

THE FIRST YEAR: INTEGRATING TRANSACTIONAL SKILLS

SUE PAYNE*

I think what I'm going to talk about really plays nicely off of what others had to say. You know, I recently moved to Emory from Northwestern. I've been here since the middle of July, but I've only been teaching at Emory since the 1st of September. My presentation is about the contract drafting module we used at Northwestern in order to create a bridge from theory to practice.

The contract drafting module is something that I prepared in response to our dean at Northwestern's request. It was David Van Zandt at the time. He wanted to respond to the reports and the continual criticism alleging that there was a gap between legal education and law practice, and he wanted to make sure that all of our students graduated with the ability to draft simple contracts. This was something in our strategic plan called Plan 2008 (I think it's getting to be a little bit out of date).

We set about trying to teach all of our 1Ls to draft a contract. We did the big sort of buy-in, and this is what I came up with in order to make it happen. So it's not perfect by any means.

This is how we did it. We offered the contract drafting module in legal writing class, which is two semesters at Northwestern. We did it in the second semester. In the beginning it was me teaching everyone before I trained all of the legal writing professors to do it themselves. And I had a PowerPoint, which you're probably going to get on the flash drive, through which I would introduce the basic contract drafting concepts very quickly. It was a miniature introduction to contract drafting concepts, and I would move very, very fast. We would review a model contract in the course of covering the Power Point. I think that I've provided you with a couple of my models. I have some very simple models--a paperweight purchase agreement between an artist and a man who wants to buy her paperweight and a leaf disposal services agreement between a company and leaf disposal service provider. I happened to be creating that second model in the fall. I could have made it snow removal if I'd been writing it in the winter!

We'd review the model contract together. The student would get some supporting materials that would be posted on Blackboard for them. Then I would play the client, and

* Sue Payne is the Executive Director of the Center for Transactional Law and Practice at Emory University School of Law.

they would do a client interview in class. The students were broken up into teams because, when I first started doing this, I had 90 students in a big lecture hall. I divided them into teams of four or five and gave them team names. They had placards so I could call them by their team names.

After class one, which was a whirlwind I admit, there were tons of email questions flying back and forth between the client (played by me) and the students. The students would actually have two weeks between the two classes in the module, and, during those two weeks, they would be required to draft a contract that memorialized the terms of the deal. They were given an outline, so they didn't have to worry about how to organize the contract. They were also not required to draft boilerplate. I provided them with the boilerplate, so they just had to draft the substance of the contract and the definitions in the beginning part of the contract.

In class two, we would do an in-class critique of all of the students' contracts. I would take the contracts and I would prepare a cut and paste PowerPoint, containing pieces of the contracts. Along the bottom of the screen, I would run a line with a question. This was very hard to coordinate. I wanted to make sure that I asked the question of a team other than the team whose contract clause appeared on the screen. It was kind of cool to do it that way because a team would see their provision flash up on the screen and there'd be this little, you know, excitement -- "Oh god, that's ours and I wonder what we did wrong." The question running along the bottom would go to a different team, and it would say something like, "Is this an appropriate representation or warranty?" That's the kind of in-class critique that we did, and it was because we thought that grading the contracts would be really burdensome, but we still wanted the students some feedback. So we had an entire session where they got that kind of feedback. It was very tough putting those Power Points together -- a lot of hours -- but I thought it was the best way to do it.

After class two, we sometimes had to grade the contracts because, at one point, our dean found out that we had not been grading the contracts. One of my colleagues, a new legal writing professor, told the dean that we were not grading the contracts during a conversation they had at a breakfast for new professors. Suddenly we were grading the contracts. I trained an army of TAs who helped us grade the contracts, and the grades were rather high, as I recall. But we did grade them from that point on.

So here are some of the advantages of teaching the contract drafting module within the legal writing class. The advantages are some of the things that others have already mentioned. You reach a really large audience with 1Ls. You introduce transactional lawyering early on, which gives them a different way to think about being a lawyer. I know I never had that kind of an introduction when I was in law school many, many years ago. And it really broadens the students' views of what lawyers can do. There aren't a lot of television shows, you know, where they show transactional lawyers doing deals. The closest thing I've

seen is “Shark Tank.” Do any of you ever watch that show? There are investors on a panel and someone brings his or her invention in and pitches it to the investors. The investors all fight over who’s going to invest in the invention. But there really aren’t many television shows that depict real people doing deals. If you know any shows like that, make sure you tell me because I want to know. Students are used to shows portraying litigators handling exciting or humorous cases.

Of course, the great disadvantage of teaching a contract drafting module in a legal writing class is that you don’t have much time. It feels tacked on. And the students say, “Why are we doing this? We hate this!” Or they say the opposite. “Oh, this is the best thing we’ve ever done in legal writing!” The contract drafting module does take up two full class sessions plus drafting time. So you have to find a space in the 1L legal writing curriculum that will allow for the two class sessions with two weeks of drafting time in between. It takes a lot of time. It’s very difficult because the students are doing all kinds of things -- litigation-based things -- and adding in a contract drafting module lacks context.

Now I want to tell you about some of the contract drafting assignments that I’ve created for the module. They’re not collected anywhere, and I’m thinking I’ve really got to do something about that. When I first started teaching at Northwestern, the first assignment that I wrote for the contract drafting module was an exotic pet sitting services agreement. That was a module where the students interviewed me and I played the manager of the exotic pet sitting services company. The pets were not ferrets. They were a couple of mini lop-eared bunnies that we had just acquired for my stepdaughter, so that’s how it all came about.

After that, we bought a golden doodle puppy and I wrote a golden doodle puppy purchase agreement. The students interviewed the owner of two pet stores that needed to have a constant supply of these wonderful hybrid dogs on hand. That was the contract that the 1Ls wrote that year.

I then wrote an assignment about a license agreement between Magdalena Stoley and Bradley Pritt, who had just had triplets. Stoley and Pritt licensed the first pictures of their children to Weeple Magazine. I was trying to get a little more complex because I felt like some of my colleagues thought that my assignments were too cutesy.

Then I moved into a book publishing agreement about a self-help book on navigating Northwestern. After that, I had the students draft an agreement between a blogger blogging about life at Northwestern and a blogging network. That was cool, but it was very difficult to figure out how bloggers make money. Let’s put it this way: I now know more than I ever want to know about bloggers’ finances.

Finally, the last assignment I created for the contract drafting module was the one that I’m going to show you a little clip of today. We got to the point at which it was too burdensome for me to always play the client, and not all of the legal writing professors were

comfortable playing the client. Some of the legal writing professors really took to it and loved it, but for this last assignment, I invented an entrepreneur, a millionaire, played by myself. She wants her family to go on eco tours. She's tired of these luxury vacations that they always take, and so she hires an eco-tourism consultant who is going to plan these vacations for her and for her family. I will show you a little clip of that client interview.

My wonderful TA, Jenny Mitchell, was the lawyer interviewing me.

[Plays clip and fast forwards in spots to make short commentary.]

So you can see the disadvantage of playing the client yourself. It's obvious that I'm not an actress. I feel very uncomfortable watching that. It's still fun doing it. If you can get a real actor or actress to do it, as you did, Lynisse, I think that's wonderful.

Audience: I think you were great. I couldn't tell you were playing a role.

Well, I finally got into it, but what you need to be able to do is to have an actor or actress who understands that you're trying to build things into this assignment, you know, like a representation and warranty. I say things in here that I told the eco-tourism consultant, Will Planet, and that I'm sure he's depending on. I'm trying to signal to the students that they need to write a representation and warranty. I'm so glad we did the video now, but I believe that it probably belongs to Northwestern since it cost the school \$500 to make it. The money made it possible to get a two-camera shot where the videographers filmed me and filmed Jennifer and then edited it to make it appear as if we were having a conversation. It would have been free to use just one camera and have a static shot, but our audiovisual department had to charge us \$500 for the editing.

I love creating assignments. I'm sure that you do too, Lynnise, because I can tell you have the fire, and it's really a lot of fun. It's also a lot of work.

I also taught the contract drafting module within a contracts class once. I included in the handouts for you, right at the beginning, a collaborative project I did with Jim Lupo, who's now a dean at Northwestern. Jim used to be a legal writing professor. Jim taught contracts one year and he was familiar with my work so he was somebody from whom I didn't need to get faculty buy-in. You know, he actually thought it was a good idea to incorporate a contract drafting assignment into his contracts class. So he taught the class using a four-count complaint that is at the front of your handouts.

All semester long, Jim was teaching using this complaint between Brian Eno and Vinaferra Brokers Limited. The basic story was that Vinaferra found some cases of rare Château Lafete Rothschild '71 and published a flyer advertising it for sale. Brian Eno wanted to celebrate his parents' anniversary by buying them this wine so that they could drink it. (It was the same vintage as the year of their wedding.) Anyway, Jim created this whole scenario, which was great, and then I came into it later. But Jim used this contract to talk about a lot of things such as whether the flyer was an offer and what constituted a

“qualified purchaser,” as defined by the flyer, and when the contract was formed. Then, on the second page of the complaint, there’s this tiny little contract, which is basically a little bill of sale., and is that a contract? Then paragraph 8 says Dale Zinfan, the representative of Vinaferra, assured Eno that the ten cases of wine would be shipped from the French broker under contract with Vinaferra as soon as practicable. There’s nothing in the contract about any of that. Why are so many of these details not in the contract? Of course, Eno took some action in reliance upon getting that wine. He started building a big wine cellar in his house. What Jim came up with is great. There’s a promissory estoppel claim and even a demand for specific performance because it was very hard to get that particular vintage of wine.

My task was to collaborate with Jim and to try to come up with a client interview and a contract drafting module that would work with the complaint. The big advantage of teaching the contract drafting module in the contracts class was that I got to collaborate with another professor. It was fun, and Jim had already supplied some context before I came in near the end of the semester to teach the module. The whole experience seemed very engaging for the students. Positioned at the end of the semester, the module was a nice break for them, too.

The disadvantage of teaching the contract drafting module in the contracts class was that it took up three full class sessions plus drafting time.

This is how it worked. Class 1 was the introduction to what I call the frame of the contract. That’s just the skeletal part -- the title, the preamble, the background, the words of agreement, subject matter performance provision, --

Audience: Just one clarifying question--when you say you took one class, were you saying you took the whole class or this was covered in part during part 1 and then you would--

S. Payne: The whole class.

Audience: How long is a class?

Ninety minutes.

Anyways, we did this introduction to the frame. It’s a PowerPoint that I have in which we talk about how to write the preamble, the background, and the definitions but nothing about the contracts concepts yet (covenants, etc.).

And then the students did the first client interview of Dale Zinfan, played by me, who is a senior wine broker at Vinaferra. The students then had to go off after class 1 and draft those portions of the contract -- what I was calling the frame. I’m always looking for metaphors for contract drafting. (Sometimes I call these parts of the contract the skeleton.)

I think the students had ten days to draft the frame of the contract. And they were in teams of three, I believe.

In class 2, another 90-minute class, I presented all of the stuff about what's a covenant, what's a representation, a warranty, a statement of discretionary authority, etc., and the students conducted the second client interview. They really laid into me (Dale Zinfan) during the second client interview. When you present the contract drafting module in contracts class, you're going to get much tougher questions than you get from the students in their legal writing classes. It's all about the context. Maybe the students were showing off for their contracts professor, too. I don't know, but they were asking great questions and having a lot of fun.

After class 2, the students had to take the first part of the contract -- the frame -- that they had drafted after class 1 and fill in the picture, merging the two parts together to form the entire contract. Then, in class 3, we critiqued through a Power Point cut-n-paste. We did not grade these contracts, but the students' work on the contracts was considered part of their class participating grade.

I have included some materials in your handouts after the complaint that Jim drafted. I gave you the interview that I drafted for the script with Dale Zinfan. It was a lot of fun to learn all this stuff about wine. It was very time-consuming but the students loved it. They loved asking questions, and they loved some of the funny answers that they got. I remember talking specifically about the qualities of the wine and being kind of snooty. "It delivers a luscious, blackberry, dry, porcini, tobacco and licorice aroma," you know, stuff like that. It was really fun to do, and they got a huge kick out of it. They asked great questions. I thought it was much better than presenting the contract drafting module in the legal writing class partly because it didn't feel shoe-horned in. Instead, the contract drafting module felt almost like a capstone to their contracts class.

I think I've also given you the model paperweight purchase agreement, which is what I gave the students in this particular contract drafting module. It was a purchase agreement, but it wasn't really very similar to what they were going to draft. That's the problem with giving out models. I'm always looking for something that's not going to give them a dead bang, spot-on model. Some people still follow the model way, way too closely.

The other parts of the handouts that you have are the client interview script for Terra Fermata, who's the woman I was playing on the video I showed you. She had hired Will Planet, the eco-tourism consultant. You have that script as well. And then you have the two-page contract that Will Planet himself had drafted. Will said, "It's just my basic form contract, and you can have your attorney rip it up. I don't care."

And then, finally, I gave you my annotated leaf disposal services agreement. This I did because I was training legal writing professors to teach contract drafting within their legal writing classes. And I wanted them to have something that points out what the essential

parts of the contract are and locates where there is a covenant, a representation and warranty, etc. I annotated this model for the professors, and then, eventually, we began to give it to the students. I guess we thought it was a pretty useful document for them.

So, I have presented the contract drafting module in a contracts class. I also presented it once in a general business law class. There, the contract drafting module was about a patent license agreement. We had a company called Healthy Obsession Products, which manufactured and sold products for improving mental and physical health. And we had a product that my husband actually patented at one time: the digital therapist. My husband is a psychologist, and he invented the digital therapist, which is a wristwatch that you wear from which you can hear your own therapist's voice. He's a cognitive behavioral therapist. If you are seeing a therapist regarding weight control and you find yourself about to eat a big donut, you can put the digital therapist up to your ear, press a button, and it will say something like, "You could make a healthier choice." But the voice speaking to you is your own therapist's voice. It was a cool idea back then, but nobody ever wanted to manufacture it. (They had a few nibbles.)

I was lucky enough to have a professor teaching general business law who bought into the idea of trying a contract drafting module in his class. I did a negotiation assignment here, which is much more complicated. I introduced the basic contract drafting concepts, talked about how to negotiate, and then reviewed a model contract. Then, after class, the students had to negotiate and draft a letter of intent and term sheet, so each part was just like a real negotiation. Each party had some confidential information, and both parties had some general information about the transaction.

Then, in class 2, there was more instruction on the basic contract concepts. And here, since we had three classes, I actually had the students practice translating business terms into contract concepts.— After class 2, the students drafted the contract. They had two weeks, I think, and then the final class was, again, the in-class critique of contracts. At that point, we did peer evaluations instead of doing a cut-n-paste Power Point. It was just getting to be too difficult to put those cut-n-paste presentations together. So we had the students conduct peer evaluations, and they were pretty tickled to get a chance to see how the other students had drafted the contract.

So, all of this was actually part of my job talk when I came to Emory. How does the contract drafting module serve as a bridge from theory to practice? The module brings the theory to life. It gives the students the opportunity to act like transactional attorneys. They interview a client. They get their heads around the facts of a deal. They think about the deal in the context of the theory, and they draft the contract. And, to demonstrate this, I have a quote. After taking the contract drafting module in his contracts class, a student said, "Now I understand how hard it is to be completely clear in a contract."

Questions?

- Audience: When you do the cut-n-paste into the Power Points, do you do one for each of the groups?
- S. Payne: I did.
- Audience: But each was a different provision. Did you ultimately go through the whole contract?
- S. Payne: Kind of. I would start out looking for certain things. For example, I would want to show some definitions that worked very well, so I literally had the hard copies of the contracts, and I put sticky notes on them. And I did four definitions, and then I did four monetary provisions. I kind of grouped it together. We would eventually make our way through the whole contract. And then, at the end, I'd have signature lines that were incorrectly drafted.
- Audience: And you can do that in one 90-minute class?
- S. Payne: You can, but it is not ideal. It's really not. I think what Lynnise is doing is a much better idea, which is pulling smaller pieces of drafting into the class. I'm not advocating the contract drafting module I've talked about today.. We're not doing this at Emory. It's not something I've talked to them about doing, but I think I would much prefer to do something with smaller, briefer assignments. The students do really like it. I mean, it's a lot of fun, but I'm not sure how much of it they retain. And then they're in teams, so if you're in a team and you have one person who already knows how to draft, it's not necessarily fair to the other teams.
- Audience: Do you think that you would try doing it in the contracts class again, or do you think the module just doesn't work generally?
- S. Payne: I would do it in the contracts class again if I could find one of our professors here who would be willing to do it.
- Audience: I actually wanted to ask a question about that. So I currently use a contract when I teach. I use a basic form when I teach contracts, but I was thinking it may be a great way to take this (complaint) and have that be where the class ultimately goes, but just to start off with that purchase agreement and sort of build it out and do maybe--be able to integrate--I'm just thinking about not being able to break it--like two full classes but being able to do small client interviews and have a different team responsible each week for asking the fact-finding questions. Ultimately, we could think about how the transaction creates that problem, what the complaint would look like,

and then how to draft at least a couple of provisions of that contract. That's what I'm thinking.

S. Payne: Very cool idea.

Audience: I'd like to take it through the semester.

S. Payne: I do have to say that it's copyrighted by James Lupo, so you'd have to call him. He would likely say "yes," or you can email him.

Audience: I wouldn't necessarily use the whole thing. I'm just saying the idea of breaking it out that way and having this type of setup where it's a transaction that's not completely set in a fact pattern.

Audience: Let me ask you, when you do the peer edit in class, how does that work? I've done it before, but then the students are, "Well, I want to see what I wrote," and they want to change their paper back, where they would go around the room and have everybody talk about it. And then, are they conscious about, "Well, I don't want them to see what I did?"

S. Payne: Well, I think all of that depends on whether it's a graded assignment. Most of these cases weren't when we used the peer evaluation. And I do have a form that I use for it, which asks very specific questions and requires them to write a summary comment and assign a grade from 1 to 5. I get a lot of 4s.

Audience: I have two questions. When you produced that video, you said you had your AV department work on it. Was that the law school's or the university's?

S. Payne: It was the law school.

Audience: And did you leave all the editing to them?

S. Payne: To them, yeah.

Audience: And were you happy?

S. Payne: It was very minimal editing. All they were doing was trying to show Jenny when she was asking a question or reacting and show me doing the same. We didn't cut--I mean we really didn't cut anything out. And, of course, I was talking much more than a client normally would. I mean you'd have to draw the client out more, and Jenny does a lot of that near the end of the video where I got quieter and started to ask her to help me. She does a lot more of that. But yeah, we did it in one take basically, and then they just chopped it together.

- Audience: At my school, we're kind of having a discussion right now about curriculum reform and possibly making some changes. And I'm trying to sort of insert into our conversation the idea that we need more transactional exposure, at least, in the first year. And you talked a little bit about trying to get kind of buy-in from the rest of the faculty. And also, Sue, you talked a lot about--I mean it sounds like you were really involved in training research and writing professors in doing these modules in these classes. Could you talk a little bit more about how those relationships came about and how you approached that--how that even worked in terms of teaching credit for you--I mean did you just do all this voluntarily?
- S. Payne: I did it all voluntarily in addition to my normal teaching load. I was new--at one point, I was new and not jaded and just full of energy. And I started doing it. Everything they asked me to do, I did for free. And then, as the years went on, I began to demand some payment for creating the contract drafting module. Just to create that module for the 1Ls every year, even though I was no longer playing the client and presenting it myself, was a massive amount of work, so I did eventually get not teaching credit but payment for it.
- Audience: You said it started as a goal with the dean saying--the school getting together to have the students be able to write a simple contract. In either of the scenarios, were the best student examples something that you can say they learned to write a simple contract?
- S. Payne: Yeah, I think so. I think the ones in the contracts class were better. I don't exactly know why, and I didn't do a careful study. But I felt like everything that went on in the contracts class with that module went better. Questions were more intelligent. Students were more engaged, and the product was better. I don't really know why.
- Audience: Does that kind of go to this idea in your opening remarks about the false dichotomy between doctrine and skills.
- S. Payne: It does.
- Audience: Because when you try and split them up, it really does create something that's hollow, and then when you're able to combine the two, it really is a much more honest experience for the students.
- S. Payne: I think you're right. I mean I can't scientifically explain why it's better but that's a good explanation.

Audience:

There is a synergy that goes on. If you teach it while you're learning the substance, the doctrinal reinforces the practical. The practical reinforces the doctrinal. The problem with all of that though is to do that, you've got to, as you say, find doctrinal professors that are willing to do it, and by and large you won't. So that raises my problem. My problem is one of uniformity. If we're just throwing it in as an add-on to legal research and writing, even there, all the legal research and writing professors are not transactional people. Most of them are probably litigators or their history is as a litigator. And so what I wrestle with, and I'm trying to structure a transactional program where I am trying to figure out how to do this. My idea is that I've got to get uniformity. I've got to get something so that every single student has a uniform transactional experience in some way. That's my goal. But how do I do that--other than creating a dedicated course on transactional stuff? And then I've got to figure out how to staff it and stuff. But I haven't been able to come up with a way to actually integrate it into substantive classes or really ask the legal research and writing people to do it in a way that's going to be cohesive and give everyone that experience. And if you have it in a separate course, then you've got to staff it, and then you got to grade it because you can't have an ungraded course. So all this stuff about we'll grade it with the PowerPoint, cut-n-paste, and we'll have some--that doesn't cut it. And then how do you really staff if you're getting every single student this 2 or 3 credit, whatever it is, course on transactional stuff? How do you grade it? How do you test? Any thoughts--any help on any of that?

I mean, one of the goals that I try to have is not to think about it just as uniformity. You can think about consistency, but there's never going to be complete uniformity if different people are teaching it. I've come to terms with that. But if you think about the goals of the assignments, what do you want to expose the students to, and what do you want students to be proficient in when it comes to transactional skills? Then, you can create a rubric. We use rubrics for my writing assignments that identify categories. And they have narratives kind of what would be highly proficient, what would be proficient, what would be developing. So that's a way that you can--we've been using those rubrics as a way to try to ensure that all of the students reach proficiency in the techniques or categories that we have identified for students. And then that is what their grade is premised on. There are scores associated with each of those

categories. And the rubrics--I know the rubrics have been used a lot in legal writing courses, and so [inaudible] uses them in doctrinal courses, but it's been the best way to identify student learning outcomes that the students know in advance. And then the flip of that is there is some consistency in how different professors are scoring. Does that make sense? So that's been the best way for us to--

S. Payne: And are you talking about transactional assignments or just legal--

Audience: No, that's just been in our legal writing assignments, but I've helped a family law professor do it for a summary judgment assignment, the drafting --just our regular drafting course, he's used some as well. And there's actually a whole website on how to create a rubric and examples. If you Google "Sophie Sparrow," then the rubric comes up.

S. Payne: Cool. I like that.

Audience: I was going to say we have a business drafting course [inaudible] our upper-level writing course and anything--and that's a requirement, so we have an 85 average that we have to grade to, so we've got to find some way to do grading. What I do is I know you have a text, I guess. I think I use Tina Stark's text,¹ and I just give weekly assignments out of it and a midterm project of a client letter on the matter, a final project, and other people who use contracts and things like that. I mean it's pretty straightforward. I mean, you just tell people they've got to grade to something, and they'll find a way to grade to it, unless I'm just being the person who does something that they tell me to do.

S. Payne: I grade in different ways. I do use Tina Stark's book with my own because my book is only a collection of assignments. It's all of these narrative assignments that I came up with, so it's not a textbook the way Tina's is. I made the students buy both, and mine isn't that expensive, so that's good.

To the issue of grading--how do you grade a contract? I have used rubrics, nothing as detailed as what you're saying, so I want to see what the Sophie Sparrow website says. I've used electronic bubble comments. There are things to comment on in contracts just like in any regular legal writing assignment: "You know, you really missed a

¹ TINA L. STARK, DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO (2007).

point here. The deal fact was blah blah blah.” There are all kinds of comments. But I’ve also done voice comments, which is another thing I think I’ve talked about in this conference before, with my microphone plugged into my computer, and I just talk the comments through, so students feel like it’s sort of an office conference. They are definitely ways to assign grades.

But one of the things that I wanted to just mention is that for a while at Northwestern, we tried--and this goes to your question about getting the faculty interested in this. Before the fall semester, I would meet with all of the contracts professors and do my speech about why they ought to try this and how great it will be. And then it seemed like it wasn’t early enough because they would always say, “Well, I’ve got my syllabus all mapped out, and it’s exactly the same as it was last year.” So it wasn’t until a legal writing professor began to teach contracts that I was able to get the buy-in that I wanted so that I could have the contract drafting module. But Jim Lupo and I did talk about how cool it would be to have a one-credit hour course that runs concurrently with contracts class in which the students are doing contract drafting.

Audience: Yeah, I pitched that too.

S. Payne: And that didn’t work?

Audience: And the contract professors hated that, so no. So then I went to them--well I have a transactional class but it’s not contracts per se. It’s transactional, and that’s selling a little bit better.

S. Payne: Well that’s good.

Audience: I teach a two-credit transactional drafting class that’s optional for second years. It’s one of our required third semesters of legal writing. And I currently--we start with a retainer agreement and go all the way through a purchase agreement. Our first year of the course we only graded--we commented but we only graded the final paper of each semester, and now I’m trying to work some more contracts in. So I’m thinking about going to a model where the first few contracts of the semester are not graded but are office conferences. They come in. You know, I highlight some of the--you know, I don’t go through it with a fine-tooth comb but look for some of the common mistakes that they made. And then the last two assignments, I would make up their grade. But it gives us the

opportunity to have group work, and they don't feel like they're burdened--I get that a lot too.

S. Payne: The free rider.

Audience: The free rider. The person who's a control freak, and so I thought [inaudible] group assignments out of the graded assignments into those assignments [inaudible] so a little bit of a hybrid. It takes a little bit of the grading onus off and combined with [inaudible] reverse.

Audience: So I was just curious about [inaudible] anybody else in here. I'm doctrinal, but I do skills transfer in all of my classes. So my question, if you had to recommend to somebody to read one or two books on the pedagogy behind experiential learning and this type of teaching because it's--like a lot of this stuff I figured out by trial and error. But I would certainly love to know what are the things you've hired somebody new in your writing program, or you said you're in your second year. Like, what was the book that just helped you the most, or the resources that helped you the most, because I would love to be able to read it myself and give it to the other faculty members who are reluctant to start thinking about this.

S. Payne: You know, I don't know as far as experiential learning in a general sense, I don't know what I would recommend. I'm a contract drafting expert, so Tina Stark's book is the book. I mean, it's just the most practical so far that is out there. But I don't know in general.

There is a book that I talked about today in my kickoff speech *Reforming Legal Education*.² The editors are David Moss and Deborah Moss Curtis. It has articles about experiential learning at all different schools. David Moss writes an article in the beginning. And he and Deborah Moss Curtis jointly author one at the end, and then in between it's about different programs at different schools, like Washington and Lee.

Audience: There is also a brand new organization for experiential learning. We had our first annual meeting last week.

S. Payne: And we joined, yes.

Audience: So that's [inaudible].

² REFORMING LEGAL EDUCATION: LAW SCHOOLS AT THE CROSSROADS (David M. Moss & Deborah Moss Curtis eds., 2012).

- Audience: What's the name of it?
- Audience: Alliance for Experiential Learning in Law. But you should know that there's sort of this split of opinion as to whether this kind of teaching qualifies as experiential learning versus clinics and externships, so I don't think everyone agrees on whether simulations qualify as experiential learning.
- I also wanted to make a point about your challenge about getting at least consistency across the curriculum. What we're talking about at our law school is adding that single credit and not having it attached to any particular doctrinal class, so it wouldn't necessarily be contracts, but it would be a transactional credit that a student could take either in property, in contracts, in [inaudible]. So that might be a way to sort of spread the burden among more faculty members. And if we do it, we would call it a transactional credit or lab and attach to it one.
- Audience: And you would allow students electives? And electives you would place--
- Audience: We've talked about it both ways. We've talked about first semester assigning them and then second semester allowing them to choose because first semester they don't even know what torts are. But that's one way of spreading it out.
- S. Payne: Well, who's supposed to teach those courses?
- Audience: Really, in the beginning stage, we talked about adjuncts. We talked about doctrinal faculty members. We talked about having somebody come in, who's interested, all variations, all have their own pros and cons.
- Audience: I was just going to say we just had this conversation with my students this week in class because I had them draft a client advice letter and send it as an email. But I purposely chose a strategic issue. In other words, one was kind of analyzing whether a motion to dismiss would be granted or not because I thought that news would be something that ought to be sent by way of email because clearly they're not getting their motion to dismiss granted. There's not a lot of litigation strategy that's revealed within the whole second issue. It's about how to deal with this affirmative defense that they have. And so we had a little conversation about why we might not put that information in an email and what concerns you could have. So I

think it's good for them to be thinking about the reality. Is there some stuff they're going to have to send or their client is going to want them to send [inaudible]? That's just the reality of practice. But I think it's good for them to be thinking about what they shouldn't include. And there seem to be more articles about that now in terms of what's appropriate to send and what's not.

S. Payne: One other thing that is sort of tangentially related to that is the American Bar Association just changed the Model Rules to add that part of being a competent attorney is staying abreast of technology as far as what happens when you transmit a document electronically.³ Have you scrubbed it for the metadata? You actually have to know that stuff. That's now one of our ethical principles, and I had a wonderful discussion in my contract drafting class about that because the students know a ton of stuff about all kinds of data that can be buried and found and how to do it. So it's something else you might consider. I always try to encourage everybody to stick some ethical questions into the--even if it's a drafting class. There are tons of things that can be discussed.

Audience: All of your problems seem really creative and fun. But do you do that on purpose? Do you try to find problems that they're not going to find a form out there that's anything like this?

S. Payne: That was the initial impetus for it, but I think as time went on, I started to--I do actually ramp up during the semester when I'm teaching contract drafting. I start out with an assignment in which the students are not allowed to use any precedent except the model I give them, and then I give them a precedent assignment just like a canned memo assignment with like five pieces of precedent. And then for the final contract, I let them use anything they can find. So yeah, that was kind of the initial thought was if I do something totally unique, they won't find a model that absolutely replicates it. But I kind of moved it away from that because I went to a book publishing agreement. They can obviously find models for those. Mostly, I just write stuff that I'm interested in. So I have a whole series of things about a female golfer because I was learning to golf that summer. You have to do what you're passionate about I think.

Thank you very much everybody.

³ MODEL RULES OF PROF'L CONDUCT R. 1.6 (2012).