

TECHNOLOGY IN THE CLASSROOM: CLICKERS, VIDEOS, AND OTHER MEDIA

MATTHEW LYON*
SELETHA R. BUTLER*

Carol

Just for everybody, who wants to know, we're in Technology in the Classroom: Clickers, Videos, and Other Media, and we have two speakers, who have all their materials loaded, as you can see. Seletha Butler from Georgia Tech is going to talk about teaching Corporate Governance through video and other media, and Matt Lyon from Lincoln Memorial University - Duncan School of Law is going to talk about using clicker technology to develop transactional skills in the first year contracts course.

Matt Lyon

Hi everyone. I'm Matt Lyon. I teach at the Duncan School of Law in Knoxville, TN. I've been teaching full-time for three years. I was an adjunct for two years prior to that. I teach Civil Procedure, Contracts, Business Associations, and Commercial Transactions, not all simultaneously, but I have taught all of those at one time. I'm going to focus today on a technology called TurningPoint, often known as clicker technology. I don't know how familiar you all are with the technology. Some people maybe already use it in their classroom. Some people maybe have never heard of it, so I'm starting with the basics to explain what the technology is like.

This is going to be interactive, so if you have a laptop, go ahead and pull that out. You can use your laptop or your smart phone, if you have internet access on your phone. When we get to the interactive part, I'll let you know.

TurningPoint was a software product developed about ten years ago, and it is known as clicker technology because it traditionally was used with clickers that were handed out. You may have seen them before. This is a primitive example, they are like what they might have at a bar and grill for trivia. It gives you the opportunity to generally just answer multiple-choice questions. There's no opportunity to type in text; you simply answer A, B, C, or D in real time.

Just to give you an idea of what it looks like, here you can see on Microsoft PowerPoint that TurningPoint just shows up as another option on the toolbar. When you click on it, you get all of the Turning Point modules. That's where I create new PowerPoint or Turning Point slides. There are also other various tools, not all of which

* Matthew Lyon is an Assistant Professor of Law at Lincoln Memorial University - Duncan School of Law.

* Seletha Butler is an Assistant Professor of business law and ethics at Georgia Tech's Scheller College of Business.

we need to get into. The most important part is the ability to create questions either multiple choice, short answer, or essay questions.

When you create the session, it allows the program to collect the data, which then you can go back to and look at after the fact. All of our students are required to log in with their names, so I can go back and look after class and see. "Okay, Jane is doing really well. She's answered all the questions right, or a large majority of them." Similarly, "John is not doing very well. Every class, he's getting 25% of the questions right, so maybe that's an opportunity for intervention." It's basically an everyday assessment tool.

Tina Stark was talking earlier about midterms or quarterly assessment, even ungraded assessment, but by assessing in class everyday we can see how students are doing and the class as a whole can see how it is performing. And of course, the individual students can see how they're doing as well.

The newer versions of TurningPoint allow you to log in via your laptop or smart phone, through Response Ware. So, let's do that right now. I'll go to Turning Point, and start a session. You want to go to the website www.RWPoll.com via your laptop or smart phone. When you get there, it'll ask you to enter a session ID. This is how I start all of my classes at school. The first thing I do is log into the session, and the students, who all have laptops, go to RW Poll and log in and I can see that in real time. That number's going up right there. [Counts]

Like I said, since students do this for every class, their names are already in there, and they can just log in with the particular session ID. I can actually require them to enter their personal information, but I disabled that today you could log in as guests.

Audience: And so for class do you have like a lot for the students and therefore you can keep track of how they are responding?

M. Lyon: Yes. I'll show it to you.

Audience: Okay.

The benefit of RW Poll as opposed to the clickers is that I can administer short answer or essay exercises, which you can't do with the clicker. In class I still do primarily multiple choice because of time constraints. But, I also build in these -- and I've done more and more of them over time -- these sort of short answer exercises. Of course, it's going to take 5 or 10 minutes out of the class to give the students time to come up with a relatively well-thought-out short answer.

At the Duncan School of Law, we actually require an average of at least three Turning Point to be included in every class session. All students receive school-issued laptops that are part of their student fees and are theirs when they graduate. Some

professors don't like to use laptops in class. When that's the case, the professors have the students do the Turning Point at the beginning, and then they close their laptops for the rest of the class. I personally like to intersperse them throughout the class and integrate them into each lecture. Whether the students have computers or not, there are going to be times when they sort of mentally zone out for a few minutes, and the questions always will bring them back in. If they faded out, they say, "Oh there's a question. I am going have to read it and answer it!" That's why I like to intersperse them throughout the class.

For some professors, the goal of the question may be to check to see if the students did the reading last night, rather than calling on them Socratically. I purposefully choose textbooks that have a lot of problems in them. They use the traditional case method, but generally have some problems after the cases that build off pieces of the cases. For example, I our Contracts class is three credits. There's a separate part I and part II. And so I am able to teach sales in my Contracts classes. I cover Article 2. Maybe the case will illustrate the common law rule, and then the problem will a similar concept, but involving the sale of goods, so you can explain if there is any distinction between Article 2 and the common law rule.

Let's try a basic question here. I give this on day one of the first semester of Contracts, when I start to introduce the difference between the U.C.C. and the common law. Don't worry if you don't get it right because I won't know who gets it right or wrong since you didn't enter your name. But I'm looking here at where does Article 2 apply and where does it not. In one of these choices, Article 2 does not apply.

You can see right here as people respond, this number goes up. If, for example, I have 20 people in my class, I can see it tick up until it gets to 20 and then I know when to stop the polling.

I'll close the polling and it pops up and it gives the response right there so we can all see. Now, we can't see individual responses of course, so no one has to feel self-conscious because they got it wrong; although, I will say my favorite is when the result 50/50 or when it's close, because then you can really use that as a teaching moment. I know that half the class answered A. It's up there, and no one can avoid raising their hand because I know the results. At this point you can call a student and ask what they put. They had to put something. So then you can get an argument or discussion back and forth between students. "Well, why did you put A?" And they'll have to defend why they put A.

This is a rather simplistic multiple-choice question. I try to make most of mine more about application of knowledge to new sets of facts. You can obviously do it however you want to meet whatever your pedagogical goals are. This is obviously just a straight black letter law question, again, the sort of question I ask on the first day of

Contracts class. One of the things I focus on that day is the definition of a contract and then the differences between Article 2 and where it applies vis-à-vis the common law.

I show them what the right answer is, and usually I'll have a slide, especially if it's a more complicated question, explaining the answer. I'll go through the answer with them so that when I post my PowerPoint slides after class, they'll have the question and the answer when they go back to study. It makes it easier for them.

Now this is literally the third slide I post in class on August 9 or whatever the first day of class is. "What is a contract?" They've had the first day's reading, but that's it. This is an example of some of the answers I get. I'll give them some time, 5 to 10 minutes, to type in their answer on their laptops.

These are actual answers that I got from my students on the first day of class. You can see that they're doing a pretty good job. They have their casebook in front of them, but they really don't have a lot of time to look up the answer -- kind of like a law school exam. Even when exams are open book, you don't really have time to look up the answer. You kind of either know it or you don't.

After I get the answers, I will call on someone and say, "Well, what did you put?" We then have an opportunity to have a couple of people discuss back and forth what they put. Then, I'll usually put up a slide with a "right answer," to the extent there is a right answer to the essay question. The key part I want them to get here is that a contract is a set of promises that the law can enforce. And of course, you can go on and say the key elements are mutual assent and consideration, mutual assent usually defined by offer and acceptance, but not necessarily. This is just an example of the slide I would put up after the fact and after we've had the chance to discuss a few of their answers.

Now I'm going to go through a few of the exercises that I go through in class. The first one is -- not a drafting exercise but it's really more of a short answer. It's one of their first opportunities in law school to do IRAC, because when I describe and go through the answer with them, they have barely even touched on it. We have a mandatory "bridge week," the week before classes start which is sort of an orientation on steroids. It's seven days and it obviously is a bridge into law school. They go through IRAC there, but this slide is really one of their first opportunities to see what an IRAC answer is like.

Again, most of my exercises are based on problems from the cas book because we've all read them. They're familiar with them. I don't have to introduce them to a new set of facts, so they're more time efficient to go through in class.

This is a case you may or may not be familiar with. It's one of the first cases in the Crandall and Whaley Contracts casebook, *Stapp v. Freeman*, and it involves a lottery

pool. We see these all the time whenever there's a group of employees who hit it big, and there's always the story about the ten employees who only bought into the pool every time the lottery got over a certain amount, and they agree to split the winnings in the event they draw the winning number. Sometimes this can lead to disputes: "Who exactly was in the pool and who was out?" "You used to be in the pool, but you weren't anymore." "We thought you were in it, and you weren't." Obviously it is not a big deal until they actually win the lottery, and then people have a vested interest in having been in the pool or out of it.

Just so you're familiar with them, the facts here are that there were 20 workers at this auto plant, and they would jointly purchase tickets for the drawing. There was no written contract. This introduces the concept of implied-in-fact contracts. There's no clear offer and acceptance, but over time, due to facts and circumstances and the conduct of the parties, a court will find that there was actually an agreement between the parties.

Here, although there was no written document they signed to become part of the pool, they had over time developed a way of doing things. One of the main rules, though unstated, was that the organizer of the group had never removed anyone unilaterally without talking to them first because not everyone may be at work on a certain day when they're collecting the money and not everyone would necessarily pay in before the lottery drawing twice a week. They would never just take someone out of the pool without talking to them. They had a waiting list for the pool for people who wanted in, and they would never bring someone in without either telling someone, "Well you're not paying us on time and you've done it over time, so you're not going to be part of the pool anymore."

There's a dispute between one of the group members and the organizer. And the organizer, in retaliation for this dispute, which is unrelated to the lottery, decided he was going to shut the other individual out of the pool. So he buys one less ticket and does not ask the person for his money. The other person usually had a role in helping go and buy the tickets, but the organizer didn't ask him to do it that week. They win the lottery and they say, "Well you're not in it. We're splitting it 19 ways, not 20 ways."

It is important that the lottery pool organizer never told the other employee that he was being excluded. They just didn't collect his money that week. The excluded employee sues, saying he deserves a cut. It was a pretty decent size. I can't remember the exact amount, but it was worth suing over, it was in the multimillions. The excluded employee says, "I'm entitled to one-twentieth of this amount."

So, we go through this case in class and we just do the typical Socratic method. We talk about the case and talk about implied-in-fact contracts and what they are.

The court said that the excluded employee won because there was an implied-in-fact contract and that one of the terms of the contract was that members would be informed when their money was due before they were dropped from the group. So, the twentieth person was still part of the pool, and they had to split the money with him.

After they read the case, I show them footage of a similar story that aired on *Good Morning America* in 2013. Basically, the story is very similar to the case. There were seven hairstylists who pooled their money to buy lottery tickets. They win the lottery. The woman who was charged by the group with buying the tickets says, “Well wait, the ticket that actually won is the one I bought for myself. I didn’t buy it for the group, the losing tickets were the group’s.” This is why you should never do lottery pools at work.

She comes into the shop and says, “Well we didn’t win, but I did.” The footage is from a trial court in Indianapolis and it’s a motion for a preliminary injunction preventing the woman, Christina Shaw, from doing anything with the money. The other stylists are asking the court to freeze the assets until the case is decided. This gives the students exposure to the standard for a preliminary injunction.

After they watch the story, I ask them to step in the shoes of the trial court judge and decide whether to grant a preliminary injunction. Because this is only the second week of law school, I have to describe what a preliminary injunction is. They haven’t covered that yet in Civil Procedure. I tell them that the key thing here is that the plaintiff co-workers have to show a likelihood of success on the merits that they are entitled to share of the lottery winnings.

The students then have to write out a paragraph. I give them 5 or 10 minutes to do it, and then we discuss their answers. I also put up an IRAC example of a model answer.

First is a rule statement. This is one thing all first-semester law students struggle with, the notion of the rule statement preceding the answer. They often just get to the answer immediately, and we all stress to death the importance of letting us know what the law is before they let us know how it applies. It is kind of like the old show-your-work example from geometry proofs in high school.

The rule here is that the first required element of a contract is mutual assent, and one way mutual assent can be shown is an implied-in-fact contract through the party’s conduct and declarations and the surrounding circumstances.

Here, the testimony of the coworker was that there was a rule that any individual lottery tickets were to be bought at a separate location from the pool’s tickets. This was so there would be no confusion between which tickets belonged to the pool and which tickets belonged to the individual employees. And so it should be assumed that if a ticket was bought at the place they always bought tickets, it belonged to the pool, not to the

individual employee. That testimony may very well show that the hairstylists have a likelihood of success on the merits and therefore should prevail on the issue of whether there was an implied-in-fact contract.

As the year progresses, I sort of expand from the short answers to do short drafting exercises and simple contract provisions. We are going to do two. Both come out of the Contracts casebook because it is the easiest way to do it. Obviously when I give a midterm or a final exam, I'm coming up with a brand-new fact pattern that they haven't seen. But when we're doing these short little in-class exercises, I try to use examples from the cases we cover so they can get some practice drafting short contractual clauses. They see the contractual provisions in their cases, but sometimes they have trouble, even when they're block-quoted or footnoted, picking them out.

The key is looking at the clause at issue in the case, seeing what was wrong with that clause that led to the litigation and then determining how could it have been drafted in a better way. So, that's the first exercise.

The second exercise is a problem from the book that requires them to think of a new set of facts and draft a clause. It comes at the end of our unit on conditions and promises. The students can get some practice as to some key types of boilerplate provisions that are the same in many different contracts, so they can recognize them as they're reading a contract, know how to draft them, and know when they should be included and when they should not. Both these exercises—cover the issue of constructive conditions and express conditions.

Here is Example One from a Fourth Circuit case from 1975 that it involves crop insurance for a tobacco crop in North Carolina that was destroyed by heavy rains. The farmers were insured by the Federal Crop Insurance Corporation. They file a claim with the FCIC, which looks at the policy. The farmer's policy with the FCIC includes a clause that says the tobacco stocks on any acreage with respect to which a loss is claimed shall not be destroyed until the corporation makes an inspection. However, this was a pretty substantial storm. There wasn't the only tobacco crop that was destroyed, so it took a while for the adjuster to get out there to inspect it. The farmers were worried not just about the crop that's already lost, but their ability to plant in upcoming years. So notwithstanding this clause, they went ahead and plowed over the crop and planted a cover crop on that field to prepare it so they could start planting tobacco as soon as possible.

When the adjuster shows up, the adjuster sees that the field has been plowed over and says, "Well, you're not covered." The argument the FCIC is making is that it was an express condition. The effect of this clause is that the farmer essentially forfeits any right to recovery under the policy.

The farmers argue, and the court agreed, that the clause was not a condition but rather was just one of several promises that the farmers made. If they did plow over the land prior to inspection, it might limit their recovery in some way, but it wouldn't completely forfeit recovery. In other words, it would be a promise rather than an express condition. This was based on the fact that the key language that needs to be there in order to show that it's an express condition -- "It shall be a condition precedent that the farmer shall recover only if . . ." -- simply was not there

The point here is that if you want to draft an express condition, you need to make it very clear that it's an express condition. The contract is construed against the drafter, and of course this was an insurance policy that the FCIC itself had drafted. Particularly problematic for the FCIC was that there was a paragraph right near the one in question where it had actually drafted a beautiful express condition on some other issue. And so the court said, "Well, it's clear FCIC that your lawyers know how to draft an express condition. And so, therefore, you must not have intended this clause in question to be an express condition."

After we go through the case, I put up this slide, and I say, "If the FCIC had really intended the inspection of the damaged crops to be a condition precedent to coverage, then how should the government lawyers have drafted the paragraph in question?" This is the paragraph.

You can feel free if you want, if you're logged in, to take a couple of minutes and give it a shot -- one sentence as to how they could have drafted it more clearly. The students just go ahead and hit submit once they've done that. One thing you have to be comfortable with, if you're going to do this in class, is a few minutes of silence while they consider and type their answers. I'm somebody who typically likes to fill the silence, but you can't feel awkward when you're standing up here.

Audience: Can I ask a question while people are typing?

M. Lyon: Yes.

Audience: So, is this part of like class participation or how do you kind of ensure that students are actually participating?

M. Lyon: Well, as people type in their answers, the response comes up. I can see that they're actually submitting something. Then I can go back after the fact and read the answers. I have used Turning Point as a grading element before, but now I don't because I really want it to be a teaching tool. I don't want students to be worried about grades when they are answering these questions. I want to be able to put questions up that don't have a clear right answer, and I don't want

students to be worried about whether their grade suffering based upon what they put.

So I can being able to see that they're entering a response. I then call on people and ask for their answers. I can go after the class and see whether everyone is giving a good faith effort. The last thing I'll show you –is the report I run after class.

Unlike the multiple choice questions, we don't see all the answers in class. So at this point, I'll usually call on someone and have people talk about how and why they drafted the clause the way they did. I'll usually put up a slide with a sample answer. Again, there's no perfect answer here. You could have done it a number of different ways. The key is really that language about “any condition precedent to the payment of any loss or to recovery” or “the plaintiff shall recover only if....” And then an extra sentence here at the bottom, to the effect that it's a condition and if the policyholder doesn't do it, they'll forfeit any coverage. The goal is to make it an ironclad express condition.

I had another example here. Since we're running low on time, I won't ask you to type it again on your phones. This is one from their book where they're asked to draft a simple clause from scratch. It's one where this city has been awarded the Winter Olympics. They hire a construction firm to build the bobsled run, but if the bobsled run is not completed by a certain date, they risk losing the Olympics entirely.

The city officials talk to their attorney. They say, “If the bobsled run is not completed by this date, we don't want to have to pay anything. If it's 95% done, it's not good enough for us because we may lose our investment in the whole event. Draft a clause that will convey that.”

The key here is that their answers should show both a promise and an express “time is of the essence” condition. So, they want to both commit the contractor to a particular course of action and then also alert the parties that the city's promise to pay is conditional on completion by a certain date.

Another important thing that the best students will put in there, because we will have already talked about it, is the notion of quantum meruit recovery. If you're the construction company, you're going to say, “Well, it's unfair for us to not get paid. Maybe we're 90% done with the construction work. We should get back 90% of the money, which constitutes the reasonable value of our services.” So, you would want put a clause in here showing that the city gets no benefit from a bobsled run that is not completed by that date and that therefore, because the city is not retaining any benefit, the construction company will not be entitled to any restitution payment.”

You may also want to include an anti-waiver clause. It is something to protect the city in case its agent, who is overseeing the work, allows certain benchmarks to run and the construction to continue. Even if that happens, that does not constitute a waiver of a later breach if construction is not completed by a certain day. So, these are just a couple of examples of some of the sort of simple things we try to do in class.

I wanted to show you really quickly the way I can look at the data afterwards. What I'll do is save the session on my desktop and then close out. I go into the session and I can run these reports by question, so I can see overall how people did on the questions. For the written items, the best thing to do is by participant. If you were one of my students, I'd see your name. The list goes down student by student. Of course, I'm not doing this in class. I'm looking at this afterwards in my office. I can see what they put for the multiple-choice questions and then also see the responses to the written questions like the short essay and the drafting exercise.

Of course, we'll do some discussion in class, but usually I try when I have the time to come back in the next class and give some generalized advice. If I'm seeing the same mistake over and over, I can mention it in the next class.

That's all I have. Thank you. Now we will have time for some general questions at the end too. Yes?

Audience: Have you ever used Shecretta.Com and how would you compare it to TurningPoint.

M. Lyon: I have never used it. I don't know anything about it. I'd like to talk to you about it though. Thank you all.

Seletha Butler

As Carol mentioned, I am Seletha Butler, and I am a professor at Georgia Tech's Business School. At the Business School at Georgia Tech, I teach undergraduate students, and I developed for the Business School the Corporate Governance class that we now offer for undergraduate students. I've also had a chance to do some lectures for the MBA students on corporate governance.

If you look at my bio, the background will show that when I was in private practice, I did a lot of mergers and acquisitions and corporate governance type work, which is the explanation for why I'm so passionate about making sure that students at the undergraduate level and any graduate program level understand the concept of corporate governance. Because I teach undergraduate students, I try to make sure that I'm building into the discussion lots of examples. That's what my discussion today is about—how I structure my corporate governance class and also how I'm using certain videos to demonstrate different points that I present in class.

This is an example of one type of media that I use in order to demonstrate points to my students. I use other video clips or news broadcasts to explain concepts.

I will give you some background information. The first thing is the course description. I'm not sure how many of you actually have within your law school or business school a true corporate governance class. Meaning it's totally devoted to general corporate governance issues—talking about management versus the governance; what boards of directors and management do as opposed to focus on securities law matters.

I'm going to talk about the course description, certain of the course objectives—things that I'm responsible for making sure that the students are exposed to and hopefully that they master once they get finished with the course, and the rationale for my teaching through the videos. I'll also give you some course content for the course then discuss how I start my corporate governance class. Next, I'll show videos I use to demonstrate certain points to my students and then talk about the course capstone, the last part of the class. The course capstone is the last project the students have to deliver to me, where it brings everything that we learned in the semester together. Finally, I want to make sure that you understand some of the student feedback, which is how I develop different tweaks for the class going forward.

This past semester was the second time that I taught the corporate governance class. So, I've only had two runs of teaching the course, but I will usually build student feedback into any modifications that I do.

I'm going to talk about some adjustments that I'm going to do based on my last round of feedback that I received from students and some things that I found to be things that I should incorporate going forward. You can ask me questions throughout if you have any, and I'm going to try to get through a number of the videos, but if not, I will just skip over some of them because of the time constraints.

This is the course description and I'm not going to go through all of it, but the general idea of the course description is that I am trying to set this up for them to get that understanding corporate governance is important to various levels of individuals. I get students in this class that may be second semester freshmen all the way up to graduating seniors. I want them to understand that it is important to them possibly currently, but that it is also important for them going forward in their careers. I'll talk about throughout the semester how different careers will utilize this information.

What we have is a number of students that may go back and work in their family-owned businesses, some of whom also may already be working in the family business, and so that's what I'm trying to demonstrate to them, that you can use this information on day one. Even if you're not working in the family business, you can still

help your parent or your grandparent or whomever is working in the family business understand some of this.

I get a number of athletic students that will take the course, and I try to make them understand that this is not just for-profit organization concepts. You can also integrate this into nonprofit organizations and actually, corporate governance is extremely important for nonprofit organizations because a lot of time nonprofits gloss over this. People may not have the background information to understand how to deal with governance issues at a nonprofit organization. So, that's what the course description is talking about.

In the last paragraph, I talk about what the course is really about and I say that it examines the evolution of corporate governance models, the meaning, and the distinction between governance and management, why understanding governance is important and how corporate governance matters are addressed from an internal and external perspective.

I build into the class not only the videos that I'm demonstrating or using to give examples, but I bring in guest speakers who can talk about their experience in dealing with governance issues. I bring a range of speakers depending on the topic that we're going to be talking about for the class session.

I won't go through all of the course objectives, but the first thing is to ensure the students understand the difference between governance and management. A lot of times no matter what organization you're with there may be some people that are part of the organization that may have challenges understanding what management is supposed to do versus what your board—your governance arm—is supposed to do. That is one of the course objectives. I'll talk to you about how I'm going to add something into the end of the class to try to measure those objectives. A measurement process may be something that will help me going forward, and it also can help the college when we get ready to deal with accreditation issues.

Another objective -- the second one, is to analyze and address situations in which corporate governance issues exist by providing potential practical solutions to such issues. I structure the course to teach students the black letter of law and how you're supposed to be reading a statute or regulation. I want them also to be thinking about solutions on how to solve these complex issues.

As you know, governance ties into ethics on a number of issues. Therefore with corporate governance, you're going to run into situations that are legal but may not be the best thing to implement. One of the things that I'll get to when I talk about starting on day one is getting students to understand that you shouldn't only ask, "Can I do this?" but you also have to ask "If I should do this?"

The rationale for teaching through the videos is that I want to make sure that students have a real-world understanding of what this content is that I'm teaching them. That's one of the reasons that I'm bringing a lot of videos in. Also, I have undergraduate students, and a number of them have no work experience. Because they don't have that experience in what it is like being involved with some issues that come up in an organization, I want to at least get them to see it from an example standpoint.

Three points from student feedback that led to and continues my use of videos in the classroom are as follows. The videos allow students to receive clear examples of the course content. Sometimes students may say that they do not understand exactly what you're talking about when you may tell me the definition of something. You may show them how it's applied, but until they see it, they don't really grasp the way that you're talking about the concepts, as applied and what they really mean.

It also provides variety in teaching. Some students sometimes say that they don't stay engaged because you may just lecture or you may just do problem solving during the class. I want to try to bring in a variety of methods of teaching this course.

It also is considered as "spicing up,"—a term that I got from students' feedback—the lectures that I'm providing.

I divide the course into four modules. The first module is an introduction. I talk about content that gets to what corporate governance is. The second module addresses the purpose—why is corporate governance important? The third module addresses the internal matters of why corporate governance issues exist. Here we're going to be dealing with what solutions may be out there or some solutions that the students might start developing. The fourth module is external matters—how corporate governance issues are handled or can be handled. This is when we talk about things that come from the SEC or things from Sarbanes Oxley Act.

I did not include in the material my syllabus because it's pretty detailed. But, I can always share that with anyone if you want to see it. I just wanted to give you a background in terms of the range of things that we're covering in this class.

Audience: My question is at what stage do they take course? Have they taken business law -- I mean they're undergraduate business? Have they taken like a basic corporations' course?

Yes, that's a good question. The prerequisite for this course is that you have taken the basic legal aspects of a business course. So, you have taken the course that's required for business majors to give you a sampling of the different topics considered business law topics—constitutional law, contracts, torts, criminal law, corporations, business formation, and securities

Even students that are not business majors still take it, so you get engineers. You get computer science students in there. You get international public policy because of this sampling. And after they do that prerequisite course, they can still qualify for this corporate governance class.

The class kickoff is viewing the *Barbarians at the Gate* movie. I brought this video in because when I started practicing M&A law -- the first thing that I asked someone at my law firm in Chicago was, "What would you recommend that I read to help me understand how to be a great deal lawyer and what to look for?" And *Barbarians at the Gate* was the book that this partner told me that I should read. It just happened that later in life I started doing some LBO work for some clients. So, I use the *Barbarians at the Gate* movie to demonstrate a lot of issues that we will run into in discussing corporate governance.

During class one, we watch the film. Because the film is more than the hour and twenty minutes we have, we finish it in class two. During the film viewing, the students are supposed to be taking notes. The reason is because the first assignment that they'll have to deliver on class three is a write-up, where they have to deliver a review of five different corporate governance items that they identified in *Barbarians at the Gate*.

The reason I do this assignment is that I know a lot of the students may not have been exposed to what corporate governance is—the corporate governance issues that are out there—. But this assignment gives me a framework of what I'm working with, with the students. This initial assignment also will give them the ability to think back on when they started the class, what their thoughts were in terms of these different types of issues that we're going to talk about, what the law says, if the law doesn't address what you should be doing, and if the law says something, whether you should even take it further and have the stakeholder focus.

The assignment is to identify and describe five corporate governance issues or topics of concern that you identify in the film—Some students will go to law school, but a lot of them will be business people—either entrepreneurs or they will be starting out as analysts, some type of entry-level business position and move up to management. So, I'm teaching from the perspective of teaching people to be business managers. I want them to be concise in their writing, so you have one page to talk about the five different corporate governance issues that you see. There is no grading for right or wrong. I'm trying to make sure that they're giving it a good faith effort in terms of the things that they've identified in the film.

I'm going to give you five examples of some of the things that the students laid out, and then I'm going to tie it to the different clips that I will show throughout this presentation.

One student wrote that one of the major corporate governance issues outlined in the film is that the Board of Directors of RJR Nabisco seemed to have little control over the behavior of its management. The management team at RJR Nabisco seemed to spend lavishly on themselves and its corporate board from apartments to golf tournaments to airplanes. These perks in turn caused the board to rarely challenge its CEO, F. Ross Johnson. These could be the result of a close relationship between the CEO, management team, and some board members, or it may be due to the fact that the board members are paid by the CEO or the management team. This is just without the students having any background information that I taught them from the corporate governance perspective about some things that they've identified in the film to be one of the corporate governance issues or concerns that they have.

With that being said, just to back up in terms of the required course, most of the professors that teach it, we usually have three or four different professors per semester teaching the required course, don't get into per say corporate governance issues. They may get into the concept of what fiduciary duties are, but you don't dig deep into the subject because that subject is at the end of your traditional legal aspect books. So students don't have the chance to really hear the professors talk about corporate governance.

Another thing I ask the students to not do is to go out and do research and see what's on the Internet about the film. I want them take this from the standpoint of "I'm coming in here with the basic knowledge that I have and we're going to build on that basic knowledge." So, I am asking them to be ethical and taking that they are not going out and doing prior research about what the issues should be.

The second example of corruption within RJR Nabisco is another corporate governance issue that is unveiled within the film. John, the President and CEO of the Nabisco division of RJR Nabisco, who works with the KKR team after not being included in the F. Ross Johnson's original management team involved in the buyout plan, highlights this corruption. John feels that he has been betrayed and gets even by giving Henry Kravis and KKR the statements that show the true health of RJR Nabisco and its current inherent value. This move by John levels the playing field and gives KKR the same leverage under which F. Ross Johnson and his management team were operating.

So, in case some of you may not have seen *Barbarians at the Gate* or read the book, ask me if you have questions about who some of these individuals are because what I do at the beginning of the class is give the students what I call a "cheat sheet" in terms of who the players are so they can use that going back and forth as the movie is going on to say, "Okay, F. Ross Johnson is the CEO of RJR Nabisco. John is the one who is running the Nabisco division of Nabisco." They'll be able to just look back and forth in terms of the different players that are out there. I hand them that sheet the first

day of class so they can use it as they're watching the video and as they're going throughout the semester.

The third example deals with insider trading. This student says that trading stock on inside information was the topic. During the buyout proceeding, information is leaked from both the company and Johnson's party. This information should be kept private as it allows others outside of the proceedings to take advantage and make trades on the stock. The massage lady knows the information and leaks it to everyone that comes to her business, and the pizza boy uses the information he learns to buy stock before it goes up on rumors of a buyout.

The fourth one is board responsibility. The RJR Nabisco board failed to maximize the shareholder return in the buyout when they accepted KKR's cheaper offer. After the decision, Johnson's party makes a comment saying that they have never heard of the highest bid losing.

I'm not giving you exactly the order that I teach the class in. I'm sort of skipping around because of the way I have the videos. But, one of the things that I do is I get into this deep discussion with the students. I have reading materials for them, etc., in terms of what the difference is between governance and management. I tell them that role of governance is to ensure that management is working in the best interest of the absentee owners and society as a whole and also ensuring that there's stewardship occurring over the company's assets. I talk about the governance, meaning the board's responsibility to make sure that it is looking at the strategic issues of the company. It's setting the strategic plan even though it may be working with the CEO and the executives in terms of building the strategic plan. The strategy part is what the board is responsible for. Also the board is responsible for dealing with the hiring, the firing, and the monitoring of the CEO.

Then I talk about management. Management's role is dealing with the daily operational activity and the responsibilities of running the company from a day-to-day perspective. I try to get the students to see this through the lens of publicly traded companies because I have more information that I can share with them. But, I also tie it to nonprofit organizations and also government organizations because we've had a lot of issues that deal with school boards, etc., so they can know that this is translatable information that they can take to whatever role they are in.

The first thing is I get into a discussion about officer and director fiduciary duties. I do it from a general perspective in terms of you're supposed to be working in the best interest of the company. But, I'm also going to talk to them about the two duties, the duty of care and the duty of loyalty and break those down. So, when we're going back and forth and talking about the different fiduciary duties of the company, what I'm wanting them to go back and remember from the *Barbarians at the Gate* movie is that there was excess spending that was occurring and someone had noted that in their

write-up at the beginning of class. Now, they can go back and put it in the context that boards of directors and officers have a fiduciary duty to make sure that they are working in the best interest of the company. Where does this excess spending go? Did the officers meet their fiduciary duties? Here's the clip that they see for that.

[Plays clip.]

I don't always go back and show them the exact clip, but what we can do is we can talk about, "Oh, remember when we saw the two planes, one with the CEO and the other with the Chairman. The planes are being shown next to each other. Thus, their routes take similar paths. Why are they on separate planes? You also have a wife sitting in the plane with the CEO, reading a book." You're going to see some other excess spending aspects.

We do get into the part about the fact that sometimes you do have to have corporate jets that are for the company and what the proper use is. I can give examples in terms of how I have friends and they have been going to their company's hanger for corporate trips. The reason that the employees use the corporate jet is because it's cheaper for them to use that. They all load up at 6 am. They fly to whatever location they're supposed to be going to. Those employees come back to the hanger at say 5 pm or 6 pm, and then they fly back to wherever headquarters is. The employees don't have to use commercial, and the company also makes sure that the employees are getting on the ground at certain times. So, I can bring in a lot of that practical information as well.

Audience: So, the students look at the whole movie first and then you come back and show little clips from it to make -- to reinforce a point?

Right, I can pull the clip back up. I don't always pull the clip back up. What we do is that we talk about remembering the part when they had the planes flying next to each other. So, by that time, I have the students understanding that they can always go back and review the film weekly or whatever if you want to think about what the movie was showing. But no, I don't always bring the clips back in.

The reason is that I figured out how to slice the movie up, so now I can go back and do the clip review. But before I learned how to slice the movie up, we were just identifying different aspects that they saw originally in the movie.

What I usually do is that I am probably viewing this movie three times per semester because I want to remember the different pieces that I can bring out and into the discussion. Now that I have it sliced up like this, I can show individual sections of the movie.

Let me go to the next one. With this one the students will have a chance to see that you can have a senior executive and his direct report having conflicts about how company money should be spent. And you will see this demonstrated in this scene. But, there are other clips throughout the movie where the students got some background information on conflict between two individuals within the company, one being the Johnson and Nabisco division President and CEO conflict.

[Plays clip.]

That clip can be used when we are talking about having structures where you can report out and making sure that if you have a CEO at the division having a conflict with the CEO of the parent company there is some infrastructure for that person to have the ability to speak up. We get into that too when we're talking about whistleblowing, etc. This clip allows the students to refer back when they're trying to think about how to deal with conflict and where to go if the boss is doing something that I think is inappropriate.

[Plays clip.]

The students get into the conversations asking, "Remember you saw the Chairman of the Board and the CEO standing outside of the plane at Charlie Brown? You have this Chairman who is supposed to be leading the board and supervising the CEO. Didn't that Chairman know that the CEO's dog was flying back to another location on the company plane alone? What should that Chairman have been doing?"

Then we get into the discussion about the whole honorary degree aspect and what amount has been paid out of the company's funds. It was ironic because we had another video clip that dealt with the same issue. We had Aaron Beam on campus speaking, and I got his permission to use his video to show in my Corporate Governance class. He talked about this whole concept of paying for honorary degrees, giving money back to higher education institutions to get name recognition, and how some of that was -- or should not have been going on within a publicly traded company.

This is going to be a longer clip, and I might cut some of it off. But, with it, we were still talking about these general fiduciary duties. We haven't started getting into the duty of care, the duty of loyalty. This is more general, but the board members have to make sure that they're informed by the executive officers of these major strategic initiatives. Now, you're going to see in this clip of whether or not that was occurring in RJR Nabisco.

[Plays clip.]

Okay, I'm going to skip through that one and just point this part out. One of the issues that was happening with the GM recall is similar to this clip. Here you had these individuals, and we're making the assumption that the researchers are actually

working for RJR Nabisco, working on a product that's a major launch for the company. They see that it's not going the way that it should be going. You have the division head that knows what is going on now just informing the CEO. But no one in the research arm, these middle management people or even the low-level people, had any type of documentation or any type of discussion with higher-ups about what is going on before they got to this stage in the development. We can now talk about why the GM recall issue was not noticed or talked about before it got to where there were alleged deaths that occurred. You can tie a lot of the movie topics into current day activities.

This other piece was dealing with the fact that that chairman was actually doing a lot of activities with the CEO and really was not engaged with the board as much as you would have thought -- at least how he should have been. This was one of the examples we have of that.

[Plays clip.]

Okay. I'm going to stop there and just tell you some of the things that we pull out from this clip. We get back into this whole discussion about why the Chairman is talking to one of the bidders for the company. The bidder is the CEO and the Chairman should be neutral now because this person is also a bidder. He's not talking about what he's trying to do with the company going forward, he's talking about the deal.

Also, students start to see Johnson in a different light from the standpoint of stakeholder perspective or a shareholder perspective. If you're looking at it from a shareholder perspective, you hear Johnson talking about getting money for the shareholders, but he's also talking about not forgetting those employees that clock in all the time. That's where the discussion gets the students to think about whether he is that bad of a person. Yet, they can see him in the next part of the movie and not agree with something he is doing.

When I talk about the fiduciary duties, I break the duties down into duty of care and duty of loyalty. When I talk about the duty of care with the students, we read cases, but more excerpts of cases because they are undergraduate students. I talk about how you're supposed to be acting in the best interest of the company. I talk about how this includes having confidentiality and exercising reasonable supervision over your reporting officers. You have to have expertise if you need expertise, and when you engage in expertise, you have to make sure that that expertise is competent. Then you're supposed to be making, as a director or as an officer, informed and reasonable business decisions. I also get into director dissent from the standpoint that if you don't agree with something, you have to make sure that your disagreement is recorded in the minutes. Then I talk to them about how you look at minutes to make sure that if you were a dissenting director that it is recorded and approved in the minutes of the next meeting.

These are some of the clips that I can tie concepts back to or some of the discussions that we had with the students when I was talking about the duty of care. This clip is the one dealing with the best interest of the company when information was not turned over to KKR.

[Plays clip.]

This clip is one that we talked about in terms of confidentiality. Sometimes students are unsure as to what you mean by confidentiality and this clip demonstrates the point

[Plays clip.]

That clip gets into how much you share with your spouse and also that you have to make sure that people are not having conversations in front of individuals that are providing them services.

[Plays clip.]

That clip involves the head of the Nabisco division sharing information with the other bidders because they couldn't get the information. Now, he's providing them with the information. The students have a discussion of whether that exchange of information should happen. If someone is withholding information from the other bidders, does a company officer have the right to share company confidential information with such bidders?

For duty of loyalty, I discuss that the obligation is to make sure that you are subordinating your personal interest to the interest of the company, meaning you cannot compete with the company. You cannot engage in conflicts of interest. You cannot have insider trading and you cannot take advantage of corporate opportunities. I get into that whole two-prong test in terms of what you should be looking at to determine whether or not you are taking advantage of a corporate opportunity.

Also, I have the small portion, where I will talk about looking out for the minority shareholders. The duty of loyalty clip that I'll show you is the one that I have combined in terms of making sure that you're subordinating your personal interests and you're not competing with the company and you are not engaging in conflicts of interest.

[Plays clip.]

Now, remember that he knows the premiers were going to be a disaster. That has not been shared with the board. He is now pitching them that he wants to buy the company.

This is the piece on illegal insider trading.

[Plays clip]

Again, that's getting the students to understand to watch who they have conversations with.

Because of the time, I'm going to go ahead and just flip through all of this remaining material. But, we also get into shareholder versus stakeholder theories. There are some clips that we go back to in terms of what really should be the best interest of the company when they're thinking about things from a stakeholder's perspective as opposed to a shareholder's perspective. And so, with that, I will open up for any questions that you have.

Audience: I just had a question about permission to use the film. Do you have to go through anything like that?

S. Butler: No, because I'm doing it for the purposes of teaching, I don't. It's also available on the internet.

Audience: And the actual clipping that you mentioned, you just used tech people at the university?

S. Butler: Yes, I used someone at my university to help me clip it and post it into a PowerPoint slide. Again, for our class purposes, we spend a day and a half viewing the film and the students have access to that YouTube clip that's on the internet to view the film themselves. I think an older version of it is available on Netflix. You have different resources that you can get it from. I use the publicly available YouTube option.

I have feedback in my slides, but because we are running short on time, I won't tell you about some of the feedback that students have. I think that it is really helpful when you're thinking about how to get students to understand some of these complex concepts in corporate governance because oftentimes people assume that if they are having a conversation in front of the pizza delivery person then it's okay. It means you really need to make sure that you are cutting off that conversation or waiting for the cleaning person or the pizza delivery person or the shoeshine person to exit before you continue to have these confidential conversations about a company. These persons can try to trade on this confidential information.

Okay, anything, questions?

Carol: Well, thank you both and remember we've got the evaluation forms.

S. Butler: Okay. Well thank you.

End of Session