

## TRANSACTIONAL CENTERS AND CERTIFICATE PROGRAMS

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**JOHN J. WORLEY**

### **Introduction**

My name is John Worley, and I am the director of the Transactional Law Practice Certificate Program at South Texas College of Law. Sherry Porter directs the Transactional Law Certificate Program at Northern Kentucky University's Salmon P. Chase College of Law. Karl Okamoto directs the Business and Entrepreneurship Law Program at the Earle Macke School of Law at Drexel University. Our idea for this session is that, rather than each of the three panelists giving a presentation, we will conduct a more informal discussion. The panel will raise a number of issues affecting transactional law centers and certificate programs, and each of us will offer some comment on them. From time to time, we will interrupt this dialogue to permit you to pose your questions or comments. In view of the fact that we have a relatively small audience, you should feel free to raise your comments or questions at any time during the discussion. The first issue we should discuss is the purposes a certificate program might possibly serve. Are such programs valuable for students and, if they are, what benefits do they provide? Do they help students find employment, or do they help better prepare them for the practice of law? What benefits might a transactional practice certificate program provide for the law school? Karl, if you don't mind, would you like to start off?

### **KARL OKAMOTO**

I am often asked this question by rising 2Ls because that's when they first start thinking about this question. At our school, we have three certificate programs. We have a certificate program in health law, in intellectual property law, and one in business and entrepreneurship law. Let me start by explaining why we have those three and in particular why we have one with the word "entrepreneurship" in it.

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### **Programs' Origins**

Drexel recently launched its new law school and wanted the new law school to play to its existing strengths. The University already was known as an engineering school and an information science school. So that's IP. It has a medical school, so that's health. And it has a business school, which has as its claim to fame being one of the best "entrepreneurship" business schools. To tie this new jewel into the crown, the law school with the rest of the university, and to market the law school as capitalizing on the great strengths of the university, we have now an IP concentration, a health concentration, and a business and entrepreneurship law concentration.

I think that was the genesis for the idea of certificate programs. It made for great marketing material. It made the web site look good. It pleased other constituencies within the university and made them think that this law school was going to actually mean something to them too. So I think that was its real motivation, and probably still is its real motivation.

But from a student's point of view, rising 2Ls ask me why they should pursue this certificate. Of course, I have those students who are absolutely certain they want to do it. But then I have the ones who are always looking for advice about getting all that they can out of this very expensive education they are getting. They usually assume that there is something about the certificates that could help them with their job search and then maybe further their career.

### **Certificate Programs' Purpose**

I think a lot of people have caught the certificate buzz. They think you have to become a CFP or CFA or whatever and add those credentials to your name because it's going to create more opportunity in your life. And my answer to them is, "No." At least when we're talking about a law school certificate program. If you think putting that on your resume is somehow going to help you get a job at Cravath, which you otherwise would not have gotten, I would suggest that it won't. For that matter, it probably wouldn't help for any other firm down the pecking order.

### **Value of Certificate Programs**

On the other hand, I don't want to put myself out of a job but suggesting that certificate programs have no value. My answer as to why it might be valuable goes like this: if you're like me you need a guidebook when you go to a foreign country. For many, going to law school is like going to a foreign country. So, having a certificate program is your guidebook. This is me telling you that, if this is what you are vaguely interested in, and you want to come out of law school with some exposure and some set of the competencies that law school has to offer, this is the curriculum that I'm suggesting. It's a way of organizing your three years. It's a guidebook. Whether you get the certificate in the end really does not matter. You won't actually know until you hopefully already have that job to which you are aspiring, and no one's going to care about it when you are switching jobs three years down the line. It's not going to be relevant that you have a certificate in entrepreneurship law.

But the fact that you took this sequence of coursework will matter. And I think most students, at least at our school, get very little guidance in how to design what is otherwise a Chinese menu style of education. You know, choose one dish from column A, another from B, and so on. You can choose whatever. There doesn't need to be any coherence to your education at law school. Well, what I think you get in a certificate

program is a suggestion of a coherent program of study at least for one particular purpose. I think that is a certificate program's primary value for students.

### SHERRY PORTER

I would tend to agree. I'd like to back up just a moment and tell you how we came upon having a center and a certificate program. Chase College of Law has been around since the late 1800's. We started out as an evening program at the Y across the river in Cincinnati, and we've always been known as the lawyer's law school. We have a very devoted alumni group, and they are very excited about the fact that we've always been able to produce students who can come out of law school and help them immediately.

I'm an alum from Chase as well. But the curriculum has historically been geared more towards litigation. In recent years, we have looked more at the transactional side of the practice, and we set up two new centers two years ago. One is an advocacy center, which if you have to draw a line down the middle of the practice of law – which you know is really hard to do – would be your litigation. The other side is transactional. We chose transactional because we wanted to encompass so many other areas.

I head up the transactional side because I was a corporate lawyer in my prior life. And the focus of these centers is to give our students more skills. Not that they are not getting it already, but to put more of a focus on them getting the skills while in law school. With the advocacy center – and I was telling these gentleman a little bit earlier – it was really easy. Because law schools historically have pushed more towards litigation, they were able to repackage a lot of already existing programs.

#### Transactional Center

The transactional side has been a little more challenging because we've had to create more programs, new courses, and our new certificate program. I look at the certificate program really as a road map for our students. If you look, I do have our requirements in the handout.<sup>4</sup> We have some required courses. We have some elective courses. We have some other things. But we also sought out advice of our alumni and of the practicing bar when we were setting up the certificate program to see if they thought this would be valuable. And the overwhelming response was that it would be, absolutely. When our students walk out of our halls, they will be equipped with the knowledge and skills that will make them practice ready. "Practice ready" – one of our marketing terms.

#### Value of the Program

I think this does add value, though not only for the road map that it provides our students but for the added knowledge and skills that our students will have that will make them practice ready upon graduation and passing the bar exam. Again, we're hoping because this is very new: the certificate program is just within its first year. Hopefully, I will have more to share two years from now, and I will be able to confirm that our certificate program has proven successful and that it will be something that sets our students apart. As far as I'm aware, we are the only law school that actually offers a certificate in transactional law in

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<sup>4</sup> Sherry Porter, *Certificate in Transactional Practice Law* (Conference Handout), [http://www.law.emory.edu/fileadmin/Translaw/ConferenceMaterials/2010\\_Conference\\_Speaker\\_Materials/Porter/Porter\\_Materials.doc](http://www.law.emory.edu/fileadmin/Translaw/ConferenceMaterials/2010_Conference_Speaker_Materials/Porter/Porter_Materials.doc)

our region. I'm really hoping, at least based on the discussions I have had with the practicing bar, that they will consider someone actually walking out with a certificate, as having gone above and beyond the regular law school curriculum.

We're hoping it will be a very rigorous program: if you look at some of the grade point requirements, it requires B's or above in most classes. That's where we are hoping this will go. I will have more to report as we move on with this. But we're very excited. Our students are very excited, and the practicing bar in our area is actually very excited.

### **JOHN J. WORLEY**

First, I should acknowledge that at South Texas we were motivated by a concern expressed by both Karl and Sherry. We too wanted to provide a coherent course of study for students who are interested in preparing to engage in a business transactional practice. The prescribed curricular requirements of the program provide a kind of career pathway leading students in their choice of course work in a way designed to assure their receiving an appropriate background of knowledge and skills for a business transactional law practice. Moreover, the presence of a program director promotes individualized course selection and career planning advice.

But we also were determined to provide a concentrated educational opportunity that will get students to be, in Sherry's language, "practice-ready." Our goal is to provide students with an educational experience that will enable them to be immediately productive lawyers upon their graduation from law school.

Let me describe part of the concern that motivated our initial development of a certificate program. In part, we were concerned about the changing economics of law practice. It is our belief, I think one widely shared, that big firm law practice has changed significantly and for the foreseeable future will be quite different from what many of us experienced. Law firms no longer can afford to employ bright new associates, pay them six-figure salaries, and train them for a year or two before they become profitable. As has been the case in smaller firms, new lawyers must be immediately productive. More and more law firms believe that new lawyers must be prepared from the time they enter law practice to make a valuable contribution to the law firm's work in order to justify the salaries that firms are paying them.

### **Program Considerations**

These considerations about the need for our graduates to be immediately productive lawyers led us to structure our certificate program to have a lawyering skills orientation, as opposed to a more finance or economic theory orientation. Although we expect that students will have a good understanding of the underlying business and financial issues in the transactions on which they work, the program is designed to help students develop the kinds of skills they will require in representing clients negotiate, structure, and document the deal. This skills orientation provides our program's distinctive focus.

The South Texas certificate program is still too young for us to have reliable data, but we do have some anecdotal evidence suggesting that the program is having the desired effect. For example, one of our recent graduates began practice with one of the big Houston law firms working in its corporate section. A partner gave him the draft merger agreement in a deal the firm was handling and asked the new associate to review the document. The partner's purpose in making this assignment was entirely educational. He

wanted the associate to become familiar with the structure and terms of a merger agreement and to understand some of the issues the parties were negotiating. But, to the partner's surprise, the new associate returned with four or five suggestions for improving the document and thereby better protecting the interests of their client. This new lawyer's experience illustrates what we are striving to achieve. We are not so naïve as to believe that any first- or second-year lawyer can perform work at the same level as a lawyer with twenty or thirty years of experience. But we do believe that a new lawyer can and should add real and significant value to the firm's work, and one of our goals is to prepare our graduates to do so.

Secondly, why should a law school consider adopting a certificate program in transactional practice in the first instance? At South Texas, we have a long tradition of practice-oriented legal education. But, like at Northern Kentucky, most of that tradition is in trial and appellate advocacy. We are very proud of the fact that our mock trial and moot court teams have won 104 national competitions.<sup>5</sup> I do not think any other law school has won as many as half that number, so we have developed a very strong reputation for effectively preparing young lawyers to become successful litigators. But that achievement has presented a challenge for those of us who teach and practice in other areas of the law: the acclaim generated by the success of the trial and appellate advocacy program at South Texas tends to drown out everything else that the law school does well. So another consideration that led to our adoption of a certificate program in transactional law practice was to create an opportunity that would permit calling to the attention of prospective students, enrolled students, alumni, and prospective employers the fact that South Texas College of Law not only educates outstanding trial advocates but also prepares its graduates for a business transactional practice.

We believed this renewed emphasis on transactional law practice was especially timely in Texas, because a variety of developments, both legislative and judicial, all marching under the banner of "tort reform," have made it very difficult for lawyers to make a living doing trial work. These developments have had an adverse effect on both the plaintiffs' and defendants' bar in Texas and in other states where aggressive "tort reform" has taken place. Many lawyers are giving up trial practice and are finding other kinds of legal work to do. In view of these developments, we believed we needed to do a better job of bringing to students' attention alternative kinds of law practice, perhaps different from what they might first have thought about doing when they decided to come to our law school.

### **Student Benefits**

So we hope the certificate program will teach students the legal knowledge and skills that will lead them to be immediately productive new lawyers, but do legal employers recognize the value of students' experience? Does participation in the certificate program help law school graduates get jobs? Well, I do not want to undersell the employment value the certificate program provides, but I do not want to oversell it either. We certainly hope that a student's completion of the requirements for the transactional law practice certificate will improve his or her employment prospects in two ways.

First, participation in the certificate program at least serves as a signaling device to prospective employers concerning the student's genuine interest in and serious commitment to doing business transactional work. Especially at a time when many law school graduates

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<sup>5</sup> As of April 15, 2011, the total number of national championships had reached 108.

are having difficulty finding employment, law firms and other legal employers will have many employment candidates who will be searching for any legal employment they can secure. A legal employer seeking to hire a new lawyer to do business transactional work will know that some of the candidates for the position may have little or no long-term interest in having that kind of law practice. But while the hiring firm certainly will be concerned about the new lawyer's skills and capabilities, it also will be concerned that he or she intends to remain with the firm long enough for the firm to recoup its investment in training the new lawyer. A student's participation in the certificate program and willingness to undertake the effort to meet the requirements for it are objective indicia of his or her genuine interest to engage in the relevant kind of work. The candidate who has earned the transactional law practice certificate thus can offer at least one reason the employer should prefer him or her over a candidate who has not.

We also believe that participation in the certificate program can improve a new lawyer's employment prospects in another way. A legal employer will seek to determine which of the job candidates offers the best set of professional and personal attributes for the job. Often this determination can be made only crudely by interviewing candidates and examining law school grades, co-curricular and extracurricular activities, and work experience. For employers seeking a lawyer to perform business transactional work, the candidate's participation in the certificate program provides one additional credential attesting to his or her readiness for the job. It serves as a kind of "*Good Housekeeping Seal of Approval*" attesting to their preparation and ability to be an immediately productive transactional lawyer.

We certainly do not know whether a graduate's participation in the certificate program is something that makes or breaks an employment decision. But I do think it is a positive factor that may influence an employment decision. We do know that our students are reporting that interviewers are showing real interest when they learn about their participation in the certificate program and that the line item on their resumes showing that participation often provokes questions from interviewers that provide them with the opportunity to talk about their course work in the program and the kinds of projects they are doing. So while I do not want to oversell program participation as the thing that will guarantee a job offer that a student could not otherwise have received, I do believe it is a positive factor that can contribute to one's obtaining that offer.

Now we should describe the components of each of our programs and try to show how we are each attempting to accomplish the objectives we have described. Sherry has been more generous than Karl or me and has provided you with a printed copy of the Northern Kentucky program description. Karl and I will show you the program descriptions appearing on the law schools' websites. Sherry, why don't you begin by summarizing the elements of your program at Northern Kentucky?

### **SHERRY PORTER**

#### **Program Components**

Obviously, there are going to be some required courses. I anticipate most certificate programs have certain required courses that a student must take. We also do have a selection of elective courses. I think that will be something that actually is in motion because we are adding more transactional courses every semester. I'm very excited to see that. I look forward to having that list go from however many it has now, like ten or fourteen, to a

much larger number. I think that will be most helpful. That way, students can really focus in on their area of interest. If they are interested in IP, they can really focus there. Or if they are interested in health care, they can focus there.

One of the more interesting parts of our program is that we have an accounting and competency test. We had much discussion as to how to ensure that our students walk out the door being practice ready without having any basic understanding of accounting and finance. We weren't really sure how to do that. We offer accounting for lawyers, business for basics, and corporate finance. But do we take these classes and require them, or do we have them attend some other mandatory course? We had so much discussion about it.

Actually, this idea was our dean's. He said, you know, we are a law school. And while we should be teaching some of these things, it's not necessarily our job to teach them everything they need to know about accounting and finance. So we ultimately ended up with the accounting and financing competency test. And I will tell you that we have not administered our first test yet. It will be done this fall. But it is very basic, and we are sharing with students the very basics on which they will be tested.

Again, I'm the new kid on the block. So I hate to come and tell you it has been wonderful, and that all our students have passed, but I don't know yet. The program has been well received by our students because many of the students that are involved so far have some type of business background, whether it's an accounting or finance background. We have a large part-time program. We have a lot of students who have already been out in the working world and have a lot of experience in this area, whether as a banker or work in real estate financing.

I anticipate that some of these students will be able to pass this test with ease. Those students who cannot pass have the opportunity to retake it. I think it will be very interesting to see how many of our students actually pass it on the first try. And if, indeed, they find that they are really lacking in a certain area, that will put the onus on them to be a self-starter, to go out and get that additional information.

#### **Additional Program Requirements**

There are many programs that we offer through the transactional law center. On campus, there are so many programs they can attend without even going out and taking a class that they can definitely obtain some competency.

We also have upper level writing requirements, as I'm sure most law schools do, and they have to fulfill both of those. One is a drafting requirement, and they have to fulfill that within a transactional topic. I will approve that, and I'll be fairly open with what constitutes a transactional topic. We also have a research requirement, so they will have to accomplish both of those within a transactional class. Most of my students fulfill the drafting requirement in my contract drafting class.

We also require them to participate in at least 500 minutes of programming sponsored by the Transactional Law Practice Center. That really hasn't been a problem. When I set up the center, I also established a student group. I think it's very important in order to get buy-in immediately from the students, so I have a student group of about a hundred and something members, of which thirty to fifty are generally active. But usually it's a pretty decent showing at most of the presentations, with eighty to one hundred students, which is really good for us. The students do keep track of that, and I have a form for their use in keeping track of the certificate requirements. They actually have to register for

this program, and I have a form that they fill out. I actually have them come in and sit down and talk with me about where is it that they're trying to go and what is it that they want to accomplish by doing the certificate program.

Then, I explain to them that it's not going to be some magic key to some door that they otherwise would not be able to enter. But a lot of times, I have students come in who are misguided or have no direction. They don't know really where they're going. And that meeting can be very helpful for them. I can help aim them in a proper direction.

We also have a pro bono requirement at our law school. Students have to fulfill fifty hours of pro bono work. To get the certificate, we require that half of that be fulfilled in some type of transactional law field. I will tell you I was a little nervous when it was initially proposed that we put that in here because I had looked at the pro bono opportunities out there, and there are not as many in the transactional field as there are in the advocacy field.

However, I've been pleasantly surprised and really excited to see new opportunities coming in based on getting this requirement out in the community. For example, we had an alum that had a connection in Haiti. When they had the horrible devastation that occurred, he had a connection with a company that was creating water purification systems, and he needed some non-disclosure agreements and some other contracts. I was able to reach out to some of our students in this program to get them to assist with that, and they learned so many wonderful things. So I'm not as nervous now as I was originally. I think that covers my requirements. How about you, Karl?

### **KARL OKAMOTO**

In our certificate program, we have, very much like Sherry's program, basic required courses. Like most such programs, we went to our standard course list and looked at which of the courses on the list looked relevant and ought to count towards getting you such and such certificate. By selecting these courses, we're providing students a kind of service like the guidebook I mentioned earlier. That's a good thing. But if the dream is to actually offer people a real substantive signal of some kind of competence, you need something more. I would love it if some day someone said, "oh, that Drexel certificate means something like a tax LLM from NYU; it means that that person is good at this." That would be the real differentiation. In theory, that's the hope for all of these certificate programs.

### **Program Focal Points**

To be more than just a collection of existing law school classes, somewhere in a program there needs to be that point of differentiation, and at Drexel we distinguish our program in two ways: something we call a "Keystone Course" and something we call a "Capstone Experience." We use "keystone" because we're in Pennsylvania, the "keystone state." The Capstone Experience relies on Drexel's well-known co-ops. All of our students are allowed to go work for a semester as part of their law school experience. The ABA doesn't let them make any money, but it allows them to get out there for course credit. It's like an externship, a field clinic, or what have you. They basically go to work for half a year. And we have specific co-op placements for people who are in our concentration.

For example, the general counsel of Game Stop, which is a very popular co-op because you get free stuff, happens to be based near us. We're in the city of Philadelphia. There are a lot of law firms, banks and the SEC's regional offices and the like in the city, and

they take students and let them come to work for free. They are very happy about that these days! These experiences come with some academic support being provided by the university. We have people who are so-called co-op professors, and they provide practical support, advice on how to survive in a law firm office, and so on.

The other part, which I'm particularly interested in, is the so-called Keystone Course. And it's very much like a "deals" course, except the one difference is that it's one hundred percent simulation based. Unlike a deals course, where you give people a stack of documents and tell them to go figure out how this deal got done based on what happened, our course is one where you are given a description of a situation and asked to figure out how to get the deal done.

Last year, it was a family business that was half in the hotel development space, a franchisee for Holiday Inn, and half in the construction business. And the way they got in the business was one of their construction companies failed on them and they ended up owning the hotel. One of the sons though he could run hotels, and now they have four. They're over-leveraged, the bank is knocking on their door, and they are crossed collateralized. We ask the students how to solve the problem. It's a very rich vignette that they are given, and they spend the semester solving the problem, from hiring the investment advisor to haggling with the vulture fund that's providing bailout financing to ending the transaction by selling the hotel business to somebody else. Actually, they sell it to the one son who wants it and who has a partner from business school who is going to help him finance it.

That's a simulation class that the students take in the second semester in the second year as a way of getting exposed to deals skills. This introduction to the difference between transactional lawyering and litigation hopefully gives them a little bit of a head start in what things they need to know in order to do a decent job at their co-op. It also wets their appetite for the advanced curriculum after having had that exposure. They think, "Yes, I would like to take Private Equity or M&A." It is something more meaningful to them than it might be if it was just something after taking business organizations. It is not just another upper level class. It's a bridge between the introductory doctrine classes on the one hand and the skills and advanced specialty classes on the other.

#### QUESTION

Two years ago, I heard you talk about a class where you put the students into various practitioner's offices.

#### KARL OKAMOTO

That's this class. The class is in four units at the moment. Part of each unit gets conducted at a law firm or business. Let's take the vulture fund situation. The students role-play, and they have a job. In this case, they are representing the company that was raising the financing. Their job was to review a financing proposal term sheet. They role-play with each other and then maybe with me, depending on the situation. They attempt to draft the commitment letter and so on. Then, at the end of each unit, we go to some place. In this case, we went to a vulture fund. And the exact same exercise the students have been doing for a couple of iterations now gets done in front of them by a set of real lawyers/vulture fund investors.

The purpose of this is to allow the students to compare what they have done to what an expert does. They get to juxtapose their own efforts with the efforts of people who

really know how to do it. The theory is—and it works—that it creates that “ah-hah!” moment. That's my phrase for it. They go, “Wow, that's what it looks like when it gets done well.”

If I sat there and told them about what a vulture fund term sheet, well, I wouldn't call it that, what a subordinated debt lender's term sheet is supposed to look like, and I talked at them about that, their reception for that material would be one thing. But if you've tried to do one yourself for three weeks, then struggled with it and gotten close, and then watched someone have that conversation, the receptivity that you have to that experience is very different. Then the engagement that you have with the demonstrator after the fact is even more different. You can have a real peer-to-peer kind of conversation. So that's that class.

### **JOHN J. WORLEY**

#### **Doctrinal Course Component**

The South Texas College of Law program has four basic elements: (1) substantive course requirements, (2) skills course requirements, (3) a substantial writing requirement, and (4) a combination of grade point average requirements.

The South Texas program focuses on business transactional practice, so we require students to take three core substantive business law courses: Agency and Partnership, Corporations, and Secured Transactions. Even transactions that are not primarily related to business entities often will implicate some governance issues, so we believe every transactional lawyer should be familiar with the law of business organizations. Furthermore, a great many business transactions also will have some financing element, and we have chosen to expose students to the law and business of commercial finance by requiring the Secured Transactions course.

In addition to these three required business law courses, we also require students to take three more business law courses from a list of electives. The list of eligible electives is artificially short, but students may request my approval of one or more courses not appearing on the list to qualify as an elective. The rationale for our making the elective short is related to the grade point average requirements. In our program, students must meet an overall GPA requirement and also must achieve a specified GPA in their certificate program courses. But the latter requirement is stated as a specified GPA in courses eligible for the program, and our concern was that this requirement might discourage students from taking advanced courses that would be beneficial to them, because they were worried that their grade in it might adversely affect their ability to meet the program-specific GPA requirement. So, for example, we offer an number of advanced tax courses that do not appear as elective courses for the certificate program, even though they have a very strong relationship to business transactional practice. But I routinely approve these courses for the business law electives requirement for students who wish to take them.

#### **Foundational Skills Component**

To be eligible to earn the certificate, students also must take a foundational skills course. At present, we offer three courses. These courses are variations on the contract drafting course that many of you already may teach or may have seen offered at other law schools. One we call Contract Negotiation and Drafting, another is called Contract Building Blocks, and the third we call Commercial Real Estate Finance Practice. As their titles

suggest, each of these courses has a somewhat different focus. Nevertheless, they share common themes. Each course is designed to emphasize understanding the business objectives of the deal, using appropriate language and concepts accurately to translate the parties' understanding into language that achieves those objectives, recognizing the nuances of language and how different word choices and modes of expression may alter the meaning of a legal document, and using drafting techniques that make use of best legal practices and plain English. All of the courses provide students with many opportunities to craft legal documents or parts of legal documents and to receive detailed, individualized feedback on their work product. The goal of all three courses is to expose students to a variety of business transactions and the various kinds of agreements that might memorialize those deals and to help them develop the basic drafting skills necessary for the production of high quality legal documents. Certificate students typically take one of these foundational skills courses during their penultimate semester, although they may enroll in the courses earlier in their law school careers. In any case, however, we want them to take one of the foundational skills courses before they take our Capstone course.

### **Capstone Component**

We presently offer three Capstone courses, and a fourth one will be offered next spring. These are all simulation courses, and they all involve working on a moderately complex, mid-market transaction from inception to closing. These capstone skills courses are designed around different kinds of transactions—corporate, real estate, international business, and energy—but the core idea is that the skills students develop working on these deals are not specific to any particular commercial context but instead are transferable. All of these courses are very rigorous. Students must draft four or five complete documents – certainly not every document that would be produced in a deal of that kind, but many of the documents relevant to the key aspects of the transaction. Students also prepare a list of all the documents that would be generated in the transaction—essentially a closing list for the deal—in which they identify who typically would be responsible for drafting each document and what role it plays in the transaction. Moreover, each course addresses one or more issues of professional responsibility. Of course, students build on the contract drafting skills they develop in the foundational skills course. But each of the capstone courses is designed to help students develop abilities to think holistically to see the entire transaction and not just its parts—to apply principles already learned in a variety of substantive courses to new problems and situations, to synthesize and integrate information and concepts, and to think creatively. Of course, they also must hone their analytical and problem-solving skills.

### **Project Specifics**

The Corporate Capstone course is designed around the acquisition of a business by its management through a leveraged buyout. Students examine the acquisition by means of a merger and the structure of the financing by means of loans secured by the target company's assets as well as alternative forms of acquisition and financing structures. Students draft many of the core documents involved in the transaction, including a merger agreement, loan agreement, security agreement, guaranty, a stockholders' agreement, and an attorney opinion letter.

The Real Estate Capstone course involves three individuals who seek to invest together in a commercial real estate venture. Students examine legal issues like determining the identity of the client and choice of business entity. They then draft a variety of documents, including a client engagement letter, limited partnership agreement, an earnest

money contract, promissory note, deed of trust, guaranty, security agreement, and an attorney opinion letter.

The International Business Capstone course is built around a multi-party transaction involving a U.S. manufacturing firm entering into a foreign joint venture for the purpose of distributing one of its products. Students will learn about the intellectual property and investment laws of two foreign countries and deal with legal problems common in such transactions, including the Foreign Corrupt Practices Act, export controls, gray market goods problems, and ethical and dispute settlement issues. They must draft a joint venture agreement, an intellectual property licensing agreement, an international distribution of goods agreement, and several documents associated with the financing of the transaction.

We also expect to offer an Energy Capstone course next year, but at present it is still under development. That course will involve the sale and leaseback of an offshore oil-drilling platform, and students will draft a variety of the key documents in the transaction, including the loan agreement, ship mortgage, and an operating agreement.

The Corporate Capstone course illustrates the level of complexity these courses involve. The simulated transaction involves a management leveraged buyout of a family-held business. The problem is designed to eliminate any securities law issues, and the centerpiece of the transaction is a reverse triangular merger. The core transactional document students draft is the merger agreement, which may run forty or fifty pages. Because the deal is done with other people's money, students also must draft a loan agreement and a security agreement. The transaction also has got a little twist in it. There is a mezzanine financing aspect of the deal, requiring students to draft a shareholder's agreement. These are four major legal documents, and students also draft the attorney opinion letter of borrower's counsel in connection with the resulting entity's financing under the loan agreement.

Each of these courses is very demanding and requires a very substantial amount of work by the student lawyers. But what makes these courses so distinctive is that enrollment is kept small, each has a maximum of sixteen students, and each is team-taught by a full-time faculty member together with an experienced adjunct faculty member. Students work on the documents in small groups, but they spend hours in face-to-face review sessions with the two teachers essentially going through their documents line by line. We believe this is a very rewarding experience. Our goal is to have the two teachers act like partners working collaboratively with a new associate.

### **Substantial Writing Requirement**

Our program also has a substantial writing requirement. The certificate program writing requirement is connected with the law school's general upper-division writing requirement. We do not expect students to produce an additional substantial writing; instead, we simply expect that, however students satisfy the law school's substantial writing requirement, they write on a topic relevant to transactional law or practice. As director, I approve the choice of topic as suitable for transactional practice, but I have tried to adopt a fairly capacious understanding of transactional practice and of what would be relevant to it.

I wonder whether anyone has any questions at this point.

### QUESTION

Have you had any organized input from the perspective employer community, surveys, or advisory committees? Do you know what they are looking for when someone gets that certificate? Or what they would like to see in the courses? Have you had any systematic feedback from the bar about the effectiveness of the program and whether the certificate has merit?

### JOHN J. WORLEY

Yes. Well, as did Northern Kentucky, we started with a center that has an advisory board. The advisory board includes transactional lawyers practicing in a variety of settings. Some are in-house counsel, some are at big firms, some are in small firms, and several are solo practitioners who do transactional work. Initially we met with them and solicited their concerns about what knowledge and skills they would be looking for in a new attorney. In part, that advice went into the structuring of our simulation courses.

In addition, each of the simulation courses is co-designed by our full-time faculty member and the adjunct who team teaches it. In each case, we have practicing lawyers who are very experienced handling similar transactions. For example, in the Corporate Capstone course, we have partners from major Houston law firms who are doing merger and acquisition work. In the International Capstone course, the co-teacher used to be an intellectual property counsel at Hewlett-Packard; she is now at BMC Software. In short, we seek to involve lawyers who are on the cutting edge of their practice to contribute to the design and construction of the problems as well as the tasks we have students perform.

More recently, we brought our advisory board together, provided them with the list of practice skills the MacCrate Report<sup>6</sup> says all lawyers are supposed to have, and engaged in about a two-hour exercise with them asking whether these were the skill transactional lawyers need. This exercise will help us as we continue to develop the program.

### QUESTION

So this is the Carnegie report?<sup>7</sup>

### JOHN J. WORLEY

We are sensitive to the issues identified in the Carnegie Foundation report, but the exercise we conducted with the advisory board used the lawyering skills identified in the MacCrate Report. We asked the practitioners to identify which lawyering skills described in the MacCrate Report were important for transactional lawyers, to prioritize those skills, and to suggest any other skills they thought were important for business transactional lawyers to have. We conducted this exercise just this past spring, and it proved to be very informative. I think our advisors learned some things, too. For example, some very experienced lawyers wanted to discount the value of certain skills, but they came to realize that a lawyer with thirty years of experience may not personally be performing the same tasks that a newer

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<sup>6</sup> MACCRATE REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (American Bar Association 1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>.

<sup>7</sup> WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (San Francisco: Jossey-Bass 2007).

lawyer is performing, but that there may well be another younger lawyer on his team who is performing it.

**QUESTION**

They don't know they know it.

**JOHN J. WORLEY**

Well, there is some of that phenomenon, too. Some skills have become so much a part of who a lawyer is that he or she may not even recognize that he is using them. But what we wanted our advisors to help us identify is what knowledge and skills they expect a new lawyer to have, and sometimes experienced lawyers had to recognize that the tasks they performed were not always the same as those that new lawyers were expected to perform.

**QUESTION**

Have they published it yet?

**JOHN J. WORLEY**

We have not yet decided whether to publish the results of this study. Others with input?

**SHERRY PORTER**

I mentioned earlier that I did seek the input of local practitioners, our alums. Part of setting up the center, we wanted to engage our alums. So we have also established a board of advisors. We have founding partners who make a significant contribution to the center and other board members who make a lesser contribution. I will be happy to let you take a look at this. We've tried to pick a good array as well. But we also have some alums that are no longer practicing, and some are presidents of companies or vice presidents in various positions. We did something very similar this spring. I don't know if we are on the same karma here, but we did actually have a big board meeting to discuss what skills our students really need. We had the most fun day.

I was the facilitator, which is really not part of my job description, but I had so much fun. I was talking with our alums about how many cool things we could do through the center. We had been thinking about setting up a small business clinic, and we have now gotten that approved by the faculty. That's my summer job: to get that set up by the fall. No pressure there! But we did get a lot of input. The list was comprised of many things that we knew, but a lot of things that we had not completely put in writing, such as project management skills.

And so obviously we are going to take this information back and synthesize it and decide where we can put it into our curriculum. The certificate program actually got out ahead of that. And I can see that perhaps some of the courses that I'm going to be designing going forward, I can incorporate a lot of the comments that our board of advisors had. So I think that they are going to be very instrumental in not only what we've done, but also in helping us grow and improve upon what we've done. In our region, we are the first ones to do a transactional law center and to offer the certificate program. So I'm really very excited.

And while I have the microphone, I would like to tell you all that my admissions office and our director of development really thinks it's a great idea to create these really cool things and they are on our web site. But just to get out and market to new students.

Obviously, we are always looking for new ways to set ourselves a part from all the other law schools in the nation and in the region. So we are taking some of this and packaging that. So I am happy to have you take a look at some of these materials. But it does talk about some of the other innovative things we are doing. But I'm getting way beyond my area of expertise there on this question. I will let Karl chime in.

#### **KARL OKAMOTO**

##### **Using Practitioners**

Practitioners are just not particularly articulate about what their own expertise consists of. And I think even the ones who are spectacular at it, if you ask them what separates the people who you'd put on the list as "the ten best deal lawyers you've ever dealt with" and everybody else, discounting for experience, they would struggle to explain the difference. Because they clearly have in their minds a difference.

So there are these ten experts and then there's the rest. And there's something that separates the two. What is it? If you could distill that for me, then I could figure out how to teach it and then, boom. You'd be paying me a lot for that muffler. And all the practitioners who help me with my class try to define this expertise because that's an inquiry we try to have with them all the time. In this class that I do where I go to these firms every few weeks, that's the last question of the day for the discussion. Of course students are very hungry for the answer to this, too. If you could tell them what it is they need to know, especially what they need to say they know at the interview, that will be a very useful thing. And invariably I get the same platitudes: attention to detail, good writing, etc. But what does that mean? Not a lot of very helpful insights into what makes up this elusive expertise. But everyone who has practiced knows it when they see it. They do and I think we all do. And so how to distill that down to something. And I think I've come to the point where I don't think you can.

I think the discussion this morning between Dent and Gilson was sort of about that. Gilson still thinks you can. If you find the law and finance theory that explains everything that happens in a deal and you teach the theory, people will instantly be able to be really good -- they will all be like Joe Flom. Well, the fact is there aren't a bunch of 24-years olds who figured out the theory of transactional lawyering and are now like Joe Flom. And I don't think it's ever going to happen. But that's a long way of saying I think the answer often lies in watching.

##### **Watching as a Teaching Tool**

It's not in distilling and explaining. It's in watching. And that's -- that's what apprenticeship is about. You follow someone along and you watch them do it and you assimilate through that process this inarticulate thing called expertise. And so to the extent we can create opportunities for students to watch, is, I think, a very valuable thing. And alums and practitioners are the things they should watch. They should watch people who are good at it. And creating a way to do that efficiently might be a lot of the answer to doing a better job in my view. Also, it happens to deal with one of the other problems which is that lots of practitioners who are really worth watching are really bad at teaching.

And so it's not the answer to say, oh, Joe Flom, come teach my M&A class because he probably will do a lousy job. Well, he may not. But some of them will do a really lousy job in this setting. Whereas if you could somehow bring students to tag along with him, it would be very powerful. Except you have to bring people to tag along who know enough to

get something out of watching. And so this course I described, that's the theory of that class. I'm trying to give students enough of an exposure to what it is they are going to see so that they are intelligent watchers. But then I give them the chance to watch. And I bring practitioners in who are probably not very good teachers or some of them aren't. But if I ask them to do what they do really, really well every day, it's like water off a duck. They walk in and give two hours of demonstrating how to negotiate a term sheet. They are not thinking about how to teach, they are just doing what they already know how to do so well. It's a phenomenal thing to watch. You just have to bring the students to the point where watching is actually a meaningful thing for them.

Finding that dynamic in a curriculum ought to be replicated every possible place we can. And so guest speakers become different. It's not really guest speakers. It's guest demonstrators. And having these folks involved is very valuable. You get a lot of feedback from people out in the world about how you're doing because now they are very much invested in the program in a way that's actually powerful and not too hard for them to do. They are not frustrated by the fact that they are not particularly good PowerPoint lecturers and so on. You've simply asked them to show what they already know how to do well, and that's worked very well.

#### **QUESTION FROM MIRIAM ALBERT**

I'm Miriam Albert and I teach at Hofstra in Long Island, a law school that doesn't have a program and that doesn't have a course like yours. And two years ago I sat here and was very inspired and was going to do it and two years later I have done nothing. I'd like to come back in two years and tell you how it's going. So what I need this time is a little bit of guidance. If you could go back in time, and you guys, too, to before you started. How much administrative time did it take away from your teaching and your writing? How did you figure out who the adjuncts were? How much time does it take? And do you guys give course relief? I know you're doing this and another course. So what kind of steps can I start to take at a school that doesn't have a program, that has a faculty that's going to be a little bit resistant to it? If I can show them some of these benefits, will they come along? The question is how do you set up one of these courses? How do you set up this program? What is the first step?

#### **JOHN J. WORLEY**

I believe the question has to do with the initial spadework required in creating a transactional simulation course.

#### **QUESTION**

The question is how much administrative time does it take from the faculty to find the adjuncts, mentor the adjuncts, and supervise the adjuncts? And so then not only construct but also the monitoring of the adjuncts and so on.

#### **KARL OKAMOTO**

If I may very quickly. I think this is the primary value of a transactional center because besides certificate programs and all of that, what it allows you to do as a political device, if you will, or an organizing tool is it's a way of getting resources attracted to this project and projects like it. Because without a center or something like it, everything you try to do to build up the transactional curriculum at your school is going to be on you. Having a transactional center creates this separate body that's not just a faculty person. It's a body that has some institutional spill-over benefits, an entity that you can advocate for. So you can

go to the dean or your fellow faculty members and say we're building the center; therefore, I need this time or this resource to do this. As opposed to "I need release time in order to build this class" because then it is about you. Not about this institutional project. And if the institution doesn't want you to have an institutional project, well, then it's on you and you have to decide whether it's worth it or not from a joy of life point of view.

I hide behind my "center" a lot. I get a budget because there is a center. I get administrative pay because there is a center. I get rewards for having built this thing that looks better and better on a web site and seems to have more substance to it every day. The fact that I bring twenty high-powered lawyers in for an advisory meeting, the dean realizes that. I get credit for that. All those things give me institutional freedom that I wouldn't have if I was just this crazy faculty member that was trying to do a new course. And so that, frankly, I think is the greatest benefit. It's an organizing tool. It's an umbrella. It's a way of extracting resources out of an organization in a way that just a single faculty member can't usually do.

#### **JOHN J. WORLEY**

I do not have personal experience creating one of these courses, but I entirely agree with Karl about the relationship between the center and the sort of the curricular innovations you might be interested in developing. We were lucky because when my colleague, David East, and I approached our dean and told him what we were interested in doing, the dean immediately saw the value in the project and gave it his full support. Part of the reason he did so is that we had already been talking to our alumni, and they had identified the lack of preparation for doing business transactional work as a gap in their legal education. So the message was easier to sell to the administration when practicing lawyers and alumni identified what they perceived to be a deficiency in the legal education they had received or a gap in the skill set held by the new lawyers they were recruiting. So having the support of alumni and other practitioners does facilitate moving things along.

David East has been the co-creator of two of our Capstone courses, and he will be developing the fourth one as well. He has received some accommodations, including some release time from teaching or reduced teaching loads, to facilitate his work on these courses. But he also has taken on these projects even without accommodations, just because he is so passionate about the need to provide a richer and more fully developed transactional practice experience for our students.

#### **SHERRY PORTER**

Since I'm a newbie, I don't have a lot to add aside from the fact that our dean actually had this idea about the centers because he had come from a prior law school where he had done this. So I was lucky because it was pretty much just us getting on board with the ideas. But the center has been a tool to get other faculty members who are otherwise way over worked, over tasked, over everything, involved in some of these other bits and pieces that are not all litigation oriented. So it's been a slow process. I wish it were actually moving more quickly because I feel like I'm a very small island in the transactional world amongst this huge advocacy world. But I'm definitely making headway, getting more buy-in from the faculty and alums and the university at large, et cetera. But that has been very helpful because I'm starting to see things taking a turn.

Getting the new clinic is a huge deal. But this has been an impetus. Look, the center is bringing in very high-powered attorneys. We're doing a lot of skills instruction. Our alums are very excited about. The practicing bar is excited about it. The faculty is excited

about it. So it has been a great tool to bring more people in and get them involved and create some excitement, create some programs where maybe if it were just Sherry doing it, perhaps I would not have the ability to do that. And I do have some relief when I'm setting up some of these new programs with someone. Supposedly, I have a half teaching load. I've never actually seen that half teaching load. But I have been relieved to set up this new clinic. That will be all that I'll be focusing on next year. So hopefully build it and they will come will be my story.

**KARL OKAMOTO**

Hofstra would be a perfect location. I'm surprised you don't have a center.

**MIRIAM ALBERT**

We have a small business clinic and we have a bunch of us that teach skills. This afternoon my exercise demonstration that I'm going to do is about skills and doctrine and the theory is -- remember that commercial from the 70s, "You got chocolate in my peanut butter, you got peanut butter in my chocolate?" Our faculty thinks that we are divided into doctrinal and skills categories, and I don't think that's actually possible. So there are pieces of it everywhere and we are so ripe for this and we are so there. And when I think two years ago I swear I said I'm going to do this. It will be great. And then two years went by in a second and here I am sitting here thinking I should have done something. It's so ripe for it. I have to figure out the right way. But what I need -- what you guys are all saying is you need buy-in. I need everybody to see how it's going to help them and not take away from their writing and teaching time and that's the trick.

**SHERRY PORTER**

And that's really hard. I will tell you that. That is very hard because I'm one of them. I practiced for 15 years before I came to the law school. But I will tell you, I went to individual faculty members and spoke to them one on one to get buy in. But it's not universal. There are a few who are maybe not on board with all the Center is doing. But it's definitely grown in the past two years and I think we're going great places. So I found that that personal interaction really helped. I don't know if that's how your atmosphere is, but that really helped me.

**MIRIAM ALBERT**

If I had the structure and if I could show my IP person how they would fit in and it's done for them. I'm not asking them to make simulation; I'm not asking them to grade anything. I'm asking them to do what you said you asked, come and do your thing. And law professors love to talk. So it should -- but I have to figure out how to build that structure and that's the tricky part.

**QUESTION FROM DANNY BOGART**

I actually have one comment and one question. The comment is about -- first of all my name is Danny Bogart, Chapman Law School. The comment has to do with how do you get people to buy-in. I wonder whether the change in the legal marketplace is going to make things -- is going to markedly improve our ability to persuade faculties and especially deans that research should be allocated. Not necessarily because it will allow our students to get jobs immediately out of law school, but because the employers -- how students are being employed, when they can expect to find employment. In California the bar doesn't -- firms don't even look at students until after they pass the bar. So we're talking about major law

firms. The pattern of hiring has changed dramatically. And the idea that students are readily capable of practicing becomes a very different thing when you have so many unemployed lawyers in the market place. So I wonder whether that is a change from a few years ago. I was looking at some of the material as it floated by and an argument I have had with faculty at different schools and at schools I have taught at about the substantial writing requirement.

And I'm going to ask a question and it will begin with my on bias which I think is almost worthless from the perspective of teaching transactional practices. What is the point in the substantial writing requirement when it is usually implemented as following: It is a research memorandum that looks like a law professor's attempt to teach how to write a law review article. The substantial writing requirement for transactional practice should be very different. And it may be satisfied from within the courses that you are already teaching. It should be the ability to produce on more than one occasion the type of work -- what I call student work product, lawyer work product -- that a lawyer would expect to see in practice. And they are not going to see a 20-page memo in most transactional practices. So I saw it in yours. And my guess is if I went through some of the others -- maybe not all of the transactional centers. But my guess is I would find it in at least half of them. The substantial writing requirement continues to be part of the curricular necessity that a student must fulfill.

#### **JOHN J. WORLEY**

Danny Bogart's question goes to the substantial writing requirement. I think you correctly point out the disconnect between what the upper-division substantial writing requirement typically involves—a student scholarly exercise in which students produce something like a law review article and what would be most appropriate for a transactional program. I entirely agree with what you are saying. All we have done in our program is to blend the law school's existing writing requirement with the certificate program, attempting to modify it in a way that would advance the purposes of the certificate program. But what you are suggesting would require essentially saying that, for purposes of the certificate program, the substantial writing requirement should be satisfied in a different way. And that is simply a battle that I have not tried to fight at my institution.

#### **DANNY BOGART**

But it doesn't make sense to me to put it in the transactional program something which is, again, litigious, adversarial, memorandum-oriented. Which is what they've already been trained to do.

#### **QUESTION FROM BARBARA LAKE**

So backwards. I have been wondering about the same thing. My name is Barbara Lake from Wake Forest. The ABA says you need upper level writing requirement. But why can't that be a portfolio thing? You do a lot of writing to put that together. And if we could find a way to say that you've satisfied the writing requirement with one of these deal courses for simulation, we'd get institutional support because everyone has to have that and that's where you get your small classes.

#### **SHERRY PORTER**

Well, at our school we bifurcated that. So there's a drafting side and a research side. I felt strongly that I thought the drafting would actually fall nicely within the certificate requirement and most of my students fulfill that in contract drafting. They draft an asset purchase agreement including schedules and exhibits which I think is more appropriate for

that. But there's also the second part which is the research part. And I did not -- I didn't actually think about really fighting that battle as to whether I should even discuss that because it's a much larger discussion than we could probably have in the next few minutes. But it's certainly something to think about. Because I'm okay with the drafting part. The research part I don't know. At least I can have them focus on what we can call transactional topics. You know, something transactional that may be an area of interest. Perhaps we are working in the clinic and we have an issue where two non-profits want to merge. Maybe that's an area that's ripe for some research and some discussion. I don't know. I haven't gotten that far yet. So that's kind of where I'm looking with that. But you raise an interesting point.

**KARL OKAMOTO**

Yes, just quickly. We originally required that you complete the writing requirement for graduation as part of the concentration. But we just abandoned that. So we have no separate writing requirement for the certificate at all. My law and finance class does satisfy the general upper class writing assignment. So if that's how you choose to do it, you can do it that way. You don't have to -- well, you do in the sense that it's a required class for the certificate but not because there is a separate writing component.

**JOHN J. WORLEY**

Just one more thing. Barbara, you were talking about the upper-division writing requirement. The draft ABA standards that you were talking about earlier today, as I read them, still leaves open the possibility that that the rigorous upper-division writing requirement could be satisfied by something other than a standard research-driven kind of project.

**QUESTION**

My question sort of ties in because when I saw that you break this up into a drafting and a research -- so I will give you my bias. I am director of the law library and I teach advanced legal research. And part of what I had noticed was when we teach them to research in context it's almost always advocacy, or it's this law review, research style. And what I'm trying to figure out how to do is change that. And so I was curious when you break it into this drafting and research, it almost sounds like from what you said that that research part is still sort of the law review, research paper which I personally think it's missing a lot of research teaching. So is that what's really happening?

**SHERRY PORTER**

Well, you know, this is our first year with the certificate program. And I've had no students come to me with that. Now, they have all fulfilled their drafting requirements. The research requirement not so much. So I would welcome any comments that you might have. But, you know, in what other areas could we have them do research? And I honestly have not really analyzed that whole issue.

**QUESTION**

Edgar business information?

**SHERRY PORTER**

Absolutely.

**KARL OKAMOTO**

So in the law and finance class, we don't have any background materials. I mean, they get the case -- the fact pattern. There's no form. There's no book. There's no treatise. There is a bibliography. And it's -- actually one of our librarians created this and it's all linked. You click on it. It takes you to the form book. It takes you to the treatise. It takes you to whatever. It takes you to the ABA guide or whatever. It's fabulous. It's got much too much information. Every student gets an account at the Practical Law Company. It's a good starting point. We think of it as if they are like an associate. No one gives an associate the references she needs. Now, sometimes I'll throw a form out there if it's a little bit too difficult to start. But the idea is go figure it out yourself. And that is research in the transactional sense.

#### QUESTION

But do they get any guidance on how to go figure it out by themselves other than the bibliography?

#### KARL OKAMOTO

No -- well, actually I take that back. The librarian who prepared the bibliography does come and give a presentation.

#### QUESTION

There is -- for many years I taught -- added a research project to my course's research class. I just found it overwhelming with the number of assignments that I had because it occurred to me that the type of research projects -- if you really wanted a research project that a transactional attorney did, it looks very different but it's not that they aren't assigned. So for example, an associate in his first three or four years will be asked to research projects by partners in a law firm. But particularly they will ask the following question.

Let's say we are using the following document: A transaction we just engaged in has highlighted the importance of revisiting the document and a provision in it to see whether or not it is appropriate. Please go take a look at the exculpation provision. The exculpatory provision in this commercial lease agreement where the landlord says he's exculpated from acts of his own negligence and tell us whether we think it's going to be enforceable in the next couple of years. The lawyer wants no more than two or three pages. And in the end he wants a marked up provision. Now that's a very specific kind of transactional research project, and it's doable. And it seems to me that that is something, several of which combined, ought to meet a requirement for writing and really would fit and allow a lawyer to work with transactions.

#### JOHN J. WORLEY

Well, your point echoes something that we heard from our advisors. We had many of the more experienced transactional lawyers saying that legal research was not so important to transactional law practice. Certainly they are not regularly engaged in the sort of legal research one would be doing if writing appellate briefs. Instead, the kind of research the transactional lawyer is likely to be doing is much more targeted, addressed to very specific, narrow kinds of questions.

#### SPEAKER

Well, my students -- one, because when I teach advanced legal research, I put out part of the semester and then they get to vote on what the other topics are. And they --

every single year they've chosen business research. They usually choose securities, you know, tax. So it's something that I think they want and they are not really getting elsewhere.

#### QUESTION

This is back to the spade work issue. Do you each have a physical place that is the center? Because I am thinking money. Where does the money come from for that? Are you just like in your office and you have students?

#### KARL OKAMOTO

No, it's a virtual center. In theory we should have a separate space but it didn't work out that way.

#### QUESTION

I don't know if Tina Stark does. Here we are sitting in this lovely law school but is there a physical place that's her center?

#### JOHN J. WORLEY

We do at South Texas. We have divided responsibilities. David East is the director of the center; I am the director of the certificate program. We each have our own faculty offices, but we also have center space, which has reception space, an office, and a conference room where students can meet with their teachers in a small group. We also are developing a library to go in the conference room so that students would have ready access to resources that they would regularly use. And the center does have a part-time secretary.

#### JOHN J. WORLEY

We are approaching the end of our time. The last topic we planned to address today is whether there are any things we would like to change about what we have done or perhaps problems we found either in creating or implementing the program. Karl, would you like to start off with that topic?

#### KARL OKAMOTO

This question about space leads me to my wish list because more than space, although I think space is a very important factor for a lot of reasons, I would love to have classrooms that actually were suited to transactional role-playing and work. This is not a courtroom. More of a pseudo-conference room. There's a conference table. There's room around the conference table around which you can observe. I would love to have the technology that allowed me to record very easily. Those kinds of things. Now going to law firms is a great thing. They have that. They have conference rooms that are set up for exactly this purpose and they are free. They even buy you lunch if you ask nicely. And I think it's very valuable, by the way, taking students out there and asking them to put on a tie. Most of my students when they walk into a law firm's conference room they are pretty blown away the first time. The view is different than they are accustomed to.

But the biggest one -- the biggest thing on my wish list is I'd like to have colleagues. My thought of a center is it's like a department in a university setting. Where are my colleagues? Yes, there is someone in my school who teaches tax. He doesn't think he's part of my center. He will teach the tax class, but he's not committed to the center. Yes, I have people who teach commercial law and, yes, they are counted -- you go on my web site. They are all listed. But what I think is odd about centers -- and this is not just transactional law centers, but in particular transactional law centers because most faculties probably say to

themselves once we have got one of these transactional types, that's all we need. Check the box. What I think is disappointing about that is the center ought to have a critical mass of people who are focused on this enterprise. I think there is actually a "one plus one equals three" phenomenon that could happen if that were the case. And so I envy you, your colleagues. If I were to wish for things, I'd wish for two, three people to spend time with on this project under the aegis of a center. And, of course, I'd like to have nice space that we can all do it in and all these other things.

**SPEAKER**

So one way you can get the space is to have a small business opportunity clinic.

**KARL OKAMOTO**

Let me throw one other thing on top of the list. What I don't wish for is a clinic. And let me explain why. Don't get me wrong, I think a transactional clinic would be great. If that were -- if Bill Gate's father wanted to give my law school half a billion dollars, sure I'd build a clinic. Of course. Why not. I think they are great in and of themselves. But it's way down my list in terms of priorities for the use of scant resources. I think it's very, very hard to deliver in the clinical setting what I would like to deliver in a transactional practice program. You, of course, will disagree. But I'd much rather invest my money in colleagues and more and more simulation and more and more simulation using effectively, and leveraging, relationships with practitioners. I think that's a much more powerful tool than providing services to not-for-profits and small businesses. That's my view.

**JOHN J. WORLEY**

Well, if I might comment on something. I agree with everything you have said. One of the things I think is useful about having a certificate program or center or some blend of those things is to aid in recruiting colleagues.

**KARL OKAMOTO**

But you have to get them hired by your faculty.

**JOHN J. WORLEY**

Well, I do not mean recruiting new faculty. I mean recruiting existing faculty to the transactional program. Part of the idea is to try to preach the gospel to them. Having a certificate program in place provides a basis for getting more faculty colleagues involved in teaching transactional skills. At first, colleagues may be only nominally a part of the program's activities, but its existence gives you some opportunity at least to start having conversations them. For some, all that may accomplish at the beginning is convincing them of the value of integrating some transactional exercises into their business organizations course, but even that small step amounts to some progress. Moreover, as Tina said the first day, many law schools have been dependent on adjuncts and legal writing teachers in developing their transactional skills curriculum. But we have recruited several colleagues who have been teaching only doctrinal courses for many years --and I believe they all will testify that developing and teaching these transactional skills courses has reinvigorated their teaching vocations. I think trying to tell that message to law teachers is valuable. Recruiting colleagues to the cause of transactional skills teaching not only allows expansion of the kinds of opportunities you can offer students and enriches their preparation for law practice, it also may prolong and enhance the teaching efficacy of experienced law teachers and may

help them avoid the burnout that sometimes accompanies teaching the same courses year after year.

**SHERRY PORTER**

My program is so new I don't know if there's anything I would change. Although everybody sitting here today has raised such interesting questions today. I'm sitting here rethinking how it is we do things. So I think it will be interesting to come back two years from now and see where we all are. Hopefully, you will be on this panel. You are going to be on this panel and you are going to be talking about your wonderful new successful center. I had a doctrinal faculty member come to me and say, you know, I really like what you're doing with this board of advisors, seeking advice from them. And he attended our brainstorming session. And he said, you know what I'd like to do. I would like to do that with some of our more recent grads. Why don't we start a junior attorney roundtable -- the JAR program? He said why don't we get these junior attorneys who maybe have been out two to five years and ask them "what do you wish you had learned while you are here at Chase that you really could be using when you got out to practice?" So he took that on by himself and came up with a program and hosted -- I don't remember how many attended. I think a dozen relatively fresh graduates and got very similar feedback from what we got from the practitioners who had been out practicing for a long time. There were some other little nuggets that we can use as we create new programming. And we will be incorporating some of that into our discussion as we decide where to take the next program and developing some more wonderful courses because I now want to come and take Karl's course. I'd love to develop some of those as well. But it just happens one at a time.

**SPEAKER**

So then your JARs are your advocates in the future, your board of advisors in the future?

**SHERRY PORTER**

Precisely.

**SPEAKER**

When you show someone an article, you say what are your thoughts on this. Their thoughts may be helpful or maybe they are not. They are not vested. They aren't a part of that. When someone says what do you think of our article, it's a little bit theirs. And the same way you ask these JARs what their opinion is and they say we need more X, and then two years from now you say can you come and teach X, how good is that going to feel to them.

**SHERRY PORTER**

Absolutely. And it was not even my idea to do this. It was the other faculty member. So slowly but surely we're getting buy-in. So it's a challenge. It really is a challenge because most of our faculty is on the fifth floor. I'm on the third floor. I do have space. I do have a place. But I am removed from the majority of the faculty.

**SPEAKER**

Does it have a sign?

**SHERRY PORTER**

It does have a sign. But it is kind of nice because we have three centers. We have a local government law center that doesn't do exactly the same thing as our Transactional or Advocacy Centers but we're all actually in the same place with a receptionist/secretary, some additional conference meeting room although we are shaking all that up with this new clinic since I'm going to driving that bus as well. We're moving people around. I don't know if that's going to be good or bad because the different centers actually ended up having to be split because we will have to have a new clinic location. So I have to report that back in two years to see how that went, but I do actually have a space. That's been kind of nice.

**JOHN J. WORLEY**

Our time is now up. I regret that we ended up having so few people in attendance, but the benefit of having a small group has been that this has been an engaging and productive conversation. I appreciate your questions and comments. It was very helpful for me personally. Thanks very much.