

**A CASE STUDY IN TRANSACTIONAL CENTERS AND
CERTIFICATE/CONCENTRATION PROGRAMS:
FROM PROGRAM DESIGN TO STUDENT EXPERIENCE,
THE CLAYTON CENTER FOR ENTREPRENEURIAL LAW**

**BRIAN K. KRUMM,* JOAN MACLEOD HEMINWAY,*
& MICHAEL J. HIGDON***

Brian K. Krumm

This is going to be a little bit abbreviated because Bill Delaney, who was scheduled to be here to talk about his emerging companies, of course, at Suffolk University, can't be here because of an illness in the family. Bill also teaches, as an adjunct, at the Roger Williams School of Law in Rhode Island.

What I'm going to do is first introduce the panelists, give a brief historical background of the business concentrations curriculum at Tennessee. Joan Heminway will then tell how it evolved over time. Michael Higdon, who is our legal writing specialist, will discuss a little bit about how he hopes to integrate some business transactional writing classes in to first and second year curriculum. And then I will end up by talking about how we apply the skills learned in the concentration to both the capstone courses and the clinical courses we offer at the University of Tennessee.

From a historical standpoint, the idea of a concentration really started developing about 1993. There were three primary individuals, Bob Lloyd, Tom Davies, and Amy Hess, all who came from private practice, originally, who noticed that more attention was being given to the advocacy aspects of our curriculum and thought that it would be good to start looking at how we can enhance the skills of some of our students, from a business transactional standpoint. So in 1993, they began outlining what the curriculum should look like, and by 1996, it was submitted for review to the University which endorsed the concept for the concentration in transactional law.

The first director was Bob Lloyd, and Bob came from Los Angeles and had mostly a commercial transaction practice. He teaches contracts, law and economics, commercial law,

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and introduction to business transactions within the concentration. Carl Pierce later took over as the director, and at that time, he had an individual come in, as a practitioner in residence. His name was Jim Clayton. Jim was a UT alumnus who lives in Knoxville, and owned Clayton Homes that was eventually taken over by Warren Buffet and Berkshire Hathaway. And as a result of that transaction, he provided a substantial gift which created the Clayton Center for Entrepreneurial Law. That was about the year 2002.

George Kuney came in the year 2000 and strengthened the program from a directional standpoint, as well as helping develop the curriculum along with his other colleagues. Some of the things that he integrated, at that time, was a speaker series, the Clayton Visiting Scholars Program. And even though Carl started the Transactions Law review Journal, George really got involved in it and became a faculty editor, for a short time, in an effort to strengthen the Journal.

Since a high proportion of legal work occurs in the representation of businesses, the Business Transactions curriculum allows second- and third-year students to concentrate their studies on the legal aspects of business and finance, emphasizing the needs of business concerns both large and small.

Many of our faculty members have practiced with prestigious law firms in their transactional practice groups and are uniquely qualified to mold a curriculum that will give students practical experience in business law — from the perspectives of both transactional lawyers and commercial litigators. In part, the Business Transactions concentration was created to take advantage of these real-world experiences. This Concentration is administered by the College's Center for Entrepreneurial Law.

Following this course of study helps students develop competence in the kinds of transactional matters lawyers handle daily, such as working with clients in planning and carrying out business transactions, drafting and negotiating documents, and counseling clients about compliance with laws and regulations. The curriculum allows students to prepare for practice in this field. Core doctrinal courses in Business Associations, Fundamental Concepts of Income Taxation, Taxation of Business Organizations, Land Finance Law, and Commercial Law are complimented by applied courses in Contract Drafting and Representing Enterprises. Students who have met the requirement of this concentration and the other requirements of the College will be acknowledged as having completed the J.D. degree with a concentration in Business Transactions

The concentration consists of the following eight primary core courses:

Introduction to Business Transactions (2 credit hours). Background information regarding the basics of accounting and finance which every business lawyer should know. The course also covers how business people analyze deals, and how various players in the business world interact with each other and with lawyers. Waived for those with sufficient business background — See Professor Lloyd if you are not sure you need to take this course.

Fundamental Concepts of Income Taxation (3 credit hours). An introduction to the principles of federal income tax law and how that law affects financial planning. Three Units. Enrollment cap of 72 students.

Business Associations (4 credit hours). Legal issues surrounding formation, operation and dissolution of business firms. Four Units. Enrollment cap of 72 students.

Contract Drafting (2 credit hours). A seminar in which students learn the basic principles of drafting contracts, leases and other agreements, and put these principles into action by drafting and redrafting contracts, both in and out of class. It is recommended that you take this course in your second year if you wish to preserve your ability to complete the concentration. The course is generally taught in small sections of no more than 12 students each, and typically there are four sections. (Satisfies Planning and Drafting requirement.)

Income Taxation of Business Organizations (3 credit hours). An analytical and comparative study of the federal income taxation of the various forms of business organizations which students will encounter in practice. There is an enrollment cap of 72 students for this course. (Prerequisite: Fundamental Concepts of Income Taxation.)

Secured Transactions (3 credit hours). Basic coverage of the most significant provisions of the Uniform Commercial Code's Article 9 and relevant Bankruptcy Code provisions.

Commercial Law (4 credit hours). Basic coverage of the most significant provisions of the Uniform Commercial Code; security interests in personal property (Article 9 of the U.C.C. and relevant Bankruptcy Code provisions); commercial paper, including checks, notes, and other negotiable instruments (Articles 3 and 4 of the U.C.C.); and sales of goods, including coverage of portions of Article 2 of the U.C.C. not covered in Contracts.

Land Finance Law (3 credit hours). An examination of the mechanics of financing real estate transactions. Students become familiar with traditional financing devices such as mortgages, deeds of trust and land sale contracts, as well as new developments in areas such as condominiums, cooperatives, subdivisions and shopping centers. There is an enrollment cap of 72 students.

Joan MacLeod Heminway,

**A Recipe for the Controlled Organic Growth of a Business Transaction
Concentration**

My talk is designed to explain how all The University of Tennessee College of Law's Clayton Center for Entrepreneurial Law¹ developed over time. I am the Chair of the Self Study Committee in connection with our imminent American Bar Association ("ABA") site

¹ See <http://law.utk.edu/centers-clinics/clayton-center/>.

review. In that capacity, I had to do a lot of soul searching about our programs, including the Clayton Center's Concentration in Business Transactions.² As an instructor in that program, I wanted to make sure that we were adequately expressing what it is, what it can do, what it may be lacking, and what we can do to continue to improve it. So in preparing for this session, I processed this information and realized that it invoked a cooking theme. So, as you can see from my title, I am using the idea of a recipe in cooking to communicate my message today. (I like to cook in my spare time.) Through this vehicle, I hope to illustrate where the Concentration in Business Transactions came from, how it integrates with our curriculum, and where it's going—or, at least, where we hope it's going. It's a continually evolving process. The overall content of my talk is the recipe for controlled, organic growth of our concentration program.

Before I get into the recipe, however, I begin with a quote from Yo Yo Ma that sets the stage. (I admit that I also enjoy music and love Yo Yo Ma. He's neither a transactional lawyer nor a cook, but what he says here accurately describes what has happened with our transactional law program, and (more particularly) our concentration program.) The quote reads as follows: “[A]n innovation, to grow organically from within, has to be based on an intact tradition”³

This quote describes not only our Concentration in Business Transactions, but also our entrepreneurial law center, as a whole. What we've done, which is different from what a lot of other law schools have done, is we've grown our program and our entrepreneurial law center organically from within. We took a few foundational faculty members and organized a program that centered on their skill-sets and designed and built a program that would evolve from them but continue to include them. Two of these faculty members recently retired, and a third is close to retirement, if we believe her. The founding faculty members planned for that and for other changes; they knew that the concentration program and the entrepreneurial law center as a whole had to be constructed and developed in a manner that allowed for its continued operation and relevance without their respective contributions and without (possibly) people sharing their areas of expertise. The tradition that they established over time laid the groundwork for additions and changes that allowed the Concentration in Business Transactions to continue to evolve productively over time.

So, if we think about the design and building processes relating to our Concentration in Business Transactions as analogous to the process of cooking using a recipe, we first start out in our metaphorical kitchen asking ourselves: “What's around you? What are my tools? What's in the kitchen that I am working with?” In answering these questions, I describe below the foundational aspects of our institutional structure at The

² See <http://law.utk.edu/centers-clinics/clayton-center/business-concentration/>.

³ Yo-Yo Ma in Edith Eisler, *Yo-Yo Ma: On the Silk Road*, STRINGS, at <http://www.allthingsstrings.com/News/Interviews-Profiles/Yo-Yo-Ma-On-the-Silk-Road>.

University of Tennessee College of Law that help inform why we did what we did and why we do what we do in our business transactions concentration program.

At the College of Law, we have what our dean would describe as four seminal, key (core, if you will), specialized, curricular programs. One is the one that we're talking about today, the business transactions concentration program, within the Center for Entrepreneurial Law. We also have a concentration program in Advocacy and Dispute Resolution, which is administered through a center of the same name, with a whole separate set of courses and requirements. We also have, like a lot of law schools, a law clinic, but ours may be different from some of yours. Ours has (in addition to civil, criminal, immigration, wills, and environmental law components) a business transactional component, comprising two different aspects: a for-profit business clinic and a not-for-profit business clinic, taught by two different faculty members. Our fourth core curricular program is our legal writing program. Our legal writing program has principally been focused on first-year students until recently. As you'll hear today, we now have significantly greater aspirations for our legal writing program. So, our law school kitchen gives us access to all four of these programs, as well as the more traditional parts of the law curriculum that we all have. Your kitchen may be stocked differently.

Of course, a student does not have to complete a concentration program. A student does not have to enroll in one of our many clinical programs. Our objective is to offer to every student at The University of Tennessee College of Law at least one experiential learning experience, whether that be a clinical experience or a simulation experience or an externship or a practicum—something that engages you with practice skills and professionalism issues. We don't have a night program or part-time division. We don't have LLM programs. We don't have all of that distracting us. We are just a nice, simple, small law school. Our total student population has been about 450 students until recently. We're a little lower now because we enrolled a smaller first-year class in the fall of 2012, like a lot of you.

Other general factors that may be relevant to the way in which we designed and built our business transactions concentration program include the fact that we are located on and are a part of a land-grant campus, and many of us at the College of Law take that very seriously. We know that we serve the public in the State of Tennessee. Our instructors, even our adjunct instructors, are actively engaged in the community outside the law school. Finally, but not insignificantly, we are a research university—classified Research Universities (very high research activity) by the Carnegie Foundation for the Advancement of Teaching.⁴

⁴ For more information about the Carnegie Foundation for the Advancement of Teaching classification system, see *Classification Descriptions*, Carnegie Foundation for the Advancement of Teaching, <http://classifications.carnegiefoundation.org/descriptions/basic.php> (last visited April 11, 2013).

We have a comprehensive undergraduate program and a significant number of masters, doctoral, and professional degree programs on our campus and the adjacent campus housing the Institute for Agriculture. It is a scholarship-driven campus, and we are engaged in scholarship as part of that campus effort.

Now that we know something about the kitchen in which we are operating, it's time to ask what the main ingredients in our recipe are? We have some unique main ingredients at The University of Tennessee College of Law. We have a unified, engaged tenure-track and tenured faculty. What do I mean by that? Our law librarians are tenure-track or tenured. Our clinical legal instructors are all tenure-track or tenured. That makes us very different from a lot of law schools, in terms of the resource base of faculty that we have. The institutional engagement of our faculty is different from that in many law schools. Our clinicians research and write. Our librarians research and write. For the most part, the unified tenure system that we have is positive; but it does mean that sometimes people are being stretched a bit thin. People are trying to do all things for all people at all times, and that does create some resource constraints, especially in a state university (i.e., limited resource) context.

Another ingredient: our students really want to practice law. Students do not come to the College of Law to become what I am. (Okay; some do end up as law professors, like me. But it's not the norm.) Our students usually are not going into high-level, policy-oriented, think-tank positions. They're going into small and mid-level markets, mostly in law firms.

We also have a dean and directors of our four core programs that are really super, and I don't know how you create that except by careful and lucky searching and choosing. Our dean is a clinician, and maybe I don't need to say much more than that. There aren't many law schools with that attribute. You've met George Kuney; he spoke this morning.⁵ His significant and far-reaching practice, editorial, and teaching background serves us all incredibly well. We have a really talented (and new to our law school) director of our clinical programs, and we also have a really strong administrator, who's a former judge at all three levels in the State of Tennessee, who directs our advocacy and dispute resolution center and concentration program. And we have Michael Higdon, who will be speaking next, as our legal writing program director. They communicate well with each other. I don't know how one can guarantee that kind of synergy in 30-minute interviews (etc.), when hiring people; but right now, we're uniquely disposed in that way. And so, there's a lot more cross-pollination occurring among our programs because of that high level of communication, and the dean is leading that charge.

We also have, as evidenced by our many adjuncts present at this conference, a very active and supportive alumni base. They populate so many of our courses—doctrinal and

⁵ See *supra* George Kuney, "Preparing the Transactional Lawyer: From Doctrine to Practice," p. 448.

experiential. In particular, we rely on adjunct instructors for our contract drafting program. We also now have a course on real property title registration taught by one of our adjuncts attending this conference. Our adjuncts teach a lot of other interesting things, too—and they often serve as guest lecturers. We're in a small market, but our alumni will come in and talk about their business or their career path or their practice. We're really excited to have them, and they're excited to work with our students.

We have a feedback loop that we've created with our alumni that I think is really important. We have something called our Dean's Advisory Council—a body of advisors to the College of Law named by our dean. They come to the law school twice a year, and they talk to us about our programs and tell us what we're doing right and what we're doing wrong (including, in the case of adjuncts, what they're seeing with our students). That is a further ingredient—a component—that's quite positive and has helped to sustain the College of Law and its centers and programs over time.

So what are the directions for this recipe? How do the ingredients get used? Recipes are written in advance. Not so much here. I've cheated and reverse-engineered them from the actual dish. I went back and looked at the history of the Concentration in Business Transactions and tried to understand how the concentration was created from what we had. The plan that our law school developed really involved an entire sub-curriculum, the concentration program, but it also involved the integration of that curriculum with co-curricular activities (principally, a business law journal) and other not-for-credit opportunities, opportunities that support the curricular plan. For example, in any given year, depending on student interest, we may have business law moot court teams, a Business & Tax Law Association, a business law symposium, or other activities that support the concentration program from an extracurricular standpoint.

So that's basically how we formed our Concentration in Business Transactions, as a curricular part of our law school puzzle. We then had to implement our plan. We had to keep the faculty engaged in the process. We launched the business law journal. We also launched a Research Associate Program, which is what I call "George's Team." You can see the team members—students retained by the Clayton Center for Entrepreneurial Law—running in and out of the center's offices as they perform research and support the center's curriculum. It's an effort to get our students involved in our scholarship and the overall production of practical, applied scholarship from The University of Tennessee. So he's got a fleet (okay, I admit that's an over-claim) of students. The projects vary. One year, folks may be researching piercing-the-veil questions. Another year, the research may focus on alter ego liability in corporate transactions. The Research Associate Program is a great way for students to make a little bit of money, add relevant experience to their lives and their resumes, and support faculty working in the center

We also have a Visiting Assistant Professor Program that we instituted back in 2006. This program enabled us to hire Brian Krumm (by coaxing him into the law academy from private practice), and it's the way that we have launched the law teaching careers of a number of other people as well. It's basically run as a practice-to-profession program, and these people teach in our Concentration in Business Transactions. The Clayton Center also recently put into place a field placement program with the Y12 National Security Complex, which is local to us in Oak Ridge, Tennessee. They do some tech transfer work, and our students wanted to get involved in that. They work part-time in the spring, and there's a paid summer position that comes along with the field placement. All of this support of our business transactions curriculum.

Now, you might ask: "What's *not* in the formal concentration program, in terms of courses, that supports the required concentration curriculum?" The session will later cover capstone courses included in the curriculum. However, we also have capstone courses outside the concentration program. We have informal curricular tracks that involve business law electives that are not required for completion of the concentration program. There are a number of opportunities of this kind (in areas like corporate finance, real estate transactions, intellectual property, tax, and competition law) that enable students to build toward specialized career objectives and build on the core courses of the concentration curriculum.

What else? We've obviously had to hire a lot of people over time. I already noted that there have been retirements. There's been a reasonable amount of turnover in personnel over the 15 to 20 years that we've been doing this. We meet, on an ongoing basis, with our deans, with the other administrators that we're working with, with our alumni, and with employers in the community. We ask them questions. What can we be doing better? How can we make this concentration program better for you? We also solicit feedback from our concentration graduates as to what we've done well and what we haven't done well. In response to all of this, we make ongoing adjustments to the program. Those who teach in the concentration curriculum and those who teach related objectives meet as a faculty once every year or two, and we critique the concentration. Are these still the courses students need and want? Do the courses have the right components? The Director of the Clayton Center leads that charge.

We've also shared a lot of things about teaching methods over the years, and we've become a lot more electronic since this program was introduced. What do we do well with PowerPoint? What do we not do well with PowerPoint? How, if at all, do we engage third-party resources, like the Drexel LawMeets⁶ in our classes? How do we best integrate all of this pedagogy, these learning tools, these experiential learning components, etc. into our courses to meet our teaching objectives and the learning objectives we have for our

⁶ LawMeets can be found online at <http://www.lawmeets.com/>. See also *supra* Karl Okomoto, "Simulations: Collaborative Experiential Learning," pp. 432-46.

students? We continue to work toward doing more. It is a relatively constant evolutionary process. You might say--I don't know if you would say--that this meal that we're making in our law school kitchen using our special recipe has been and continues to be in the oven for a long time! Or maybe we've pulled it out at various points in time and partaken of it and then continued to use parts of it as leftovers in new meals. (I am straining to keep my analogy relevant at this point, it seems.)

The Concentration in Business Transactions connects to our clinical program with a dotted line. The business law clinic is a large part of that informal connection, but we have a wills clinic now, too, that our transactional law students really want to participate in. Most of us who teach business law courses recognize that estate planning and business are, in many circumstances (and in particular in family businesses), intricately connected. Especially in smaller markets, like ours, a number of our students practice in both of those areas, so it's nice to give them the opportunity to work in both areas in law school.

Our specialized clinics and curricular tracks typically are constructed around the specific skills and interests of the business law faculty that we hire. For example, I'm the securities and corporate finance person on our faculty, and I teach the advanced courses in the track alone or with other faculty members. Each new person hired to work in the Clayton Center enables us to evolve the program. Each time we hire someone, it naturally morphs a little. Our transactional business law program is somewhat like an amoeba. With each new faculty hire, it changes its shape a bit to fill the available space. My point is that the change is very organic. We didn't put a structure into place, like others have done, and then populate it ideally with faculty members having certain identifiable areas of expertise. We simply do not have the resources to do that. So we work happily with what we have, and as we hire, we change the details of the program to embrace the knowledge, skills, and interests of the people that we hire. In deciding to hire those people, we take their practice and teaching experience into account so that we can ensure that we meet institutional and student needs while also adding something new.

And we're trying, at the same time, to create a body of transactional business law scholarship around our program. What I am talking about here is applied legal scholarship (sometimes engaging those student assistants in the Research Associate Program). We have begun to work with each other and use each other's work--citing to each other and building on each other's work. And we engage together in conferences like this. And that's a very important piece for me—working collaboratively and constructively in the community of scholars—that's a part of my job that I love so much.

We also are trying to make sure that, as we head towards 20 years of Clayton Center activities, that the employers are paying attention to what we're doing and valuing what we do—that it means something to say I got a Concentration in Business Transactions from

The University of Tennessee College of Law. We are beginning to see that attentiveness pay off. As I noted earlier, we are a small law school. It's difficult to make an impact on an employer community with a small number of graduates—and Tennessee is a big state. It takes a long time for a program like ours to be recognized, but now there are partners and firms in Nashville, Chattanooga, and in Knoxville, in particular (because they're right in our backyard), that know about and appreciate the impact of the Concentration in Business Transactions. Even in some smaller markets, employers are starting to understand that there's a value to hiring a student that has that particular designation on his or her transcript.

For me, a really wonderful thing is that we now have two business law clinicians, a wills clinic, now and a new director of our clinical programs. The possibility for interconnections between our clinics and our doctrinal and simulation courses is so much more palpable. We haven't done a broad-based, comprehensive curricular assessment at The University of Tennessee College of Law in a long time. We think it's a great time to do that now. We noted this in the self-study report for our re-accreditation site review. We have personnel on the ground, and I personally am very excited about that effort. I hope that it does result in more and better interactions between what we're doing in our clinical programs and what we're doing elsewhere in the College of Law—even what we're doing in our first year program. Also, possibilities exist for working with our other concentration programs--some of our business transactions concentration students want to do litigation, and we're preparing them for that on a substantive basis in the business law area. But, we also advise them then to take courses in our advocacy and dispute resolution concentration program curriculum, which are not limited to just those students concentrating in advocacy and dispute resolution. We may want to work toward creating a more formal or a more robust informal pipeline there. These are exciting ideas as to where we could go with the business transactions concentration in the future.

I will let Michael Higdon talk about this in greater detail, but we all have come to recognize over time that we've not done a very good job in integrating and enhancing our legal writing program to better meet the needs of our business transactions concentrators. We start with a strong base in this area—a mature, wildly popular contract drafting offering that exposes students to drafting skills that are transferable to many different areas of law practice. We have the most fabulous people teaching in this program, all of whom are engaged professionally in contract drafting as part of their practice or (for the full-time instructors from the law faculty) area of expertise. We understand that our students' law degrees are not worth much if they cannot effectively present the law and legal analysis that they are learning both orally and in writing. So I personally am really excited about potential future integrations of legal writing instruction and the concentration program. These are areas in which we need to create better connections. Resolving the question, posed earlier today, about how an institution can connect the doctrinal faculty and the clinic faculty—and

(I will add) the legal research and writing faculty)—is an important task for the future for our program and for others.

I want to leave you with one final thought—a thought that asks you to think about the possible application of what I have said here today to your own law school. If you're under-resourced, like we are, and you are finding it difficult, if not impossible, to create new structures for yourself from the ground up and populate them with all the right people, I want to urge you to consider whether you can, instead, do something with what you have. This involves having a cooperative and engaged faculty and a lot of the other things that I talked about today in your institutional kitchen. But, if you think can do what we have done in building a program from our strengths, if you see some similarities between your situation and what I have described to you today--I know that all three of us up here, as well as many of our other faculty members, would be glad to talk to you more about doing the same kind of thing at your law school.

Michael J. Higdon

Do any of you teach legal writing? Well if you teach legal writing--if you're the one human being in this room, who teaches legal writing, I hope you'll find interest in this. If you don't but you would like to get your legal writing faculty maybe helping out in the transactional drafting, I think maybe this will be of interest to you as well.

When I interviewed for the director position at the University of Tennessee, one of my now colleagues, Greg Stein, asked me--he said aren't you bothered by how first-year, legal writing is so litigation-heavy. And I hate to admit it, but I hadn't really thought about it, but he's right, of course. First semester, we're doing predictive writing. Someone's thinking of suing. How's this likely to come out? Second semester, someone has sued. Let's now persuade for a result. It's very much litigation-heavy.

So as I sat there thinking about it, my response was maybe I'm bothered by that, but I don't want to do that because--and my answer was we've already got too much stuff to do. I don't know how to fit that in. The other thing, and you may understand this, and if you go talk to your legal writing faculty, they'll be sensitive to this, is that I'm not home room. I'm not the skill that you can't fit somewhere else. You tell the legal writing person you do it. I [inaudible] at that. At one of my former schools, they said our students need to learn to write other letters. You should do that. I said, you know, I'm not good at that myself, so I'm not going to--and it also cheapens what I do.

So--and the other thing that I want to make it's like sure it's very litigation heavy, but I'm not just teaching writing. I'm teaching legal analysis, and the writing is my way to test that they're learning how to do that analysis and then communicate it to a third party, so it's a little bit deeper than that.

So at the time, I was thinking, I hear your point, but I'm not going to do it. As I thought more about this, I think that was probably--it was probably not a good reaction, on my part. And instead, I've come to think that maybe we should introduce transactional drafting in the first year, and I don't mean to make it sound like oh here's this monumental revelation. Others have already figured that out and are doing it. I know some people, in second semester, will have students do like a settlement agreement after they do their brief.

But, even if you can't fit it in, and I can't fit in the level of drafting a student may get in a drafting course, there are some things that we can do, and so I want to go through a few of those. But, I first want to say why I think it is important, if at all, you're resistant or, if at all, you encounter resistance when you propose such a solution. And part of it is when we leave out transactional drafting, I think we're giving our students an incomplete look of legal writing. Yes, there's predictive writing, and there's persuasive writing. But, there's also preventative writing, and at any one time, in any writer's life, we know legal writing is recursive; they're going to have to put on one of those hats, even when they're writing persuasively. And sometimes they have to put on that preventative cap. For example, if you write a complaint, you are trying to lay out a very persuasive story. But at the same time, that story you lay out, the complaint, that's going to bind you from here on (down with litigation). So you need to think ahead of how that's going to work.

The other reason--and I think I'm a little more persuaded by this-- is just--and we've talked today about the University of Tennessee, as an example, of how you can let business drafting sort of permeate curriculum. There are students who go on to that second and third year, and they weren't all that engaged the first year, and then they encountered these courses, and they just come alive. It's like I've found the thing that makes me passionate about the law, and that's a beautiful thing. So for those students, wouldn't it be nice if they could get a taste of it, in the first year, so you could start harnessing that energy, and they may not even know that they have an interest. But, if they can find out sooner rather than later, they can then tailor the rest of their legal career to be a little bit more tailored. I'm sure you hear people, who late in the game decide I really like this. I wish I'd done the business transaction, and by introducing that legal writing it can help you with that.

So I'm just going to give some ideas of ways you could maybe introduce this in the legal writing class if you wanted to, again, even if you didn't have time. One of the simplest ways is we all teach statutory interpretation, right. There are a lot of corollaries there between contract interpretation and canons of construction. That's a way to at least introduce that. You can use examples of interpreting contracts, and contract examples.

The other thing you can do, and I've done two of these this semester as sort of try this out and see how it would work, is just, as the students are working on these litigation-directed documents, just stop one day and ask them how could this have been prevented. Is there any document anywhere in this chain of events that could have prevented us from

today having to sit here and worry about this? And it doesn't just have to be a contract. It can be a release. It could be a warning posted on a wall somewhere, any of those things that they could identify. And then you could go deep with that. You could start with just let's identify what that is. If you want to go further, let's go research how one might create that. Even further, let's write one, so introducing those components and showing them how it fits with the other forms of writing that they're doing.

I did that this semester. I'm doing that right now. I gave the students a problem. I borrowed it from the idea bank. I didn't create it. I forget who did, but it's a--a guy advertised a house. It's haunted. He thought it would be cool. The people who showed up, they really wanted that. That sounded awesome to them, so he was just joking, but once he heard that, he sort of played it up. They moved in. It's not haunted. You may think, "How did they prove that?" Well, he made up a story about a murder that didn't happen there, so they're now suing for fraudulent misrepresentation. And you know, the question is how could he have prevented this from happening. Could he have made a disclosure? I was lying. That was a joke. You understand that? Those types of things, and then if you want to go deeper, okay let's write it or let's research what would have to be in that--what the components are [inaudible].

The other thing you can do is you can give a problem that already involves a dispute over a contract or how we interpret a statute. Have the students work on it in this predictive or persuasive fashion, and one day when you have a break, and if you teach legal writing, there's always a break in your grading, when you want to do the lighter stuff, right, cause you don't have time to do a bunch. Say, okay let's ask ourselves, this contract creates these problems. How do we fix it so that it would not? Or, this statute is ambiguous. How do we fix that? Any of those are ways. Just introduce them to these people.

And finally, it need not all be in the first year. One thing I--again I feel like we're talking about UT a lot, but we're of course proud of UT. But, it is an example. One of the things I really love about our program is not only can I introduce this to first year students, but when they get to your class, your class--I know Joan's come to me many times. If we're having a problem with this and maybe in my expertise in legal writing I can help and if not, maybe I can find someone who can, so it does create just some greater bonds among the faculty. And we are sensitive to our school with having unified tenure track. It makes everybody feel good. So, if that's something your school's trying to do as well, maybe this can be a catalyst in that regard.

Brian K. Krumm

What I would like to do know is provide an overview of the three capstone courses and briefly discuss the two transactional clinics which give the students the opportunity to apply some of the legal knowledge that they learned in the concentration's core courses that

help them develop practical skills through the use of simulations, drafting and feedback sessions, and actually dealing with real-life clients, in the clinical setting.

Capstone Courses: There are three capstone courses for the concentration, Representing Enterprises, Transactional Tax Planning, and Estate Planning Seminar. Those courses are offered as instructors are available. You must take at least one of the capstone courses and you may take all three if they are offered and your schedule allows.

Representing Enterprises (3 to 5 credit hours). This course, taught in a series of modules, by full time faculty and adjuncts, integrates prior course work in simulations of business transactions. The transactions vary from year to year, and have included formation of a new business, acquisition of a new business, obtaining a working capital loan, negotiating and documenting a shopping center lease, securitization of receivables, and confirming a chapter 11 plan of reorganization. This course is taken in the spring of your third year. It is usually taught in small sections of no more than 14 students (Prerequisites: all other courses in the concentration; satisfies Planning and Drafting requirement; up to two of the prerequisites can be taken concurrently with Representing Enterprises as co-requisites.)

Transactional Tax Planning (3 credit hours). Advanced study of taxation of business organizations, including tax treatment of business acquisitions, tax planning for financially troubled entities, and the review of recent transactions that involve cutting-edge planning and have shaped changes in the law. This course is taken, when offered, in the fall of your third year. (Prerequisites: 818 Fundamental Concepts of Income Taxation and 972 Income Taxation of Business Organizations; satisfies Planning and Drafting requirement.)

Estate Planning Seminar (2 credit hours): After a brief consideration of the ethical conflicts that can occur in the estate planning process, the course focuses on drafting two legal documents commonly used in planning for clients with taxable estates, the life insurance trust and the will (the latter employing the Federal Estate and Gift Tax Unified Credit and marital deduction). Class time will be spent on understanding the provisions of these instruments, including the possible interaction of certain clauses. Students are then required to assemble the articles and clauses studied in class into a finished work product and to draft letters to the client and fiduciaries explaining the legal documents. The course seeks to simulate the production of legal documents as is typically expected of a beginning lawyer in an established trusts and estates practice, with emphasis on a polished work product, including appropriate communications with clients. This course is taken, when offered, in the spring of your third year. Limited enrollment. (Prerequisites: Gratuitous Transfers (935) and Wealth Transfer Taxation (973). Recommended: Fundamental Concepts of Income Taxation (818); satisfies Planning and Drafting requirement.)

In addition to the capstone courses, Tennessee offers three transactional clinical experiences:

Business Clinic (6 credit hours). Students counsel small start-up businesses on choosing a legal entity, forming corporations and LLCs, and help clients with other aspects of creating successful businesses. Students provide a valuable service to the community while developing skills essential to the business law practice such as: client interviewing; client counseling; document drafting and business planning. This course is offered during the fall and spring semesters. (Pre-requisites Law 818: Fundamental Concepts / Income Taxation; Law 826: Intro to Business Transactions; Law 827: Business Associations; and Law 972: Income Tax of Business Organizations. Co-requisites: Law 814: Legal Profession; and Law 842: Contract Drafting. Comment: 826 may be waived for students with sufficient business background).

Not-For-Profit Clinic (6 credit hours) Students represent non-profit organizations in the Knoxville area and are able to provide a valuable service to the community. Not-for-Profit students counsel clients on choosing a legal entity, forming non-profit corporations and obtaining tax exempt status and developing skills such as: client interviewing; client counseling; and document drafting. This course is offered during the fall and spring semesters. (Pre-requisite: Law 814: Legal Profession Co-requisite: Law 909: Non-Profit Corporations Comment: If enrolling in the clinic, students must also enroll in the seminar component (Law 909). The seminar may be taken by itself for 3 credit hours.)

Wills Clinic (3 credit hours) The Homer A. Jones, Jr. Wills Clinic gives students real-world experience in trust and estate matters through their work with economically disadvantaged clients. Student attorneys interview clients, draft documents including wills, living wills and trusts, and may handle probate matters. The clinic was established with a grant from the American College of Trust and Estate Counsel Foundation. Continued support comes from an endowment begun with a generous gift from Homer A. Jones, Jr., an ACTEC fellow who practiced in Bristol, Tenn. This clinic is offered spring and fall semesters.

Opening it up to comments, questions, concerns?

- Audience: Just a quick question. What do you mean when you refer to planning and drafting requirements listed on the capstone courses? And then also, do you have a writing requirement for your students, in either one that includes the type of writing used in transaction-focused courses or a writing that's like long papers, memos, etc, and then recognize a separate form of writing and transactional clinics and that somehow gets tracked across students?
- J. Heminway: Having just finished writing the self-study, I can be very definitive on this. We have four curricular requirements that are not part of the

concentration program but interact with it.⁷ One is an expository writing requirement, which involves a paper of publishable quality of a length of at least 25 pages for one credit-hour (but the paper can be longer). We also have a planning and drafting requirement, which does work very heavily with both the business transactions and advocacy and dispute resolution concentration programs. It requires writing in an applied practice context, but it also requires some form of legal planning in connection with that writing. We also have a degree requirement that is called a “perspectives” requirement that doesn’t (in most cases) relate directly to the concentration programs but, instead, involves multidisciplinary education—an interaction of law with another academic discipline—one that’s outside of law (like Law and Economics or Philosophy and the Law). I taught Animals, Ethics, and the Law in the spring, with a professor from the Philosophy Department, and that course met the perspectives requirement.

The last degree requirement that we have is a professional skills requirement. The ABA looked at our three other degree requirements in our last accreditation review and told us that we didn’t have a skills-based requirement that complied with legal education standards, although most of us thought our planning and drafting requirement met that requirement in the ABA standards. So, in response, we added a fourth degree requirement, which is our professional skills requirement. A lot of the courses that meet the planning and drafting requirement also meet the professional skills requirement.

Audience: Do you then end up with most of your courses being offered filling one of these categories one way or another or do you still have a full group of what would be considered like traditional doctrinal courses that don’t have any of these sort of additional experiential or other components?

J. Heminway: The latter. We have both types of offerings, but we have more and more experiential learning courses every year, especially thanks to our strong team of adjuncts that routinely offer courses that meet one or more of these degree requirements. It also may be worth noting that some doctrinal classes incorporate experiential learning. For example, when I teach Business Associations, it has a

⁷ See <http://law.utk.edu/academic-programs/jd-requirements/>.

transactional skills-based flavor. Another colleague who teaches the course focuses more on litigation and professional responsibility, since she's a litigator, by practice experience. Similarly, some contracts and civil procedure classes in the first year involve some applied skills work, and others are more strictly doctrinal.

Audience: Last follow-up. When you do the--do you have an internal set of guidelines as to what--how a course is satisfied as different--there's different requirements?

J. Heminway: I can point you to a webpage for more information.⁸ The requirements are all listed on one page. The description of each the requirements, including lists of the standard courses that satisfy those requirements, is available through hyperlinks included there. But all descriptions are subject to some interpretation, and courses that satisfy the requirements may change over time. The decision-makers on these issues are our dean, our associate dean for academic affairs, and, in certain cases, our dean of students. To some extent, they all get involved in making sure that students know which courses meet the degree requirements.

Audience: I have two questions. The first is about the Introduction to Business Transactions course. Can you talk a little bit more about that course? I am especially interested in this course given the comments that have been made at the conference about the desirability everyone having some business understanding before they engage in a business law practice. Secondly, do you set any priorities for what students can get into what classes within the concentration? For instance, are concentrators given priority? Can you get into the capstone courses without being a concentrator? And do people have priorities for various classes?

B. Krumm: You know it's one of those things that I hear about the complaints more than I do about the strategy because as a practical matter, you can tell students what courses you should take in order to fulfill the concentration, and whether they hear you or not is important. One of the issues we have had in the past is that Taxation of Business Organizations, which is a prerequisite, was only offered in the spring semester. If a student did not take it in the spring semester of their second year, it would preclude them from taking business clinic.

⁸ See *supra* note 7.

This issue has been addressed in that it is now offered in both the spring and fall semesters, allowing more students the opportunity to take the business clinic.

J. Heminway: I will just enhance that a little bit. Some of the classes are not limited enrollment, so there's no question there about being shut out of the course. (Although the students still need to pay attention to sequencing so they can take the course in the right semester. We used to have an actual priority system for certain classes, but we gave that up a number of years ago in favor of a more open system for a variety of reasons. We now have a point system for limited enrollment offerings. Unfortunately, there's a lot of game theory that comes into play even with this system. So Brian is right that some adjustments are made in class size or otherwise to help meet student demand.

On the capstone question, we sometimes allow non-concentrators to take the concentration capstone courses. That's very rare, however, in my experience. So, in that respect, we do have a specific requirement or priority for enrollment.

Audience: But are any of these in your--I'll call them core courses in your concentration curriculum are those--those aren't obviously limited to concentrators.

B. Krumm: No.

Audience: But the concentrators get priority?

J. Heminway: No.

B. Krumm: You receive a number of points--

Audience: It's part of the general class registration?

B. Krumm: Right.

J. Heminway: But most of them are not limited enrollment.

Audience: And just to talk a little bit more about this initial course and --

B. Krumm: Introduction to Business Transactions.

Audience: What concentrate -- do your concentrators get a piece of paper saying you completed the concentration --

B. Krumm: No, but they can designate that they were part of the business --

- J. Heminway: Actually, I think the Clayton Center provides them with an unofficial certificate.
- B. Krumm: Yeah, but certificate has a special meaning within the university system that we have not applied for I don't believe, and I don't know if we can --
- Audience: You mean Tennessee?
- B. Krumm: Yes, exactly. It's a bureaucratic issue that I don't know enough about and I don't want to address it.
- J. Heminway: They give them a piece of paper, but it's not formally sanctioned by the State of Tennessee. The concentration is, however, designated on their official transcript, as I understand it.
- Audience: It's a matter of some discussion in some schools as to whether in a concentration you're going to give a different piece of paper or you know --
- B. Krumm: And I understand that. It's one of those things that I've discussed with people. I still don't come away with a clear understanding of what actually happens other than it requires authorization from the University, which has yet to be obtained.
- Audience: Could you discuss the Introduction to Business Transactions Course?
- B. Krumm: Bob Lloyd basically put together the Introduction to Business Transactions course over time. I've taught it, and he uses a lot of his personal, real-life experiences discussing a variety of business transactions. For example, explaining commercial loan or real estate transaction and describing how such deals develop between the business people. And it's not so much going through the documentation itself, but it's telling the story and explaining how business people think versus how lawyers think. Attempting to impart an understanding that the lawyer's role is to explain the risks and hopefully allocate those risks reasonably between the parties. Such a basic understanding is critical such transactions is critical because it provides context which is essential for taking such courses as contract drafting, secured transactions, commercial law etc.

Now this is waivable for people who've had significant amount of business experience before entering law school. But, it's aimed primarily at those individuals who are English majors, political science majors, who are great writers and can be great drafters, but just don't have the business context mindset in order to apply those skills.

- J. Heminway: The course requires that the students do present value discounting. The course requires that they look at financial statements and calculate ratios, and it makes them look at a merger not from a statutory standpoint but instead based on what the parties are trying to achieve. It's a really interesting course.
- Audience: People take this who are in the concentration?
- J. Heminway: Yes (unless they waive out of it and do not choose to take it), the course also includes non-concentrators.
- B. Krumm: Yes, I think when I taught it, I had 72 students in the class.
- Audience: So you have final exams?
- B. Krumm: I did, but I did a combination of a final exam and a paper.
- Audience: Your adjuncts teach this alongside or --
- B. Krumm: Well, I did it as a visitor a long time ago, and Bob has done it every year since that time. And I think he's going to continue doing it even though he's retired now. He comes back just to teach this course.
- Audience: You probably answered this, but in the whole concept of concentration versus certificate and you don't even offer a certificate, do you police who might put a concentration designation on their résumé (whether they had the concentration or not) and do they have to have at least a B (or some minimum threshold grade or GPA to be able to say that they have completed the concentration?
- J. Heminway: We don't police the résumé, but it is designated on their transcript, so somebody could easily cross-check it (if they understood that they could).
- Audience: And do you have to have a minimum grade or pass the course so you can --
- J. Heminway: All a student must do is pass the courses. Then he or she can claim completion of the concentration.

- B. Krumm: One interesting aspect of how representing enterprises, is graded is that in addition to the Professor giving a grade for the drafting of a particular document students grade each other's performance because they're the ones that really know who's doing the work and making the best contributions to a group project. And if you do it anonymously, you get a good sense of who the real performers are in a group exercise. I think that's pretty valuable.
- Audience: Are all these courses required?
- B. Krumm: Everything on the second page there that's in highlight is required.
- J. Heminway: And one of the capstones.
- Audience: So then the second part of the question is did you--this is a lot of courses. Did you have to revise the curriculum to make courses that had previously been required un-required so there was enough room to do this?
- J. Heminway: The answer is no. But that's partially because we didn't and do not have as many required courses, as other people do. For example, Business Associations was not and is not a required course. Accordingly, we didn't and don't have to worry about that course as a large, four-credit-hour space-filler. In the upper division, our only two required courses, apart from those four degree requirements I talked about earlier, which can be filled by other courses, are a Constitutional Law requirement and a Professional Responsibility requirement. So, that left open a lot of spots in the 2L and 3L year for our concentration requirements and electives. That's one of the reasons we were able to have robust concentration requirements. Also, some of the concentration courses are two-credit-hour offerings, so you can cobble together different number of credits, including on the capstones, to achieve different scheduling results. We do have students that take more than one capstone course. That proves to me that there is more capacity in the system than we use for the degree and concentration requirements.
- B. Krumm: Anything else? Well, we've certainly enjoyed it.
- J. Heminway: Yes, thank you.