the years has demonstrated pedagogical outcomes for law students and positive community impacts. This part will describe the observed pedagogical outcomes, providing modified hypothetical examples, and then will end with some suggestions for implementation both inside and outside of the transactional law clinical context.

A. Pedagogical Goals and Outcomes. The structure of this pitch intake model enables positive experiential-based student learning outcomes

for both the pitchers and the student attorneys acting in their capacities as directors of the firm.

1. *For the Pitchers*

a. *Increased client interaction and meeting.* By requiring the student attorneys to schedule and conduct the initial intake meetings with potential new clinic clients, the student attorneys are given an additional opportunity to build a relationship with a potential client. In these initial communications, the student attorneys also learn about the communication and interaction style of the potential client contact. If the client contact was timely and enthusiastically responsive, or if we get a sense that this potential client might only be able to meet in the evenings online, the student attorneys will get a sense of that in these initial communications. We have, of course over the past few years, needed to do some of these intake meetings online, which can be logistically difficult, especially for some of our more rural or remote clients. But we have also had potential clients drive two+ hours for an intake meeting, for example, which is all usually discussed at some point in either the pitch or in the Q & A.

In addition to the information that the potential client submitted through the intake form, the student attorneys will have also done a bit of background research on the potential client before meeting with them to prepare. The purpose of the intake meeting is to build a bit of rapport with the potential client or its business representative, learn more about the business model, and how the business intends to provide services to the community.

This initial intake meeting also gives the student attorneys the opportunity to practice issue spotting in the business law and transactional context. Some clients arrive with a list of questions related to their business, while others come with a general idea of what their legal needs might be but are otherwise relying on the expertise of the student attorneys to tell them what their business legal needs are. Because of the range of familiarity with

business legal issues, these initial intake meetings give the student attorneys the opportunity to learn how to issue spot in the moment.

b. Additional persuasive writing intervention. Although much of the work that student attorneys will complete for clients in a transactional law clinic may not always have persuasive ends, the drafting of and review of the intake memorandum, which requires the two pitchers to make a recommendation as to whether the clinic should accept the client and why, provides the student attorneys with an additional opportunity to write persuasively in the context of helping a board of directors make a determination or decision, much like a specially organized board committee or expert might need to do.

c.

At this point, the two pitchers and I have discussed whether we think that this particular potential client is “pitchworthy.” And the aim of this conversation is not to determine whether this is the most groundbreaking business idea one’s ever encountered, but to just generally determine whether the client meets our baseline, standard criteria for pro bono law school clinic representation and if the client is ready to move forward with transactional legal representation. Although we have, as one could imagine with so much collaboration with the business school, worked with and represented cutting edge technology-based businesses, for example, we also represent more traditional small business and microbusiness owners, such as mom and pop candle makers, family-owned food truck operators, and early childhood education community development organizations. The bar for “pitchworthiness” is low in that it only requires that the potential client fits the intake criteria.

d. Practice advocacy skills and balance personal investment. The pitch intake method also gives the pitchers the opportunity to practice their advocacy skills in a professional setting, while at the same time teaching them to balance their personal investment and relationship with the potential client up to this point against the overall needs of the firm. This type of advocacy differs than advocacy in a litigation setting. The recommendations of the pitchers in the intake memoranda can range from strong enthusiasm for to

strong recommendation against a particular client. However, they also learn that it is their duty in this instance to present the potential client in a manner that gives the potential client the best chances of success, especially if their initial interactions are generally positive, but to be forthright in disclosing any reservations to the other board members as well.

In some instances, I have observed that just meeting an individual and putting a “face to a [business] name” can cause the two student attorneys to become personally invested in the pitch process. They are often incentivized to gather additional information from their potential clients, do more research on their potential client’s industry, and become more impassioned in their pitches.

It has also taught them to “think on their feet” during the Q & A session if it appears that the board might be feeling negatively about accepting a client or if the board might be misinterpreting some information. Because of the time limitation of the pitch (no longer than ten minutes), much of the substantive discussion that might concern whether the client is a “fit” for the clinic happens during the Q & A.

e. Improved presentation and speaking skills in a professional setting. Because the student attorneys usually conduct multiple pitches during their pitch week, this intake pitch model can develop the student attorney’s presentation and speaking skills within a professional setting. It also gives them the opportunity to learn how to pitch different types of clients whose businesses might be trying to solve completely different problems. I have observed that some student attorneys volunteer later in the semester to conduct new intakes received because they flourish during the pitch process and want to repeat the exhilaration of pitching and client that their peers then vote to accept. I have also observed student attorneys volunteer to conduct new intakes later in the semester because they want another chance to do a pitch presentation and improve on their professional advocacy. In both instances, the benefit to the student attorney pitchers is a stronger familiarity with and multiple attempts to pitch persuasively in a professional, corporate setting.

f. Encourages creativity and confidence in producing and conducting pitches. Every law student who enrolls in a transactional law clinic arrives with different strengths in their skillset. What has traditionally been stifled in the context of transactional lawyering, however, is the skillset of integrating creativity and one's own presentation and personality style into business law practice.

Because the pitch itself has no prescribed style, I have witnessed the full spectrum of pitch styles. I have seen pitchers use a combination of narrative approaches. But to supplement their narrative pitches, I have seen student attorneys use traditional visuals such as a PowerPoint presentation, play YouTube videos, interact with a potential client's website, do live demonstrations, bring product samples (free snacks!), or use a single prop to ground the pitch. I have had two pitchers pretend to be TV sportscasters when pitching a community recreational organization, with fake microphones, theme-music, over-the-top three-piece suits, and all! I have had student attorneys who may struggle to find all the "trees" from the "forest," a skill that is needed to successfully engage in transactional work, but who can hold up a single prop like a candle or a spool of thread, sit in a chair, and convince the rest of the class in five minutes why this founder changes lives.

Depending on the potential client and the two pitchers, each pitch is unique. Often amongst the three pitches a student attorney team might conduct on their pitch day, the pitch styles can differ. One student attorney on the team might excel at producing interactive and creative visuals; the other student attorney on the team might excel at fearlessly presenting the ideas of his or her clinic partner in a charismatic manner. This pitch process can build into their strengths as a team and gives them the opportunity to create imaginative, inventive, and interactive pitches that are bespoke to both them and their clients.

g. Practice explaining stakes and outcomes to clients. Like providing an additional opportunity to meet with and interact with potential clients, this intake pitch process also gives the two pitchers the experience of explaining

both the pitch and voting process to the potential client, as well as informing the client after the fact of the results of the pitch vote. After the initial intake meeting, some clients will provide the student attorneys with additional information and materials to incorporate into their pitches and will have built a strong relationship with the two pitchers. If the vote does not swing in the potential client's favor, the two pitchers who already have the relationship with the potential client must also bear the responsibility of explaining the disappointing news to the potential client. The ability to both explain the process, and to deliver positive and negative outcomes to clients is a skill that all lawyer must possess.

2. *For the Student Attorneys Acting as Directors*

a. *Engage in board governance and procedures.* For the other student attorneys enrolled in the clinic who are not scheduled to pitch during an intake week, the use of the board meeting setting provides numerous opportunities to learn about board governance by acting like a corporate board member. This process reinforces the importance of process, procedure, electing a secretary and keeping minutes, upholding decorum, and understanding how voting on a board works and the forum and mechanisms by which a board of directors should oversee an organization and exercise fiduciary duties.

b. *Exercise duty of care.* Law students enrolled in doctrinal business law courses will likely spend a fair amount of time analyzing how a court of law might determine whether a corporate director or officer has violated his or her fiduciary duty of care to an organization. They will learn throughout the doctrinal development of the duty of care jurisprudence, the bar is exceptionally low for a director or officer to have found to violate their duty of care under the forgiving "business judgment rule."

However, this process encourages law students to engage in and fulfill their duties of care, not by doing the bare minimum, but by fully informing themselves about and questioning the pitchers about this particular client. It encourages them to ask about statistical and empirical

data, about the type of founder the client may be, the potential for business success, what legal needs we can provide, and, most importantly, if this is the type of business or client, substantively, that we want to support through our time and provision of free legal services.

They are encouraged to investigate in real time any questions which are salient to that determination, which the pitchers might not immediately be able to answer. They are encouraged to view holistically the impact that this client might have on the community. For creatives, this can often involve a viewing or discussion of the creative's work to determine if, for example, a fiction novelist's work is of the type and quality that we would like to assist. This process teaches them what it means to thoughtfully and fully exercise their fiduciary duty of care at the highest level of compliance, not necessarily teaching to the low bar of the business judgment standard. That being said, I also engage in the Q & A process and often ever so gently try to raise additional points or sway opinions if I think there is a point that was missed, as is my duty as the CEO/ED and an ex-officio, non-voting member of the board.

c. Exercise duty of loyalty and address conflicts of interest. Our law students are often tasked to provide organizations, especially tax-exempt non-profit organizations, with conflicts of interest policies. Yet, law students rarely have the opportunity to walk through a conflict of interest policy for a corporation when a potentially conflicting transaction presents itself. This intake pitch process can provide law students with the opportunity to experience exercising their duty of loyalty and address conflicts of interest.

For example, while actively enrolled in clinic, one student attorney formed a business, which he later pitched in the aforementioned River Pitch Competition and ALDAG Business Plan Competition and the University of Alabama. He also then sought representation for his business from the clinic. Because he would be voting on whether his own business should be accepted as a clinic client, the two pitchers flagged this as a potential conflict. Together, we walked through a model conflict of interest policy about how to address the internal conflict. We determined that this student attorney/business

owner could not receive the intake memorandum which included the recommendation, could not be present for the pitch and Q & A session, and could not be present for the vote. This process gives student attorneys the opportunity to address conflicts of interest and learn to fairly execute their duty of loyalty.

d. Exercise duty of good faith and fair dealing. Presenting potential clients in the setting of a board meeting also gives the student attorneys the opportunity to always keep in mind the conscious requirement to act in good faith and execute their fiduciary duties in a fair manner. For example, as the director I often ask before the Q & A session is closed whether we think we have enough information to vote or if anyone thinks we should have more information. Doing this provides them with an opportunity to ensure that they have fully executed their fiduciary duties in good faith.

I also encourage them, in instances where a potential client might be more controversial, to think objectively about the goals and purposes of the clinic and not necessarily about how their personal belief systems might differ from the potential client's, for example.²⁶ The goal is to allow them to consider and deal fairly and objectively with a client on their transactional legal issues if and once accepted.

e. Exercise ethical rules across clinics. Depending on how a law school's clinical program is structured, this intake pitch process can also reinforce conducting intakes firm wide, running conflicts checks before conducting intakes, and ensuring that no larger, firm wide ethical issues might exist. For example, we once had a potential business client and the owner was married to a student enrolled in another clinic. While not a conflict, it provided us with the opportunity to talk about potential conflicts and issues that this personal relationship might present clinic-wide.

f. Understand the value of transactional legal services and the gravitas a "yay" or "nay" vote bears, client selection impact. As previously mentioned, after

²⁶ See generally Adam Babich, *The Apolitical Law School Clinic*, 11 CLINICAL L. REV. 447 (2005) (discussing the importance of being a neutral advocate for all clients).

each pitch, the student attorneys vote either “yay” or “nay” on a potential client. I do not vote, unless in cases of a tie. Although I’ve explained the process here as being more high stakes than it may be in real life (we’re usually able to suss out potential clients that might not be a good fit by the “pitchworthy” discussion stage), most of the potential clients that make it to the pitch and vote stage are voted in.

However, with clinical classes being small in enrollment number, each vote counts; each is critical to avoid a split vote. Surprisingly, of all of the years and semesters that I’ve been utilizing this process, I can count on one hand the times that I’ve needed to cast a swing vote. On the occasions when the board of directors of our clinic firm votes majority “nay” on a client, their small number also has the effect of revealing to them, often for the first time, the awesome responsibility with which they are tasked and the gravitas of each vote bears.

This experience not only teaches them how to make decisions collectively as a group, but the impact that such a decision might have on the potential client and the firm. The student attorneys are often selecting clients that the clinic will not be able to assist until the next semester, when a new set of student attorneys will be assigned to the clients the current students vote in. This process provides them with a deeper understanding of making long-term decisions on behalf of an organization and how much import a single board vote can have.

This process also has, at its core, the ability give students the thought process on how to make decisions as a member of a board and to pick which transactional clients to assist in the future.

B. Community Impacts. This intake pitch model also has demonstrated positive impacts on the potential client base within the community. For these potential clients, it provides them with an opportunity to meet with a student attorney, potentially issue spot together, and begin to build that longer-term relationship with the clinic. It also provides them with an opportunity to assess whether they are ready for legal services and

determine where in their private ordering process they may be. Often, we find that potential clients might need to visit a small business development center or organization first to get some planning assistance before returning to us for legal representation. A potential outcome of these initial intake meetings is a professional referral and education about pro bono services available. It also provides clients with the opportunity to determine whether they want to work with us after having the experience of meeting with a law student within the clinical setting and understanding our timeline and process.

C. *Implementation Suggestions.* I was able to implement this intake pitch process and board meeting format in this manner partly because of the fact that I had a high-credit load clinic, with a seminar that met twice a week. However, I have been able to adapt this process in my current clinic, which has a lighter credit requirement. I simply pushed the intake weeks back to weeks 9-14 and cut down the number of intakes each pitch team was required to try to contact and meet. For doctrinal or skills-based simulation courses that would not need to utilize the intake feature of the model, these instructors could still adopt the governance features of the model. For example, the instructor could task a pair of students with presenting a legal proposal or deal, explain the features of the deal, and then have the remaining class members act as board members in questioning whether the hypothetical organization should move forward with a particular transaction after a discussion and vote.

CONCLUSION

This Essay describes how a law school clinic intake model can incorporate the use of a “pitch,” often seen in the business investment context, in its client selection process to teach advocacy in the transactional context and proper board governance to law students. By adopting this intake process, or an adapted version of the board governance feature, law schools can better prepare students to counsel and work with organizational clients and become indispensable and experienced corporate advisors.