PREPARING "MAIN STREET" LAWYERS: PRACTICING WITHOUT BIG FIRM EXPERIENCE

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Lisa Reel Schmidt

Teaching Contract Drafting to Main Street Lawyers

I am Lisa Reel Schmidt, formerly Lisa Penland. I am here today with Steve Garland, and Robert Statchen. What we all have in common is that we teach drafting and transactional skills to main street lawyers, not Wall Street lawyers. We may differ slightly in how we view main street lawyering. Essentially, however, we define main street lawyering as lawyering in the context of a small firm and often in the context of a general practice.

This panel comes to this conference with two premises. The first premise is that we need to teach transactional skills in law school because a fair number of our students either will focus solely on transactional law or will be engaged in a more general practice where transactional skills are necessary. Our second premise is that the number of our students who will engage in main street lawyering is significant and, therefore, we need to focus not merely on transactional skills, but on those skills that are specific to main street lawyering. Both of these premises are borne out by the statistical data.

It is doubtful that anyone will disagree with our first premise -which a fair number of students will engage in transactional practice. It is the theme of this conference, the conference before, and the conference before that. That consensus is supported by statistics. As early as the MacCrate Report in the early 1970's, the academy has recognized the need to increase the teaching of business skills based on the increasing number of lawyers practicing in the corporate atmosphere.[1] Additionally, a 2000 survey of the Young Lawyer's Division of the American Bar Association indicated that more than half of the young lawyers responding to the survey were practicing in the transactional area.[2] The

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[1] *See* ABA Sec. Leg. Educ. & Admis. To the B., *Legal Education and Professional Development – An Educational Continuum, Report of theTask Force on Law Schools and the Profession: Narrowing the Gap* 3-8, 11 (ABA 1992).

[2] *See* ABA Young Lawyers' Div., *Career Satisfaction Survey* http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/satisfaction_800.doc-21k-2012-08-16

MacCrate Report also noted a survey of the Chicago Bar Association that indicated that more than half of the Chicago Bar members were practicing in corporate transactional areas. Thus, it is fairly well established that transactional lawyers make up a significant number of lawyers practicing law and, therefore, law schools ought to teach transactional skills.

Our second premise is that we need to teach transactional skills that are specific to main street lawyering. What do we mean by main street lawyering skills? When I teach a short unit on transactional drafting to first year students, I call the transactional drafting I am teaching "death and deal" drafting. Of course, transactional drafting extends beyond the law involving death and business deals, but the phrase is alliterative and the students remember it because it is alliterative. What I mean is that transactional drafting is much broader than business and contract drafting. It includes other areas of law such as probate, wills and trusts, social security disability law, and, in some respects, family law. Many areas of practice are more transactional than litigious in nature. Many of those areas fall into main street lawyering practice. Thus, our premises are that, yes, we need to teach transactional skills, but, more importantly, we need to teach main street lawyering transactional skills.

There are also statistics that support our premise that a significant number of lawyers engage in main street lawyering; therefore, we ought to teach our students main street lawyering skills. As noted earlier, by main street lawyering we mean practicing in a small practice setting and often in a general practice setting. The National Association of Law Placement provides nationwide statistics that illustrate that most of our students will practice in smaller firms. Of those young lawyers in the 2011 class who went into private law firm practice, about 6% went into solo practice; 44% went into practice in 2-10 person law firms; 11% percent went into practice in 11-25 person law firms; 6% went into practice in 26-50 person law firms.[3] Summarizing those statistics, that means that 67% of those lawyers entering private practice in 2011 went into firms of 50 lawyers or less. That is, there are a considerable number of young lawyers practicing in small firms and we perceive that to be main street lawyering.

Let me add to the mix some statistics about the students that I teach. According to Drake's Career Services Office, of Drake's 2011 graduates practicing in law firms 16% are in in solo practice; 58% are in firms of 2 to 10 persons, and 11% are in 11 to 25 person firms. Only 5% are in firms of 50 or more. In sum, 75% of Drake students that go into private practice are practicing in firms made up of 10 lawyers or less. From both the nationwide statistics and the local statistics, it is evident that students need to learn main street lawyering skills.

Finally, there are Iowa statistics that illustrate that main street lawyering not only includes the idea of practicing in a small firm setting, but the idea that the lawyer is engaged

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[3] National Association of Law Professionals, *Class of 2011 National Summary Report* http://www.nalp.org/0712research.

in a more general practice of law. In a 2011 Iowa State Bar Association survey, out of 535 responses from practitioners, 70% stated that they practice in more than three areas of law. This suggests these lawyers are engaged in a more general practice.[4] In sum, the statistics support our two premises. Lawyers are engage in transactional practice; therefore, we need to teach transactional skills. In addition, many lawyers are engaged in small firm and general practice; therefore, we need to teach main street lawyering skills. With those premises in mind, let's turn to the challenges of teaching transactional skills to main street lawyers.

Steve Garland

50 Years of Transaction Practice; 5 Years of Teaching Transactions: Lessons Taught and Learned

I'm Steve Garland. I worked for 25 years in a commercial transactions practice in North Carolina. After law school I worked for a couple of years with Moore and Van Allen a relatively large firm in Charlotte, North Carolina, so I know something of larger firm practice -- not Atlanta or New York City mega-firms perhaps - but a larger Main Street firm. I spent most of my career, however, with Blanco Tackabery, in Winston Salem, NC with about 25-26 lawyers, a more traditional Main Street transactional firm.

One of the challenges in teaching a Business Drafting course is conveying to the students the life of a transactional lawyer. I am a visual person, so I have chosen some images for the students to consider. First, I show them this slide of circus-act plate spinners and analogize it to a transactional lawyer's responsibility to keep all of the different aspects of a transaction going at the same time. But then I tell them that the life of the transaction lawyer is more complicated than that. More like the work of a juggler perhaps. And not just any juggler, but one who juggles different objects like one I recall from Saturday Night Live who would simultaneously juggle a chainsaw, a bowling pin and an apple -- every now and then taking a bite from the last. A transactions lawyer always has different problems to deal with. The lawyer project manages the non-legal aspects each of them unique.

I finally settle on a different graphic representation, however, a person from a YouTube video who juggles while simultaneously solving Rubik's Cubes. This is the model of a transactional lawyer. I tell my students, "You're not that lawyer in the library. You're not that lawyer doing depositions. You're not that one who's going to be standing up in court. You're this guy -- the Rubik's Cube solving juggler. You not only juggle all the non-legal tasks necessary to close the transaction; you have to solve the legal problems as well. You're the person who's doing all of those things simultaneously."

While Business Drafting class is an extension of the legal writing program where one goal is to build writing skills, as Sue Payne referenced in her keynote another important

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[4] *The Iowa State Bar Association 2011 Economic Survey of Legal Practice in Iowa,* The Iowa Lawyer (June 2012).

goal is to teach the students that the audience for their work product is different. The new audience is not the traditional first year legal writing audience of senior attorneys or judges. To drive this point home, I show them a slide of Bob Young. Our law school is currently housed in tandem with our business school. Sometimes there are speakers who come to the school, and they talk to both the business students and the law students in a common courtroom area. Bob Young came to speak (in the slide he is easily identified because he's wearing a red hat, symbolic of the company he founded, Red Hat, Inc., an open source software company known for its version of the Lynux operating system). A successful entrepreneur, Young asked the audience "How many people here are lawyers in this audience that came to see me today?" A fair number of the 75 people who were there, raised their hands, and his comment to these prospective lawyers was in the paper the next morning. "I've got bad news for you guys," he said. "The world doesn't revolve around you. It's like the world operates despite you guys." The students need to understand that they have moved from learning about and writing for an audience of clients that sees them as their knight in armor representative in litigation to a more skeptical audience.

In the transactions context, the lawyer has to go out and convince a business person, like Bob Young, to part with his funds to help him with a transaction, and business people are pretty skeptical about doing so. As Tina Stark points out, and as Bob Young's verdict underscores, it's easy for the lawyer to get the reputation as a deal killer. Thinking like a lawyer is very different for a transaction lawyer and requires very different skills from those needed in a litigation practice-- what I refer to as the pathologist skills. Litigators generally take apart something, tell people what happened, and try to convince someone to pay for what went wrong. Transaction lawyers have to have similar issue recognition skills, but have to think creatively about a way to solve the problem because the transactions patient is still living. A transactional lawyer is not a character on Bones, dissecting a corpse; she's House, diagnosing a problem to keep the patient alive by finding a creative solution. Transactional lawyers are the people trying to keep the transaction alive to get their deal done.

So, throughout the course we talk not only about the need to work to solve the clients' legal problems, but the need to understand their business. If they have a rhythm to their businesses, the lawyer needs to understand that rhythms. If they need to close deals in a certain time frame, the lawyer needs to consider that. Many considerations outside of the standard legal realm of rules are necessary to exercise the legal imagination that adds value to the transaction. If a lawyer can't exercise legal imagination, if she can't predict what's coming up and find a way to get the client where the client needs to be then that lawyer is not going to be a very good transactional lawyer. The transactional lawyer has to convince the Bob Youngs that she can do the job and that she's worth it.

Lisa Reel Schmidt

In talking about challenges of teaching our students, I would like to preface what I am going to say with a few comments about my students. My students are smart; they are engaged; and they are wonderful analytical thinkers. However, one of the challenges I face in teaching my students is that most of my students do not have a sophisticated business background. There are several reasons for this.

The first reason that many of my students do not have a background in business is that they have not taken transactional or business courses in law school. I teach contract drafting in an interim two-week course, and a student can sign up for my course if he or she has completed the first year of law and the first year Contracts course.. Of course, I could require more prerequisites. However, because I believe contract drafting is an important course for all students to take, it is more important to be inclusive rather than exclusive.

In addition, most of my students have a very limited background in contracts, both because of their academic backgrounds and because they are young and have limited work experience. Only 20% of Drake's incoming 1Ls have degrees in business. The bulk of incoming 1Ls have earned their undergraduate degrees in the liberal arts. Forty-seven percent of Drake's 1Ls go straight from undergraduate school to law school, and 81% go to law school within two years of earning their undergraduate degrees. Only 11% of Drake's incoming 1Ls have a five-year gap between undergraduate graduation and entering law school. In addition, the average age of Drake's 1Ls is 25; 67% are 24 or younger, and 87% are 29 or younger. What all of this suggests is that law students are a very young group of students with little academic or work experience related to business or transactional law.

So how do I gear my teaching to my audience? First, I am very careful that my exercises and assignments are appropriate to the business knowledge of my students. When I choose from prepared assignments and textbooks, I am very selective to ensure that the underlying content is not too sophisticated. My purpose is to teach my students the basic skills of contract drafting without being distracted by the complexity of a particular business transaction. Because of this need to gear assignments and exercises to the students' level of sophistication, I create the bulk of my own exercises and assignments.

The second thing I try to do is remember that while I want to cater to the students' limitations, I also want to expand their business and transactional knowledge base. For example, one of the things my students do not understand is the process of purchasing property, whether that property is real estate, a business, or some other type of property. While a few of my students have purchased homes, it is generally only a few. Even fewer have experience purchasing a business, a large piece of equipment, or anything of that nature. Because they do not have this experience even the concept of a three-step purchase process - a written offer and acceptance, a sales agreement, and then a closing – is difficult for them to understand. Related to that, they do not always understand the difference

between a contract for a term and a contract for a closing. Thus, these are few of the areas, among others, on which I educate my students throughout the class.

Finally, I work to broaden their horizons on ethical issues. Without previous business or transactional work experience, the students are unaware of the unique ethical issues that arise in transactional legal work. We spend the greater part of one of our three-hour class periods discussing and unwrapping these ethical issues.

In sum, my primary challenge in teaching my students is their lack of transactional sophistication. I address this by creating appropriate material so that they can work on their basic skills without being too distracted by complex business concepts, but also by expanding their transactional knowledge base throughout the course. Let's now turn to a quite different challenge that Bob has.

Robert Statchen

Creating Value for Transactional Attorneys through an LLM Program

I want to shift gears just slightly and start off by saying I really appreciate the statistics Lisa put together at the beginning of this presentation because I think they don't get enough exposure as far as the fact that, again, most attorneys are not practicing in the large firm environment after graduation. I think those numbers are important.

My name is Bob Statchen. I teach at Western New England University. I run a small business clinic and I've been doing that for about five years. I also teach two online LLM courses in drafting corporate LLC formation documents as part of our LLM program in Closely Held Businesses. Prior to that, I was in private practice for about ten years, in the 25 attorney and below size firms, and also was an Air Force attorney.

I would like to talk about the challenges of teaching students who actually do have some, and sometimes extensive, business and legal experience. I primarily get all 3Ls for the clinic and many of them are in the JD/MBA program. Not only have they taken their businesses classes, but they also have business experience which served as the impetus for them entering the program. Also, many of the 3Ls interested in the small business clinic are the students who worked in or even owned businesses prior to law school. Similarly, the LLM students can sometimes bring over twenty years of legal experience to the course.

Starting with the clinical students, one of the first issues presented with a student who has more business experience is assessing what is business advice versus what is legal advice. One concrete example of that is a trademark where you have a client come in who has a trademark or a word mark, and it does not appear to be to be very effective not only for a likelihood of confusion or merely descriptive perspective, but also from a marketing perspective. For trademark work, my clinic does a preliminary availability search and then, if appropriate, we'll do a full search report, and in some cases, when possible, we'll file the trademark form.

Some students have an almost visceral reaction wondering why are we helping a client with a mark when, from a marketing perspective, they believe it will be ineffective. These students have either taken several marketing classes or they have marketed products or services in prior employment.; Their question is primarily whether, as clinicians, can we give advice about the quality of the mark in addition to the legal sufficiency?

There are similar questions with business models. Clients come in to the clinic for their initial client meeting and explain what their business is, and during the post-interview debrief with me, the students are concerned because they believe the client does not have a sustainable business model. What is their role in that situation? Do they form an LLC for a business they think could never be profitable, or even sustainable?

I think these situations create a lot of opportunity to talk about what business lawyers do at multiple levels. One perspective is that we are not there to advise client on business development issues, especially in the initial stages, during the initial client meeting with a new client. We heard talk this morning about attorneys becoming a trusted advisor, and these scenarios really create a unique opportunity to talk about the fact have attorneys have to earn the right to tell a client their mark is not good. Have the students really earned that right at the first meeting? They probably have not nor have they become a trusted advisor in that short period of time nor have they likely gathered sufficient information to make that analysis. These "teaching moments" give us the opportunity to discuss that there are many business models that people didn't think would initially work. Online sale of books 20 years ago -- how's that ever going to work? There are bookstores everywhere. What are they bringing to the table? It gives an opportunity to talk about what if we're wrong about our business assessment. Further, we can discuss whether, as lawyers, law students and graduate students, we have certain obstacles to really understanding the entrepreneurial culture. As compared to entrepreneurs, we are not generally considered risk takers. We need to discuss with students how that impacts the attorney-client relationship in the business advising context.

By the end of the semester, when the students have a final meeting with a client, at that point, can they be a bit more critical? Is the client looking to the attorney for more advice? You see that transition throughout a semester with a client as far as talking to the students, working with the students, and they start to ask more questions. They start to become that trusted advisor, and again, it gives the opportunity to discuss this role for the business attorney. There are studies that interview business owners and ask about their top trusted advisors. From what I've seen, the one and three positions are always interchanging between accountants and lawyers. And, again, it opens a great opportunity to talk about the attorney acting as the trusted advisor. What unique skills does a JD/MBA actually bringing to the business client?

Working with experienced LLM students from a legal skills and drafting perspective presents unique challenges. Primarily, in this new curriculum, I want to ensure that the educational experience for the students is more than just CLE. As this is the first semester I am teaching in this capacity, it's a question I am still trying to answer. In my clinic, I personally utilize a significant amount of CLE to keep up with practice developments. And I am continually trying to assess how my course differentiates itself from these offerings so that the program can deliver a product that is different and adds greater value than what basic CLE is providing.

One of the obvious methods of differentiation is the time and depth that we are able to bring to a subject. Some CLE programs can be six hours or maybe even a couple days. However, I am seeing that many complex subjects are also being covered in ninety minute teleconferences. Sometimes these programs result in a presenter giving a very superficial overview and then implying that it is very complicated and if you need assistance, you should hire a specialist in the area (and by the way my contact information is at the end of the presentation materials). Of course, an LLM program does not bring that time limitation or potential bias to the curriculum.

Another way that advanced business and legal skills courses can provide value to students is helping students manage the amount of information available. There a massive amount of information on these subjects out there on the internet, of vastly varying degrees of quality. If you look at one of the handouts I provided there is a syllabus I use with the LLMs in which I start to distill what is good information. I see this as a role that legal educators can take as far as what is an effective resource both for substantive information as well as drafting forms which are such a crucial aspect of business law practice. Legal educators can ultimately provide specific guidance as to resources not only on the subject matter, but only state-specific resources. We can identify which are the available resources that are well written and regularly updated. While this may not sound like traditional legal education, I think it an area that legal education should consider embracing more fully as this is the type of information that students, especially LLM students, are looking for and can put into use immediately.

From a more doctrinal perspective, I also believe we have the ability in these transactional courses to find recent cases and administrative decisions are very extremely instructive and really make the subject matter relevant. Despite the 1997 check the box regulations, the IRS is still out there telling business people they've lost their S-Corp designation. Creditor protection methods used in conjunction with drafting LLC agreements is also getting significant attention in the courts. I think studying these current cases and decisions and combining that study with analyzing drafting concepts, and the dangers of not closely editing available forms, can be extremely effective. It is engaging to discuss specifically what attorneys need to do to avoid these practice pitfalls. Ultimately, I

think these methods can better prepare both JD and LLM students to be ready to practice in the business environment.

Lisa Reel Schmidt

We were going to talk about some of the necessary skills that need to be taught as a part of transactional drafting, but I believe that everyone here knows what those skills are and is teaching those skills. For example, we should be teaching students an understanding of the macro-organizational structure of a contract; how to identify and use the various contract components; the mastery of specific language used in a contract; and an understanding of both legal and non-legal research sources relevant to transactional practice.

More importantly, however, I'd like to identify some broader transactional competencies that we ought to be teaching our students. These additional competencies might not be traditionally viewed as transactional, but they are much more related to transactional drafting than to litigation. Of course, I have some statistics to share with you to begin the identification of those competencies. In the 2011 Iowa Bar Association survey that I mentioned earlier, about 70% of the lawyers responding to the survey indicated that they were practicing in three or more areas. As noted earlier, this suggests that these lawyers are engaged in a more general type of practice. The next question is – what areas of practice predominate in these general type practices? The survey noted that 22.5% of the lawyers responding indicated that the area yielding the most fee-producing time was estate planning; this is not surprising in the state of Iowa where we have an aging population. In addition, 15.1% of those lawyers indicated that family law was the area of law yielding the most fee producing income and 8.1% of those lawyers identified real estate. In contrast, only 7% of responding lawyers indicated that personal injury was their highest income producing area of law.

These statistics made me think about what I ought to be teaching law students who will be practicing law in Iowa. In an article I wrote a few years ago about achieving basic transactional competencies[5], I noted that lawyers in general practice ought to be competent in real estate law, tax law, estate planning, and family law. This certainly seems to be supported by the Iowa statistics. Thus, in a basic transactional course, assignments ought to be geared to those areas of practice.

Robert Statchen

In regards to legal skills for business clients, I would like to specifically look at problem solving and how you facilitate a student's ability to identify what the client's needs are. I would like to present some recent scenarios from my clinic in which students had to apply problem solving techniques to assist students. These scenarios also reflect the type of

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[5] Lisa Penland, *What A Transactional Lawyer Needs to Know: Identifying and Implementing Competencies for Transactional Lawyers* 5 J.ALWD 118 (Fall 2008).

issues presented to small business clinicians and how they could potentially be used as sources for practical scenarios on legal writing and doctrinal classes. This analysis also revisits the issue of business problems versus legal problems as I previously discussed.

Recently, we had an example in the clinic where a client came in and had issues with employees. It was a manufacturing company that made sheds, and they said they can't keep their employees. Their employees were always transitioning as the construction industry is generally known for high employee turnover. Prior to the client meeting, the students received a few hours of orientation on employment and other legal issues for small businesses. This training is primarily designed so that they knew how to nod intelligently not get the deer in the headlights look when the client started talking about their legal issues. Then we work from there based on the specific issues the clients bring to the initial meeting.

The students' immediate response in this case was to offer assistance with drafting an employee handbook. This presented a great opportunity to talk about what the client really needs. Now, the client is in an industry where the turnover is common, and that's appears to be more of a business problem than a legal problem. Is there a role for legal advice in this situation? Ultimately, we were able to explore legal ways to incentivize employees (for example, profits interests and bonus programs) to encourage more commitment ot the company.

These types of scenarios also present an opportunity where both clinical, legal writing and doctrinal professors can collaborate on creating real world scenarios for non-clinical courses. Every semester I sit back and chuckle at issues clients come in with that are really practical legal issues that I would never have come up with or created for either a simulation for students to do.

As another example, a client wanted to set up a shipping structure for farmers so she would be the conduit between consumers and organic farmers in Western Massachusetts, where there are lots of organic farms. During the initial interview, she also mentions that she wants to be able to sell fruits and vegetables utilizing an ice cream truck model where her employees will travel into neighborhoods to sell the produce. The students had to spend significant time figuring assessing if it was possible to structure something like that in compliance with FDA, state and local regulations. Again, a client wanting to sell vegetables through town using an ice cream truck model was not a scenario I would come up with and yet it proved to be an extremely valuable administrative law experience for the students. Those are the sort of problem solving scenarios that make it legal education tangible for the students.

I think the link to problem solving is client interviewing and really being able to get useful information from the client. Following up on John's comment about being able to interact with the clients, being able to interview the clients and listen to them in order to assess what their needs are is important. One of the preliminary exercises I do with the

students is tell them we are culturally bias against listening to people for purposes of finding out more. I have them do an exercise where the next time they are interacting with people, whether in school, at a a party, or at home, the need to listen to how someone converses with them. When they say they went skiing this weekend up at Killington, the response from the listener will generally not be how was the weather up there, did you have fun, or who did you go with. People will respond with "I went skiing at Okemos and this is what I did." That's how conversations really take place.

The next step after they realize that is what is happening when people are communicating is for them to try and be more effective communicators. You can practice this skill by not immediately reacting with "Well, I . . . ." Students regularly come back the next week and saying how they enjoyed the exercise and how people seemed to really enjoy talking with them. I also discuss with the students that this is an effective job interviewing skill, too.

Also, a part of this client interviewing process is understanding and explaining to students how clients are going to come in with varied types and amounts of information, and our job is to distill from that what are legal and relevant aspects. I make the connection because, again, I think there's a closer connection to doctrinal and skills-based teaching than is sometimes perceived. In the doctrinal contexts, exams require the students to take in facts, identify the issue, identify the applicable law, apply the law to the facts and make a conclusion. That's similar to having a client come in and explain their business and concerns and you identifying what, if anything, the student can do to assist the client from a legal perspective. Also, having the student recognize that they should not expect to know all the answers at the first meeting and, much more often, will have to take the information from the client and then research to assess where and how they can assist the client. Explaining that linkage from law school to real practice can be effective.

I would also like to discuss a third problem solving exercise that I have found to be very effective with law students. Many law schools are associated with business schools or have a business school on campus with both graduate and undergraduate students. One experience that has been very successful is working with a business professor teaching entrepreneurism. The business professor has young undergrads who are putting together business plans, and therefore there will be legal issues for the new enterprise. Often, the business students do not take the time to fully address the legal issues for their proposed businesses. The exercise we conduct basically provides law students the opportunity to advise the business students on these legal issues for their hypothetical businesses.

The law students interview the business students as clients, formulate questions, and then have a counseling session where they counsel them on their business. Again, this exercise has really worked well. We had one situation where a business student gave our law students the opportunity to look at their business plan and some questions that they had

prior to the meeting. During the meeting, the law students began asking about zoning requirements because they had looked at them based on the address of the proposed business in the business plan, and found they were very restrictive. The business students were somewhat taken aback and said they had made up that address in Florida.

This exchange actually worked out really well. For the business students, it really solidified that lawyers can be part of the team and help identify issues. For the law students, they were able to use their legal skills and see where they can add value to a proposed transaction. These interviews are conducted in an open forum with the other business students and law students and those watching the exercise equally benefited. This exercise provided an opportunity for law students to actually practice legal problem solve with future business people in a fairly low risk environment.

Steve Garland

Lisa's statistics show that teaching our students transactional skills will be important because many of them are going to go out and either work by themselves or work in smaller firms. In these situations, they are likely to handle transactions in the mix of their legal work. Lisa talked about the challenges of reaching them the skills they need, and we have also talked about the skill sets that the law firms and our students are looking for.

Now we turn to talking specifically about some of the assignments we create to teach these skills. I will start out with one that I use at the outset of my class. My students are not significantly different from Lisa's in that many of them don't come to law school with backgrounds in or any level of sophistication with business or transactions.

Rather than begin with a sophisticated business transaction I start out with an apparently simple mortgage exercise that I think they can identify with. A mom and dad have a college graduate daughter. The daughter has obtained a college loan. She didn't get it through a college program but through a commercial lender. The loan is coming due, she is graduating, and she doesn't have a job. Can she get the lender to extend the loan? The bank agrees that it will extend the loan but only if the mom and dad are involved. Mom and dad don't want to be liable to pay off the entire loan, but they agree that whatever equity is in the house can stand for their daughter's debt. They just won't agree to fully guaranty the loan.

I spend a fair amount of time explaining to the students what a mortgage is and the ideas behind the mortgage transaction and its components, promissory notes and deeds of trust (North Carolina's real property security instrument). The assignment serves the informational purpose of introducing the financial concepts of notes and mortgages in a familiar context; later we deal with them in the commercial context.

For the drafting exercise, I give them a copy of the first page of a pre-printed North Carolina Bar Form deed of trust. I tell them: I'm a partner going away for the weekend, and as associates they get to work when partners go away. All they need to do is fill out the

blanks in this deed of trust form because the parents have said they will put their house up as security for the bank loan, but, I caution, they do not want to be fully liable for their daughter's debt.. I give the pre-printed form to them, and tell them to just handwrite the information in the blanks. Previously during this introductory class I have emphasized George W. Kuney's caution "Never leave in a provision because you do not understand its purpose. Never take out a provision because you do not understand its purpose. Figure out its purpose, then determine if it should be retained, deleted or modified."

The students start off well. On the Deed of Trust form they successfully fill in names correctly. They know who the Grantor is -- the owner of the house. They know the Trustee is the law firm, and they know the Beneficiary is the bank. After the names of the parties only one provision has blanks remaining to be filled in. Here it is:

> WITNESSETH, That whereas the Grantor is indebted to the Beneficiary in the principal sum of _____ ($_____), as evidenced by a Promissory Note of even date herewith, the terms of which are incorporated herein by reference=

Since I have given them the dollar amount of the loan, all of the students just fill in this blank with that dollar amount and turn in the assignment.

In the next class we walk through this provision to understand each of the capitalized defined terms. Who's the "Grantor"? Well, that's John C. Smith and his wife, the parents. Who's the "Beneficiary"? That's Goliath Bank, the lender. What's the amount of the debt -- $25,000 that was the amount of the promissory note between the Smiths' daughter and the bank. I then ask someone to read the provision with the names, rather than the defined terms,

> WITNESSETH, That whereas John C. Smith and his wife are indebted to Goliath Bank in the principal sum of $25,000 as evidenced by a Promissory Note of even date herewith, the terms of which are incorporated herein by reference.

Then I ask a student to show me where on a diagram of the transaction (the diagram showing the daughter's obligation under her promissory note to Goliath Bank) where John and Sarah Jean Smith are indebted to Goliath Bank on that promissory note. Of course they can't. They tell me that they just assumed the parents were liable on the note -- though I had specifically stated that the parents did not agree to be fully liable for repayment of the daughter's obligation.

In this exercise, the answer is that there is not a "Promissory Note of even date" between John and Sarah Smith and Goliath, and, thus, they are not liable on the promissory note and saying so is a mistake. I don't want to go in depth into the legal problems

(although, we do in class to get their minds around the issue, but it turns out to be no small mistake. In North Carolina a deed of trust that does not adequately describe the obligation it secures is unenforceable. In their first assignment the students have filled out a form that created an unenforceable obligation, a problem for their client and probably a malpractice or liability issue for them.

And the specific lesson? Well, never leave in a provision you don't understand. Never take out a provision you don't understand. Basically, figure out the purpose of provisions you are drafting or revising. As Lisa says, these are very bright students. Yet, I have used this exercise five years in a row, and no one has ever so much as emailed me a question. Everyone has just filled in $25,000. Either no one has bothered to read and understand the provision they have completed or they have and just decided that it must be okay. (You might question whether or not it's a realistic assignment. It's based on a North Carolina case. But I ask lawyers at my old law firm and they say at least once every year, this issue is brought up on our in-sate real property listserv. Banks are always doing this -- just filling out the blanks in their forms.)

The broader lesson -- as John pointed out, there's a spectrum of what you want novice lawyers to do. You want them to be able to end up juggling all the things required for a closing and solving the legal problems. But sometimes when they come into a law firm or start their own practice, the attention to detail is not always the key consideration. They see transactions closing and get attracted to the idea that the only goal is to get the transaction done. They know not to be the deal killer. So they're just going to fill in the form and move on. They don't think about what it is they're doing. And that's the opposite extreme from being a deal killer. This one deceptively simple assignment at the outset drives home the point of not being so focused on closing a deal that the student checks her legal training at the door. The novice lawyer can spot issues, be specific and detail-oriented and not be a deal killer if she can still get the job done by finding an alternative path to a solution.

So this is not end of the lesson. "You can't do this!" is not an acceptable answer for your client. The transactions lawyer is not the litigating issue spotter, turned deal-killer. We talk about the necessity of taking the next step -- solving the client's problem. And there is a way to solve the problem. What I have the students do for their mid-term project is prepare a letter explaining the solution to the bank and the parents. We consider a limited recourse guarantee. But that's another assignment.

Lisa Reel Schmidt

Our last topic is the creation of assignments. I create most of my assignments based on contracts that others have shared with me. Recently, I assigned a surrogacy contract as the final assignment for my students. One of my former students, who is now practicing in Des Moines, prepared a surrogacy contract, thought it was interesting, and passed it on to

me. This was a particularly interesting assignment because there was a question about whether a surrogacy agreement is enforceable in Iowa. Some states have specific laws about surrogacy agreements, but Iowa does not. Thus, the assignment included research on enforceability and the question of how to counsel a client who is entering into an agreement that is potentially unenforceable?

I try to make my assignments realistic and relevant. An assignment that I am anticipating preparing is a wind turbine agreement. In the Midwest there is a number of wind turbine farms. Often, as you are traveling down the interstate, you will see a truck transporting wind turbine arms. . I have reviewed a few of the prevailing forms and they need considerable work. This would be a wonderful assignment because it includes a variety of issues, including consideration of easements. Another interesting and relevant assignment I have assigned is an employment agreement in the context of a fish hatchery business. While we do not have many fish hatcheries in Iowa, many of the key elements of the employment agreement assignment would also be in key in other agricultural business employment agreements..

Reflecting on the statistics I presented earlier, I realized that we could create one-credit Main Street Lawyering courses to address the need to teach students in those areas of law in which they will practice in a general practice scenario. These one-credit courses would focus on the documents prepared in one of those areas of general practice, such as Main Street Lawyering: Real Estate; or Main Street Lawyering: Family Law. Students could take as many of these modules as their schedules would permit.

Audience: You know I was very interested in the statistics you had with trusts and estates and family law and real estate and everything else way down below. How did you get those statistics again?

L. Schmidt: The statistics came from an Iowa State Bar Association survey published in the June 2012 issue of the Iowa Lawyer, the Bar Association's magazine. Five hundred and fifty lawyers responded, and that's a pretty good sample.

S. Garland: And that might be the way to go is state by state; they said size of firm and whether people are hired is what they look at. They don't look at where they work.

L. Schmidt: Yes, as noted earlier, the statistics really made me think about what we're teaching and how to thoroughly prepare students. If you offered segmented courses focusing on narrower areas of practice, the students would benefit. It would allow the professors to dive into the specific documents they will encounter in practice. And, yes, the courses offered would vary state to state according to the practice of law in each state.

Audience: And then also your statistics about what the great university graduates and what they're doing. Is that through the Alumni Association or something?

L. Schmidt: Our career development office at Drake provided me with those statistics.

Robert Statchen

I have the last section on creating assignments, and I'll be quick. With the main street lawyer, something our school has done, about five years ago, Fred Royal started an online elder law and estate planning LLM program comparing it to the tax program where you have students who are doing mergers and acquisitions in corporate tax requirements, which may be relevant to what the practice area they'll be in, in a program that focuses just on estate planning and elder law. Again, this is the first year with the closely-held businesses LLM in the program.

We've gotten good responses from it, and it is a need that's out there to kind of get smart in the way that people are actually practicing. The larger percentage, again, I love Lisa's numbers that reflect that.

As far as assignments, you know I attached to the material an assignment I use in the LLM program and what I try to do in presenting these because it is people who walk in the door and they have to react, but in the LLM program, I still want to create that environment of what happens when the person walks in the door. What can they expected to have come in? And, again, hopefully the assignment I have there reflects it.

How would you respond in practice? There's been discussion today and yesterday on forms and using forms and whether it's an internal form or an external form. That's usually the starting point. Something I've had some success with is having the students make a list of resources that potentially are out there. You might find others that you want to use. You should look to whatever state you're practicing in, and again, with the LLM students, look to whatever state you're practicing in to try to find a competent form. Then submit it to me, but what I want you to do is black line that form, and it gives the realization that there's forms out there, but they're not perfect. You need to consciously review each one, and then when you black line that form, annotate why you black lined it. Is there a case? What is the reason why you black lined it and have them do that. Again, that gets them using the forms, gets them having the realization that forms are imperfect yet necessary, and kind of pushes them towards doing that.

And it also allows them to black line -- have them black line for purposes of plain English as well using Wayne (Chises) book and those sorts of principals as far as working on the documents. I think that's making the assignments as realistic to the client walking into that type of law firm what they can anticipate. I think I was the last one. Alright, thank you.