

ACROSS THE CURRICULUM: INTEGRATING TRANSACTIONAL SKILLS INSTRUCTION

JEAN WHITNEY,* LORI D. JOHNSON,* RICHARD RAWSON,*
& CAROL MORGAN*

Jean Whitney

Welcome everybody. I'm so glad you came. My name is Jean Whitney. I'm from UNLV¹, my colleagues Lori Johnson and Rick Rawson are also here from UNLV, and Carol Morgan is here from the University of Georgia.

Our two presentations were combined by the conference organizers because they are closely related. We didn't know it when we were planning, but what we've got now is a presentation that talks about a continuum for integrating transactional skills across the curriculum. I'm going to start out by talking about how I integrate transactional skills as in discrete assignments in a first year course and my colleagues will describe how they help students learn transactional skills through increasingly more comprehensive assignments and Carol will explain the immersion experience she offers students through an externship program.

One of the things we try to do at UNLV is integrate some of the Carnegie recommendations about incorporating all three apprenticeships of legal education - helping students learn new legal knowledge, develop their practice skills, and think about professional identity and purpose in the context of a transactional practice. And all of our approaches include opportunities for students to learn both in context and in role.

At UNLV, students are required to take three semesters of legal writing - at least one legal writing course after the first year. Our program offers a variety of options for that third semester, one of which is legal drafting. All three of us teach transactional skills in the third semester courses, but even in the second semester of our first year program, in which the assignments are litigation-based, like a motion for summary judgment or a motion to dismiss, we integrate some basic transactional skills. For example, we have the students try to

* Interim Director, Externship Program Lawyering Process Professor, University of Nevada Las Vegas, Williams S. Boyd School of Law.

* Lawyering Process Professor, University of Nevada Las Vegas, Williams S. Boyd School of Law.

* Adjunct Professor, University of Nevada Las Vegas, William S. Boyd School of Law.

* Business Law and Ethics Program Instructor, University of Georgia School of Law.

¹ University of Nevada, Las Vegas

negotiate a settlement of the case before the hearing on a motion for summary judgment or before the brief is due on an appeal. Students are on different sides of the case and must negotiate with each other, and develop the terms of settlement agreement. Sometimes you can't get to all the assignments that you want to in a semester because there's just not enough time, but even if there is not time for them to draft a settlement agreement, I have them negotiate and then write each other a confirmatory letter that identifies the primary terms. So at least they have to figure out a "deal" and articulate the key terms. And then I bring samples of settlement agreements, and we review them in class so they get an idea of what settlement agreements look like. And we talk about the fact that settlement agreements are contracts or transactional documents, even though they don't think of them that way. So with one discreet assignment in the first year, students are exposed to transactional skills.

As I said, one of the third semester courses we offer is legal drafting in a general practice context. For that course, when I teach it, the students are exposed to several different kinds of drafting experiences. They draft contracts, litigation documents, estate planning documents, and legislation, including private legislation such as articles of incorporation, or HOA rules. Each of the assignments gives the students a chance to solve hypothetical but practical problems and to draft a solution to the problem.

The other thing I do is give students experience not only with drafting but with reviewing documents drafted by opposing counsel because often that's a role that they have to assume in real life. Students don't realize that they can't always draft every document or that even if they don't have to draft the document, they must review it to be sure their client's interests are well-served. I have several assignments where I give them a document to review it and comment on by writing a letter to opposing counsel saying why they agree or disagree with particular provisions in the document. I use that approach for some of the more complex documents because -in a course where you're trying to expose students to lots of different types of documents, there isn't enough time to have them draft more than a couple of big projects.

In our basic legal drafting course, I have used service learning projects as the final assignment - projects that serve the needs of persons or organizations in the community. One semester, my class worked on a project for a group of doctors and nurses that wanted to start a community health clinic. To do that, they needed to incorporate as a not for profit. So I had the students work in groups to draft the articles of incorporation and bylaws for this group. One of the doctors, who took the lead on getting the corporation formed, came to class and the students interviewed her after they had done some research about what needed to be in these documents. Then, after they drafted the documents, she came back to class and the students presented the four different agreements that the groups had drafted. Learning in context and sometimes in role not only completes the learning cycle for students, it makes the class come to life.

In our last session, we were talking about how sometimes it's hard to deal with university administrations and that there are lots of hurdles to clear before you can do the things you want to do. Our approach, when we developed our advanced writing courses, was to create generic courses that allow for specialization. For example, we submitted a course proposal for a course called "Legal Drafting;" with a colon, so that we can add whatever we want after the colon without having to get the course approved again if we want to focus on a particular type of drafting. So after the colon, we've inserted intellectual property or family law or real estate transactions, and whoever is teaching the course can teach transactional skills in his or her area of expertise.. Each of those classes is a regular, three-credit course or, a one or two credit practicum that faculty members add on to their podium courses. So if a faculty member is teaching intellectual property, he or she could add a practicum and have students do a skills-based project that requires application of the principles the students learned in the course..

At UNLV, we require that anyone who wants to teach either a practicum or course that satisfies the advanced legal writing requirement must spend at least 50% of class time talking about drafting skills and have at least one "turnaround" assignment on which students get feedback on whatever they drafted before turning in a final draft.

I have explained how we at UNLV incorporate transactional skills into our first year legal writing course and in our general legal drafting course. Lori will talk about her course, which is a transactional drafting course that she's designed. And then Rick, who is one of our adjunct professors, will talk about his class, which focuses on real estate transactions.

Audience: Barbara Wagner from Chase College of Law. Can I ask a quick question? –Your students do one drafting project instead of several small group assignments?

J. Whitney: In my course, student do a fairly significant assignment, like the articles of incorporation, and they had to do multiple drafts, more than they would have time to do in the regular business associations course. If someone wanted to add a drafting practicum to a podium class, the skills portion of the class would be optional and students could enroll in that extra credit and do a project that the professor had lined up.

Lori D. Johnson

My colleague Jean Whitney explained the continuum we provide to address transactional skills in our basic first-year legal writing classes. We also offer a third semester upper-level seminar to students with a menu of choices. I provide a choice on the menu focused on transactional drafting, the goal of which course is to put transactional skills into context. I should note that for each of our courses, sample syllabi and sample exercises will

be available on the Emory Conference website.²

I would like to discuss the approach I take in this particular course and where it fits on the continuum of transactional skills instruction that we offer at UNLV. My goal in this course is to provide a capstone experience for students; capstone being broadly defined as an experience where students can synthesize subject matter knowledge they have previously obtained and connect theory into a skills-oriented setting. The course I offer goes a step beyond simply adding transactional skills into a pre-existing writing course, by taking subject matter and putting it into practice in a transactional-focused legal writing seminar. The subject matter I focus on is contract law generally, while my colleague Rick Rawson, who will speak later, provides a course focused on a more specific doctrinal topic.

In the first several class sessions of this seminar, I focus on Tina Stark's textbook, which gives the perspective of the creation of the contract and the identification of contract concepts.³ This approach is the converse of the way a doctrinal contracts course is typically taught. All of my students are second and third-year students who have a basis in contract law. However, doctrinal contracts instruction typically focuses on the demise of the contract, and the litigation that ensues when a contract breaks down or the parties dispute its existence. My course views this subject through the opposite lens, by focusing on the creation of the contract. This has been a particularly effective way to help students understand that any of the knowledge they have acquired in a doctrinal course can be translated into skills. The students begin to understand how to take doctrinal contract concepts and put them onto paper.

I attempt to get students writing right away, in the very first class, even though it's an unfamiliar area. Most students have never drafted a contract. Throughout the semester, we move into drafting contracts on more complex issues so they can see that the skills they're learning in this particular course translate into a variety of different subject matter areas using all of the same contract building blocks. This course involves quite a bit of in-class work, in-class exercises and group work, as well as taking small manageable pieces of the contract and discussing and redrafting those particular issues class by class.

I have noted that this capstone approach provides the advantage of helping students recognize that the knowledge they've gained in other classes can be put into practice. This approach also legitimizes courses that are housed in our writing curriculum because it takes doctrinal contracts knowledge and puts it into practice in a way that goes beyond mechanical writing and grammar. The students begin to view this type of course as a logical extension of their previous doctrinal work, which deepens their understanding of the doctrinal

² See <http://www.law.emory.edu/centers-clinics/center-for-transactional-law-practice/2012-conference.html>.

³ Tina L. Stark, *DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO*, Aspen (2007).

concepts they have already learned, through the lens of skill,

Through teaching this course, I have found that there is really no better way for students to understand a case about a breach of warranty than to go through the exercise of drafting a warranty for a hypothetical transaction. Additionally, the use of the stand-alone seminar model focused on transactional skills offers some unique advantages for the professor, in that it provides the option to reach a bit outside the typical Socratic approach, or even the typical legal writing approach that you would take in most of your courses and use some more nuanced methods of presenting information.

I will continue by discussing a few of the techniques I have used successfully in this course. The first being graded group work. I am cognizant of the fact that graded group work is something the typical law student may resist, but it's very reflective of the real world of transactional practice. It is common for transactional attorneys to draft in teams, and making sure that students are exposed to the realities of practice in a capstone course is critically important. Students are forced to think about the logistics of working in a team, which is a very important and very unique opportunity to have in law school.

Additionally, I have found that there's some real utility in approaching drafting problems through the lens of current cases, borrowing from the Harvard Business School method.⁴ This method of instruction, originally referred to as the problem method, uses current, real-world scenarios as the basis for class work and discussions.⁵ I should note that other legal writing professors have even identified this method as particularly effective in the legal writing classroom.⁶ I should note that the Harvard Business School method has been cited as encouraging the "self-discovery of truths, the application of theory to real-world decision-making and collaboration."⁷ Each of these elements encourages students to apply skills gained through doctrinal classes to their experience in transactional drafting seminars and legitimizes the process.

Finally, another method I've used in my transactional drafting seminary, which has been particularly effective, is that of partner presentations. This requires putting myself in the role of the assigning partner and asking the students to discuss drafting decisions they have made, in a simulated boardroom environment. I have students justify why they have drafted a certain provision a certain way and explain the legal and stylistic underpinnings of

⁴ Jodi Jewell, *Modifying the Business Case Method for Use in the Law School Classroom to Improve Learning Outcomes and Increase Student Engagement*, Presented at Rocky Mountain Legal Writing Conference, Sandra Day O'Connor College of Law, Arizona State University, Tempe, Arizona, March 2012.

⁵ Rachel A. Smith, *Finance Professors' Use of the Case Method at Harvard and Darden MBA Programs: Ensuring Students' Technical Knowledge in Finance Courses Using the Case Method*, J. of Econ. & Fin. Educ., Summer 2010, at 32.

⁶ See Jewell, *supra* note 3.

⁷ See Smith, *supra* note 4.

that decision. This simulation forces students to communicate legal information verbally, and emphasizes the skills they have learned. This also helps me, as a professor, to assess performance. Therefore, the three main approaches I use in the course, group work, the problem method, and the partner presentations, really help flesh out the capstone approach in our curriculum.

I would like to briefly note that one useful exercise I use in this course is what I refer to as an ambiguity case study. I use the published opinion in a decided case to illuminate the complex issue of ambiguity in drafting. The materials for this exercise are available on the conference website as well.⁸ As many of you probably know, avoiding ambiguity can be one of the most difficult issues in contract drafting. It certainly was for me in practice, and it has turned out to be one of the most difficult areas to teach because of the three different types of ambiguity: (i) contextual ambiguity (meaning inconsistencies between provisions of a document); (ii) semantic ambiguity (meaning confusion over the meaning of a specific word, such as homonyms or words with multiple meanings); and (iii) syntactic ambiguity (when the order of words and phrases and the use of punctuation causes an ambiguity).⁹

Based on these three different types of ambiguity, I found it difficult for students to correct or avoid ambiguity in their drafting. Additionally, students also often failed to understand how these problems could impact the meaning of a contract. To remedy this misunderstanding, I take a real case and work backwards through the pleadings to find an actual contract in dispute. I also read the pleadings and pull out the salient facts. For purposes of the exercise, I provide the facts to the students first. We pause after reading the facts and engage in an in-class discussion of possible ambiguities. Next, I provide the students a copy of the contract and require them to read it, in light of the context provided by the facts. I then request that the students attempt to determine which types of ambiguity are present and whether they're contextual, semantic, or syntactic. Finally, I have the students dissect the drafting of the contract and redraft the problematic provisions.

I provide the students with written feedback on their re-drafted provisions. I also provide the students with the decided opinion in the case, which highlights the actual financial implications of the drafting errors, and includes a statement by the deciding judge chiding the parties' poor drafting. This exercise illustrates how to utilize the three teaching methods I emphasize in this capstone class. The exercise requires group work, use of the Harvard Business School method (by using the real world case), and providing individualized feedback.

I should note that with regard to any course of this nature, there are definitely

⁸ See, *supra* note 1.

⁹ Thomas R. Haggard & George W. Kuney, *LEGAL DRAFTING IN A NUTSHELL* (West 3d ed. 2007).

challenges that every professor needs to think about before they determine whether this particular choice is right for them or their institution's curriculum. There are logistical concerns, particularly with group work. How will you assign the groups? Will it be random? Will you select students and group them? Will they wonder about your methodology? The group work itself can have some logistical issues. There's also a rather heavy load of grading, commenting, and watching presentations, so depending on your course load and the number of students that you have, this can become a particularly challenging course. However, these small, incremental steps are required to help students understand how to draft each portion of a contract.

Finally, I have noted that this particular course works extremely well when I have a nice subset of the class being either MBAs or concurrent JD/MBAs. Such students are much more comfortable with group work, and they improve class dynamics and discussion quite a bit. If you have a class full of JDs with pure humanities backgrounds, this might become a more difficult course to teach, and there might be a little bit more resistance to the methods, particularly the Harvard Business School method and the graded group work. However, I really find this kind of transactional drafting seminar to be an effective means of bridging doctrine and practice and adding transactional skills to the curriculum. I strongly recommend the sort of curriculum we have set up at UNLV, which includes this option, and my colleague Rick Rawson will talk further about his course, which moves even more into focused simulation. I'll be glad to take questions.

Richard Rawson

I've been teaching as an adjunct at UNLV since 2006. I started my practice at a large Nevada firm (large for Nevada is only about 80 lawyers). This summer my partner and I opened our own practice, which is focused on business and real estate transactions.

I teach legal drafting, real estate transactions as a simulation course. I pattern the course after the experiences student get as either a summer clerk or first-year associate. In my experience, some law clerks are better prepared for transactional practice than others. One of my primary teaching objectives is to help my students make the transition into practice.

My teaching is influenced by my experience as a transactional lawyer. As a new lawyer, I remember being given an assignment to review a set of loan documents that were a couple of inches thick. I read them. When I was done, the assigning partner asked me to write a memo and list my comments. I remember sitting at my desk and looking at the blank memo and having absolutely nothing to put on the paper. Feeling unprepared to practice was frustrating and discouraging.

About that time, a colleague that started at the firm with me had a similar experience. He had reviewed a set of documents. When he met with the assigning partner to

talk about this review, the partner said, “[t]here’s no way you could have reviewed these documents so quickly. Do it again.” These experiences taught me that there’s a real distinction between reading a document and reviewing a document critically. In my course, we focus on critical thinking and understanding what the document says and then testing it for consequences. Later, I’ll share a couple of examples or exercises I use in the class to try and help the students understand the importance of critical thinking.

But first, why real estate transactions? When people ask me what I teach, I tell them I teach a drafting course because that’s what it is. It just happens to be set in the context of real estate. I believe that the skills that are learned in drafting a real estate document are transferable to a corporate document or an employment contract or an intellectual property agreement. Picking one area of law seems to provide the students with more time for drafting and less time spent trying to get familiar with the law underlying an assignment

Another reason I teach real estate is that’s the area I practice in, so it makes it easier for me to develop creative problems for the students. I also have a lot of resources available. I’m working on deals on a daily basis. I have access to forms, and those become great resources for me in developing problems and assignments for the students.

Another thing that students seem to enjoy is the fact that I have experience with current events, with issues that are facing the practice in our community. We’ve seen incredible changes in the real estate market in the last few years. I’ve incorporated problems that deal with the condominium boom and fall. Students have represented buyers of condominiums and buyers trying to cancel contracts. We’ve had problems with short sales, loan modifications, and foreclosures, and I think that makes the course a little bit more interesting. The students feel like they’re learning something that will be useful to them as they finish their law school experience.

The following example, which I frequently use in class, came out of a condominium contract. As background, the contract was drafted by the in-house lawyer of one of our high-rise condominium developer clients. After the developer sold condominium units, got financing, and completed construction, they started closing on units, and buyers started moving in. One of the buyers, after closing on his unit, listed the unit for sale. The developer called and said “we can’t have our buyers competing with our own sales efforts. You’ve got to stop it.” I told him I’d take a look at the sales contract and get back to him..

The applicable provision I found in the contract reads:

Until Seller has sold and transferred 95% of all units in Wall Street Condominiums owned by Seller to third parties, or ninety (90) days after the transfer of the Unit to Buyer, whichever date is earlier, Buyer shall not market, list or advertise the Unit for sale or lease in any public medium, whether print or electronic media, multiple listing service or any other publicly available method or form.

The contract didn't contain anything else on the topic and there was no corresponding remedy section.

When I present this problem to the students, they review the contract and find the same provision. The critical question is what's next? The contract says the buyer can't list the unit, but what if the buyer does, what's the seller's remedy? The students often suggest suing the buyer for an injunction. The challenge with an injunction is that injunctions take time and cost money. By the time the seller obtains an injunction, much of the 90 days may have expired and the buyer, by the terms of the contract, may soon be permitted to list the unit. I use this as an example of language that was used. It was drafted by a lawyer, reviewed by multiple parties and either they didn't care what it said or they didn't test it for consequences to understand its real meaning and what happens if it's breached. This exercise starts to get the students thinking about a more detailed level of review instead of just reading a document.

There are some real distinctions between a law school setting and working in a law firm. One of those distinctions is that students expect and in some cases demand very concrete, definitive assignments. They want to have the scope of their work very clearly defined, but in practice that doesn't happen very often. Attorneys are busy, and they think spur of the moment; I need help with this. They call a law clerk or a new lawyer in, and they give an assignment off the top of their head and really haven't taken the time to organize that assignment. Students need to understand that this is what they're going to face, and so over the course of the semester we start out with a very detailed assignment, and by the end of the course, I'm giving assignments verbally in class.

The same thing applies to feedback. Students are very uncomfortable when they turn in a document and they don't get feedback right away. I start off the semester with immediate feedback and I try to wean them off of it to the point where they turn in part of their final portfolio —without me having looked at it before they turn it in. They have to turn it in, you know, blind to me, and they're uncomfortable with that, but, again, I think that's realistic, and it's trying to help them prepare for practice.

Another of my teaching objectives is to introduce the students to terms that they probably haven't been exposed to in other courses. I remember being a new lawyer and being asked to add a counterpart signature to a contract, and I'd never heard the term before. I spent a lot of time looking for this concept of counterpart signatures and was frustrated when I ended up adding just a very simple boilerplate provision to a contract. I felt like I should have known what that was before I started. We obviously can't cover everything in law school, but I'm trying to introduce students to terms and concepts that they are likely to encounter. At least they'll have heard the terms before and have an idea where to look for additional information.

The authors of drafting texts often discourage the use of forms. They give many

valid reasons why forms can be problematic; however, forms are used daily in practice. Many clients won't pay for an attorney to draft documents from scratch. It's too expensive. Using forms does come with certain responsibilities. I use an exercise in class to try and impress upon the students the importance of using forms responsibly. I assign the students to draft a deed to convey a commercial building from the seller to the buyer. What the students do almost every semester is they go out to our county website. They go to the assessor's page, and they bring up the vesting deed and copy it.

This exercise takes the students about 30 to 45 minutes to copy the deed. Afterwards, we put a couple of examples up on the screen, and critique them as a group. Their comments are generally limited to grammar and typos. I then lead them into a discussion, and I'll ask some questions that stump them. I'll say why did you draft a grant, bargain, and sale deed instead of a quitclaim deed? And they're silent. In some cases, they haven't even heard those terms. I'll ask them what warranties are conveyed with a grant, bargain, and sale deed. They don't know the answer. I'll ask them about the form of notary acknowledgment that they used, and I'll ask about recording requirements, and the point starts to be driven home. They copied a form without really understanding what it means, and frankly it was irresponsible on their part to not do some research and know more about what they were drafting. We then backtrack a little bit, go through those things a bit--those questions that I just asked them so that they have that foundation going forward.

I think considering the client's issue is a very difficult thing for students to understand because I think in law school they're motivated by their own interests. They're worried about their own grades. It's hard for them to step outside of that and think about a document from their client's perspective.

Another assignment that I use is based on a real assignment. My client owns a commercial shopping center with a lot of vacancies. He hired a broker to help fill the vacancies. The broker sent my client an email and says he went and looked at the property. "It looks great. Attached is our standard listing agreement. If you'll tell us who the owner of the property is, we'll send you a version to sign." My client forwarded the broker's email to me with a list of points that the client wanted added to the listing agreement, and then added this kind of generic comment asking me to add what I think is missing. What does that mean, and what's the scope of that? Attorneys do the same thing to new lawyers, you know, make sure the client's covered. Make sure they're protected or just some kind of generic comment like that. I've incorporated the broker's and client's email into an assignment memo that I give the students. It says please see the email below. I'll be out of the office this week, but while I'm gone, I'll need you to review and mark up the attached listing agreement and add what is missing to protect our client. Typically the students change the formatting and they correct the typos, but they're a little bit concerned about really making substantive changes to the listing agreement.

As part of the assignment, I include a reference to a commercial treatise that has an owner-friendly listing agreement, and if they'll just take that listing agreement and compare it to the broker's form, they can compare paragraph by paragraph and see what benefits our client and make the changes. Their first draft is usually inadequate. I show them what I've prepared, in the real life setting, and I think they all of a sudden feel empowered that they can make changes to these documents and they need to make changes to protect the client.

Throughout the semester I try share practice tips, things that I learned along the way. Some of them I learned the hard way. As a new lawyer, I was asked to draft a condominium declaration, which was a 100-plus page document. I wasn't really sure where to begin. I had some forms, but I didn't see the changes that I really needed to make to them, so I went to one of the senior partners and I asked if he had a condominium declaration that he'd marked up that he could send me the marked-up version. He did and I sat and I went through this document paragraph by paragraph. This proved to be an invaluable experience for me to start to understand the kinds of things that I should be changing and looking for in a document.

One of the side benefits of this review was that I started to pick up the partner's style. As I did more and more work for him, my work started to reflect his style, his preference, which obviously he liked, and he started sending more work to me. That created a market for my services and helped me be successful in the firm. I try to make that point with the students that they're trying to create a market for their work, to the extent that they can make the job easier for the partner then they're going to get more and more work.

We talk about signature pages. The students are always very concerned about putting a signature page on a page by itself. I explain to them how we seldom close deals with everybody sitting around the board table. That the closing documents are changing right up until the deal closes, and so they need the signature pages to be separate and we talk about the logistics of that. I encourage the students to start developing and collecting their own forms, and to start categorizing their forms to be able to search for provisions that will help them in the future.

There are a lot of free resources out there, and I try to share the things that I've learned in my practice. There are resources available from local governments that the students probably don't know about.

The last point is a phrase that I picked up from this a grumpy old associate I use to work with. He phrased this term as dying on the vine. What he meant by that was that as a lawyer, especially as an associate in a firm, your life blood is the flow of work, and if the flow gets interrupted, if it gets stopped, then that associate is dying and may not even know it. What sometimes happens in firms is that performance (e.g. lack of billable hours, lack of collections, etc.) does not show up until there is an annual review. There's an annual review, and then that associate is invited to find work elsewhere. We talk about this in class. We talk

about the fact that if you're sitting in a practice and everybody's busy and you're not, then you have reason to be concerned, and it's time to start knocking on doors looking for work. It's time to start demanding feedback and start figuring out if there's a way to fix issues that are interrupting the flow of work. Ultimately, the student is responsible for his or her success in a firm and needs to take an active role in addressing issues before it's too late.

Carol Morgan

Corporate Counsel Externship Inside and Out

We've been hearing about doing transactional skill building inside the classroom, and I'm going to take us outside but also bring us back inside because I see a real value in having that combination.

When I graduated from law school 30ish years ago, I didn't have a clue what an in-house counsel was. This is me. Even when I applied for an in-house counsel position two years later, I still didn't know what they did to know the right questions to ask. And fortunately, a very kind general counsel I interviewed with interrupted me and told me the questions I should be asking him. And then he, with a great leap of faith, hired me and mentored me for a number of years. I ended up having a very satisfying 25-year career as an in-house counsel.

I think the difference in law school today is students have some notion about in-house counsel, but they still don't really know what they do, and they're a lot of myths floating around. That 9 to 5 myth is still out there.

But when I was asked by the University of Georgia in 2008 to create and lead our Business Ethics Program, I realized that a critical component of this program would be providing more experiential learning opportunities in the transactional area. We have a number in the advocacy area, and I wanted to be sure that we did the same in the transactional area. And a corporate counsel externship would be the perfect fit.

An externship in a corporate legal department provides an ideal opportunity for a student to be able to learn about transactional practice generally and then more specifically about the role of an in-house counsel. Students, as in all internships, have that opportunity to link the legal theory to the practice of law. They develop their transactional skills. They also, and maybe even more importantly, gain some confidence. They really can do this. I've seen that transformation, and this an exciting one to see a law student develop a little more confidence.

A bonus of this externship is that students develop a professional network. I really didn't anticipate that aspect of it. It's been very beneficial for our students because it helps counsel know lots of lawyers, and so our students become part of their network. Students also report that it makes for a great conversation starter in interviews, when they have their externship on their résumé.

So first what we've done at the University of Georgia is we have two integrated components, obviously the externship itself and the legal department, but then we also have an academic component. And I'm going to start with the in-house placements. I want our students to have a wide range of experiences, so I recruit public companies, like those here: Coca-Cola, Delta, Intercontinental Hotels Group, NCR, Verizon; private for profit companies like Cox Communications; and also nonprofit organizations, like American Cancer Society, CARE, and hospitals. We have a number of students interested in health law, so I've specifically recruited hospitals to meet that need. I believe that diversity of placements enhances the value of the class because the students bring these different experiences, and they learn from each other. There are a variety of industries represented here. We have all sizes of companies. We have large and small legal departments, and we have domestic companies and those with global operations, and it's just a wonderful blend in the classroom.

We run the program year round, all three semesters. We have a pool of about 20 to 25 companies. They don't all participate each semester. In any one semester, 8 to 15 students may be participating. Each placement only has one. I want the student to get a lot of focus, so there's only one student per placement. The selection process, as you can imagine, is highly competitive. I am the one that makes the selections and makes the recommendations to the legal departments. And the prerequisites are corporations and professional responsibility, so second semester 2Ls and then 3Ls will be eligible.

What I expect from the supervising attorney is a lot, and I don't sugarcoat that responsibility to them. I want them to integrate our students into their legal department. They're part of the team. They're not to sit in a cubicle away from everyone, invisible to the department. They're to be actively engaged. They're there to participate. They're to see the in-house counsel in action, but they're also to do some meaningful work. And the students have done some amazing things, and sometimes they're asked to give presentations to senior management groups and do some very meaningful work.

As I said, the attorneys know that this is an expectation. They will not continue if they don't give that kind of attention to our students. But while this placement, I think, is extremely valuable to our students, I believe that a student gains even more benefit by simultaneously taking an academically rigorous course on the role of the in-house counsel.

So what I have designed is a course that provides a contextual framework for this work experience, and they see it as more than just working somewhere; they see it in the context of the practice involved. And it helps students to appreciate the fact that they are getting a very rare, exclusive view into the life of an in-house counsel, and it's a valuable perspective not only for those students who think that's a great job. It's for those students, who will be outside lawyers, and most of them will be initially. And they will be so much better at representing their clients if they understand the needs of the client and the

expectations of the in-house counsel.

We cover a variety of issues. Because each externship isn't created equally with another, I make sure that I supplement the material and make sure everyone has exposure to at least some of the basic concepts and issues that in-house attorneys face. So I fill in the gaps. I equalize the experience in the classroom, provide lots of opportunities for them to practice their skills, and it also gives students a chance, in a safe environment, to discuss their challenges and issues that they face as they are experiencing the practice.

So what do we cover in the course? I basically have a different topic every week that we dig into starting with the attorney-client privilege and the importance and the uniqueness of that in an in-house counsel setting. We deal with corporate governance issues, which are applicable across the spectrum of private, public, and nonprofit organizations. We have the business advisory role of an in-house counsel, business ethics from a client's perspective, corporate compliance contracts, employment issues, potential property issues, relationship with outside counsel, the management of litigation, investigations both internal and government, and also crisis management. You deal with all these issues basically as a survey of issues that in-house attorneys encounter.

So how do we cover these topics? I employ a variety of resources and teaching methods. Every class includes the background and learning by doing, as I am a firm believer that learning by doing is the way they reinforce that subject matter knowledge and then develop their skills. So these are some of the resources I use. I don't have a textbook. There's really nothing that's been written like this, I don't believe, but I do rely heavily on Corporate Counsel Guidelines by John Villa, sort of the bible for in-house counsel.¹⁰ There's a new book that was published this year, Indispensable Counsel, which I think is an excellent book on the role of in-house counsel in today's world.¹¹ And then I assign a variety of articles. So the students have readings.

I'm also a big fan of Practical Law Company.¹² I don't know if any of you use Practical Law Company, and the students have found it to be a very rich resource as well. I like their practice notes, which are very practical, basic presentations about different legal topics. Their standard documents are also excellent because of their annotations, and so I use those in some of their drafting projects. And they rely on Practical Law Company in their externships as well.

I also have at least one panel discussion, where in-house counsel come talk about their pet peeves with outside counsel or their role as business advisors, which is something that's relevant.

¹⁰ JOHN VILLA, CORPORATE COUNSEL GUIDELINES (1999).

¹¹ E. NORMAN VEASEY & CHRISTINE DI GUGLIELMO, INDISPENSABLE COUNSEL: THE CHIEF LEGAL OFFICER IN THE NEW REALITY (2012).

¹² PRACTICAL LAW COMPANY, <http://us.practicallaw.com/> (last visited March 10, 2013).

In the process of all of this, the skills development--where I see the specific skills that I'm focusing on is their communication presentation skills because in-house counsel are teachers. That's what they do. They teach their company, and so I want them to learn to communicate well with all levels of people and be able to present well. And so they do some individual presentations, but they also do some team projects on hot topics in corporate governance, for example, or hot topics in corporate law. I do some drafting projects. They have an agreement, and I actually put that one on the flash drive, where it's a several-step process where they interview the client and then they draft. And then I review, and they draft again, and then a letter--a cease and deist letter. Both of these are fairly common assignments that an in-house counsel would have. And then I also emphasize issue spotting, counseling, and problem solving, and we do a variety of role-playing and discussion scenarios.

My favorite thing is at the end we do hot seat simulations where each of the students has the opportunity to be a general counsel, and then their classmates are the senior management team. So they have to experience both being a general counsel and also imagining themselves from a client's perspective as well. It's just tough for them, but it's a very good exercise for them to realize the pushback that a general counsel may get from the client. I give them 24-hours notice of the problems. I have several issues. You can't get to them all in a meeting, but you need to be prepared for all of them, I say, and then they come to the meeting, and we discuss those over a period of time. So it's like an oral exam, I guess. It covers every subject that we've discussed in the course, and it just calls on them to demonstrate their counseling abilities.

So the other requirements in the course--they do some general reflections that are sprinkled throughout the semester about the semester, about their own insights about their professional development. They also do a final appraisal, which synthesizes their entire work experience. They submit work products that they've done and are proud of in their workplace. They each will lead a class discussion about some relevant topic that they have experienced or observed. They meet with me. I see them a lot, and then they are evaluated by their supervising attorney on their professionalism and legal acumen, and their poise and professionalism, and the quality of work.

So based on what overwhelmingly positive feedback that we've got both from the students and the supervising attorneys, the externship has far exceeded initial expectations. I had a modest goal of just exposing them to a different practice of law, and it's turned out to be much more than that. They're improving; their skills and their increase in confidence over the semester are both remarkable. By the time of that hot seat simulation, they've really demonstrated efficiency in subject matter knowledge and that poise that we talked about.

So a corporate counsel externship strengthened by the academic course I have found clearly provides a very unique and effective way for students to transition from the

classroom to transactional practice. So I guess that's all we have, but we're open for questions.

Audience: George Kuney, and I'm interested in knowing how many credit hours are associated with both components of the course and additionally is it limited to one semester?

C. Morgan: For the second part of your question, currently it is limited to one semester. I have been asked by a number of students about doing some sort of supplemental or advanced course, and so I may do that in the next iteration of this. But at this point, they can only do it one semester. And they can earn anywhere from 4 to 6 hours total. Half of it is graded and half of it is pass-fail. They can work one full day, basically, in a placement per week for four hours of credit, with a two-hour course, or they can work up to two days per week, for the six hours of credit. And most of the students in Athens do have to drive to Atlanta. That's where the corporate counsel positions are, but they don't complain about that. They're happy to do it because it's such a great experience. So they just go early and stay late, have a full day at the office, and then come back for the course, which meets each week.

Audience: Jim Elliott, Emory. Do you run into any confidentiality issues where something has come up in the office but they really can't talk about it in the classroom?

C. Morgan: Absolutely, absolutely.

Audience: And how do you deal with that?

C. Morgan: That's in the very first class. I stress to them the importance of confidentiality, and part of the discussion of attorney-client privilege is that we don't want them engaging in any conduct that would waive that privilege. So it's emphasized a lot, and if they start down a path, I will cut it off, but they're usually very good. I can think of several instances where they were saying there's a really interesting thing that we're dealing with right now. It will be public by next week. I can't wait to tell you about it, but they couldn't tell us. They realize they can't tell us about something that's going on that's very confidential. So that hasn't been a problem, but it is something I have to remind them about, and they're very aware of it because this is a very incredible part of being a lawyer is keeping secrets.

Audience: Susan Jones, George Washington University Law School. Can you

describe some of the projects that the students have been working on in the program generally?

C. Morgan: Absolutely. And I believe you're referring to the externship itself, the placement itself.

Audience: Yes, that's correct.

C. Morgan: Well it's a wide range, but I know some of them actually will be reviewing contracts, and they will work closely with the attorney in editing the contract. For example, some will draft some contracts. Some have worked on EEOC position statements. Some have worked on drafting policies, like social media policies. As I said, some have made some presentations on issues. Some have worked on proxies and gotten involved in doing some research on that, and whether the company is doing what it needs to be doing on certain risk factors. They may also just review it because so many eyes have to look at these documents. So you know they could be on the securities. Some have worked on bylaws or amendments, so a variety of things--just a wide variety. And the health law companies, they have a lot of compliance and regulatory issues that they're dealing with. I don't even understand all of the Stark and anti-kickback stuff, and they're actually doing and working on very confidential matters, but they're being exposed to what hospitals [inaudible]. So it's just a variety of things.

Audience: Barbara Wagner again. I'm more familiar with the model where externs--whatever kind of externship you're doing, whether it's more adversarial or a law firm or in-house counsel, they all have a class together, and they get the benefit of exchanging ideas and learning from each other--learning in their externship. So I assume there's a whole separate externship program for traditional advocacy, and do you ever combine efforts and have an opportunity to blend?

C. Morgan: If we have another externship program, yes, we have a very active civil externship program that's separate from this. And no, we have not blended the two. The corporate counsel class has been our own stand-alone class. It's required, as part of the externship, but we do some of that, but in the context of the in-house practice. We cover some of the same area generally, about practice of law issues.

Audience: John Flynn, Elon University of School of Law. How do you develop the relationships with the companies, the corporations? Are they receptive to you as you come to them and say I want to place an

extern with you? How do you get them to agree to cooperate?

C. Morgan: That's a great question. Well first I call a lot of my friends in the general counsel community. I will say that, but also our alums are huge resources because they are so supportive of the law school, and they're very eager to open their doors to our students and to mentor our students. And I think I mentioned earlier in-house counsel are teachers, and for that reason, I think they have an inclination to want to do this kind of mentoring. In-house counsel by nature, I think, are in a counseling role, and so many of them, not all of them of course, but many of them really enjoy this and like this. So it hasn't been a problem really, and I've actually had some in-house counsel approach me when they hear about it through their friends. Can we participate? And sometimes they may not be a good fit for us. It really just depends on what their situation is. I told them this isn't the place where you're going to get free labor. It's really going to be labor for you to do this because it's an educational experience for the student. We want them to do meaningful work, as an academic experience, and they all understand that--the ones who are participating. But I think that the alums are huge. We have an Association for Corporate Counsel in Atlanta, as well, so that's a networking opportunity. And then some of the in-house counsel who participate will refer us to others. So the word gets out. We have some big companies, but I really like some of the smaller ones because I know my students will get lots of attention in the smaller environments. Is that helpful? Any other questions?

Audience: Susan Jones. One follow-up. I believe the University of Chicago recently announced a similar program, so there seems to be sort of an up-tick in interest, and I was sort of wondering whether you've yet seen a correlation between, you know, job placement and student placement, you know, as a result of the externship?

C. Morgan: We're still in the early stages of this because we just started our program in 2010, so I have more antidotal evidence than empirical evidence. But I do know of several instances where the supervising attorneys have referred our students to law firms, you need to hire this person, and they've gotten jobs that way. I've gotten called recently from a supervising attorney who said I need the number of my student from two years ago because I have the perfect job for them. So that's part of being in that network; that's so good that I just have that antidotal information. But I think there is a correlation

where employers are interested in what they did because it's real work, and the other nice part is these supervising attorneys write rave reviews about the students. They're great references for these students. And they have not only witnessed them, they've witnessed them working, not just a professor giving a reference, which that's still good too, but they've seen them in a work environment, and if they can give that much praise, I think there's value to it, so I think it can only be helpful, but I don't have that [inaudible].

Audience: George Kuney. I'm not trying to [inaudible] with dying on the vine, but what problems have you run into both on the student side and general counsel side just that we can take it away as lessons to avoid?

C. Morgan: Some of it has come from your practice tips, where students have gotten full benefit. Sometimes I think it's because they have not taken some initiative. And so part of it is a learning experience for them, and I've learned now I have to do more upfront. Things that I just assumed students would do, they would make sure that they were very visible and make sure that they were knocking on doors, that's not necessarily intuitive to a law student. They don't want to bother anybody, and so I do have to give that practice tip right up front at the very beginning. You're here for your educational benefit, and you do everything you can to maximize it. And you take that initiative, and you go knock on those doors, and you ask to be in these meetings. So taking initiative I think solves some of the problems because some of the students are going well, I don't think they really need me or I'm not getting the work. Some of it is the lawyers are busy, and they think the student is busy. They don't realize they've finished, and so the student has to let them know I'm ready. I need more work, so that's been a challenge, but that's been a lesson for me too that I need to be more proactive on that, so I've changed my introductory remarks to include more of those little lessons learned.

From the other side, some lawyers are more attentive, and if they're not attentive enough to our students, then they will not be invited back to participate. I've only had a couple that I have to do that. I don't feel that they were a good fit for our program because it is an educational experience and if the attorney just doesn't have that time, then that's not a good fit.

Audience: Barbara Wagner. Having just come from an in-house position where

we frequently thought about externs and frequently turned them down, we downsized from 18 to 3 lawyers, and it was over [inaudible] period. But, you know, there was plenty of work to do, but we just didn't have the lawyers. It was easier to send something to outside counsel and have them have a first-year associate do it than for us to commit to oversee a law student doing it. It would have been a great project, and we were very sensitive. I had things I could have given a senior paralegal to supervise, but that doesn't make the student feel very good. And it really would have been some interesting legal work, working on a proxy statement or drafting minutes for a subsidiary, but I had paralegals doing all that. I never even touched it until it was, you know, sort of finalized. So we felt it was really hard to make the students feel really welcomed and worthwhile if we had senior paralegals that were doing the same stuff.

C. Morgan: And that's perfectly understandable. It doesn't work everywhere for sure.

Audience: Dennis Honobuck. Just a quick comment--it sounds like a great program. It sounds like it's well organized and really very beneficial. I just want to add that the cover story for the November issue of *Corporate Counsel* is entitled *Training for Trouble*, and it's all about TC courses in law school including discussing the half a million dollars that Northeastern got for their clinic, so it might be of interest of course.¹³

C. Morgan: No, I'm glad you brought that up. I haven't seen that.

Audience: Yeah, it's November 12, 2012 issue, and you can just bring it up online.

C. Morgan: That's great. Anything else? Alright, great.

¹³ Sue Reisinger, *Training for Trouble*, *CORPORATE COUNSEL* (Nov. 1, 2012), http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202574093143&Training_for_Trouble&slreturn=20130210014420.