# TEACHING TRANSACTIONAL SKILLS THROUGH SIMULATIONS IN UPPER-LEVEL COURSES: THREE EXEMPLARS

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## INTRODUCTION

At the University of Oregon, we have undertaken an experiment regarding the teaching of transactional skills and deal sense. For the past two years, students enrolled in my doctrinal course on mergers and acquisitions (or my colleague's course on real estate finance) have been eligible to enroll simultaneously in an associated "Transactional Practice Lab." I teach the law and policy in the foundational course and, at the same time, a team of practicing attorneys teach the craft in the lab. Other schools may be doing something similar—I don't know—but we are having good success with the program and I believe it's worth sharing.

## I. A STORY

Now, because this is a conference on teaching, I feel that I should treat the whole thing as one giant teachable moment. In other words, I have to start with a story—something clever and insightful to help you understand our program on an intuitive level. I certainly can't just jump in and *tell* you about the theory behind the labs! Instead, I have to try and show it to you.

When I was in college I played squash. Squash, if you remember, is a sort of "New Englandy" sport. Nobody really plays it much outside of New England or, more importantly, outside of college. That means you can go to college and be a decent athlete, maybe play a little tennis, and you can learn squash and play very competitively and at a high level. In this way, it is a little like learning business law. In my day at least, most squash players, like most law students, arrived on campus filled with desire and talent, but without a clear understanding of how the game is played. Squash, like transactional lawyering, is something that many people practice and try to master without ever having seen it done.

So, I spent three or four years trying very hard to become good at squash by practicing the individual strokes. I practiced forehands, backhands, drop shots and lobs. I studied all the different strategies and theories and worked diligently to hone

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my skills. Over the years, as you can imagine, I improved substantially. However, the single day when I went from being a solid player to a true proficient was a day I did not play squash, did not practice, and did not even hold a racket. It was a day I watched.

My senior year, we hosted the individual nationals. So, the absolute best squash players in the country at the college level were there—people who were going on to go on and play in the pro circuit (and yes, there is a pro squash circuit, if you can believe it). While watching, I had this moment of epiphany when I realized: "oh, *that* is what I'm trying to do. *That* is how the game of squash is meant to be played." I remember thinking that if somebody had showed me this two or three years ago, maybe not the first year I was playing, but at least the second or third year, I would be out there playing today. *I* would be headed for the pro circuit.

When I woke up the next day, not having practiced for even a minute, I could do the pieces better. They made more sense—forehands and backhands and the like—because I understood them in context. I could see why and how the individual elements of the game fit together. Then, when I went out and played with friends, I was simply and obviously a much better player. I had seen a glimpse of the future and of what the game was really about. I had been given an opportunity to see how the pieces interact with and reinforce each other. And that glimpse, that opportunity, made all the difference.

## II. THE GAP

It is clear that the academy has begun to take more seriously the teaching of transactional deal-making skills.[1] We have started to incorporate planning, drafting, negotiation and even risk assessment and deal logic into our traditional curriculum. However, we rarely teach them as part of a comprehensive whole. We teach the pieces of dealmaking, but not how they fit together. Hence, the concern we had at the University of Oregon was that teaching the pieces—no matter how well we did it—was not enough if the pieces existed only in isolation.

So what are we doing right? We have an in-house small business clinic where students meet with real clients and learn client interviewing and planning skills. We have negotiation classes where we videotape students to help them with their

[1] I have always thought that "skills" is an unfortunate word given the historical tension between the teaching of law as a craft versus something more lofty and theoretical. *See* WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 47, 105 (2007). However, to understand dealmaking, one must learn more than just the law—one must learn deal sense and deal logic. If these count as "skills," then it is skills that we must teach.

negotiating skills. We have business planning courses where students learn to plan for an unknown future and to assess and allocate risk.

We have a course over the summer where we put MBA students together with our law students and give them access to proprietary technologies to see if they can commercialize those technologies and craft appropriate business plans. We even have a popular accounting course that is a prerequisite for studying securities law.[2] Most importantly, however, we seek to incorporate concepts of finance and risk management into our doctrinal courses. We review and analyze real contracts.

We have all the pieces, in other words, but nothing to help students put it all together.

The way you draft a contract impacts how you negotiate the deal and in what manner the negotiations will proceed. Likewise, the negotiations will impact the subsequent drafting and planning, and it all comes back together in a sort of legal-skills feedback loop. In the same manner, when I play squash, it is not just one shot or the other that creates a winning game. It is how you put them together.

So, to address this fundamental gap, we decided to try and provide students a glimpse of their future. We wanted them to see where they are headed so they can learn the pieces better by learning them in context. We wanted them to hone their skills more quickly by helping them gain a better understanding of how and why deals proceed as they do. Our goal is to provide students with a mental picture of what deal lawyers (outside of the movie "Wall Street") actually do for people. And we are trying to give them that glimpse upfront, early in the educational process, so, as they learn the pieces, they learn them in relation to each other.

## III. CHALLENGES

The real challenge, of course, is how to accomplish this goal if you cannot change the whole curriculum overnight—if you cannot easily obtain buy-in from the litigators and the deans and all the other constituencies and require that they change the way they teach their courses.

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[2] The only downside to the course is that, in my opinion, we spend too much time on debits and credits.

If you cannot do a comprehensive overhaul, what you need to do is *add* a set of simulations. Add a program of courses where students actually experience first-hand the interface between the law and the craft.

This is easier said than done, however. Firstly, simulations and other experiential learning opportunities are extremely expensive on a per-student basis. For example, as I mentioned earlier, we offer an in-house small business clinic. Originally, we had eight students enrolled in the clinic each year. Now, with great fanfare, we have increased that to twelve. However, the University of Oregon has about one-hundred eighty students in the first-year class. So we are still only reaching less than ten percent of the class. The amount of resources we put into the clinic—including dedicated faculty, support staff and physical space—is clearly disproportionate to the experience of the twelve students. We think the clinical business experience is a good thing, but we, like most law schools, do not have the resources to replicate it for all students.

Another scarce and therefore expensive resource is faculty. Many law professors do not have practice skills. Either we went straight into academics or we practiced for too short a period of time to have developed true dealmaking prowess. Indeed, even many in academia who began their careers as dealmakers only practiced for two or three years and so never advanced to the point of running a deal. And if you are like me, the longer we remain in academia, the more we begin to lose what practice skills we started with. Moreover, attempting to stay current with the craft necessarily means spending less time on scholarship and other important faculty pursuits.

What this means is that it is expensive to have simulations and similar experiential learning opportunities because either you need to have dedicated clinical faculty or you need to have doctrinal faculty members who bring those skills and then continue to exercise them by staying current on developments in the *practice* of law.

A second major problem with simulations is that they do not easily fit with the teaching of doctrine. My fantasy when I arrived in academia was that I would teach a three-credit-hour merger and acquisition simulation. We would assign students into small groups, recruit some MBA students to act as the clients, and actually transact a deal over the course of the semester. However, even if I could put in the energy, prepare the materials, and stay current on the practice, it is impossible to teach the deal if students do not already know some tax law, some accounting rules, certainly the corporate law, and a whole group of other associated topics such as antitrust—basically the whole curriculum. You have to understand the law—not just the deal—to be a deal lawyer.

So how do we integrate the doctrine? And how do we do so in a cost-effective way? What we decided to try over the past two years was to integrate several doctrinal courses with associated labs.

## IV. A THIRD WAY: LABS

I teach Mergers and Acquisitions in the fall in a fairly traditional format. I certainly have a transactional lawyer's bent, so we approach the topic from a risk-analysis standpoint. I have students look at actual contracts and we spend a week or so trying to figure out how they work and how different provisions fit together. Otherwise, however, it's still a fairly traditional doctrinal and policy-oriented course focused on the law of corporate combinations. Likewise, in the spring, we offer a real estate finance course which is also fairly typical. What makes these courses unique however, is that we have appended to both the option for students to enroll in an associated lab.

The labs are taught by adjuncts at the same time as my colleague and I teach the underlying doctrinal courses. We the theorists teach the doctrine and policy, while the adjuncts who are practicing lawyers teach the practice. In this way, we have divided and harmonized our approach to the theory and the craft. This structure also makes supervision and cooperation between tenure-track and adjunct faculty quite easy.

Though taught by adjuncts, the labs are each sponsored by a law *firm*. In fact, this aspect of the program has been essential to its success. We began our experiment by approaching several senior partners for support, and then they assigned a team of senior associates to teach the course. Having a senior partner as supervisor, it turns out, is an effective way to ensure that the adjuncts show up, prepared and eager, no matter what work conflicts might arise. It also allows the instructors to recruit others from their firm to assist at various points. Although they, as M&A lawyers, are not experts at every body of law, they are experts in knowing who in their firm is.

During one class session, for example, the students are confronted with an employment law issue. The acquisition that is the focus of the lab involves some vacation accruals and it is not clear who is going to pay for them. Instead, it is a point that the students must come together and negotiate. So, the instructors pull out a speakerphone with the class all gathered around and they dial up an employment lawyer in the law firm who is in another city. The employment lawyer is expecting the call, but nobody has told her what the issue is. The class then has to look at the speakerphone, explain the deal, explain the issue, learn the law, and work

together with the employment lawyer to come up with a possible solution. Then they hang up the phone and draft the contract language.

In addition to seeking a firm sponsor, we also decided to make the simulations small and manageable. This is so obvious and so simple, but it makes a huge difference to the program's overall success. Instead of trying to bite off a highly complex simulation, which would have been quite a big deal and nearly impossible to replicate, we structured the labs as one-credit add-ons and graded them pass/fail (based largely on demonstrated student effort). We did not require the lab, so out of one-hundred eighty students we had about thirty enrollment requests. I generally have about thirty students enrolled in Mergers and Acquisitions, of which twelve or fifteen choose to take the M&A lab. The same for the real estate finance course. Notably, however, the number of interested students has being going up each year.

Instead of trying to teach students to perfect every individual aspect of a deal, we decided that our goal was to give students a glimpse of how the pieces fit together. Had I watched the squash game and left to go get a snack and come back to watch the end, I might have missed some drama, but I would not have missed the glimpse of what my future held. The point isn't to teach the individual skills or even to be comprehensive in our approach. These goals can be pursued in other courses. The point is to demonstrate deal logic and cohesion.

We scheduled the labs as five meetings over the fourteen-week semester. Also, we did not start at the beginning of the semester, but paused to allow the doctrinal portion of the experience to get a head start. Then we added on the lab on a once-a-week basis.

Students began with a simulated term sheet and were asked to draft the purchase agreement. We structured the deal as an asset purchase, which is the bread and butter of most deal lawyers in a city like Portland, Oregon. Students then worked through various aspects of the deal, including the employment law issue described above, and finally ran a closing (during which our dean acted as one of the clients). Because of time constraints, students did not engage in every aspect of the deal, but they got to see how the pieces fit together and form a comprehensive whole.

Another way we toyed with doing the labs was as a smaller transaction, such as a CEO's employment agreement—something with real legal issues and some meat to it, yet fairly small and without too much novel doctrinal law. This format might also allow us to expand the lab format beyond M&A and real estate transactions.

Overall, we've found that by keeping the labs small, by having a law firm sponsor them, and by having them appended to a doctrinal class, we managed to solve most of the issues we encountered, including with respect to resources. Indeed, the sponsoring firms have thus far done their part for free—neither law firm charges us for their time, though we did take several key personnel out to dinner.

## V. SIDE BENEFITS

In addition to addressing important pedagogical concerns, the lab format has also provided a number of side benefits. Working with prominent law firms to sponsor labs, for example, has clearly helped us deepen our relationships with those firms. In the Oregon market these are significant law firms who we hope will employ a number of our graduates. In addition, they are alumni and friends of the law school. Thus, pedagogy aside, we are pleased that the partnerships we have forged with respect to the labs have only brought us closer.

Location is also an issue for us. We happen to be situated in a small college town—Eugene—with the major nearby legal markets being in places like Portland and Seattle. So, what we are facing is a gap in distance. The labs help address this because they encourage (or really force) the lawyers in those firms to come south to Eugene for two or three of the classes. They come south to Eugene and they are reminded that the two-hour drive is not all that onerous. They walk our hallways and get comfortable with our students. Indeed, we try to schedule the meetings on home football weekends and we provide free tickets and tailgates for the adjuncts and their families. We want these prominent alumni and friends to become used to coming to our law school and to think it a natural thing.

Moreover, on the flip side, because we require that the first and last class meetings be held in the offices of the sponsoring firm, the labs also force our students to drive north to Portland and see first-hand that two hours is not all that long a commute. After all, if they are going to be successful deal lawyers, they are potentially going to be jumping on airplanes and traveling long distances on short notice.

Meeting with practicing attorneys in a formal setting also provides lessons in professionalism. We require the students to wear business suits and to spend the day in a real law office with secretaries and wood paneling and all the trappings of a modern legal practice. This is also implicitly a lesson in job interviewing skills. Indeed, the labs connect the law firms and our students in a way that we hope will someday produce job opportunities, either for the students currently enrolled or for their more junior colleagues.

More broadly, I do not think there is a single second- or third-year course in the curriculum for which we could not create a lab. For example, as described above, there is no reason why we cannot approach an employment law professor and ask her to sponsor a lab wherein students negotiate a complex employment agreement. The response we might fear is "well, no thank you—that's too much effort for me." However, to sponsor a lab, the doctrinal faculty really don't have to change their courses at all. Because the labs are offered only as add-on courses, there is no reason for sponsoring faculty members to change the way they are teaching. Plus, the adjuncts and their sponsoring firms will do most of the heavy lifting

Thus, the labs are scalable in the sense that we could spread the concept throughout the curriculum. Indeed, in that respect, the format constitutes more than just a different style of course. It potentially represents a new model for teaching law school.

Faculty have a vested interest in what they teach and how they teach it, and that is certainly fair. They also have different opinions as to curricular needs, and that is fair as well. However, the labs are not meant to replace the existing curriculum, but to complement it. Ideally, transactional skills would be integrated throughout a student's law school experience, but to the extent this is impossible, we at least wanted to develop a course structure wherein students can put it all together—theory plus doctrine plus skills plus deal sense.

## CONCLUSION

The labs are not perfect. The content of the classes could be refined, and we could improve the integration of the labs and the underlying doctrinal material. We have trouble communicating the structure of the course to new students. We also have trouble integrating it with our registrar's system of enrolling in classes online. However, these are very practical, nuts and bolts problems that do not affect the viability or vitality of the model.

Enrollment in the labs has risen every year and, according to the written evaluations, students appear to love the format. Indeed one of the sponsoring law firms likes it enough that they actually proposed that they integrate their new hires into the course alongside our students. For some reason, the firm in question seems to think that to the experience of taking a lab will have a measurable impact on the participants' development as lawyers. They see our students' experience in the labs and think "wow, these people are learning something that I want them to learn."

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# EDUCATING TRANSACTIONAL LAWYERS

## INTRODUCTION

I am currently writing a casebook with my co-author, Dana Warren. Our casebook is titled, *Business Planning: Financing The Startup and Venture Capital Financing*,[3] and is scheduled to be published early next year by Aspen Publishers. As part of this panel devoted to teaching "deal making" in the upper division courses through the use of simulations, my presentation will focus on the Business Planning course that we have implemented at my law school, Loyola Law School-Los Angeles. In addition to providing a description of this new innovative curriculum as reflected in the approach we adopt in our forthcoming casebook, my presentation will also address the broader controversy concerning the delivery of legal education to those students who plan to practice law in a transactional (rather than litigation) setting.

My co-author and I are currently teaching the Business Planning course from a set of materials that we have collaborated on over the past several years. These materials are now sufficiently developed that we are offering multiple sections of the Business Planning course by using experienced lawyers as adjunct faculty who teach Business Planning using our course materials.

Our casebook offers a unique and innovative approach to teaching the traditional law school course on business planning in that it relies on the use of a simulated deal format that is designed to integrate theory with practice. We developed this approach to teaching the traditional business planning course in order to better prepare our students for the real world of practice and the expectations of the senior, more experienced lawyers who will supervise their work.

My presentation will describe the collaborative development (with my co-author) of this "simulated deal" approach and how this approach is responsive to many of the concerns that were raised by the Carnegie Foundation Report on Legal

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[3] THERESE H. MAYNARD & DANA WARREN, BUSINESS PLANNING: FINANCING THE START-UP AND VENTURE CAPITAL FINANCING (Aspen Publishers 2010) (publication forthcoming).

Education that was published in early 2007.[4] At the risk of oversimplifying the conclusions reached by the authors of the Carnegie Report, I believe that a fair and succinct summary of the thrust of the Report is as follows: Legal education today does a fairly effective job of educating our students "to think like a lawyer" by virtue of the traditional and well-established case method approach used in the first year law school curriculum. However, the remaining two years of law school are woefully inadequate in that the upper division courses do very little to educate our students as to what it is that lawyers *do* in their daily professional life.

When I first read the Carnegie Report, I was struck by the fact that the recommendations in the Report seemed skewed in favor of what I view to be the long-standing bias in legal education, which is that law school traditionally promotes an educational environment that is grounded on the assumption that our graduates are going to end up practicing as trial lawyers of some variety, whether it is civil rights, product liability, employment, criminal defense (or prosecution), or commercial litigation. Notably, all of these practice areas were touched upon to one extent or another by the authors of the Carnegie Report,[5] but I was struck by the fact that the authors largely ignored the needs of those students who plan to practice as transactional lawyers, whether they are going to represent business clients in the context of a large Wall Street law firm or as part of a smaller Main Street law firm.

Our Business Planning casebook project is a direct outgrowth of what has come to be a passion for me as an academic lawyer, which is to improve the delivery of legal education for those students who are going to practice business law in a transactional setting, whether it is on Wall Street or Main Street. Even more importantly, our casebook addresses what I perceive to be a fundamental weakness in legal education that is essentially ignored in the Carnegie Report. My view is that the Carnegie Report does little if anything to address the formation of professional identity for our students who are going to end up practicing law in a transactional setting. Let me explain the basis for my criticism of the Report.

The Carnegie Report identifies "three apprenticeships" for legal education.[6] At the outset, let me say that the use of the term "apprenticeships" is terminology that I am not fond of and which others have criticized as being reminiscent of a

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[4] WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) ("Carnegie Report" or "Report").

[5] *Id.*

[6] *Id.* at 27-29.

trade school mentality,[7] and, as such, undermines my own view of the law as a noble profession. Indeed, I frequently remind my students (in all of the corporate law classes I teach), that as corporate lawyers we are part of a noble profession. Having said that, I do believe that the "three apprenticeships" identified in the Carnegie Report have the virtue of capturing what I believe to be the essential goals of legal education. According to the Report, the first apprenticeship is the intellectual or cognitive, focusing on the knowledge and the way we think as lawyers.[8] The second apprenticeship described in the Report is the forms of expert practice that are shared by competent practitioners.[9] Finally, the third apprenticeship, referred to as identity and purpose, introduces the law student to the purposes and attitudes that are guided by the values of lawyers as professionals.[10]

As it turns out, our Business Planning casebook addresses each of these educational goals (or "apprenticeships"). However, since we were developing our course materials long before the Carnegie Report was published, our casebook did not have the benefit of the terminology used in the Report. Nonetheless, we identified educational objectives that are consistent with the "three apprenticeships" described in the Carnegie Report. Our Business Planning casebook, however, addresses these three objectives from the perspective of educating our students to be transactional lawyers, a perspective that is largely ignored in the Carnegie Report. In order to more fully appreciate how the simulated deal approach that we adopt in our Business Planning casebook addresses these "three apprenticeships," let me provide some general background as to the origins and development of this new curricular initiative for educating transactional lawyers.

While I believe that the learning experience in law school—in terms of mastering substantive law—is as relevant to those law students who end up "doing deals" as it is to those students who will practice law as litigators, I am of the view that the typical law school classroom experience emphasizes internalizing this knowledge from the professional perspective of a litigator rather than the perspective of a transaction planner. My ongoing frustration with this traditional and well-established law school emphasis on the "litigation" perspective eventually led me to

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[7] *See, e.g.*, David Chavkin, *Experience is the Only Teacher: Meeting the Challenges of the Carnegie Foundation Report, available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1008960 (American University & Washington College of Law, Research Paper No. 2008-16).

[8] *See* Carnegie Report, *supra* note 4, at 28.

[9] *Id.*

[10] *Id.*

write my own Mergers & Acquisitions casebook,[11] which adopted the transaction planning approach as the focus for teaching this area of substantive law. As part of my Mergers & Acquisitions casebook, the students studied a real world transaction in order to understand the real world significance of the legal doctrines and concepts that are part of M&A law.

Given this heavy litigation emphasis in legal education in general, I have also come to the conclusion that the *professional identity* of the law student as a first-year associate in a corporate law practice is much less well developed than the identity of a first-year associate in a litigation practice.[12] My perspective is informed based on experiences from "both sides of the table," so to speak. That is, my perspective is informed based in part on anecdotal evidence provided by my former students who commiserate with me about their work experiences as first-year corporate law associates. In addition, my perspective is informed by those lawyers on the other side of the table who hire and (hopefully) mentor these young lawyers. In designing the educational approach that became the foundation of our Business Planning casebook, we received and incorporated input from "both sides of the table."

First, from the perspective of my former students (most of whom were young corporate law associates, primarily first-year lawyers), our Business Planning casebook is designed to address what many if not all of my former students described as a big "gap" in their legal education. These former students felt that this "gap" left them at a loss as to how to tackle work assignments given to them by senior, more experienced lawyers when they started working as junior corporate lawyers. I refer to this "gap" as the "deer in the headlights look." In other words, these first-year lawyers are generally at a total loss as to what is expected of them as young lawyers and thus are at a loss as to how to tackle work assignments given to them by more experienced lawyers. Moreover, these young lawyers often have no idea as to what to expect in terms of the day-to-day work of a practicing corporate lawyer in a transactional setting.[13] Our Business Planning casebook was deliberately

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[11] THERESE H. MAYNARD, MERGERS & ACQUISITIONS: CASES, MATERIALS & PROBLEMS (2d ed. 2009).

[12] I have been teaching for over 20 years and thus my perspective is informed by countless conversations with my former students as they make the transition from law school to the demands of modern law practice.

[13] Many of these young lawyers report that, after spending a couple of years as associates in a corporate law practice, they seek to move to litigation because they have come to realize that their skills and temperament are better suited to law practice as a trial lawyer rather than a transactional lawyer. In designing our new business law curriculum for the upper division law student, we deliberately set out to create a course that would offer a realistic perspective on the practice of corporate law and the day-to-day work responsibilities of the corporate lawyer so that the law student

designed to address this expectations "gap" in order to better prepare today's law students for the reality of practicing corporate law.

On the other side of the table, we talked to a number of hiring partners as part of developing our educational approach to teaching business planning. Not surprisingly, these experienced lawyers lamented (on a fairly regular basis) that today's first-year corporate law associates were largely clueless as to what was expected of them when they were given projects such as reviewing documents or drafting agreements. This observation is supported by the conclusion of the Carnegie Report that legal education does little to prepare law students for the work that lawyers actually *do*.[14] We consulted with experienced lawyers who serve as hiring partners at both large and small law firms because we wanted to make sure that our new casebook would offer solid preparation for practicing in a transactional law setting on *both* Wall Street and Main Street. All of these senior lawyers were uniformly critical of what they perceived to be the heavy emphasis in the legal academy on the conceptual approach to the material covered in most business planning courses in law school. They viewed this traditional teaching approach as one that leaves law students ill prepared for the expectations and demands of practice as young transactional lawyers.[15] However, consistent with what ultimately came to be one of the conclusions of the Carnegie Report,[16] the goal of our Business Planning casebook is *not* to eliminate the need for law firms to continue the mentoring function that they have long assumed in the professional development of young lawyers.

Indeed, I have told all of the experienced lawyers that we talked to in developing our Business Planning casebook that our new curricular approach is *not* going to eliminate the need for the experienced lawyer to continue to provide that

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would be able to make a more informed decision as to whether to practice as a trial lawyer or a transactional lawyer.

[14] *See* Carnegie Report, *supra* note 4, at 1-14.

[15] Consistent with the experience of my co-author, Dana Warren, who served for several years as the hiring partner at a major Los Angeles law firm, many of the hiring partners that we spoke with regularly commented that today's law student "appreciates the big picture"—that is, the law student understands the terms of the deal in the abstract and has a thorough mastery of the relevant legal doctrines—but is virtually helpless in executing the tasks that the senior lawyer expects of a junior lawyer who is helping the senior lawyer staff a particular financing transaction. Our educational approach to teaching business planning has been deliberately designed to address the "expectations gap" from this perspective as well in order that the first year corporate law associate is perceived as prepared to "hit the ground running" by the senior lawyers who work with our students.

[16] *See* Carnegie Report, *supra* note 4, at 126-44.

mentoring function as part of the continued professional development of the young corporate lawyer. At the same time, I firmly believe that we in the legal academy have a responsibility to "close the gap" so that the first-year corporate law associate is much better prepared to "hit the ground running" in a transactional practice, much in the way that the graduates of my law school who ended up as trial lawyers are well-known for being able to hit the ground running.[17] As a direct outgrowth of writing my M&A casebook[18] came the idea of using a simulated deal approach to teach an advanced "deal planning" course, where the instructor could assume certain foundational knowledge about the law had already been mastered by the law students. However, as is the case for many in the legal academy who wish to include this type of real world perspective as part of their law teaching, the dilemma for me was that I had been in law teaching for over 20 years and as such was not currently "doing deals."[19] The next section describes how I solved this inherent (and intractable) dilemma, a dilemma that I believe faces any academic lawyer teaching the practice of "doing deals."

## I. DEVELOPING THE BUSINESS LAW PRACTICUM

About five years ago, Dean Burcham came to me and asked me to develop an educational program that would produce young transactional lawyers who would have the same reputation as our graduates who have completed our trial advocacy program. Loyola's trial advocacy program has achieved a national reputation for educating law students to be able to "hit the ground running" once they start as trial lawyers. Dean Burcham asked me to create a program that would be the equivalent

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[17] At this point, I have to acknowledge the leadership of my former Dean, David Burcham, and my current Dean, Victor Gold, without whose support and institutional commitment this project never would have gotten off the ground. Like many law schools, Loyola is a law school that has traditionally committed substantial resources to the development of our students as trial lawyers and consequently has developed a trial advocacy program that is well-known for preparing law students to be able to hit the ground running as trial lawyers. Both Dean Burcham and Dean Gold are committed to developing an educational program that prepares our graduates to be able to hit the ground running as transactional lawyers. I am exceedingly grateful for the institutional support that they have offered, especially given the unique and innovative approach that we have adopted. In light of the fact there was no casebook precedent that adopts the educational approach that we have developed as part of our BUSINESS PLANNING casebook, the support of both Dean Burcham and Dean Gold has been vitally important to the success of this project.

[18] *See supra* note 11 and accompanying text.

[19] Indeed, as reflected in the other presentations on this panel, I am not alone in realizing that the pace of deal-making is constantly changing as market practices and terms continue to evolve. Moreover, there is a diversity of educational approaches that can be adopted to address this inherent problem in educating law students to be transactional lawyers, as is also reflected in the presentations of my colleagues on this panel.

for transactional lawyers. In response, my colleague Dana Warren and I have developed a new educational program known as the "Business Law Practicum,"[20] and the capstone course for this new curricular initiative is the Business Planning course using the materials that Dana Warren and I developed together.[21] Before describing this new course in more detail, I thought it would also be helpful to describe the institutional constraints that guided us in developing this new curricular initiative.

In designing this new curriculum, we also had to be sure that our approach was cost-effective and capable of serving a large number of students. My law school, Loyola Law School-Los Angeles, is a very large law school with approximately 1200 students in both the day and evening divisions, and it is a tuition-driven law school. As such, this means that we had to develop a new curriculum that could be scaled to accommodate in excess of one hundred students a year, much the same way that Loyola's current trial advocacy program at Loyola accommodates about one hundred fifty students a year by offering multiple sections of the course. Moreover, Dean Burcham made it abundantly clear that this new curriculum had to be designed in such a way so as not to place any upward pressure on tuition. Both Dean Burcham and Dean Gold are committed, as am I, to controlling the cost of legal education, and therefore, the administration was not prepared to raise tuition in order to fund this kind of curricular reform.

As a result of these budgetary constraints as well as the size of the student population to be served, we decided the clinical model was impractical. Even though expansion of clinical opportunities ended up being one of the central recommendations in the Carnegie Report,[22] we decided that this was not a financially viable model for our law school. We reached this conclusion based on the limited number of students that could be served through a live clinic model as well as the substantial commitment of financial resources required to launch and maintain a live clinic.[23]

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[20] For a more fulsome description of this new program, please visit the Business Law Practicum website at www.lls.edu/businesslaw.

[21] *See supra* note 3 and accompanying text; *see also* Loyola Law School Business Law Practicum Faculty Information, www.lls.edu/businesslaw/faculty (discussing the important development role played by Molly M. Coleman).

[22] *See* Carnegie Report *supra* note 4, at page 160.

[23] Indeed, based on several recent conversations with my colleagues at other law schools around the country, our reasoning presages many of the concerns expressed by others in considering this recommendation of the Carnegie Report.

The solution that we ultimately settled on borrowed heavily from the success of Loyola's trial advocacy program and led to the development of a new capstone course, Business Planning. This approach had the advantage that it could be offered in multiple sections and could be scaled to accommodate increasing student demand as the new program gained traction with students by adding more sections of the course. The goal was to offer a curriculum that would provide every Loyola student who wished take the capstone course with the opportunity to enroll. Student demand for the Business Planning course has grown dramatically in the short time since this capstone course has been offered on a regular basis, as reflected in the following enrollment numbers. In the 2006-2007 academic year, we offered two sections enrolling a total of 38 students. In the 2008-2009 academic year, we offered five sections of this capstone course, enrolling a total of 72 students.[24] The success of the innovative educational approach used in our Business Planning course is clearly reflected in these enrollment statistics and the explosive growth that we have experienced in such a short time period clearly reflects the strong student demand that exists for this type of educational experience.[25] Moreover, I do not believe that Loyola's enrollment experience is unique; instead, I believe that these enrollment numbers reflect the intense level of interest among law students throughout the country in taking a course such as our business planning course—a course that offers students a real world perspective on the practice of law as a transactional attorney.

However, the problem in my law school, as I suspect is the case at many law schools around the country, lies in staffing sufficient sections of the course. Historically, this problem has been compounded by the simple fact that the Instructor tends to be a dedicated corporate lawyer with a busy practice who is more than willing to commit the time to teach the course, but generally does not have the time nor the resources to craft the type of teaching materials that are necessary to teach law students about the life cycle of a deal, even though the instructor himself has intimate knowledge of the issues and complications that are typically associated with successfully completing the organization and funding of a start-up business. So, our goal was to design a casebook that would provide the Instructor with an "off-the-rack" set of teaching materials that we hope will make it easier for law schools throughout the country (including Loyola Law School) to recruit experienced lawyers to teach Business Planning. In addition, as part of our "off-the-rack" set of teaching materials, our goal was also to make it easier for these adjunct Instructors to evaluate

[24] In addition, there were several students who were waitlisted but could not be accommodated because we could not staff a sufficient number of sections in the 2008-2009 academic year.

[25] The success of our innovative approach to teaching business planning is also reflected in the very positive testimonials that we have collected from our graduates who have taken this course, as well as from experienced lawyers who have worked with our graduates in their first year of practice.

students in a manner that is similar to the way young lawyers are going to be evaluated when they graduate and start practicing as transactional lawyers.[26]

Thus, the initial objective of Loyola's Business Law Practicum has been to complete our Business Planning course materials and demonstrate the efficacy of the unique and innovative pedagogical approach utilized in this new course.[27] That process is nearing completion. Our next objective is to use the same pedagogical approach and course structure we used for Business Planning as the basis for developing other course materials for other subject matter areas in which transactional lawyers practice. These new subject matters may be as varied as real estate leasing and financing or intellectual property licensing and transfer.[28]

## II. GOALS OF THE BUSINESS PLANNING COURSE

As we went about designing the framework for this new educational initiative, we did not have the benefit of the Carnegie Report, although we did come to many of the same conclusions about the current state of legal education that the Carnegie Report did. Consistent with the three apprenticeships described in this Report, our new capstone course integrates (i) the teaching of new substantive knowledge about financing a start-up business venture with (ii) the development of the skills required for the law student to be prepared to "hit the ground running" as a first-year corporate lawyer in a transactional practice.

The Carnegie Report places a heavy emphasis on the concept of "experiential learning." However, we did not have the benefit of this terminology as our efforts at implementing curricular reform at Loyola pre-date the publication of the Carnegie Report and the rich body of educational research collected as part of this Report. Consequently, in designing our new Business Law Practicum, we described our educational approach as one involving "integrated learning," a concept which I

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[26] The course materials are designed to reduce the time that a new Instructor spends on the mechanics of the instructional process so that more focus can be applied to giving feedback on the students' graded assignments. *See infra* Part II of this article, describing this aspect of our Business Planning casebook in more detail.

[27] It bears emphasizing that this casebook project and the educational approach that it adopts is the direct outgrowth of my collaboration with my co-author and professional colleague, Dana Warren. Dana's vast experience as a Los Angeles-based deal lawyer representing entrepreneurs seeking start-up funding as well as venture capital financing has proved to be invaluable in developing the foundational approach of our Business Planning casebook.

[28] *See infra* note 31 and accompanying text.

believe is consistent with the "experiential learning" approach that is at the heart of the recommendations set forth in the Carnegie Report.

Our approach to "experiential learning" is to teach new substantive material about capital raising transactions using a simulated deal format. In this way, law students will be able to study the life cycle of a deal on multiple levels: First, students would be exposed to the "big picture," which would allow them to appreciate *both* the business and the legal issues that must be addressed and reconciled in order to successfully complete the business transaction at hand. Second, it allows the students to appreciate the role of the lawyer as an advisor in a transactional setting, as opposed to the litigation context that dominates law school. Third, it allows the students to study the various stages of a deal, from inception to negotiation to closing on a particular transaction. These stages characterize virtually any business transaction that lawyers are going to get involved in. Therefore, even if our students never do a venture capital financing "deal," they are still going to be exposed to the ways in which a "deal" gets done, as well as the ways in which lawyers help move the "deal" from inception to completion.

Finally, the use of a simulated deal format has provided us with the opportunity to develop homework assignments and graded exercises that approximate the tasks generally required of lawyers—particularly junior lawyers—in order to move the deal from inception to successful completion. The next section explains how we structured our Business Planning course to implement these course objectives of integrating the teaching of new substantive learning about capital raising transactions with the development of the skills necessary for law students to be prepared to hit the ground running as first-year corporate law associates.

## III. STRUCTURE OF THE BUSINESS PLANNING COURSE

To promote the development of the skill-set that law students need to be successful as first-year corporate lawyers, we ask our students to complete weekly homework assignments, which have been built into the structure of our Business Planning casebook. These homework assignments are specifically designed to reinforce the student's understanding of the reading material that was assigned for that particular unit. Even more importantly, these homework assignments emphasize and hone the skills that are required of young lawyers who are asked to either review and/or prepare documents to implement the terms of a particular business transaction.

In addition to the weekly homework assignments, the student's grade is based on three written projects that are representative of the kind of assignments that first-year corporate associates do under the supervision of a partner. So, the