MEASURING STUDENT PROGRESS: ASSESSING AND PROVIDING FEEDBACK

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Karen J. Sneddon

Good morning. Welcome to session 1 of the panel in Room 1D. This morning, we're going to be talking about measuring student progress, assessing, and providing feedback.

We're going to have three different panels this morning. Sue Chesler and I are pleased to start the session with a presentation titled "It's About Time: Assessing Transactional Skills in Thirty Minutes or Less." Assessment is an integral part of education. It provides for the systematic development, collection, and analysis of information to foster student learning and retention of course material. Assessment provides opportunity to identify a student's strengths and weaknesses, monitor semester learning, evaluate methods of constructions, and measure institutional effectiveness. Carnegie's Educating Lawyers and CLEA's Best Practices have prompted the American Bar Association's renewed focus on assessment and consequently captured the attention of law schools to in particular, development and implementation of assessment techniques beyond the end of the semester essay exam.

This morning, this interactive presentation is going to showcase diagnostic, formative, and summative assessments using a variety of reliable, valid techniques that can be used to evaluate conceptual understanding and mastery of transactional skills.

Sue Chesler and I are going to highlight four different techniques. We're going to start by talking about something called one-minute papers. Then we're going to talk about contract drafting and revising exercises. Third, we're going to discuss selective response questions, and fourth, we're going to talk about role play simulations. You've received a hardcopy of the materials. An electronic copy of the materials is included with the course conference materials.

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Let's start with the one-minute paper. The one-minute paper is a time-restricted, in-class writing exercise that's completed in response to a professor-supplied prompt. The learning objective is to assess a student's understanding of a particular concept and to provide students an opportunity to translate understanding of that concept into a written response. A professor may use a prompt on almost any topic. One prompt might be related to transactional skills, such as the following prompt: "what is the difference is between the cooperative problem solving model of negotiation and the competitive adversarial model of negotiations." Students receive that prompt and have a defined amount of time in which to respond to the prompt. Even though the technique is called a one-minute paper, students are generally given between 1 and 5 minutes to think about class discussions and readings as they formulate a responsive to the prompt.

Students may formulate a number of responses, but what they should be focusing on is the fact these are two modules of negotiation. They might articulate the fact that the cooperative problem solving model of negotiation focuses on goals, brainstorming, and multiple methods of achieving those goals. The competitive adversarial model of negotiation focuses on defending and maintaining positions. Those observations would be drawn from the course reading; conversations about the differences between mutual benefit and zero sum in the negotiation context. The students could also raise, as they're writing and they're thinking about these different models of negotiation, that both of the models of negotiation can be truthful and professional, but the preferred model may vary based on what the particular practice area is going to be or the particular bar community. That one-minute paper allows the students to draw from their understanding of the course materials, the simulations, and the class discussions to decide what they think the appropriate response could be.

What do you do with those one-minute papers? Writing-to-learn exercises allow students to identify the limits of their own understanding. Based on the response, students may recognize that "I don't know what the difference is between these two models. I need to go back. I need to do my reading again. I have some questions to ask my classmates or my professor about the models." The one-minute paper can also be a basis for a pure assessment. Students can be asked to actually switch papers in class, a variation of the right pair share techniques of learning. You could use the one-minute papers to facilitate class discussion. The students write for one to five minutes, and then you can really have a rich discussion about what those different models are going to be. The professor can always collect the one-minute papers, review the papers individually for feedback, or review the one-minute papers to see the range of what those comments are going to be, and then post general comments and observations on a course management webpage. One of the valuable aspects of the one-minute paper is even if you do have a class discussion after the students complete their responses to the prompts, you have allocated a total of 5 to 10 minutes of

class time in which students are really thinking about what they have already learned and what their questions are.

On page 1 of the handout, you'll see another example prompt, and on page 10 of the handout, you'll see the sample student answer. The one-minute paper is a technique to assess transactional skills in 30 minutes or less.

Now we have technique 2, and I turn it over to Sue Chesler.

Susan M. Chesler

Good morning. Technique 2 that we're discussing consists of contract drafting and revising exercises. While most professors in this room, and at this conference generally, understand the value and importance of teaching future transactional lawyers to draft and revise contracts, there's this notion that in order to assess those skills effectively, we have to have students draft full contracts. We have to give them complex instructions and give them weeks in which to draft the contract; we have to provide individualized feedback, and obviously that becomes very time-intensive for both the students and the professor. Even in a contract drafting course, where the primary goal is to teach students how to draft contracts, students probably only get feedback three to four times throughout the semester because it takes so much time.

But that notion doesn't have to be true. You can supplement any doctrinal or skills course with exercises on drafting and revising contracts that only take 30 minutes or less of class time. This wouldn't be a substitute, for example, in a drafting course for the student drafting a full contract and getting individualized feedback, but this allows the professor to check into how well they're doing on particular points throughout the semester.

One exercise I'm going to address focuses on reviewing and revising an attorney's fee provision. The primary learning objective for this exercise is to either introduce or reinforce the role of the transactional lawyer in revising a contract that was written by the other party. Obviously, odds are that most lawyers will only draft the actual contract 50% of the time, unless of course they represent that one party with superior bargaining power that gets to draft every single time. Very often, transactional lawyers need to know how to revise and alter contract revisions that were written by the other party's lawyer.

We have provided the instructions that should be distributed to the students. They can either be posted online or distributed in class, and students can either spend about 15 minutes in class answering the question or do this exercise completely at home and not discuss it in class. You can also do a combination; they can do it as homework and then come to class for the discussion.

There are several means of accessing this exercise which I'll talk about in a little more detail in a moment. Students can assess themselves, and we've provided a model

answer and some discussion points. Students can also be asked simply to reflect on their own work by comparing it to the model. Additionally, students can be asked to assess another student's work product. Since the professor is distributing a model answer and some discussion points, students will have enough guidance to provide comments and evaluate another student's work product. You can also spend about 15-20 minutes of class time discussing the model answer and the discussion points. Even if the students completed this exercise in class and the discussion was in class, it would only take about 30 minutes of class time.

In the instructions, students are told that they represent the buyer in a contract for the sale of goods, and the seller's lawyer has drafted this particular attorney's fees provision. The students are asked to revise it to better protect their own client's interests and also to make sure that it's written in a way your client can actually understand.

This is the provision that would be provided to the students. It reads: "In the event that Buyer brings a claim, lawsuit, or institutes legal proceedings against the Seller, in a court of law or otherwise, that relates to, arises under, or in any way implicates this Agreement, the Seller shall be able to collect all of its costs and expenses, not limited to actual attorney's fees, incurred as a result of such a claim, lawsuit, or legal proceeding from the Buyer." I'm going to ask you to take a moment to read this and think about what you would want your students to focus on in their rewrite of this particular provision remembering that they are now being asked to represent the buyer's lawyer. Does anyone have any ideas of what they would expect their students to do in response to this question? What kinds of changes might you expect your students to want to make to this provision?

Audience: I would expect the clause to deal with the reciprocal situation and benefit either prevailing party. As written, the Seller gets attorney's fees whether they're right or wrong.

S. Chesler: That's right. As written, this clause only benefits the Seller. There is absolutely no benefit to the buyer. The seller gets attorney's fees from the Buyer, period and end of story. It would need to obviously be a lot less one-sided, and one way to do that is to apply it to both Buyer and Seller. Another way, modeled in your handout on page 11, is to focus on the prevailing party. The prevailing party, regardless of who it is, Buyer or Seller, gets attorney's fees. Anything else?

Audience: You likely want to narrow the circumstances under which they're obligated to pay attorney's fees and the amount that they are potentially obligated to pay.

S. Chesler: Exactly, there are two issues. One is what does the provision cover? Does it cover only lawsuits? Maybe. Does it cover legal proceedings

> to include things like arbitration and mediation? Probably. Does it cover just claims? I'm not so sure you'd want your client to have to be paying costs associated with just making a claim. You want to think about the scope, and there's also the amount. Here, it covers actual attorney's fees, which is probably not very beneficial to the Buyer to have actual attorney's fees so there are some choices. This is when I discuss with my students a little bit about the substance of the provision. Should we cap it at just "reasonable" attorney's fees? Then there has to be this determination of what's reasonable. Do we set an actual monetary cap, such as attorney's fees up to $50,000 or $250,000? Those are some of the things to think about when drafting such a clause.

Also, in terms of plain language, you'll see that my sample provision in the model answer is probably half as long as this one. There are lots of words in here that are duplicative and repetitive and don't need to be there. I also teach my students to draft conditional duties such as the payment of attorney's fees by using the word must. I'd expect them to rewrite this using the word must in order to indicate it is, in fact, a conditional duty.

As you can see, the point of this exercise is for students to focus on the substance and style what should be included in an attorney's fees provision. They get to focus on thinking about it from their own client's perspective and what would be most beneficial to their client. If I receive this provision, how would I want to change it to protect my client's interests? It's just one provision, but they get the opportunity by spending only 30 minutes or less of class time to focus on their drafting skills and to get some immediate feedback either by assessing themselves, by having the classroom discussion, or by doing it as a peer assessment exercise.

Now I will turn it over to Karen for technique 3.

Karen J. Sneddon

We've talked about the one-minute paper. We've talked about one example of drafting a contract (meaning). Let's talk about selected-response questions.

Selected-response questions are simply questions in which students select the best answer from a list of possible answers. These questions may be in the format of multiple-choice, true-false, or matching. Flexibility is one of the valuable attributes of selected-response questions. Selected-response questions can be used for diagnostic, formative, or summative feedback, and you can use them throughout the semester in a variety of ways. They can be the basis of an in-class exercise or out-of-class exercise. The students' responses could be recorded via a classroom response system, such as clickers, so you as the professor can get all of the data. The selected-response questions can be used as the basis

for an online quiz to be taken before class, after they have done the reading, so you get a sense of the student understanding of the material are before you even begin the class discussion. The questions could be used individually to prompt a discussion after class hosted on a class blog.

Selected-response questions may be assessed in multiple ways. They provide students with the opportunity for self-assessment. The students can select the response, be told what the best response is, and go figure out what it is they need to know in order to answer it correctly.

These questions can stimulate class discussions. You display one question to begin class that comes from either the reading or that is going to come from discussion during class so the students can see what they should be focusing on. Each question can take as little as two to five minutes of class time.

I want to highlight just a couple of examples from the materials you have that draw from the ABA Model Rules of Professional Conduct.

Example Question: According to the Model Rules of Professional Conduct, competency requires that a lawyer have all of the following EXCEPT.

Responses:

A. knowledge of the relevant law.

B. previous experience handling a similar matter.

C. sufficient skill to perform the required task.

D. diligence to perform the required task in a timely manner.

The best answer here is B. Model Rule 1.1 states that "[c]ompetent representation requires the legal knowledge, skills, and preparation reasonably necessary for the representation." This question helps the student think about that rule, and it helps them think about the comments to the Model Rule too. Comment 2 to Model Rule 2.1 clarifies that a lawyer does not necessarily need to have had previous experience on a similar matter in order to be competent. A lawyer may gain competence by necessary study or competent representation by association with other lawyers who have experience in the area of law.

Let's consider a slightly different question format that uses a fact pattern with a true or false question formulation.

Example Question: A lawyer named Gwen represents Mike in litigation over the ownership of a commercial building named the Henderson Building. Gwen tells Mike because he's suffering from some financial distress, she agrees to waive her previously agreed upon legal fee in consideration for receiving a 5% interest in the Henderson Building

Development if Mike prevails. This does not constitute a prohibited transaction. True or False.

Answer: False. This is a prohibited transaction. Is Gwen permitted to acquire proprietary interest in the Henderson Building? In answering the questions, students will be thinking of Model Rule 1.8. Gwen is not permitted to acquire a proprietary interest in the Henderson Building because the ownership of the building is subject to litigation. Students are imagining how Model Rule 1.8 (i) may arise in practice. Why might a lawyer be in that situation where the lawyer would consider entering into the relationship? Why might a client maybe make this suggestion? It helps make the Model Rule a little bit clearer. Again, this question serves as a starting point that can be used to really open up the class discussion. There are many examples of selected-response questions in the handouts. You have the questions and the best answer with some discussion points you could use to facilitate the class conversation.

Selected-response questions are can be used to assess foundational knowledge. In addition, if you want to, you can use selected response questions as a springboard to a higher level task of editing or drafting of provisions. You'll see on page 6 of the handout two question formulations that you could use to introduce or reinforce the concepts of drafting in plain language. This question could be used to build upon the hypothetical that Sue had presented with technique 2. The question could present a provision, either a poorly drafted provision or a well-drafted provision, and through a series of selected-response questions students will engage in examination of the provision in light of the principals of drafting in plain language.

Selected-response questions have a variety of different ways of engaging the students. You have the opportunity, with just 2 to 5 minutes worth of class time, to assess the foundational knowledge and springboard them into higher level tasks as well.

Now we're on to technique 4.

Susan M. Chesler

The last technique we're going to talk about today is role-playing exercises. These exercises, as I'm sure you're aware, are aimed at getting students to literally play the role of lawyers, specifically in transactional settings.

Professors often shy away from role-play exercises because it seems like it takes a really long time to get students to prepare themselves for the role play, to have the opportunity to get up and act out the role play, and then there's idea that it's really difficult to provide useful feedback at the end of the role play. However, there are ways in which you can use role-play exercises with 30 minutes or less of class time to give students some immediate feedback on their performance.

One thing you should do is keep the scenario very narrow. You don't have to ask students to role play the entire contract negotiation for this particular sales agreement: that would take a really long time for them to prepare and for you to watch and then for students to comment on. You can focus on one very narrow aspect; for example, one of the sample exercises in our handout asks the students to role play the scenario where a lawyer has to tell her client that she may, in fact, have committed malpractice. That's a very difficult discussion to have, obviously, but one in which the students can both prepare for and perform the role play in a pretty limited amount of time. You can also have students work or practice in pairs or small groups, and then only have one or two of the groups of students or pairs of students come to the front of the room to perform the role play.

One way to make assessment of the role play a little bit easier is through the use of a performance assessment rubric. On page 15 of our handout, we have a sample performance assessment rubric that covers 8 categories that simply requires the professor or another student in the class, if you're doing this as a peer assessment exercise, to check off whether or not the performance was proficient, excellent, or developing (which basically means the same as "needs some improvement"). You'll notice that some of the categories in this performance assessment rubric would be indicators of good performance in any role play exercise, such as preparation and organization, but some of them are very specific to this scenario. In this scenario, as I've mentioned, a lawyer is discussing a potential malpractice with a client. There are categories that are very specific to that, such as content honesty and truthfulness, as opposed to the student-lawyer trying to dodge or cover up the truth. The use of these performance assessment rubrics can make assessment of role playing exercises much quicker and more consistent.

There's another way in which you can do a role play exercise that will also help limit the amount of time necessary. Sample 1 in the handout, located on page 7, is a role play exercise that doesn't actually require the students to get up and perform. The instructions are that the lawyer and the client have had an initial telephone conversation about this new matter, and now the lawyer is preparing for a thorough in-person interview with the client. I ask the students to role play the lawyer in this scenario and develop a list or set of questions they would want to ask this particular client based on what they know about the issues. The students, again, can work in pairs or small groups, or they can work independently. As they come up with their list of questions, they are role playing by putting themselves in the shoes of a transactional lawyer in this scenario. It doesn't necessarily require you to take up a ton of class time with students standing up and performing. You could do that; you could have one group of students come up in front of the class and perform their interview, and the class discussion would be the evaluation or assessment. You can also provide model questions that you would want to ask the client and have students self-assess their work product, and we have included model questions in the handout. Additionally, you can have students do a peer assessment. If you provide the model answers, the students have a lot of

guidance in terms of doing the peer assessment because they've gotten the model answers from you.

Another way to assess this exercise is by not providing the model answers before the peer assessment. You can have the students do a peer assessment first, and then talk about the model answers. This gives the students the opportunity to self-reflect not only on their own work product, but to reflect on how they actually evaluated another student's work product. It provides one more chance for the student to think about and evaluate his or her own knowledge and understanding of what a transactional lawyer should be doing in this scenario of preparing for a client interview.

One other alternative is the professor or TAs could perform the model client interview or the role play for the class. There's a little preparation in terms of getting ready to do that, but you don't have to take up lots of time having multiple students get up in class. Students can still reflect on their own work product based on the types of questions asked and the way the questions are phrased. You can engage in a classroom discussion about, for example, the use of open-ended questions as well as closed-ended questions.

We hope we were able to showcase, in less than 30 minutes, how you can assess transactional skills, ethics, and professionalism, in a variety of courses, using only a limited amount of class time. In addition to the exercises we discussed today, there are some additional exercises in the handouts; Karen and I have also created exercises and assessment tools that address a variety of other transactional skills, including counseling, negotiating, and researching, using a variety of techniques such as checklists and quizzes as well as some of the ones we discussed today. A lot of these exercises and assessment tools can be found in the teacher's manual for our product, *A Day in the Life of the Lawyer: The Contracts Module*, which is available by Wolters Kluwer Law and Business. This product consists of a series of professionally produced vignettes, role playing the day in the life of a transactional lawyer. It showcases client meetings, contract drafting, and negotiating with attorneys for the other side in terms of a contract; the accompanying teacher's manual includes a variety of exercises and assessment tools.

We have a couple of minutes if anyone has any questions before I turn it over to the next panelist. Comments? Questions?

Audience: In terms of the students who are doing this work, what is their training before they get the assignment? What do they learn? What are the materials they study before they go try and do an interview?

S. Chesler: Well, I'll just answer with how I do it in my Contract Drafting and Negotiating class. I assign the students some practice-based reading materials about interviewing clients and specific issues like how important demeanor and appearance are in making first impressions. We do spend some class time talking about it before I actually have

them do this practice exercise. Then I have my students perform a "real" client interview, even though the client is one of my fellow faculty members, in order to get information necessary for them to draft a contract that is a graded assignment in my class. I do it in a three-step process. It really could take an entire semester to thoroughly teach client interviewing, but I thought that was at least enough to get them thinking about some of the issues involved.

Audience: I'm curious. How do the students react to the role playing? Do they like it?

S. Chesler: I'll give my two-cents, and then Karen can give hers. It depends on the students. There are always the people that volunteer. They cannot wait to get up in front of the room, and there are the ones that look as if I call on them they will cry. I try to avoid that; a lot of students think about becoming a transactional lawyer because they won't have to speak in public, which is obviously not true, but I don't force my students to do the role play in front of the class.

K. Sneddon: Yeah, I don't force them either. I think that's the nice thing. It depends on the size of your class. If you have a relatively small class, like some of our upper level drafting classes, I think there's more of a sense of camaraderie, and they feel it's easier to come up to the front of the class. Whereas, if it's a bigger class, I think having that comfort zone of the four groups where the professor kind of facilitates the process by walking around, they feel a little bit more comfortable. Then the next time when you do a role play, they are the ones raising their hand. They realize they have this. I've found the students especially love to complete the rubric for their classmates, and we have had to have some discussions that all developing all the time cannot possibly be accurate, butthey do seem to like it.

Audience: I'd like to piggyback on that to maybe give a different answer to your question. I think these are great techniques, first of all. I'm delighted you brought them all together. Currently, I do a mandatory role playing as a midterm in two of my doctrinal classes. In a small class, I do it on an individual basis. In a larger class, I do it in groups of three. I'm happy to share the instructions with people if they want them.

What I've found is if you put them in that role and ask them a series of questions, the students really seem to love it. They're nervous as

all get-up. The first year I introduced it, people bailed out of my class, but now they come to it for this reason: they know what I see at the end of it, which is what I'm sure you two have seen, which is you see students become lawyers right in front of your eyes. That is true for upper division law students, maybe even for some first-years who are ready for this, but certainly for upper division students who've chosen a doctrinal class. It's a beautiful thing.

I like your rubric. I think, in a doctrinal class, I focus more on doctrinal pieces, but I give them comments on some of these other things. I'm going to use this, and I think it's a very nice rubric to have.

S. Chesler: That's a great point; you could bring a lot more knowledge assessment into a role play exercise than just the skills aspect of it. You get to have them act like lawyers, but you can still assess how well they know the material, which is a really nice idea.

Audience: I was just going to comment on a clinic setting where I'm going to be setting the students loose on real life clients but, of course, I'll have to do one role playing interview because they're scared to death. I found recent alumni, who are 3 to 5 years out, and have them be the clients. Obviously, I have the luxury of only a few students, and they came in and did it in groups of two students. I gave them four scenarios, and each student did one interview and observed one interview. There was a lot of interplay back and forth with the four-year-out attorney who said they had just gotten past the point where they are not quite so scared of interviewing clients and gave the students some really good feedback.

S. Chesler: Yes, that's a really great way to keep alumni continually involved, and it's not hard to get someone to come in for an hour or so during class time. That's a great idea. Thank you.

Stacey Bowers
Implementing a Student Feedback Exercise

Good morning. Today, I'm actually going to talk about how I implement an exercise in a transactional drafting classroom where I have students give constructive feedback to another student.

I think, as most of us are professors in transactional drafting skills classes, we spend a lot of time giving our students feedback, and we're really focused on that. We're trying to give constructive feedback. We're trying to teach them how to be better transactional

lawyers, to increase their drafting skills, and how to be better drafters. I think along the same lines, they're getting that same kind of feedback from other professors whether they're getting transactional skills or maybe they're in an externship or maybe they're actually out there working for pay. They're getting all sorts of feedback from professors in academia and hopefully from practicing attorneys as well. They're learning a variety of things, and they're seeing what different people like and are learning from people that have different skills sets.

I think, on the flipside, one of the things they're not doing is learning how to provide that same kind of feedback to someone else. It often gets lost in the shuffle that that's a skill law students need to walk away with when they leave law school, and, in particular, I think law students who are going to go out there and practice as transactional lawyers really need to have this skill set to be able to give constructive feedback to others. While they might not do that the first week out of law school or even that first year of a practicing attorney, it's not going to be long before they find themselves in a situation where they have to provide feedback to someone else or they're asked to review a letter or all of the sudden that first contract lands in their lap and they're toldto review it because they're going to be a part of the team that's going to negotiate this deal. All of the sudden they're faced with this idea of how do I give feedback or how do I negotiate, and they don't really have that skill set yet.

What I try and do is create an exercise where they get the chance to develop that skill set in a classroom, in a safe place. The other aspect I bring to this is it's all done anonymously, and the student providing the feedback doesn't know whose paper they're looking at. Additionally, the student who gets the feedback does also not know which student gave them that feedback. I think by incorporating this exercise into a classroom, we're giving them the chance to build another practical sill that we sometime forget they need. I also think doing it in a drafting classroom helps since they're already getting lots of feedback.

One of the things I try and do is not bring this exercise into the classroom until way beyond the halfway point in the semester, and I do that for a couple of reasons. At that point in the semester, they've already submitted a number of their own drafting assignments, and they've been getting feedback from me. They have a sense of what my expectations are, and that allows them to turn around and have a better sense of what type of feedback they're going to get.

The other thing I think this exercise does, and I'll speak to this a little bit later, is it forces them out of their comfort zone because, I think more often than not, law students come into law school and haven't had to review or critique someone else's work. They've been in law school and usually by the time they hit my classroom, they're a second, third, or fourth year student. They're used to getting feedback from professors and people they're working with, but on the flipside, they're not necessarily used to giving that same kind of

feedback to someone else. I also think it forces them to step outside their comfort zone a little bit.

I'm going to speak about how I implement this in my own classroom, and I think there are a number of ways to do it with any drafting assignment you have in your own classroom; that's a luxury. You can do it however you want, and I'm just going to speak to one of the ways I do it.

One of my sections of drafting is based around a merger and acquisition scenario, and one of the assignments the students do is draft a specific type of letter. This is one of the assignments where I give them a little bit of choice. They can pick the letter they want to draft. It can be a demand letter where they have a customer who has failed to pay. They're past the 90-day overdue point. They can do the lease assignment letter where they're asking the landlord to assign the lease to the purchaser of the company, or in my scenario, they own a trademark, and they can also do a cease and desist letter because somebody's infringing on their trademark. The first thing I do is I give them this scenario, and they get to choose which letter they want to draft.

Prior to moving into our corporate commercial group, I was a law librarian, and I feel strongly about bringing research skills and collaboration into the classroom. This is an exercise that allows me to do a little bit of that as well.

One of the things I do is split the students in the class into three working groups. I've learned not to let them self select, and every time I split them into groups, I try to split them differently. It forces them to get to know and interact with other students in the classroom. They get split into three groups, and each group is given one of the letters to research. They need to go out there and find information that's going to help the rest of their classmates who choose to do that particular letter. I task them with the need to find general information about what the letter is, what the elements of this letter are, and to find out the expectations of this letter.

The other thing they're tasked with is where can they and their peers find good examples of these letters. I should say, at this point, one of the things they've had prior to this, is a law librarian has come in and done a research skills workshop. I'm not just setting them completely loose to flounder out there, and they've already gotten some instruction about how to do research and research skills. At this point, I'm really encouraging them to look at print materials, fee-based databases, and other free stuff so when they come back to their fellow classmates, they can give them a variety of resources that are going to work. One of the interesting things is that sometimes they find the print materials are the best, and other times they find a really great free website out there.

Then they come back to class, and get into their group. They can spend the class doing research while I'm there to ask questions, and then the next class session they come back and each group presents their findings. I don't require any type of formal

presentation. It can be completely informal, but they have to think of it from the perspective of building their own ability to do whatever letter they choose to do and also helping their fellow students who may be heading down this path.

One of the other reasons I do this, too, is it starts to build their knowledge, and as I ask them to critique someone else, they know about each of these letters and what the expectations are.

After they've given their presentations, hopefully I'm not jinxing my class who's getting ready to do this next week, I circle back and fill in any of the gaps. One of the things I've found is that my students do a far better job of researching these three letters then coming back and giving presentations to the class about what should be included in this letter.. They probably do a better job than I do, and that's been really nice for me. Generally, there aren't a whole lot of gaps for me to fill in about the letters.

We spend the rest of the class talking about what I call post-writing considerations, which I'm stealing I think the Aspen Handbook for Legal Writers; it's got a great chapter on post writing considerations.

The first thing we talk about is how we edit our own work because I think when you have an understanding of how to edit your own work, it's the building block and the foundation for how you edit and improve someone else's work. The first thing we do is have the conversation about how to edit our own work. Of course, that's a little bit different because it's hard to hurt our own feelings when we take that red pen and mark up our work. By editing our own work, we're only changing our own style.

We start there and move into how do you make the leap from editing your own work, where you can do whatever you want with it, to editing someone else's work. One of the things I try to impart on them is you have to be cognizant when you're editing someone else's work, and try not to inflict your style onto them. We all have our own style. We all have our own pet peeves, but when you're looking at someone else's work, you shouldn't be making changes because you like a word better than the one they chose to use. It's a lengthy class discussion about how we go about editing someone else's work without actually imposing our own style on them. We spend a lot of time talking about that. One of the ways we do that is by having an open-conversation about getting feedback. You get feedback from me. You get feedback from other professors. What do you like? What's really worked for you? What kinds of feedback can you read, take to heart, and makes you actually want to go back and revisit your work and make the changes? What kind of feedback do you get that is so hurtful because of the manner that it's written or the tone of voice that it's written in? You can't even take that criticism and incorporate it into your own work. I find by having this conversation and getting students to open up a little bit about what's worked for them, they are more cognizant when I ask them to then do this assignment with fellow students.

How do the actual logistics work? They've got a due date for their letter. They have to submit two copies of it; one has their name on it, and that copy comes to me. I review that copy and give them feedback and a grade. They submit a second copy with no name or any other identifying information on it. I learned that lesson well, especially with letters, because they're asked to put a signature block on it. I had a student forget to remove their name from the signature block, and none of us caught it. We lose that anonymity component so we also remove any personally identifying information. You can do it however you want, but I track the letters that don't have names on them by giving them a number. That way I can have a sheet of numbers, and I know which student I give that letter to in order to critique.

On the flipside, the student who gets the letter to critique can't put any self-identifying information on that letter either. It's interesting to watch students as they think. I have one student writes so tiny you can barely read his writing. I noticed when he was doing his critique, he changed his writing style to make sure the person he was critiquing didn't know it was his writing. I feel like the idea of making it anonymous gives students the freedom to experiment a little bit and to be a little more comfortable about giving commentary to fellow students because they know they're not going to know it came from them.

I distribute, track it, and then hold an open class session where students come in and do this exercise. They are not required to do that, but one of the things I found with drafting is I ask a lot of my students. This is a little bit of extra work, and I find they appreciate that I give them a class to actually come in and work on this assignment. I also do it for a second reason; it puts them in a position where if they're struggling with this, they can ask me questions. That's why I'm there. Additionally, I bring in work of my own, and I sit there quietly and work. Sometimes they don't have questions of me, but they're chatting amongst themselves a little bit, and it's always interesting to me to hear what they're saying and to hear what they're struggling with. It's kind of interesting to be that fly on the wall and hear what the students have to say as they're embarking on this path.

I also tend to believe, if I create this environment where they can come in, they'll be focused. I feel like if they're sitting in a traditional classroom, it's very quiet, and it forces them to sit down and focus on this exercise. They also know I'm in the room, and that element comes into play as well.

One of the things I really like about this exercise is that I return my comments and the fellow student comments at the same time back to the student who wrote the paper. In my classroom, most of my assignments are eligible for rewrite in order for students to improve their grade. All of the sudden, they just don't have feedback from me, they have feedback from a fellow student. This is fabulous because at the end of the day, my feedback over the course of a semester starts to become a little bit redundant. You're hearing the

same thing over and over because I have my pet peeves, and you think it would sink in about week 10. Sometimes it does but not always. They get my feedback, but they also get a whole different set of feedback, and I think that's a great thing for the students. Then, if they do choose to rewrite this assignment, they've got two sets of feedback to work from.

The other thing I've found is I learn a lot by reading the student's feedback because the students see things I just don't see because they bring their own unique perspective to the table; it's also a bit of a learning experience for me.

There are really two components to grading the actual letter assignments. First, there's the letter itself. I review, critique, and provide a grade on that letter, and that is the student's final grade because I feel like I'm not in a position yet where I've figured out how to incorporate the fellow student's grade. I do ask the fellow students doing the critique to also issue a grade to that work product because I think it forces them to really think about how they would grade this. What kind of grade would they give this based on the feedback they gave? Their grade does not play a role in the final grade though.

The other piece that's going on here is that students receive a grade on actually doing the feedback portion. That's a little bit harder, not that it's not subjective to grade drafting anyway, but it's a little bit harder to issue a grade to somebody about how well they did a critique. I read their comments, and what I'm really looking for is how thoughtful they were. Did they put in effort? Did they take the assignment seriously? I try not to issue a grade based on the comments that they have given, whether they're good, bad, right, or wrong or comments I would have given or not. I'm really looking at did they put effort into the assignment. Then they get a grade for doing the critique themselves.

I have two sections of my drafting class, and my one section just did this assignment, and my other class just drafted risk factors. Students gave feedback on other risk factors, and I'll read a couple of comments to give you a sense of what the students come back with.

One of the comments I saw was to use the stronger term "would" instead of "may". I liked that comment because one of the things we talk about, too, is not being general. Don't just tell them it is awkward or a bad sentence or phrasing. Try and actually give specific comments and suggestions to your fellow students.

Another comment was about a sentence being awkwardly placed and lacking transition before or after it. We get the general comment,, but they knew enough to explain and give some idea to the student of how they would fix it. For example, these two sentences are somewhat redundant; consider merging them. My favorite of this round was a student who noted that Professor Bowers does not approve of this. I know they were paying attention to me because it is one of my pet peeves, and the student had circled it. It is truly one of my pet peeves that I talk about in the classroom. I can't really go wrong on that because they are absolutely true, and it was kind of funny.

Audience: What's the pet peeve?

I hate the semicolon however interrupter in the middle of a sentence. It makes me crazy, and they know that. I think I say that in the classroom. I'm like it makes me crazy. Don't do it, so yes, the student had circled it, as opposed to what I had done, which is just write yuck. They were nice enough to say Professor Bowers doesn't approve of that.

And so, again, this is a really great tool for the students.

Last but not least is how you assess it because you need to figure out if this excise works in your own classroom. Sometimes I think it works well. Sometimes I think it doesn't, but overall the feedback I've had from my students, this being the fourth time I'm using this in a classroom, is that they really like this exercise.

One of the things I've learned is not to rely on the year-end evaluation to get feedback about the specific exercise because, first of all, students hate the year-end evaluation. They don't tell you much unless they liked you or hated you, and it's extreme, but they hardly ever comment on a specific exercise.

I've tried a number of techniques. I'm pretty comfortable putting myself out there and just asking my students if they like it, did they not like it, give it to me, tell me what you think. It's interesting because students are fairly comfortable with that in this classroom. It's a small classroom. It's a seminar type, and they're willing to have that conversation.

Other times I've tried a brief evaluation form. I don't get nearly as much feedback from my students by doing it that way using paper or our university survey tool. I get much more feedback by having the open conversation.

The other thing I put out there is to send me an email if you don't want to talk in the classroom, and tell me what you thought. If you don't want me to know what you thought or that it came from you, slip a note under my door with your comments. I also ask my students very specifically. How would you change this to make it better or different? I'm not afraid to ask my students for that feedback, and I've gotten some really good ideas about how to change this exercise to make it work a little bit more smoothly or to improve it.

The last thing I like to do is circle back with my students and get a sense of if it was easy or hard for them because I tend to think students don't have this skill set. What I've discovered is that's mostly accurate. When we circle back and have this conversation, most of them tell me it was difficult. It took them a lot of time to sit down, to be thoughtful about their comments, to come up with the right comments, to phrase them in a positive versus a negative way, and to give specific suggestions. It's really easy to tell somebody something is awkward or you don't like this, but to really think about suggesting how they might change it take a lot more time and effort.

I have found that it's a little bit easier to keep the anonymous nature by asking them to handwrite. One of the students actually used White-Out. I was looking at their comments, and I guess they didn't like their word choice because I saw a couple of places where they had substituted in another word. That also tells me they're taking it seriously which is really my goal. This exercise, for me, is really about these students walking out of my classroom with another skill set. They're learning how to draft, but they're also learning how to edit and critique someone else's work.

So that's my spiel. Any questions? Yes ma'am.

Audience: You make a pretty big deal about anonymity in this regard. I didn't catch this, maybe you said this at the outset, but is this because these are first year students?

S. Bowers: No, these are second and third year students. I really feel strongly about the anonymity because I think when you start critiquing a fellow student's work and you're sitting in a classroom where we only have 12 people, it can become very personal. Even if the comments are thoughtful and not negative, you're still criticizing a fellow student. I think, for both the giver and the recipient, not knowing who the other person is makes it a little bit easier to engage in this exercise. I feel like they're more comfortable giving more comments, maybe more specific comments, than they would be if it wasn't anonymous. I've not done a test run to see if that's really true.

Audience: This is just a thought, and maybe you can combine the two. I use this a lot with third year students on a non-anonymous basis because part of what I'm trying to teach them in the exercise is how to respectfully give instructive comments to a colleague which is what they're going to be doing either as summer assistants if they're second years or afterward. The first year I did it, one of the students was not used to this as everything had been anonymous right up through their second semester of their third year. He asked me why he was being asked to dis a colleague's work. I told him it must be a misunderstanding of the exercise; I didn't want them to be disparaging or discounting to their colleagues in any way.. This is part of the act of lawyering, and I was much more transparent about what my learning objective was. I don't know if the student was satisfied, but now I give that as part of my routine for this exercise.

S. Bowers: Well, it would probably be interesting to try it, and I might do that. I have never come across a comment that I felt I needed to edit or change even with the anonymity. I think that's partially because we spend a lot of time talking about it., but I would definitely consider changing that and trying it

without being anonymous. I think my concern is it's such a small class, and I would hate to disrupt the balance in the classroom.

Audience: It depends on your learning objectives. If you're trying to turn them into a law firm with each other, then the objectives changes, but I see exactly what you're saying.

S. Bowers: No, but I see your point as well, so I need to think about that. Thank you.

Audience: I would even say that because it's such a small class, I'm not sure you're getting the anonymity you think you are.

S. Bowers: Oh, I think I'm not; I agree with you. There's some anonymity, but I think you're absolutely right. They don't always know, but I bet about 50% of the time they have a good sense of who they're looking at or vice versa. I think they probably have more of a sense of whose work they're critiquing than maybe who critiqued them. No, I think you're right.

Audience: What are your logistics to make sure one student doesn't get his own paper to grade?

S. Bowers: Oh, I manage the distribution.

Audience: Do you have them numbered somehow?

S. Bowers: Yes, I have them numbered.

Audience: You know who gave the feedback?

S. Bowers: Yes, I do. Essentially, I create a spreadsheet and assign a number to each paper, and then I have a second column that tells me this number went to this student for critique. I'm able to track it.

Audience: Do you have any problem with institutional knowledge, that is, last year's students passing down materials to this year's students?

S. Bowers: I have not run into that, and I tend to change things up a little bit, change some of the facts or change a little bit of the scenario. I have not run into that yet, but I would be curious to see, as I teach more and more, if that happens. I also have different versions of my drafting classes that are based on different scenarios to try to prevent some of that.

Thank you very much.

Dana M. Warren

Assessing Student Progress through Graded Transactional Writing Assignments Spanning the Life Cycle of a Deal

Good morning. My name is Dana Warren, and I'm going to talk about the assessment and feedback techniques we use in the Business Planning class we teach at Loyola Los Angeles. This is part of our Business Law Practicum program developed by my colleague Therese Maynard and is the capstone class we use. Therese and I authored the casebook, available from Aspen, we use for the course.

Business Planning is a simulation class. We selected the simulation format because it gave us the ability to control the facts and to inject greater substantive content and a richer academic experience into the experiential learning course. We're offering six sections this each academic year, 15 students per section, 90 students total, and are expanding to a 7th section next year.

Each class session is treated like a business meeting. We have the students take the role of junior associates. They're meeting with the senior partner, and they are expected to be ready, show up on time, and if they're not, they have to communicate that ahead of time. You don't blow off a business meeting. This is an initial effort to try to instill an element of professionalism training.

A deliverable is required each week, either an ungraded homework assignment that we work through in class for self-assessment, or one of the three graded writing assignments we ask the students to prepare over the semester.

Essentially, the students are introduced to two entrepreneurs who want to set up a business to exploit some software they've developed. We examine entity forms and begin helping the client in its effort to obtain financing through an LLC in a strategic joint venture. The students work through an Operating Agreement, but as that approach has some major problems, we then incorporate, issue founder stock subject to a company repurchase right, and then move on to a venture capital transaction.

I teach two sections, and four are taught by adjuncts. We provide a turnkey set of materials for the adjuncts so their focus is on providing group feedback and direct feedback through one-on-one student interaction rather than on course development time. We give them a set of detailed grading rubrics for the graded assignments that itemize the substantive content and the skills expertise we're expecting the students to develop as they go along. We instruct the adjuncts to provide the kind of feedback a high-quality law firm aspires to give to their junior associates.

The assignments challenge the students with ever increasing intellectual complexity and require them to use an evolving set of skills in the context of pushing them beyond the law school tasks of issue spotting and analysis to addressing the practitioner's problem of

how to assist the client in moving ahead and accomplishing its objectives in a properly documented transaction that contains appropriate terms.

First Assignment: Review an LLC Operating Agreement and Prepare a Term Sheet

The first graded writing assignment we give students is a review of an LLC Operating Agreement for our ,client's strategic partner financing. The lead-up to this assignment is a set of materials on term sheets and the nature and characteristics of LLCs. We focus primarily on management structure and fiduciary responsibilities, not tax benefits. The homework for this unit, which we go through in class, requires the students to review several LLC Operating Agreements and address hypotheticals relating to management, internal affairs, and fiduciary responsibility problems.

The assignment materials include a memo from the partner explaining certain business terms the client has agreed to and a draft LLC Operating Agreement prepared by opposing counsel. Students are told to use those materials we gave them in class, their book and lecture notes, and nothing else. It is a closed-universe assignment, which is the only way we are able to effectively grade their work.

The students have two deliverables: a memo and a term sheet. These require the students to review the operating agreement for substantive as well as for drafting, continuity, formatting and those sorts of issues. They are to provide the senior partner with a memo providing a section by section report on what needs to be changed and what needs to be addressed to make the Operating Agreement work, not only as an appropriately drafted document but in order to implement the business deal the client reported to them.

The purpose of the memo is to assist the senior partner in doing a one-time review of the draft Operating Agreement. We emphasize that the senior partner wants to go through this agreement from the front to the back, one time, and not have to be flipping around trying to figure out what the heck you're talking about. The senior partner in practice would use this memo to assist her in that review, and in the process will annotate it and provide additional direction. The next step in the practice process would be for the partner to then give back comments on their memo and direct them to make appropriate changes to the agreement. However, we are simply at the first point in that process, and are asking the students to highlight what needs to be done.

The second part of the assignment is preparing a term sheet. The students are to prepare a term sheet that identifies for the client the deal implemented by this particular draft Operating Agreement and helps the client understand this complex and technical document as it relates to the business deal they believe they've struck.

Our major objective in this process is trying to confront students with a contract that they're responsible for from the front to the back. They will own this, and it's their responsibility to make it a coherent, integrated, rational document that works from front to

back. We're introducing basic contract drafting skills such as proofreading and the use of defined terms. We're introducing the idea that there is no single correct format, but that a good format supports the delivery of content and makes it easy for the reader to comprehend the importance of the content. The two deliverables have different objectives, and they have different audiences. They require different priorities, different levels of detail, and different language.

We introduce students to the practitioner's need to assist clients in achieving their objectives. The task for the memo is not just to offer analysis of the agreement. Instead, they've got to tell us as to each provision in the agreement what needs to be done. We're trying to have them lay out productive advice to assist the senior partner as to how we need to revise the agreement.

We are beginning the student's development as an effective translator from business-speak to contract-speak and vice versa. Business-speak would be things like "they've told us that we're the minority party, but they'll treat us like a partner." What does that mean in a contract? Or the understanding that the dissolution of the entity "will occur upon the consent of the members." "Consent of the members" means what? Does that mean unanimous? We're representing the minority party so a majority in interest consent isn't going to help us much. So, what does all this mean, and how does that relate to "they're going to treat us like a partner"?

The term sheet requires the students to prioritize and communicate not just what the draft agreement says but what the implications are for what it says about the deal the client thinks it has struck. We're testing their substantive understanding of LLC management and fiduciary responsibility issues. We're testing their ability to comprehend the expression of a business deal versus the expression of a contract, and we are beginning the process of getting them to consider the implications of proposed solutions not just in terms of what is best for our client but in terms of what's feasible to actually move towards a resolution with another side that has different interests.

Second Assignment: Draft a Founder's Restricted Stock Purchase Agreement

Our second graded assignment is drafting a founder's Restricted Stock Purchase Agreement. The lead-up to this assignment is looking at suitable Corporations Code provisions. We make students read statutes. We have them review private issuance exemptions for the securities laws issues, and we introduce them to restricted stock and equity incentive structures, Section 83 of the Internal Revenue Code and the taxation of equity issued in connection with services, and the basic construction of a purchase agreement. We give them homework that requires them to apply these things in hypotheticals that are consistent with the work a junior associate would be doing. The assignment materials consist of, again, a memo from the partner describing the business

terms the founders have agreed to with our client, and three Restricted Stock Purchase Agreement forms the senior partner is providing as precedent.

The students are to use only the instruction memo and precedent documents, the class materials, their lecture notes, and the applicable statutes: again, this is a closed-universe assignment. They are to draft the founder's Restricted Stock Purchase Agreement and prepare a memo to the partner describing their drafting decision-making processes, describing how they chose among the precedent in creating a coherent, comprehensive, internally consistent agreement that implements the deal. We explain that the memo is in lieu of sitting down with the partner and doing this verbally, which would be more likely in practice, but is not feasible in this setting, particularly given our school's requirement of anonymous grading.

The memo supplements the contract-drafting aspect of the assignment by giving the instructor insight into the student's thinking. If the memo makes it clear that the student understood that an issue needed to be addressed but simply addressed it incorrectly, the instructor can give more credit. Without the memo, if they correctly include a complex provision, you don't know if they just got lucky, if they understood it, or what actually happened.

Our major objective is to expand the idea of ownership of a contract. For most students, this agreement is the first one ever that they've actually had to draft. We're testing contract drafting skills such as using an appropriate format, using defined terms, using consistent terminology, and introducing the idea of using precedent to accomplish the drafting process, while emphasizing that this is a drafting exercise and not a cut-and-paste process. They find that creating integrated, consistent, coherent documents is a lot harder than it looks.

In completing this assignment, first we direct them to look at the precedent and understand what those documents are doing. What is the business deal that these documents are implementing? How does that relate to our business deal? Can we use what these documents did to implement our client's deal? Can we use terms from these documents to express our deal even though they might reflect a different deal? Ultimately, the question is whether a provision is useable to help you in drafting our agreement. To do that, you have to understand what the provision is actually accomplishing and how it relates to what we're trying to accomplish. We're developing the students' perceptions of the contract as a set of instructions. Some future person is going to have to use this contract to figure out what the rights are for these parties. Those instructions have to be clear and unambiguous. In order to determine that they are clear and unambiguous, the student has to actually practice tracking them through, by following their own instructions to see if those instructions get to where they need to go.

We're also testing the students' substantive understanding of the corporate law issues regarding the issuance of stock, the concept of vesting and the acceleration of vesting, the tax implications of an issuance of stock, as property subject to a substantial risk of forfeiture in connection with services, and the utilizing Reg. D exemptions.

We're continuing to push the students beyond issue-spotting and analysis to crafting solutions and considering the implications of proposed solutions, not just in terms of benefit to our client, but also in terms of feasibility in completing the transaction successfully. We're introducing consideration of how decisions relating to one set of terms affect the approach and the structure of related terms. The purchase, vesting, repurchase right, and acceleration of vesting provisions in our Restricted Stock Purchase Agreement are all related. They have to all work together, but each of the precedent documents does them differently. The precedent addresses them using different terminology and mechanics, and so students have to put all these things together in a way that makes them fit rather than bump against each other without fitting.

Third Assignment: Review and Comment on Draft Venture Capital Preferred Stock Documents

The third graded assignment is to review and comment on a venture capital Preferred Stock Purchase Agreement and an Amended and Restated Certificate of Incorporation setting out the preferred stock preference rights. Again, we provide students with substantive material in class. We give them homework assignments emphasizing preferred stock preferences in terms of dividends and liquidation, conversion and anti-dilution adjustments, voting, and redemption. We require them to actually create liquidation waterfalls and calculate the allocation of proceeds in the sale of a business. We have them determine whether a transaction triggers an anti-dilution adjustment, and then we have them actually calculate the adjustment. By working through the instructions contained in the operative documents, they can determine: do those instructions work, and do you come out where you should be coming out?

The assignment materials here are a term sheet that the parties have in fact signed with the venture capital investors plus two draft documents from the investor's counsel: the Preferred Stock Purchase Agreement and the Amended and Restated Certificate of Incorporation. We're representing the issuing company. Students are to review and comment on the draft documents in light of the deal terms memorialized in the term sheet and prepare a memo to the senior partner showing the necessary changes to the draft documents. Again, they are to use only the materials we've given them and the materials they've gone over in class.

This requires students to review and understand the term sheet, which addresses the entire transaction – more than the documents they're actually reviewing because we haven't received all the draft documents yet. They're to prepare a section by section review of the two documents we have received from investors' counsel, addressing drafting issues,

conformity issues and typos, as well as the deal terms. Sometimes the students think this is a reversion back to the first assignment, but as they get into it, they discover that this transaction is much more complex, with multiple documents and multiple elements moving around, and these elements all need to be integrated together. As a consequence, managing this transaction is a more complex thing to accomplish. We're further expanding and compounding the complexity of the issue of ownership of a document. We have multiple documents that have to live together and yet are going to be, and must be, different.

We leverage the student's experience in drafting in the second assignment to use their drafting skills to create integrated, internally consistent documents that implement the deal. We continue to develop their transaction management capability in addressing the terms of these two new documents and recognizing the difficulty of implementing terms in a complex multi-document transaction. We have them look across as well as within the documents at the interrelationship of specific terms. We are continuing to develop their skills as effective translators between the sometimes vague, sometimes ambiguous business-speak term sheet and the contract-speak draft documents. At this point, we're requiring them to actually use judgment in order to determine if the approach chosen by opposing counsel is, in fact, the best way to implement a vague and uncertain term from the term sheet so the agreement works effectively. Is there another way a particular provision should be interpreted that would be more beneficial or more appropriate from our client's perspective? We're also testing the students' substantive understanding of the specific materials and further developing the process of considering the implications of proposed solutions, not just in terms of the benefit for our client, but how it relates to other terms in the transaction and how it relates to another sophisticated party who has very strong views about how the transaction is supposed to work.

In short, we use this simulation process to define the timing and nature of details of the problems we're presenting to the students. We have them prepare a weekly assignment that they're getting feedback on instantly in class. We have them prepare writing assignments that are graded with detailed written comments as well as engendering interaction with the professor after class. We use increasingly complex, substantively challenging documents to give them the type of work a junior corporate associate does, and then we evaluate them in the way that a law firm aspires to evaluate their junior associates.

Are there any questions?

Audience: I apologize if I missed this, but on the graded assignments, do they do this in teams or individually?

D. Warren: They do the graded assignments individually. They have nine homework assignments over the semester that are ungraded. They're welcome to work as teams on the homework. Some of our adjuncts actually assign students to teams on the homework assignments.

They work individually on the graded assignments and at Loyola we have a mandatory curve and anonymous grading, so students have to work separately. Our course materials include a five or six page grading rubric for each graded assignment.

Audience: This is hyper-detailed. You mentioned liquidation waterfalls as your third assignment. I have had spectacular failures dealing with students on waterfalls and general return calculations.

D. Warren: I do emphasize to the students that we're going to be doing arithmetic now!

Audience: I've actually had to drop that problem from my contract drafting class.

D. Warren: One of the things we found is that it's very easy to try to go further than the students are able to go. One of the reasons we created a full turnkey package is because it's often difficult for adjuncts to dial it down. We do fairly straightforward waterfalls and anti-dilution issues. We don't do any kind of floors or negotiated adjustments or anything like that simply because we want them just to gain a foundational understanding of what's happening. We have to assume they can build from there.

Audience: I notice, Dana, that you said you can't just IRAC a contract upfront at the beginning of your speech. I actually want to suggest to you that you are actually teaching the students how to use IRAC by doing what you're doing because you're telling them to look at substantive rules, security law, and corporate rules. You're telling them to look at norms and to apply them to client facts. You're trying to reach a conclusion in the form of the drafting.

D. Warren: That's really the emphasis we try to present. We're not offering a skills class. We're offering an applied substance class, and the process we're going through is what you do to actually think like a lawyer. I tell them you need to IRAC it in your head. But what comes out of your mouth needs to be productive advice, direction, and counsel, not your analysis and the list of elements you need to go through. Sometimes, on the first assignment, we'll get back an article about the shortcomings of the agreement that is topically organized. For reviewing an agreement, that is useless. I've had a number of situations where I had to write "you know, this is very nicely done and well thought through, but if we were in practice, I would give it back and say okay, now do what I asked you to do, which is lead me

through the agreement." Of course we have to tell them that you can't really start trying to work this way until after you take the bar exam because you need to get through the bar exam, and this law student sort of review and analysis is what you need to do to pass that.

Audience: You teach 90 to 100 students a year. What percentage of the graduating class is that?

D. Warren: A quarter to a third, more like a third.

Audience: You do both the day students and the evening students?

D. Warren: Yes, we have day sessions and evening sessions.

Audience: Do you find a difference between the day and evening?

D. Warren: The evening students tend to get to the point more quickly because often they have more practical experience. They get to the bottom line more effectively. I really admire the evening students in terms of their determination. They tend to do well even though they're falling asleep. They tend to do real well.

Audience: Similar comment. It sounds like great training, and I'm wondering if the students going to a larger firm where they're writing memos for senior partners corresponds with the experience in your class. I'm thinking many of them may be doing much smaller practices than venture capital.

D. Warren: Well, we now have an adjunct who is in a three-lawyer firm and hired one of our graduates. He said this is the best-prepared person they've seen for their practice because they could actually put this new grad to work immediately. We're using things like preparing memos as vehicles because that's the most effective way to accomplish what we're trying to accomplish in a graded academic environment, but substantively, we're trying to get them to adjust their thinking process. And we find that it is actually very effective for preparing students to work in smaller firms who don't have the luxury of having unproductive people around.

Audience: Can we import this class just by taking the material? Is it set up that way so it's literally lift-able?

D. Warren: Yes, we have a book published by Aspen, and we have a website we maintain from Loyola that has a restricted faculty-only page that

provides all of the lecture notes, graded assignments, the grading rubrics, sample graded papers, and supplemental materials.

Audience: Is there enough structure that these materials can be used by an inexperienced adjunct?

D. Warren: We provide all the necessary course materials to adjuncts, and the lecture notes include guidelines in terms of how much time we suggest spending on each topic. We do try to provide enough structure that they can get through it. As I say, we provide samples of graded papers and grading rubrics and all. They have lots of guidance.

Audience: How much, in your experience, is the key to success the fact you're there to be the concert master of this army of people who are delivering this product?

D. Warren: You know, when we hire new adjuncts, I typically don't go visit their class until the final third of the semester just because I don't want them to be looking at me. I want them to be focusing on the students. We haven't had many problems, but we also choose the adjuncts carefully. They have to have appropriate experience. One of the things we look for in adjuncts is that they've actually supervised junior people before so we can be sure that they have a good sense of what the junior person is struggling with and what kind of feedback is needed. We try to give them guidance and let them go. It seems to be working in a number of schools around the country.

Audience: What time commitment is there for the adjuncts aside from the classroom? It sounds like there are nine homework assignments you're giving feedback on. And how many people are in the class?

D. Warren: There are around 15 students in the class. The homework assignments are actually ungraded, so all the adjunct has to do is confirm that the homework has been done. We go through each homework assignment in the course of the class lecture, so the students are doing self-assessment. The homework assignments take all of five minutes to review to be sure they have been turned in by the entire class. We want the adjuncts to spend their non-classroom time actually grading the writing assignments and providing feedback on those graded papers.