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Bridging The Gaps: How Cross-Disciplinary Training with MBAs Can Improve Transactional Education, Prepare Students for Private Practice, and Enhance University Life.

Seth Freeman

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ESSAY

BRIDGING THE GAPS: HOW CROSS-DISCIPLINARY TRAINING WITH MBAs CAN IMPROVE TRANSACTIONAL EDUCATION, PREPARE STUDENTS FOR PRIVATE PRACTICE, AND ENHANCE UNIVERSITY LIFE

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I. THE NEED TO IMPROVE PRACTICAL TRAINING FOR LAW STUDENTS—
AND ONE INNOVATIVE SOLUTIONA. *The Rising Tide of Criticism*

In recent years, a growing chorus of law school critics has argued that legal education is not preparing law students to practice law. Cameron Stracher, a New York Law School professor, puts the general problem this way:

There appears to be an emerging consensus that although law schools may teach students how to ‘think like a lawyer,’ they don’t really teach them how to *be* a lawyer. . . . In addition to misleading students, the current system [of legal education] harms clients who often assume that their lawyers have more experience than they do.¹

This emerging consensus found clear expression in a January 2007 report by the Carnegie Foundation for the Advancement of Teaching (the “Carnegie Report”).² Visits to sixteen law schools in the United States and Canada revealed that:

Most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice. Unlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner, conveying the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients. Neither understanding of the law is exhaustive, of course, but law school’s typically unbalanced emphasis on the one perspective can create problems as the students move into practice.³

1. Cameron Stracher, *Meet the Clients: Law Schools Rarely Teach Students How to be Lawyers*, WALL ST. J., Jan. 26, 2007, at W11, available at <http://www.opinionjournal.com/taste/?id=110009581>.

2. WILLIAM SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 3–11 (2007), available at http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers_summary.pdf.

3. *Id.* at 6 (citing RONIT DINOVIETZ ET AL., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 77-82 (The National Association for Law Placement Foundation for Law Career Research and Education and the American Bar

Although the Carnegie Report shed new light on the issue, leading practitioners were already well aware of the problem. Business lawyers have been particularly dissatisfied. Charles M. Fox, a former senior partner at Skadden, Arps, Slate, Meagher & Flom LLP, wrote about the lack of transactional training years earlier, noting that while most junior associates know how to handle a litigation assignment, they have little, if any, idea how to work with a contract.⁴ Christopher E. Austin, a corporate partner at Cleary Gottlieb Steen & Hamilton LLP, says many law school graduates are not well-prepared for a transactional practice and that, among other things, they frequently lack the transactional skills they need. “Many people come with virtually none of those skills—drafting and negotiating a complex contract, conducting due diligence. . . . We find we have to start on a very basic level.”⁵ To deepen my understanding of the problem, I spoke about transactional training with several other partners at leading transactional law firms in New York and Chicago. Each one said something very similar.⁶

Foundation 2004)), available at http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After_JD_2004_web.pdf.

4. See CHARLES M. FOX, WORKING WITH CONTRACTS: WHAT LAW SCHOOL DOESN'T TEACH YOU 2 (2002); see also Andrew Cohen, *How Not to Fix Law School: Legal Analyst Andrew Cohen Says Schools Still Aren't Preparing Lawyers for the Real World*, CBS NEWS COURT WATCH, Nov. 10, 2006, <http://www.cbsnews.com/stories/2006/11/10/opinion/courtwatch/main2170558.shtml>.

The dirty truth is that very little of what law schools teach baby lawyers prepares them for their first true test—passing the bar exam. And very little of what new lawyers have to study and master to succeed at the bar exam prepares them for the practice of law. That's why, in spite of the six-figure salaries first-year associates can pull down in New York and Los Angeles and other hot spots, rookie attorneys aren't worth spit (or, more precisely, don't know spit about how to successfully practice law.

Id.

5. Telephone Interview with Christopher E. Austin, Partner, Cleary Gottlieb Steen & Hamilton LLP, in New York, N.Y. (Mar. 7, 2007).

6. See, e.g., Telephone Interview with David A. Katz, Partner, Wachtell, Lipton, Rosen & Katz, in New York, N.Y. (Mar. 13, 2007) (“They’re doing better, but they still leave something to be desired. It depends on the school and the student, but I’d say that not enough practical courses are taught.”); Telephone Interview with Ross Altman, Partner, DLA Piper US LLP, in Chicago, Ill. (Mar. 13, 2007) (“I don’t think they’re particularly well prepared. There’s not much emphasis placed on how to do things right the first time in a commercial context.”); Telephone Interview with Igor Kirman, Partner, Wachtell, Lipton, Rosen & Katz, in New York, N.Y. (Mar. 14, 2007).

I’m a firm believer that law students need to be better trained. After all, law school is a training ground for the profession. . . . What’s needed [for a transactional practice] is familiarity with drafting, negotiating, and putting a deal together. Without that, I may be smart but if I’ve never seen a complex contract, I will be much more disoriented,

Law students themselves clearly sense they need more “transactional skills training,” as the practitioners say. Victor Fleischer, a law professor at the University of Illinois College of Law, notes:

[Law] [s]tudents crave deal experience. About 90 percent of Columbia Law School graduates work as corporate transactional lawyers or litigators with corporate clients within five years of graduation. Consider a typical law student who accepts a job at a large firm. She has spent perhaps 95 percent of her time in law school reading and discussing cases and law review articles. Once in practice, she will go days or weeks at a time without picking up a case or a law review article. Instead, her days will be filled with drafting, reviewing, and marking up transactional documents, negotiating language with opposing counsel . . . and composing memos, emails, and letters to colleagues and clients.⁷

Law schools can do a much better job training students how to practice law. My interest in this task grew in the fall of 2005 as I began to develop a cross-disciplinary⁸ negotiation course for New York University (“NYU”) law students and business students. The more I learned, the more I discovered the extent of the problem, and ways a course could help solve it. As I discuss below, I realized that cross-disciplinary courses offer special advantages for students, schools, universities, and employers, and so deserve much more emphasis in professional training and higher education generally.

so I’ll be spending my first year learning things I should have learned in law school.

Id.

7. Victor Fleischer, *Deals: Bringing Corporate Transactions into the Law School Classroom*, 2002 COLUM. BUS. L. REV. 475, 480–81; see Kenneth N. Klee, *Teaching Transactional Law* 6, 10 (UCLA Law Sch., Research Paper No. 03-17, 2003), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=445823 (describing, *inter alia*, results from a survey of thirty-eight ABA-approved law schools and noting that “[t]hese data show high student demand for transactional courses”).

8. More precisely, a “jointly registered course.” As I learned, registrars use very precise terms of art when a course involves students from two schools. At NYU, a “jointly registered” course is a course at one school (say, school X), which students from another (say, school Y) may take, and which appears on their transcripts as a school X course. A “joint course” means a course which students from schools X and Y may take, and which appears on their respective transcripts as any other course would from their own school. To avoid confusion, I will use the term, “cross-disciplinary course,” which covers both scenarios.

B. The Need for Cross-Disciplinary Transactional Courses

I was first inspired to create the course when business students in my negotiation course asked me to offer it. What prompted them to ask? Each semester my law school colleagues and I offer our students a joint litigation settlement simulation. The event is usually one of the highlights of the term. In the fall of 2005, a few of my business students told me they so enjoyed the event that they wanted an entire advanced negotiation course with law students. Intrigued, I circulated an anonymous survey and found that my business students gave the idea an average rating of 9.5 on a scale of one to ten; some gave the idea an eleven. Almost every business school colleague I shared it with expressed similar enthusiasm. When I asked law students, law professors, and law school registrars, they too responded with strong interest.⁹ Their enthusiasm closely echoed Fleischer's point that law students crave deal experience.

The course would also have other advantages. It would teach students in two close professions to work well together on important transactions. In the process, students would overcome natural feelings of professional culture shock. The course would also teach students about the interplay of law and business at the heart of most major corporate negotiations, such as financings, litigation settlements, bankruptcies, and joint ventures. In each of these ways, the course would anticipate and address several of the Carnegie Report's concerns.

C. Existing Courses and the Case for a Course that Downplays Economic Theory

I was encouraged to learn that several law schools and business schools have offered cross-disciplinary negotiation courses in recent years, including Columbia, the University of Pennsylvania, and Vanderbilt.¹⁰ Harvard began offering a joint negotiation course for law

9. I am particularly grateful to James Null, a NYU L.L.M. student, who helped me get in touch with a number of faculty members and students, and who contributed in several other important ways to the early work on the course.

10. See Michael S. Knoll and Daniel M.G. Raff, *Deals: The Economic Structure of Transactions and Contracting* (2005), http://www-management.wharton.upenn.edu/raff/documents/Final_Syllabus.pdf (detailing the requirements of the University of Pennsylvania's cross-disciplinary course); see also Columbia Law Sch., *Deals: The Economic Structure of Transactions and Contracting*, http://www.law.columbia.edu/center_program/adr/deals?#rtregion:main (last visited

students and business students in the spring of 2007.¹¹ The popularity of these courses at leading schools strengthened my belief that the course I had in mind could be successful.

However, I was skeptical of placing reliance on the prevailing economic theory advocated by these courses. Although varying in scope, most courses emphasize Transactions Costs Economics (“TCE”). TCE considers specific incentives to overcome problems of trust. Because I am a lawyer with a background in economics, I appreciate TCE’s value. However, business and academic colleagues familiar with TCE told me they find it only vaguely useful in practice.¹² While other schools were starting to introduce joint negotiation courses, the idea was

Mar. 14, 2007) (describing the Columbia University law school cross-disciplinary course); Columbia Law Sch., Transactional Studies Program: Deals Workshop, http://www.law.columbia.edu/center_program/deals/deals_workshop (last visited Mar. 14, 2007) (detailing Columbia Law’s joint course, though enrollment by Columbia Business Students seems to have been limited at times by scheduling conflicts between the two schools); Vanderbilt Univ. Law Sch., Law & Business Curriculum, http://www.owen.vanderbilt.edu/vanderbilt/Programs/mba/mba-curriculum/law-business/law_business_curriculum.cfm (last visited Mar. 14, 2007) (describing Vanderbilt’s short cross-disciplinary course, entitled “Negotiation,” taught by professors from Vanderbilt Law School and Owen Graduate School of Management); Francesca Jarosz, *None of Your Business? No: Law Schools Need to Bring Their Business Law Teaching to Date*, BUS. L. TODAY, Sept.–Oct. 2006, at 35, 37, available at <http://www.abanet.org/buslaw/blt/2006-09-10/jarosz.shtml> (“In 2000, the [Vanderbilt] program’s pilot class had about 25 students. Now in its seventh year, the entering class has about 45.”).

11. See Harvard Bus. Sch., MBA Courses, Deal Set-up, Design, and Implementation, <http://www.hbs.edu/mba/academics/coursecatalog/2267.html> (last visited Mar. 14, 2007). Harvard Law School lists it as “Negotiation Advanced: Deal Setup, Design and Implementation.” Harvard Law Sch., Negotiation Advanced: Deal Setup, Design and Implementation, <http://www.law.harvard.edu/academics/courses/2006-07/?id=46342640> (last visited Mar. 14, 2007).

12. See Steven L. Schwarz, *Explaining the Value of Transactional Lawyering* 19–21 (Duke Law Sch. Legal Studies, Paper No. 108, 2006), available at <http://ssrn.com/abstract=901439> (employing lawyer and client surveys and arguing that transactional lawyers add value primarily by reducing regulatory costs, not by acting as transaction cost engineers); see also Kirman, *supra* note 6 (“Sure, it’s useful to think about. I took Gilson’s course [on TCE] at Columbia. But it’s not enough . . . It’s not the expertise law schools need to focus on.”). Later, I received approval for a six-session course. While designing the syllabus, I realized that TCE would be too much to cover. Students could not learn such a complex theory in the short timeframe available to apply it effectively. Although I still may spend some time on TCE in a full semester course, my experience teaching the course suggests it is not imperative.

still new enough that there was room to experiment. A different emphasis, I decided, might make more sense.

II. THE TREND TOWARD TRANSACTIONAL SKILLS TRAINING—AND THE DISTURBING RESISTANCE TO IT

While developing the course, I also learned that cross-disciplinary negotiation courses are part of a growing trend in law schools to teach students transactional skills, such as contract negotiation, drafting, and business law counseling. Many law schools now offer their students a variety of transactional skills courses, from contract drafting electives to business law clinics.¹³ In recent years, conferences have explored ways to integrate transactional skills training into substantive law courses.¹⁴ Some schools have championed the idea that law students need improved transactional training to prepare them for their work as business lawyers.¹⁵ While this hopeful trend would seem to rebut the Carnegie Report's finding, the reality is more complex.

Despite the strong case for teaching transactional skills, many law schools still oppose it as a practical matter. Richard Neumann, a professor at Hofstra University who has served on an American Bar Association ("ABA") committee on law school accreditation, notes that while law schools offer more transactional skills courses now, they have not emphasized them: "There's a big difference between requiring that skills are the standard and schools actually doing a great deal about it."¹⁶ As a result, most law students still graduate with little or no transactional

13. See Jarosz, *supra* note 10, at 36.

Of 127 schools surveyed, the number offering transactional clinics rose 400 percent, from five schools in 1992 to 25 in 2002. There was also a 93.3 percent rise in schools that offer at least one upper-level course in contract drafting. Of 136 schools, 58 offered such courses in 2002, compared with 30 schools in 1992.

Id.

14. See, e.g., Northwestern Univ. Sch. of Law, Teaching Contract Drafting Conference, <http://www.law.northwestern.edu/faculty/conferences/contractdraft.html> (last visited Mar. 14, 2007) (detailing a conference held July 20-21, 2005, entitled, "Teaching Contract Drafting Conference"); Conference, *Teaching Contracts Transactionally*, 34 U. TOL. L. REV. 685, 685-748 (2003) (offering an edited transcript of a contract-drafting program conducted by the Association of American Law Schools in Washington, D.C., in January, 2003).

15. See Jarosz, *supra* note 10, at 36 ("From Yale to UCLA, professors are stepping outside of law schools' traditional theoretical boundaries and allowing students to get concrete experience with transactional law.").

16. *Id.* at 39.

skills training.¹⁷ In part, this resistance may occur because many law professors have little experience practicing transactional law.¹⁸ Further, many law school professors feel that it is not the place of law school to teach transactional skills, that these skills cannot be taught, and that law students can best acquire these skills on the job.¹⁹ Further, a skills-based course with a few dozen students can be more expensive to teach than a heavily-enrolled course on legal doctrine.²⁰

This state of affairs has led commentators to unflattering comparisons between law school education and medical school education. As Klee argues, “You wouldn’t send somebody out of medical school who had never operated on a cadaver. Why law school would be any different, I don’t know.”²¹ Thomas Morsch, professor of clinical law at Northwestern University Law School, echoes the point: “I think we’re about 100 years behind the medical profession. Before we turn our students loose on the public, we ought to give them some hands-on experience.”²² The Carnegie Report makes a similar point.²³

17. See Charles C. Lewis, *Turning the Firm into a School*, BUS. L. TODAY, Jan.–Feb. 2006, at 25, available at <http://www.abanet.org/buslaw/blt/2006-01-02/lewis.html> (“It should not be surprising to practicing lawyers that new associates come to work without the slightest idea about how to draft a contract. . . . The reason for this strange behavior may be explained by their failure to take a contract-drafting course in law school.”).

18. See Klee, *supra* note 7, at 11 (presenting a survey of law schools which found that in most cases, only 25% of professors at the top fifteen law schools had practiced law for more than three years); Jarosz, *supra* note 10, at 40 (“[M]any schools don’t have enough faculty members who are equipped to teach business law through a practical approach.”); see also Jonathan C. Lipson, *Doing Deals in School: A Prof Talks About Teaching Transactional Law*, BUS. L. TODAY, Sept.–Oct. 2005, at 51, available at <http://www.abanet.org/buslaw/blt/2005-09-10/lipson.shtml> (“[I]f anecdote is accurate, legal academics themselves rarely practiced transactional law.”).

19. See Jarosz, *supra* note 10, at 40 (“There’s a large snob element at a lot of the bigger, more traditional law schools that, ‘We’re not a trade school; students learn it in practice.’”); see also Fleischer, *supra* note 7, at 475 (questioning whether transactional law can be taught).

20. See SULLIVAN ET AL., *supra* note 2, at 10 (“Courses and other experiences that develop the practical skills of lawyers are most effective in small-group settings. . . . [T]he relatively higher cost of the small classes is the most difficult to overcome, especially at institutions without large endowments.”).

21. Jarosz, *supra* note 10, at 40.

22. Darhiana Mateo, *When Theory Meets Practice: Tweaking Business-Law Education*, BUS. L. TODAY, Mar.–Apr. 2006, at 56.

23. See SULLIVAN ET AL., *supra* note 2, at 8–9.

It is certainly true that experience can be the most compelling teacher, and that Continuing Legal Education and well-designed in-house training programs can be valuable.²⁴ I do training myself, and know it can make a difference. Nevertheless, I frankly find the attitude against skills training troubling and flawed. My own earlier experience as a corporate lawyer suggests that law firm partners often do not have much time to mentor their young associates. Though firms have tried in recent years to encourage mentoring, others have noted that it is a dying aspect of life in large law firms. One reason is that senior lawyers feel an ever-growing pressure to bill hours; protégé-training is simply not billable time.²⁵ Like others, I graduated from a top law school only to discover that my education did little to prepare me for the actual work of corporate law.²⁶ The disconnection between training and practice may

24. See Stark Legal Education, Inc., <http://www.starklegaled.com> (last visited Mar. 16, 2007) (citing an example of a leading transactional training program for junior lawyers which offers a wide variety of courses on contract drafting, due diligence, and accounting and financial statements).

25. See Leigh Jones, *Mentoring Plans Failing Associates: High Attrition Rates Still Hit Firms Hard*, NAT'L L. J., Sept. 15, 2006, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1158224724389>.

A commitment to mentoring young attorneys has become a boilerplate promise among large law firms seeking to recruit and retain top talent. But most mentoring programs apparently are failing associates who continue to leave firms in droves. . . . A significant shortcoming with mentoring programs is the basic disincentive created by the billable-hour structure at law firms Law firms need to provide opportunities for partners and associates to step away from the time clock . . . so that mentoring efforts are not an infringement on billable-hour requirements.

Id.

26. See, e.g., Jarosz, *supra* note 10, at 35 (recounting Columbia Law School's Dean David Schizer's first week as a tax lawyer at the New York law firm Davis Polk & Wardwell). When Schizer received his first assignment to mark up a stock purchase agreement, he responded, "I'd be happy to do it, but I have two questions: what's a stock purchase agreement, and when you say mark it up, what do you mean?" . . . Aside from that, I was perfectly prepared for the assignment." *Id.* This despite the fact that Schizer had "graduated in 1993 from Yale Law School . . . had served as executive editor of his school's law journal [and] clerked for Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit and U.S. Supreme Court Justice Ruth Bader Ginsburg." *Id.* Schizer went on to found Columbia Law School's excellent deals program, which offers a variety of courses that develop law students' understanding of transactions and the skills they need to do them. See Columbia Law Sch., Transactional Studies Program, http://www.law.columbia.edu/center_program/deals (last visited Mar. 16, 2007); see also Fleischer, *supra* note 7 (describing the program); Susan Irion, *The New Classroom: Learning How to Draft Contracts in the Real World*, BUS. L. TODAY,

well contribute to the high levels of depression among young lawyers.²⁷ Despite the MacCrate Report's assertion in 1992 that no real gap exists between law school and legal practice—just a long, arduous path toward competence²⁸—the reality is that law students often have little idea what skills they will need to succeed in a transactional practice.²⁹ While firms have grudgingly done remedial transactional skills training, lawyers question whether they should be doing so much of this work. Austin notes, “[W]e find we need to. [But] we’d prefer [law schools] to do some of it and they probably could do it better.”³⁰ He adds that clients sometimes question the value of junior associates and that better law school training would help firms’ relationships with their clients: “To the extent [law school graduates] have better transactional skills, that would be attractive to a client.”³¹ Noting that private practice can be too fast-paced for deep learning, Kirman says that “law firm training is a supplement, not a substitute.”³²

Law school graduates echo the point. Former students who have taken transactional skills courses tell their professors that the experience gave them a significant advantage in the workplace. As Klee notes, reviewing, drafting, and negotiating a number of different kinds of contracts in law school:

Sept.–Oct. 2006, at 49 (“As a business lawyer, I learned not in law school but on the job how to draft and negotiate a contract—but it shouldn’t be that way.”).

27. See HILLARY MANTIS, *ALTERNATIVE CAREERS FOR LAWYERS* 3 (1997).

Perhaps the most comprehensive study of lawyer dissatisfaction was conducted by the American Bar Association Young Lawyer’s Division in 1990. The 3,000-plus ‘young lawyers’ (defined as under age 36 or less than three years in practice) interviewed cited three major problems causing job dissatisfaction: 1. Lack of time for self and family, due to billable hours requirement. 2. Failure to communicate and isolation within the firm. 3. Lack of training or mentoring within the firm.

Id. But see Elaine McArdle, *Changes in Latitudes, Changes in Attitudes: A Nationwide, Longitudinal Survey of Today’s Young J.D.s Yields its First Results*, HARV. L. BULL., Fall 2006, available at http://www.law.harvard.edu/alumni/bulletin/2006/fall/feature_1-side.php (finding “no evidence” of “any pervasive unhappiness in the profession”).

28. See ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> (also known as the “MacCrate Report” after the section’s Chairperson, Robert MacCrate).

29. See *supra* notes 2–9 and accompanying text.

30. Austin, *supra* note 5.

31. *Id.*

32. Kirman, *supra* note 6.

not only gives [my graduates] a marginal advantage in getting a job offer, but also [facilitates their] working on more challenging problems once inside their firms. Once the partners learn that these students know about a lock-up agreement, X clause, and roof rights, they give them work that would normally be given to more experienced, senior associates.³³

It was in part because of this disconnection between theory and practice that I came to believe so passionately in the idea of offering a new joint negotiation course.

III. THE PROMISE OF CROSS-DISCIPLINARY TRAINING

A. Basic Advantages of Cross-Disciplinary Training

My research also strengthened my long-standing belief in the potential of cross-disciplinary education generally. Since law students and business students will work together throughout their careers, we waste a precious opportunity if we do not bring the two groups together frequently to learn from each other now. More than just pedagogically useful, cross-disciplinary education can also help students form valuable connections and relationships, and so further enhance the practical value of their education. These benefits are not limited to law students and business students; students from many different disciplines can gain from leaving their own worlds and working alongside students in other programs. Of course, universities have offered cross-disciplinary courses for many years. Yet, for reasons I discuss throughout this

33. Klee, *supra* note 7, at 5; see also Edith Warkentine, *Kingsfield Doesn't Teach My Contracts Class: Using Contracts to Teach Contracts*, 50 J. LEGAL EDUC. 112, 133 (2000) (discussing teaching methods). Warkentine taught contract law in part by having students review, draft, and negotiate contracts. She commented that "students who have clerked in law offices have told me that when they applied what they had learned in my classes, their supervising attorneys told them they had a better and more practice-oriented grasp of contract law than previous student clerks." *Id.*; see also LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT: 2006 ANNUAL SURVEY RESULTS—ENGAGING LEGAL EDUCATION: MOVING BEYOND THE STATUS QUO 16 (2006), available at http://nsse.iub.edu/lssse/2006_Annual_Report/pdf/LSSSE_2006_Annual_Report.pdf [hereinafter LAW SCHOOL SURVEY] (finding, *inter alia*, that students who participate in clinical and field experiences or who do pro bono work—i.e., students who actively practice working with clients while they are in law school—report gaining more than their peers in speaking and writing proficiency, thinking critically and analytically, and solving complex real-world problems).

Essay, I believe that we can get much more out of cross-disciplinary education than we have gotten so far.

Fortunately, several of our leading schools have reached this conclusion, and have started to make major changes to realize the benefits of cross-disciplinary training. NYU has been a leader in this effort, recently introducing an initiative called the Leadership Program in Law and Business which, among other things, offers a variety of cross-disciplinary courses between the law school and the business school.³⁴ These courses are a key part of a larger vision to transform legal education for students who wish to do transactional work in a highly complex, global economy. The recommended curriculum includes:

A number of transactions-based courses, relevant across different industries, [that] will allow students to consider the specific ways in which various business transactions add value to the design, negotiation, finance and implementation of deals, as well as to business management and commercial client relations. Three to five such courses may be offered each year in a variety of transactional areas, focusing, for example, on mergers and acquisitions, intellectual property, real estate syndication, labor and employee relations, entertainment contracting, or various types of capital market transactions.³⁵

Stanford Law School also announced a far-reaching curriculum change in November 2006 that will emphasize cross-disciplinary training. As Dean Larry Kramer expressed in the announcement:

Lawyers need to be educated more broadly—with courses beyond the traditional law school curriculum—if they are to serve their clients and society well. . . . To serve clients capably or address major social and political issues, lawyers now must work in cross-disciplinary/cross-professional teams The idea is to utilize the rest of the university to create a more three-dimensional legal education. We realized that the rest of the university is training the

34. NYU Sch. of Law, Office of J.D. Admissions, Leadership Program in Law and Business, Program Components, <http://www.law.nyu.edu/depts/admissions/ScholarAcademics/Academics/Leadership/Overview/Components/Index.html> (last visited Mar. 14, 2007). This program augments NYU's well-established Center for Law & Business, a joint initiative of the Law School and Business School.

35. *Id.*

people who will become our students' clients. Good lawyers need to understand what their clients do.³⁶

Kramer also notes that one of many reasons to add cross-disciplinary training to the law school curriculum is that the upper-level curriculum typically fails to hold law students' interest.

The problem is that legal education has traditionally involved teaching one skill (thinking like a lawyer), and doing so for three years. . . . The second and third year curriculum is thus best described as 'more of the same.' Yet, more of the same is not enough. . . . [S]tudents can have a much richer, more varied educational experience in which they also get opportunities to study across disciplines, [and] to work in teams with students from law and other disciplines. . . .³⁷

The University of Pennsylvania has also made a major commitment to cross-disciplinary teaching in recent years. This feature has become a key selling point for the law school, as the school notes on the homepage of its website:

Penn Law has created a cross-disciplinary program that is unrivaled among the leading law schools. Recognizing that lawyers of the future will be well-versed not only in legal tradition but also in the broader fields of our society, Penn Law has embraced its relationship with the finest array of graduate and professional programs in the nation. Our law students take classes and earn certificates or joint degrees at schools and programs such as Wharton, the Annenberg School for Communication, the Center for Bioethics program—the opportunities available to our students are bounded only by their imaginations.³⁸

The site also quotes the school's dean, Michael Fitts: "Virtually every fundamental issue facing our country is illuminated through the critical thinking developed in traditional and cross-disciplinary legal training."³⁹ One measure of student interest can be found in the fact that

36. Stanford Law Sch. News Ctr., *A '3D' JD: Stanford Law School Announces New Model for Legal Education*, Nov. 28, 2006, available at <http://www.law.stanford.edu/news/pr/47/>.

37. *Id.*

38. Penn Law, About Penn Law, <http://www.law.upenn.edu/about/> (last visited Mar. 14, 2007).

39. Penn Law, Cross-Disciplinary Focus, <http://www.law.upenn.edu/crossdisc/> (last visited Mar. 14, 2007).

32% of students took classes outside of the law school in the spring of 2006.⁴⁰ Another mark of the importance of the program is the commentary of BCG Attorney Search, a firm that publishes a ranking of law schools. The firm notes in its latest guide to class rankings that the program is Penn's "most important innovation."⁴¹

Partners in leading corporate law firms say transactional training in general, and cross-disciplinary negotiations training in particular, is an attractive addition to the law school curriculum. Austin says that a joint negotiation course "ought to be a considerable benefit, because it would allow a new associate to operate at a higher level of competence; it could possibly give a several month advantage."⁴² Igor Kirman, a partner at Wachtell, Lipton, Rosen & Katz, concurs. "I think that's a great idea. If more and more classes could be offered on that basis, it would be great."⁴³ He adds, "Learning to speak each other's language is very useful in the global scheme of things. I find that the distinguishing characteristic of good lawyers and bankers is that they understand each other's language."⁴⁴ He also notes:

If you've had at least one negotiation experience in the classroom and made mistakes there without paying the price for it in front of a partner, that experience is extremely valuable—the confidence level you'll have in your first transaction will be extremely high and the role you'll have in them will be much greater. It's not clear if these advantages stop in first few years. . . . I just think you may enjoy the practice much more, you'll be a better value producer, and you'll be rated better by colleagues.⁴⁵

40. Penn Law, Taking Courses In Other Departments, <http://www.law.upenn.edu/crossdisc/study/otherdepts.html> (last visited Mar. 14, 2007) (reporting that 64% of these students took courses at Wharton, including Behavioral Economics, Venture Capital, and Finance Innovation; 19% in medical and nursing courses such as Bioethics & Forensics; 9% at the Fels Institute of Government, such as Dealing with the Media; and 8% in other departments, such as International Studies, Business & Public Policy, Management, and Real Estate).

41. BCG Attorney Search, BCG Guide to Class Rankings: University of Pennsylvania, http://www.bcgsearch.com/crc/book2005/uni_pennsylvania.html (last visited Mar. 14, 2007).

42. Austin, *supra* note 5.

43. Kirman, *supra* note 6.

44. *Id.*

45. *Id.*

B. Other Advantages of Cross-Disciplinary Training—Lessons from Medical School and Clinical Programs

To see other advantages of cross-disciplinary training, consider medical school education. Many medical schools now require their students to treat simulated or ‘standardized’ patients—actors who play the role of a patient with particular symptoms⁴⁶—including Harvard, Stanford, Temple, and the University of Nevada.⁴⁷ The method is so widespread that at least one placement firm has made a business of hiring actors for these assignments.⁴⁸ As part of their training, these schools’ medical students must interview a simulated patient, give a diagnosis, prescribe a treatment, and offer medical advice. The training gives the students valuable experience in a controlled and simulated setting, where students can make mistakes without hurting anyone, get feedback, and gain confidence before they treat real patients.⁴⁹

46. See Brender et. al., *Standardized Patients*, 294 JAMA 1172, 1172, Sept. 7, 2005, available at <http://jama-assn.org/cgi/content/full/294/9/1172>; Roy Stuckey, *Papers Presented at the UCLA/IALS Conference on “Enriching Clinical Education”*: *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807, 825 (2007) (discussing that “medical schools use various simulation devices, even professional actors, as ‘simulated patients’”); see also Tory Harris & Eryn Jelesiewicz, *Getting Ready for the Real Thing: Medical and Health Science Programs Are Increasingly Using Simulation to Prepare Students for Patient Encounters*, TEMPLE TIMES, Sept. 23, 2004, http://www.temple.edu/temple_times/9-23-04/simulation.html (“Medical schools have been using standardized patients [i.e., actors] to conduct training and assess clinical skills for at least 30 years, while nursing and other health professions schools started using standardized patients within the past year or so.”).

47. Harris & Jelesiewicz, *supra* note 46; see Nicole Martin, *Student Scene: Recasting the Actor-Patient*, WEB WEEKLY, Feb. 6, 2006, http://webweekly.hms.harvard.edu/archive/2006/0206/student_scene.html; see also Stanford Sch. of Med., Office of Student Affairs, Standardized Patient Program, <http://ome.stanford.edu/spp.html> (last visited Mar. 14, 2007); Univ. of Nevada Sch. of Med., Office of Med. Educ., The UNSOM Standardized Patient Program, <http://www.unr.edu/med/dept/OME/spp.asp> (last visited Mar. 14, 2007).

48. Clinical Competency Ctr. of N.Y., Standardized Patients, <http://c3ny.org/wksp-sp5.html> (last visited Mar. 14, 2007) (noting that it “maintains a diverse cadre of intelligent, well trained professionals (standardized patients - SPs) who can portray anything from a 16 year old runaway, to a 45 year old man with adult onset diabetes, to a 77 year old with Alzheimer’s”).

49. Interview with Margaret Shaw, Adjunct Professor of Law, New York Univ. Law Sch., in New York, N.Y. (Mar. 15, 2007) (stating that NYU Law School’s first year program includes a mediation component that also employs actors).

Similarly, cross-disciplinary courses let professional students safely simulate realistic encounters with future clients and advisors.

In several ways, a cross-disciplinary course can offer an even superior experience. First, students experience a real culture shock when they deal with students from another field who think and act very differently.⁵⁰ Further, because the students work together not once but for several weeks, each has time to learn the other's ways. Much like characters in a buddy movie or professionals in the real world, they learn to empathize and communicate with each other. To achieve a similar benefit, a simulated patient course would need to have actors return for several follow-up visits, or simulate different illnesses with the same 'patient' each week for several consecutive weeks. Also, unlike the actors in a medical school simulation, the 'actors' in a business law cross-disciplinary course are MBA students who also learn valuable lessons in a safe setting. Thus, the course benefits many more students than the medical school model, which makes the course financially attractive to the university.

A comparison between cross-disciplinary training and clinical education also reveals benefits. Clinical programs offer excellent training to law students, medical students, and, to a lesser extent, business students. Clinics are now a firmly established part of the curriculum at most law schools.⁵¹ These programs give students a realistic experience as they work with actual clients on real life problems. The range of possible areas of specialty for a clinical program is almost limitless, and students often find the experience rewarding. Among its recommendations for improving legal education, the Carnegie Report included a strong endorsement for clinical education, especially in the second and third years.⁵²

50. As a law student, I did a simulated counseling session with an actress who played the part of a client. The experience was memorable because I was very aware that my client was an actress, which made the simulation feel a bit contrived. From what I have learned since, I gather that well-trained actors can create a very compelling experience for a student, which suggests that the success of actor-based training depends in part on the quality of the actors. Since each MBA student in a cross-disciplinary course is, or soon will be, an actual businessperson, his encounter with a law student involves a real clash of perspectives. While it can take a few minutes for a student to fully embrace his simulation role, I find that students usually become quite engrossed in the experience and live it out intensely.

51. See LAW SCHOOL SURVEY, *supra* note 33, at 16.

52. See SULLIVAN ET AL., *supra* note 2, at 9 (recommending law schools reinvent the third year by letting students engage in advanced clinical training,

Yet, clinical education also has limits. First, clinical programs can be costly to run because they require considerable space, staff, and equipment, and often let only a small number of students work with a given instructor. For this reason, some clinical programs do their own fundraising.⁵³ Second, real life clients' problems may not lend themselves to resolution within a semester, which means students may never see the final results of their work. Third, because clinics offer services at little or no charge to clients and patients, the caseload may only partly reflect what students will do when they graduate. A business law clinic, for example, may permit law students to work on a simple commercial lease, but not on a complex transaction.

Like a clinical program, a cross-disciplinary skills course gives students a compelling and memorable professional experience working with real clients. A cross-disciplinary course, however, does even more; like a flight simulator, it lets the instructor create specific experiences with discrete lengths and clear lessons. The simulations can be as simple or as sophisticated as the instructor wants. Also, unlike a clinical program, a cross-disciplinary course does not impose major extra costs on a school—indeed, it may create a net financial benefit, as I note below.

Perhaps for these reasons, many medical schools also use cross-disciplinary courses or, as they call them, interprofessional education (“IPE”).⁵⁴ IPE began in the 1960s and is particularly widespread in British, Canadian, and European medical schools.⁵⁵ The *Journal of*

among other things).

53. See, e.g., Univ. of Colorado Law Sch., Dir. of Clinical Educ. Job Announcement, <http://www.ssrn.com/update/lisn/lisnjob/job058.html> (last visited Mar. 14, 2007); Univ. of Minnesota Law Sch., Fund Raising Priorities, <http://www.law.umn.edu/giving/priorities.html> (last visited Mar. 14, 2007); Golden Gate Univ. Sch. of Law, Envtl. Law & Justice Clinic, http://www.ggu.edu/school_of_law/academic_law_programs/jd_program/environmental_law/environmental_law_justice_clinic (last visited Mar. 14, 2007).

54. See Tami L. Remington et al., *Evaluation of Evidence for Interprofessional Education*, 70 AM. J. PHARM. EDUC. 66 (2006), available at <http://www.ajpe.org/aj7003/aj700366/aj700366.pdf> (“Based on recommendations from numerous organizations, educators in healthcare disciplines are implementing interprofessional training programs.”).

55. See Univ. of Manitoba, Interprofessional Educ. For Geriatric Care, About Interprofessional Education, http://umanitoba.ca/outreach/iegc/about_ipe.html (last visited Mar. 14, 2007); UK Ctr. for the Advancement of Interprofessional Educ., <http://www.caipе.org.uk/> (last visited Mar. 14, 2007) (describing how the British foster

Interprofessional Care is devoted to the idea, stating that its goal is to foster “collaboration in education, practice and research between medicine, nursing, veterinary science, allied health, public health, social care and related professions to improve health status and quality of care for individuals, families and communities.”⁵⁶

Medical school education is literally a matter of life and death. If medical schools around the world have seen IPE’s benefits for decades, then perhaps other professional schools are right to take cross-disciplinary training seriously.

C. Cross-Disciplinary Training’s Financial Benefits to the University

A cross-disciplinary course can also create financial benefits for the university. Unlike a simulated patient course, the university receives tuition from the ‘actors’ (e.g., the MBAs who play the role of clients in simulations), and needs no special clinical facilities. Schools should not cut funding to clinical programs or simulated patient courses, but rather offer students valuable additional training in a financially attractive way.⁵⁷ This benefit can be particularly useful for law schools in light of the Carnegie Report’s recommendation that schools should offer more clinical training. Thus, for those educators who want to follow the Carnegie Report’s recommendations without incurring additional clinical program costs,⁵⁸ cross-disciplinary education might be an attractive solution.

Both participating schools within the university can benefit from the cross-disciplinary course. The school that does not physically host the course can allocate valuable space for other courses, while the host school can earn an extra fee for its role as host. Meanwhile, the two

the use of IPE through the UK Centre for the Advancement of Interprofessional Education); *see also* European Interprofessional Educ. Network, <http://www.eipen.org/> (last visited Mar. 14, 2007) (describing a parallel European interprofessional education organization—the European InterProfessional Education Network); *see generally* HUGH BARR, INTERPROFESSIONAL EDUCATION: TODAY, YESTERDAY, AND TOMORROW: A REVIEW (2002), *available at* [http://meds.queensu.ca/quipped/assets/IPE%20Today,%20Yesterday%20&%20Tmmw%20\(Barr\).pdf](http://meds.queensu.ca/quipped/assets/IPE%20Today,%20Yesterday%20&%20Tmmw%20(Barr).pdf).

56. Journal of Interprofessional Care: Aim & Scope, <http://www.tandf.co.uk/journals/titles/13561820.html> (last visited Mar. 14, 2007).

57. *See* Jarosz, *supra* note 10, at 39–40 (“Because of the small student-faculty ratio in these types of programs—many have fewer than 20 students—they’re simply more expensive than larger lecture classes.”).

58. SULLIVAN ET AL., *supra* note 2, at 9.

schools may, if they wish, share the cost of the instructor. Depending on the enrollment, the number of instructors, and the compensation, this arrangement can reduce each school's overall instructor costs.⁵⁹ Thus, the old saying about newlyweds can apply here, too: two can live as cheaply as one.

A cross-disciplinary course does create some extra expense, mostly from the extra attention that the schools' registrars must dedicate to enrollment, grades, credit hours, and timely joint recording and reporting. Most registrars, though, are quite familiar with joint courses and can handle the details without difficulty. Other costs might arise if the school needs to overcome logistical hurdles.⁶⁰ These costs, though, are probably far lower than the gains a cross-disciplinary course might offer.

A cross-disciplinary course can also help the university and its individual schools boost their ratings. As I noted earlier, Penn's commitment to such courses⁶¹ may have contributed to its rise in the law school rankings from twelfth to seventh during the period between 2000 and 2005.⁶²

Cross-disciplinary courses can also serve as a recruiting tool. Penn, NYU, and Yale now highlight their cross-disciplinary programs on their websites, which suggests that such courses can be a valuable selling point.⁶³ In my own experience over the years, I have found that my students are usually very excited to participate in joint projects with students in other programs. When students hear about these projects, student enrollment in my courses often rises noticeably.⁶⁴ Joint courses

59. See *supra* Appendix (discussing the pros and cons of using a single instructor).

60. See *supra* Appendix.

61. See BCG Attorney Search, *supra* note 41.

62. PRELAW HANDBOOK - A GUIDE TO LAW SCHOOL RANKING (SECTION 14), http://www.prelawhandbook.com/law_school_ranking_usn_history (last visited Mar. 17, 2007) (presenting the list of U.S. News & World Reports historic rankings of top 20 law schools). The handbook notes that the big winners over the past 20 years have been Stanford, NYU, and the University of Pennsylvania. *Id.* Perhaps coincidentally, these are three of the top law schools that have shown the greatest leadership in introducing cross-disciplinary courses in recent years. *Id.*

63. See *supra* notes 34–38; see also Yale Law Sch., The Campaign for Yale Law Sch., A Message from the Dean, <http://www.law.yale.edu/givetoyls/campaignmessagefromdean.htm> (last visited Mar. 16, 2007) (noting “we are expanding our cross-disciplinary offerings”).

64. I have already mentioned one-time joint law and business simulations, which usually stimulate strong student interest. I also frequently run simulations between my

can send a strong, attractive signal to prospective students that the university offers a stimulating, innovative, practical, and creative education.

In this way, cross-disciplinary courses can deepen a university's ability to be a true meeting place, rather than a collection of cloistered schools that operate in separate worlds. By lowering boundaries between specialties, cross-disciplinary courses offer a response to C.P. Snow, Michael Cohen, James March, and other critics of the modern university who have found a disturbing disconnection among the different academic fields.⁶⁵

D. The Limits of Cross-Disciplinary Training

Although the benefits are numerous, cross-disciplinary training is not a panacea. To understand one's chosen field, a student in a program of higher education must learn a set of core principles and skills and receive advanced specialized training. Involving less-qualified students from other fields in this work might slow or even derail progress. Taken too far, each student could take so many outside courses that it's no longer clear what it means to be a student of that school. Too much emphasis on cross-disciplinary education could dilute or destroy the sense of school community, undermine any coherent vision or principle, and transform the university into a mere base of operations like a commuter school. Often it's the unplanned, casual meetings between

students in New York and my students in Bordeaux, France. I have also occasionally run simulations between my students at Columbia and my students at NYU. Students typically rate these events as among the highlights of the semester.

65. See C.P. SNOW, *THE TWO CULTURES AND THE SCIENTIFIC REVOLUTION* (1959); Michael D. Cohen & James G. March, *Leadership in an Organized Anarchy*, in *ORGANIZATION AND GOVERNANCE IN HIGHER EDUCATION* 16–35 (M. Christopher Brown ed., 5th ed. 2000) (finding a disturbing disconnect between academic worlds); see also Ronald G. Ehrenberg, *Does 'The' University Exist? Will it Cease to Exist in the Future?*, *CORNELL CHRONICLE*, Feb. 4, 1999, available at <http://www.news.cornell.edu/Chronicle/99/2.4.99/Ehrenberg-commentary.html>.

Does it make sense to talk about each of our nation's major research universities as a single institution whose individual colleges are working in harmony to pursue a set of university-wide objectives? Twenty-five years ago Michael Cohen and James March articulated the view that universities are 'organized anarchies' with all of the colleges (and departments within colleges and faculty within departments) pursuing independent objectives.

Id.; see also Peter Weingart, *Interdisciplinarity: The Paradoxical Discourse*, in *PRACTISING INTERDISCIPLINARITY* 25, 25–42 (Peter Weingart & Nico Stehr eds., 2000).

students in a program that most nourish their understanding of the material, the discipline's culture, and the future role they might play. Pushed too far, cross-disciplinary education might also alienate a school's faculty, especially if they felt forced to drastically change the pedagogy, tackle a much larger workload, or deal with students they are not comfortable teaching. Further, an extreme arrangement might run afoul of accreditation standards.

Despite these legitimate concerns, it would be a serious mistake to smother a serious commitment to cross-disciplinary education. The challenge is to strike a balance so that a school is neither atomized and incoherent on the one hand, nor ossified and cloistered on the other. The goal is to provide the benefits from working with students in related fields and still nurture a clear school identity and community. Top law schools and business schools are already working hard to cultivate that balance in bold and creative ways, just as medical schools around the world have succeeded in doing for many years. Handled wisely, cross-disciplinary education can advance a given school's sense of unifying purpose.⁶⁶

IV. OVERALL GOALS AND SPECIFIC OBJECTIVES OF THE COURSE

I set two goals for my own cross-disciplinary course: help students learn to manage complex transactions wisely, and help future lawyers and clients learn to work well with each other. I also set nine specific teaching objectives. By the end of the course, I wanted students to be able to show that they had learned to:

- (1) Communicate effectively with their lawyer or client;
- (2) Coordinate, strategize, and set wise roles together for an upcoming negotiation;
- (3) Work well together on complex issues that touch both legal and business concerns;
- (4) Apply their basic negotiation training to complex situations with agents and principals;
- (5) Make wise decisions about when to sue and when to settle;
- (6) Work effectively with term sheets;

66. See SULLIVAN ET AL., *supra* note 2, at 10 ("A focus on the formation of professionals would give renewed prominence to the ideals and commitments that have historically defined the legal profession in America.").

- (7) Work effectively with draft contracts;
- (8) Understand the basics of any deal using a simple but powerful set of theoretical and practical tools; and
- (9) Recognize when they had reached a wise outcome using specific measures of success.

I designed the course so every student would have to grapple with some big questions. For example, do lawyers offer their clients anything valuable, or do they merely mess up good deals? Most business students are skeptical about the value of lawyers, viewing them as little more than functionaries who get in the way.⁶⁷ Is that opinion justified? Also, who is responsible for spotting and solving complex issues where business and law are both involved? Most law students and most business students have little idea how their work overlaps in complex deals. Further, what exactly does a client gain from having a legal right to sue, and is there anything more a lawyer should be thinking about? Most law students think their central task is to make sure their client will win a lawsuit. Is it? We would tackle these questions and more.

V. SPECIAL CHALLENGES TO OFFERING A NEW CROSS-DISCIPLINARY MINI-COURSE—COVERAGE, MIX, AND ENROLLMENT

The new course would have its own limitations and risks. Since it would only have six sessions in its debut offering, it would not be long enough to let students explore some important topics, such as corporate governance, mergers & acquisitions, economics, securities regulation, and class action litigation. Further, it wasn't clear what would constitute an ideal mix of students. The schools themselves had to agree on the number of seats each school would get, finally settling on twenty-six seats for business students and fourteen for law students.

It was also clear that the class would suffer if law students enrolled and business students did not, or vice versa. Since the course was new, I needed to promote the course particularly well, so I gave a guest lecture at the Law School, made announcements in my own classes, and gave the Law School registrar a flier to post about the course. Yet, just a few

67. See James Fuqua's Law Jokes: Famous Quotes and Sayings About Lawyers, <http://www.jamesfuqua.com/lawyers/jokes/famous.shtml> (last visited Mar. 14, 2007) (referencing Danny Devito's famous line: "Of course I've got lawyers. They are like nuclear weapons: I've got em coz everyone else has. But as soon as you use them they [expletive] everything up." OTHER PEOPLE'S MONEY (Warner Bros. Pictures 1991)).

days before the course began, it looked as if we would have only a handful of law students to join a lot of business students. Why? I believe it was because the course, its physical location, and I, were all new to law students, and also because the course needed more publicity. Business students, who presumably knew my reputation and knew we would hold the course in the Business School, had, months earlier, filled every seat available to them.

What to do? I launched a last-minute publicity campaign at the law school. To my surprise, this campaign worked so well that we wound up with more law students at the first session than available seats. The experience taught me that it is important to repeatedly promote such a new course, and that law students' interest will be high once the students really hear about it.

VI. PEDAGOGY, FORMAT, AND UNDERLYING PRINCIPLES

A. Key Features

To fulfill the course's goals, I designed it to rely heavily on active learning. Students would complete four simulated negotiations over the course of the six-class mini-semester, typically with one law student teaming up with two business students. These simulations would include the negotiation of a partnership agreement, a start-up venture financing, a loan agreement, and a bankruptcy workout. Students would also play a fun game called "Sue or Settle"⁶⁸ to learn what it's like have to repeatedly decide whether to keep a litigation going, as real litigants must. Law students would also draft detailed loan agreements, then work with clients and counterparts to hammer out final terms. For most law students, this experience would mark the first time they had ever drafted a legal agreement.

I also planned to rely on guest lecturers. In one class, we would welcome two venture capitalists who would demonstrate scenes from a venture capital negotiation.⁶⁹ In another, a partner in a business law

68. Seth Freeman, John Richardson & Bruce Patton, Program on Negotiation at Harvard Law School: Clearinghouse, Role Simulations: *Sue or Settle*, http://www.pon.org/catalog/product_info.php?products_id=274.

69. The guest lecturers were Geoff Smith and Lawrence Atinsky. Geoff is a partner and Lawrence is general counsel for Ascent Biomedical Partners, a New York venture capital firm that specializes in investing in biotechnology ventures. Geoff and Lawrence presented the Columbia Venture Partners—MedTech Inc. demonstration

firm would watch the students negotiate and then, in the debriefing, comment on the task of negotiating contract language. I would augment these features with a number of lectures.

Each student's grade would depend largely on two memos they would write about simulations. Class participation would make up another part, along with a short take-home quiz. At the Law School's request, I also gave law students an extra credit term paper assignment, which I urged them to complete in part by interviewing real life practitioners.

B. Three Key Principles, Three Key Questions

Three key principles rest at the heart of the course, which I stated as three questions.

"What does my client (or what do I, the client) want and why?" This first question emphasizes the central importance of understanding the client's interests.⁷⁰ Pointless litigation and unsatisfying agreements are the fate of those who ignore them. For example, imagine a client has been poisoned by a hospital. His lawyer might fail him by pursuing lengthy litigation when the client needs cash now to pay for medical care. Conversely, if the lawyer thoroughly understands his client's needs, he may be able to solve the problem well through skillful negotiating and legal maneuvering. How, then, can a lawyer learn the client's interests? How can a client clearly convey them? How does each ensure an agreement satisfies those interests? The more complex a transaction becomes, I emphasized, the more important it is for a client and his lawyer to keep the client's interests in mind so the complexity does not cloud their perspective.

which, they told me, they have performed for several other classes and trainings across the country. Geoff co-authored the simulation with Prof. Victor Fleischer in Victor Fleischer & Geoffrey W. Smith, *Columbia Venture Partners—MedTech Inc.* (Columbia Law & Econ., Working Paper No. 229, 2003), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=417520. I am grateful to Geoff and Lawrence for their generosity in advising me before the course, and for performing the demonstration.

70. See ROBERT H. MNOOKIN ET AL., *BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES* (2000) (arguing for an interest-based approach to lawyering); see also Schwarz, *supra* note 12, at 14–16 (finding that lawyers and clients responding to surveys overwhelmingly emphasized the importance of lawyers and clients understanding the interests behind the terms of the agreement).

Negotiation instructors will recognize that interests are important in most negotiations, but I emphasized them here for additional reasons. A law student may naively believe her sole job is to make sure her client will win the lawsuit. However, it is quite possible to draft a legally airtight contract that nonetheless serves the client's interests terribly. Meanwhile, business clients can focus so narrowly on satisfying their immediate business interests that they will agree to legal terms permitting the other side cheat, manipulate, or strategize with impunity. Getting the lawyer and the client to think and talk about key interests can help them avoid these traps.

"How do I know?" This second question emphasizes the need to ensure that the other side will keep its promises and that the agreement will actually give the client the legal and business benefits it seems to give.⁷¹ Lawyers and clients naturally think about this question from different perspectives, but it is possible to miss a lot by ignoring the larger picture. For example, how do they know that an investor really will keep his promise to let the entrepreneur control the business? Since the answer depends on business terms and legal terms, only in collaboration can the entrepreneur and her lawyer really discover how well the agreement supports the promise. Further, as students discover early in the course, a client may have no real protection if a suit is the only remedy for breach, since litigation might be too costly, bothersome, and protracted. For these reasons, good lawyers help their clients find a variety of ways to ensure the other side performs.

Many solutions tackling problems of trust exist, explored in greater detail in course material I have written entitled, "Can We Work Together? The Problem of Trust and the Elements of Agreement."⁷² Most of these solutions fall into the following four simple categories. Knowing these categories can make it easier for practitioners to spot creative ways to make sure a party does not break its promises:

71. See PAUL MILGROM & JOHN ROBERTS, *ECONOMICS, ORGANIZATION & MANAGEMENT* (1992) (providing a detailed introduction to TCE, which explores a number of specific kinds of trust problems that clients face, offers a set of ways—mostly involving incentives—for dealing with them). Since the range of possible trust problems—and solutions—can be wider than TCE suggests, a broader look at the trust problem and the many ways to solve it can enhance lawyers' and clients' work. See Seth Freeman, *Can We Work Together? The Problem of Trust and the Elements of Agreement* (2006) (unpublished manuscript, on file with author).

72. Freeman, Richardson, & Patton, *supra* note 68.

(1) *Watching Solutions*—Methods one can use to keep an eye on the other, such as early warning mechanisms, documentation, tests, security devices, and power-sharing arrangements;

(2) *Incentives & Penalties*—A stick and carrot approach that encourages cooperation, such as bonuses, mutually assured destruction, interest-based bargains, threats of litigation, and collateral;

(3) *Objective Criteria and Trusted Third Parties*—Procedures both sides trust that confirm a deal is fair (such as independent standards, arbiters, and common sharing rules), and trustworthy third parties who can back a party's promises or reputation (such as references, credit card companies, and insurers); and

(4) *Formalized Relationship*—Rules of engagement to guide the process when parties interact (such as Alternative Dispute Resolution clauses, charters and by-laws, and regularly scheduled meetings).

By putting business and law into this larger context, students see that they have a larger task, and a larger array of solutions, than their early professional training might otherwise lead them to believe.

“*What if?*” This third question teaches students to anticipate the consequences of their agreements.⁷³ No one should worry about every contingency, but good lawyers and executives watch for serious time bombs in their deals and play out realistic scenarios to test whether certain terms will help or hurt later on. To teach this idea, I planned to run one simulation where the students would be ruined if they agreed to a deal. In their debriefing, students would discover several important business and legal problems that would later destroy them—issues they could discover in advance by working together and asking a number of realistic ‘what if?’ questions.⁷⁴

73. See Schwarz, *supra* note 12, at 52–53 (finding that lawyers and clients responding to surveys also overwhelmingly emphasized the importance of lawyers and clients anticipating future events that could hurt the client, among other things).

74. Enron’s experience serves as a cautionary tale that dramatically illustrates what can happen if professionals do not learn to ask ‘what if?’:

Yet under the gleaming surface, there were problems at [Enron International], problems that got only worse over time. [Rebecca] Mark [the executive in charge of that division of Enron], who at first ran and reran numbers to make sure her deals made economic sense, became sloppy. . . . [I]mportant details fell through the cracks. ‘We are in the business of doing deals . . . this deal mentality is central to what we do,’ Mark told an interviewer for a Harvard Business School case study. . . . A second

There is much more to transactional work than just these three principles, so the course would explore many other insights as well. My hope, though, was that by emphasizing a few simple questions throughout the course, I could give students a clear, effective, and memorable way to organize their thinking about complex problems.

VII. EXPERIENCE TEACHING THE COURSE

A. *The First Classes: Introduction to the Lawyer-Client Relationship and Core Principles about Managing Complex Transactions*

In the first joint session,⁷⁵ we ran a straightforward simulation of a partnership agreement negotiation. This simulation gave the students their first experience dealing with each other. In the first thirty-five

problem: the assumptions Enron made to justify its deals assumed that nothing would ever go wrong. . . . [Yet] [t]hings went wrong all the time. People who worked for [Mark] say she trusted her gut far more than any spreadsheet, as she would tell anyone who tried to say no to her by citing a project's questionable numbers. . . . Today, [the plant at] Dabhol [India], in which Enron invested some \$900 million, sits silent, a gigantic, wasted marvel of modern technology.

BETHANY MCLEAN & PETER ELKIND, *THE SMARTEST GUYS IN THE ROOM* 76–83 (2004).

75. At the Law School's Vice Dean's request, I also held a session just before the course began for law students only. I discussed a term project they alone would write in order to earn an extra half credit. I also used this session to prepare them for their upcoming client work by examining good and bad examples of lawyering. In the first case, a lawyer pursued litigation for years while his client was dying of AIDS; in the second, a lawyer found a way to help his struggling business client win valuable concessions from a landlord, saving the business in the process. The latter story appears in the introduction to MNOOKIN ET AL., *supra* note 70, a text I assigned. I used these cases to illustrate the critical importance of understanding the client's needs, and the danger of being overly focused on litigation. To develop the idea more deeply, I told the students that I had just agreed to buy a car I found on the Internet. What contract language would I need? The students haltingly suggested a few clauses, though they had little recall of ideas like representations and warranties, covenants, and conditions precedent until I prompted them. Then I told them that I had signed the contract but that the car had later turned out to have been badly damaged, and that the seller had misrepresented its condition. What could I do now? "Sue," said the students. Then we played out what it would take to do that, and discovered it would take years and cost more than the car was worth. In the discussion that followed, we explored the idea that a legally enforceable contract, though useful, is, in essence, the business equivalent of a costly and unreliable insurance policy, in the sense that it may cost a lot to create and may deliver only partial protection. In another sense, a legally enforceable contract is like a nuclear weapon—it may be able to deter the other side, but its great cost to both sides may make it hard to use in practice, except as a last resort. The

minutes, the lawyers interviewed and advised their clients and prepared with them for the upcoming talks. For the next forty minutes, each team negotiated with another team and then posted their outcomes on the classroom board. They also completed surveys about their satisfaction with the results and with each other's work, and posted their responses.

We began the debriefing by looking at the survey results. Clients who were satisfied reported that their lawyers had done an excellent job discussing the matter with them and helping them to craft deals that served their interests; unsatisfied clients reported their lawyers took a more myopic and adversarial approach. What about interests the lawyers spotted that the clients unwisely undervalued, such as the ability to protect against breach? Satisfied clients said they appreciated it when the lawyer clearly explained why these protections mattered, and usually wound up agreeing to what their lawyers proposed. Dissatisfied clients said their lawyers merely focused on these concerns without discussing them and ignored the clients' other business needs. We then talked about the experience generally, and looked at the results themselves, focusing on whether they satisfied the clients' interests.

From the debriefing, students saw that clients' interests might not be obvious, so clients need to make sure their lawyers understand these interests, and lawyers need to make sure their clients discuss them. They also saw the need for factual clarity; dissatisfied teams typically found they had gotten confused talking with each other about the facts. The students also learned that roles matter. Satisfied groups generally spent more time working out how lawyers and clients would act at the bargaining table. The discussion also revealed that lawyers can help clients design a satisfying agreement if well-prepared and if duties are clearly delineated. The central lesson of the event emphasized that it is critical for both the lawyer and the client to understand the client's interests by asking "what do I (or what does my client) want and why?" and discussing the deal in these terms.

The students generally felt pleased with their work, but a surprise awaited them in the next class—I announced that the deal had fallen

discussion led students to an important insight: to serve the client, a lawyer must be able to give more, not less, than just a legally enforceable agreement. What should the lawyer give? The course is designed to help them find an answer. From my later work with the students, I saw that this idea—that creating a legally enforceable agreement is only part of the lawyer's task—is novel enough that law students need to discover it more than once before it becomes real to them. For this reason, it was helpful to introduce the idea again through later simulation work.

apart a few months later as one side suspected the other of misconduct, quit the partnership, and began to compete against it. Did their agreement protect them from this turn of events? “We can sue them,” said several students, as I had hoped. But then we did a thought experiment and played out that scenario: it would take two to three years in New York to actually get to state court,⁷⁶ and, if appeals followed, several more years might pass before the case ended. The chances of winning might be good, but would not be certain, and the legal costs might rival the stakes of the case. I asked the clients whether they were content with the agreement’s ability to protect them, and the business students all said they were not. “Was this scenario plausible enough to be foreseeable?” Yes, the class agreed it was. A legal agreement, it seemed, though important, might give clients little more than a long and costly lawsuit. Litigation was beginning to look like an act of last resort; a severe but costly deterrent that one might think of as the civil equivalent of nuclear war. Somehow, the clients would need more—not less—than a legally enforceable contract, just as a nation needs more—not less—than a last-ditch deterrent. We would explore what that might be shortly.

First, though, to explore litigation more deeply, we played a simple game, called “Sue or Settle,” which is available from Harvard’s Program on Negotiation Clearinghouse.⁷⁷ The game asks students to imagine they are involved in a lawsuit where one million dollars is at stake. Using a simple game of cards to simulate the process, students play out the decisions facing them at each stage of litigation. Within a few minutes, students discovered a number of troubling aspects to the game, and to litigation. First, the clients must pay tens of thousands of dollars. Second, their lawyers face an inherent conflict of interest, since they profit as the game continues. Third, the clients must continually weigh the risks and benefits of continuing the suit. That is not easy, since the clients can only rely on the lawyers’ advice to assess the strength of her case. Further, appeals and high-powered legal help can inflate the cost considerably. Law students and business students alike find that the game gives them their first experience dealing with the strategic choices,

76. See HEATHER DODGE & KENNETH PANKEY, CASE PROCESSING TIME STANDARDS IN STATE COURTS, 2002–03 62 (2003), available at http://www.ncsc.org/WC/Publications/KIS_CasManCPTSPub.pdf (reporting that New York sets as a standard that 100% of regular civil cases filed in New York pass from filing to disposition within 23–30 months).

77. See Freeman, Richardson, & Patton, *supra* note 68.

costs, and stresses of litigation. To reinforce the experience, we played the game twice, with law students acting as clients in the second game, and business students as lawyers.

The game, like the class before it, let me lead the students to an important question: If you want to agree to a contract, is legal enforceability enough to make sure each side lives up to it? The students again said it was not enough; they had twice seen the costs and risks of litigation. If not, how do you know the other side will keep its promises? That became the second key question of the course.

To answer it, we explored the idea of “Trust Substitutes”—a term I have coined to describe the vast array of mechanisms and arrangements people use to protect themselves when they are not sure they can fully rely on the other person’s promises.⁷⁸ We examined several cases where people use Trust Substitutes to shore up trust, including a simple landlord-tenant relationship and a highly complex loan agreement. In each case, we saw that the parties rely on much more (not less) than the mere ability to sue each other for breach. Business people know a lot about some of these mechanisms—like collateral, insurance, reference checks, and guarantors. Lawyers know about others, like notice provisions, due diligence, indemnification, and self-help clauses. In most arms-length transactions, the parties rely on legal enforceability *and* a number of these other sorts of protections, in part because the supplemental protections often are faster, easier, and less costly than a lawsuit. Each profession has different Trust Substitutes that can complement each other. To work effectively together, then, lawyers and business people must jointly seek the best mix. We then considered a few principles for using Trust Substitutes wisely.

In the third class, students learned several more principles for handling complex transactions, including the importance of asking a third question: What if? To learn these principles, they negotiated a highly complex investment deal in the Bountiful Table simulation.⁷⁹ Bountiful Table is a unique simulation in two ways. First, it lets the instructor negotiate a sophisticated, detailed agreement with every one in a class of forty students (or more) in about seventy-five minutes. Second, agreeing to the instructor’s final offer turns out to be a bad

78. *See id.*

79. Seth Freeman, Bountiful Table (2007) (unpublished simulation, on file with the author). I have successfully used Bountiful Table many times. Students typically rate it one of their favorite simulations. If you would like a copy, please contact me.

mistake. Only if the students are well prepared and well-coordinated can they spot the problems, resist the temptation to ‘do a deal,’ and walk away—a critical skill for any serious negotiator.

The simulation unfolded this way. The students played entrepreneurs and their counsel, and I played the role of Alex Freeman, an executive offering first round corporate backing. As Alex, I presented the class with a term sheet, and explained the terms with a brief PowerPoint talk. I tried to be positive and earnest, and laced my presentation with words like, “creative,” “interest,” “opportunity,” and “flexible.” I then let each team caucus, mark up its term sheet, hand it to me as its confidential counteroffer, and then sit down. I then reviewed and marked up a given team’s counteroffer on a first-come, first-serve basis, and returned the sheet as my firm’s final offer. After getting their respective final offers each team caucused again, this time trying to decide whether to take my offer or walk away from it. Each team then posted its decision on the board.

About twenty percent of the class took my offer and eighty percent wisely declined it, choosing instead to go with one of several alternatives the materials described. Successful teams discovered that my final offer was terrible: it did not satisfy their interests nearly as well as their best alternatives did. Also, insufficient Trust Substitutes remained to protect them when my corporation later used the deal to take control.

In contrast, when I do the simulation in negotiation courses with only MBAs, thirty to eighty percent typically accept. These results suggest that good lawyer-client teams have a better chance of saving business people from bad deals. The contrast calls into question the stereotype that lawyers are mere functionaries who kill good deals. Some deals, like this one, need to die, and several of the lawyers helped their clients see that.

Bountiful Table teaches the key lesson that ‘getting to yes’ is not the goal of negotiation: the goal is to get to *wise* yes or *wise* no. That lesson is especially important for eager deal-makers to learn because media coverage of deals often makes mere agreement look like success. Studies and cases often teach another story. Enron became a media darling for its ability to do deals, but few if any of its later deals made

money, and most proved to be disasters.⁸⁰ Similarly, studies routinely find that well over half of all mergers fail.⁸¹

The simulation teaches many other lessons, too. In a follow-up exercise, the students learned that sales over the following nine months were a disappointment—a common experience for entrepreneurs, as the dotcom debate of 2000 illustrates. Did their deals let them continue? A simple calculation sheet revealed that in many cases the answer was no. Even if they walked away from Alex's bad offer, most teams discovered their deals were seriously or fatally flawed. Only a few were robust and foresighted enough to cope with foreseeable problems. Clearly, professionals must work well together to fully understand the interests, their counterparts, and the details of offers, which in turn means mastering the numbers, the meaning and implication of each legal term, and the seemingly minor business terms (such as payment terms), any of which can make or break a transaction like this one.⁸²

80. MCLEAN & ELKIND, *supra* note 74, at 76-83.

81. See FRITZ KROGER & MAX M. HABECK, AFTER THE MERGER: SEVEN RULES FOR SUCCESSFUL POST-MERGER INTEGRATION 1 (2000) (“A global survey of 115 transactions, conducted by A.T. Kearney in 1998/1999, revealed that 58 percent of mergers failed to reach the value goals set by top management.”); see also Wharton Sch. of the Univ. of Pennsylvania, *Why Do So Many Mergers Fail?* KNOWLEDGE@WHARTON, Mar. 30, 2005, <http://knowledge.wharton.upenn.edu/create/pdf.cfm?articleid=1137&CFID=4140813&CFTOKEN=19505299>.

‘Studies indicate that several companies fail to show positive results when it comes to mergers,’ says Wharton accounting professor Robert Holthausen, who teaches courses on M&A strategy. Noting that there have been ‘hundreds of studies’ conducted on the long-term results of mergers, Holthausen says that researchers estimate the range for failure is between 50% and 80%.

Id.; see GAVIN KENNEDY, FIELD GUIDE TO NEGOTIATION: A GLOSSARY OF ESSENTIAL TOOLS AND CONCEPTS FOR TODAY’S MANAGER 68, 86 (1994).

Deadlock. We negotiate because we face the dread of disagreement. [However,] [u]nblocking deadlock could be a victory for good sense, or a triumph of bad judgment. It depends on what we concede to get agreement. Many companies go bust because they negotiate unprofitable agreements as go bust because they cannot find enough customers. . . . *Fear of Deadlock.* Extremely common among negotiators. Partly to do with the ‘success culture’ of open societies. Deadlock implies ‘failure’

Id.

82. See Alison Stein Wellner, *The Investors Have Come Calling, Seducing You with Multimillion-Dollar Deals*, INC. MAGAZINE, Mar. 2007, at 110, available at <http://www.inc.com/magazine/20070301/features-deal-the-seducers.html> (focusing on deal-making and discussing, *inter alia*, eight private equity pitfalls and ways for entrepreneurs to avoid them—many of which were present in the Bountiful Table simulation—such as know what you want, know your alternatives, watch out for deal

Finally, the follow-up exercise reveals a central insight of the course: lawyers and clients must think through the foreseeable consequences of their deals by asking the key question, ‘what if?’ Lawyers can ask the question from a legal perspective, and executives can ask from a business perspective, but often the consequences are unclear unless the two talk through different scenarios together. For example, what if sales are low, the firm needs more money to survive, and the corporate investor has a strong right of first refusal clause that effectively gives the investor exclusive power to contribute more money? That common scenario, easily overlooked but filled with serious implications, might let the investor take control of the firm. While experience can make it easier to spot problems like this one, young clients and lawyers can be precocious if they learn to ask, ‘what if?’

B. Later Classes—Testing the Principles with Guest Lectures, Complex Simulations and Drafting

In the last three classes, students studied several very complex transactions. In the fourth class, we were joined by Geoff Smith, a partner at Ascent Biomedical Ventures, a local venture capital firm, and Lawrence Atinsky, who serves as general counsel. Both men have law degrees and have worked on a lot of venture capital deals. Geoff and Lawrence demonstrated scenes from an investment negotiation, with one playing the venture capitalist, the other the entrepreneur. Between scenes, the two made comments about the deal and fielded students’ questions. Their demonstration dramatically showed the interplay of law and business in a major deal. It also highlighted the need to fully understand interests, legal and business terms, and the terms’ implications. Further, it underscored the need for protections beyond legal enforceability, and the tendency of each profession to become myopic if it ignores the other’s perspective. In a later run of the course that Geoff and Lawrence could not attend, I invited Joe Rubin, a lead partner in a midtown business law firm, to do the demonstration with me. Using the MedTech materials that Geoff co-wrote,⁸³ we were able to do a credible job demonstrating what a venture capital deal looks like.

euphoria, beware of ceding control, perform due diligence, know your weaknesses, find good advisors, and do your homework).

⁸³ See *supra* note 69 and accompanying text.

Because the materials are so good, I believe many others could do at least as well.

Next, I had the students turn a term sheet into a final draft of a contract. To do that, I asked them to imagine that the business people had just finished negotiating the term sheet for a secured loan. I then assigned them to teams of lenders and borrowers, and gave each student role-specific information. During the following two weeks outside class, the clients and their lawyers needed to do several things. First, after consulting with their clients, the lawyers had to decide who would create the first draft of the secured loan agreement. That lawyer then had to create the draft, get his clients to approve it, and submit it to the other side within nine days. The other side's lawyer then had to revise the draft in consultation with the client and return it to the first side within five days. Finally, the two sides had to meet to negotiate the final draft in the fifth class.

I gave the lawyers a choice of form contracts, as they might have in a law firm, and a partial list of drafting issues for guidance. I gave the clients specific information about their interests, and instructed each lawyer-client team to work together closely. I told them that a part of their class participation grade would depend on their timely completion of the assignment. In a later run of the course, I made the assignment itself worth 5% of their grade.

To my delight, the class rose to the challenge in almost every case and diligently produced first- and second-draft contracts on schedule (or close to it). They were able to finish negotiating the final draft in seventy-five minute meetings in the fifth class.

I reviewed the students' draft contracts before the final talks occurred and gave light comments, without a grade, to each team after the simulation was over. The draft contracts generally showed real promise and insight, although they also revealed that the law students did not understand some basic concepts about contracts in general and secured loans in particular. For example, virtually none of the contracts contained a clause that let the lender seize the collateral on default. Many draft contracts failed to define key terms; a number unwittingly used form language that favored the other side. Many disregarded the term sheet and added or omitted key terms.

There was one particularly big surprise: one pair of clients reported that their lawyer had essentially abandoned them. I had not expected serious professional responsibility issues to come up, but that surprise

suggested some useful teaching possibilities for the future.⁸⁴ We made the best of a troubling situation, and the clients were reasonably content in the end.

The debriefing helped students see that a deal is only beginning when the business people complete the term sheet, and that critical (and subtle) *business* decisions—not just legal decisions—remain as the parties work out contract language with their lawyers and each other. For example, a term sheet may simply say that the collateral will consist of “inventory,” but does that mean current stock only, or a floating interest in future inventory? To deepen the students’ learning, I invited Joe Rubin, a lead partner in a Park Avenue law firm, to give what proved to be a valuable twenty-five minute talk to the class after the simulation was done.⁸⁵

To add realism, I required the lawyers to keep careful track of the time they spent on the assignment, and submit formal written bills to their clients at the end of the exercise at the rate of \$400 per hour. Since the exercise would be an abbreviated simulation of the actual

84. In future classes, I might want to use similar situations to help students learn more about professional responsibility issues, their consequences, and practical ways to deal with them. For example, I might announce at the start of the assignment that clients will have the right to submit a grievance to the Bar Association (the instructor) if they believe their lawyer is neglecting them. The lawyer will receive a simulated hearing (typically an informal conversation), an emailed decision, a simulated professional penalty (such as a warning or sanction or notice of termination) and a grade reduction. The student would, however, be able to avoid these penalties by submitting an extra written assignment on how to deal with similar professional responsibility issues in real life. I would need to set the assignment up so that the student didn’t simply continue to argue that real life would be different, or that the decision was unfair. One way might be to have the student briefly interview a practitioner after I had first sent the practitioner a copy of the simulated Bar Association decision, and let the student hear from her why the experience is worth taking seriously. This approach is just one possibility; there may be better, simpler, and more compelling ways to turn the situation into a valuable lesson. What to do for the clients? Certainly, it doesn’t make sense to assign them extra work. One possibility, which I did not consider in this case, is to allow the clients to ‘fire’ their lawyer, and consult with another lawyer, giving that lawyer extra credit. Regardless, the experience suggests a valuable possibility that the course can help law students grapple with realistic issues of professional responsibility in a way that complements and deepens the work of a lecture-based course on professional responsibility.

85. Joe not only contributed beautifully to the discussion, but also repeatedly offered vital suggestions for the course, including essential contributions to the contract negotiation and drafting simulation. I am deeply indebted to him for each of these things.

experience, I told them to count every ten minutes of work as an ‘hour’ of their time. Their bills turned out to be low. The average came to \$8,000 (i.e., twenty ‘hours’ of work, or three and a third hours of actual student legal work in and out of class). Joe said an actual bill would probably be about \$20,000.⁸⁶ When I asked the clients whether they felt they got their money’s worth, a lively debated ensued.

This exercise marked the first time that any of the law students had ever drafted a contract. Since I never drafted a contract in law school either, I was not surprised that the students were inexperienced. I still find it remarkable, though, that law schools graduate students without insisting that they learn to draft contracts, especially since so many law students plan to practice business law.⁸⁷

In the final session, we simulated a bankruptcy workout, and explored the special dynamics that arise in that rarified situation where law and business intersect and the complexities of many issues, many parties, and intense time pressure require excellent team work.

I ended the course with two observations. First, as a former corporate lawyer who knows the special pressures and challenges of private practice, I felt a duty to warn the law students about the psychological and spiritual toll the profession can take. I gave them several cautionary articles,⁸⁸ and a list of books on ways to cope, thrive, and find their way.⁸⁹

86. In the future I would therefore tell law students who do this exercise to bill every five minutes as an ‘hour.’

87. See Email from Richard K. Neumann Jr., Professor of Law, Hofstra Univ. Sch. of Law, to Seth Freeman (Jan. 26, 2007, 17:09:22 EST) (on file with author) (“[C]ontract drafting . . . [I]t’s an elective that 20 to 70 students in each graduating class might have taken.”); see also *supra* notes 16–22 and accompanying text.

88. See Raymond P. Ward, *Depression, The Lawyers’ Epidemic: How You Can Recognize the Signs*, EVAN SCHAEFFER’S LEGAL UNDERGROUND, Mar. 16, 2005, http://www.legalunderground.com/2005/03/lawyer_depressi.html (citing Joan E. Mounteer, *Depression Among Lawyers*, 33 COLO. LAW. 35 (2004)); see also Richard G. Uday, *That Frayed Rope*, UTAH BAR J., Aug.–Sept. 2003, at 8 (citing Meyer J. Cohen, *Bumps in the Road*, GPSOLO, July–Aug. 2001, at 18, 20); see also C. Patrick Schiltz, *Those Unhappy, Unhealthy Lawyers*, NOTRE DAME MAG. ONLINE, Autumn 1999, <http://www.nd.edu/~ndmag/legl2f99.htm>; Kenneth G. Dau-Schmidt & Kaushik Mukhopadhyaya, *The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession*, 49 J. LEGAL EDUC. 342 (1999).

89. I offered the following titles—which I identified but have not read—in the hope they may contain some valuable insights. On balancing work with life and finding success in the practice of corporate law: See generally THE CORPORATE LAWYER—

For the class as a whole, I also reviewed the life cycle of transactions we had explored—from a company's birth and initial financing, to its struggles in litigation, its ongoing work with bankers, and its death and rebirth from bankruptcy, highlighting how key themes—especially the three key questions of the course—had applied in each case. I challenged them to put their training to full use, and to tell their future employers that they had trained to work well with other professionals on a wide array of complex business deals—which is something recruiters seek in both professions.⁹⁰

VIII. STUDENTS' RESPONSES

Student reaction to the course was overwhelmingly positive. The course earned an adjusted overall rating of 6.5 out of 7.0, making it one of the top rated courses for the semester.⁹¹ The course earned even

INDUSTRY INSIDERS ON THE SUCCESSFUL PRACTICE OF BUSINESS LAW (Georgia Mullen ed., 2003); AMIRAM ELWORK, STRESS MANAGEMENT FOR LAWYERS: HOW TO INCREASE PERSONAL & PROFESSIONAL SATISFACTION IN THE LAW (3d ed. 2007); RON HOGAN, VIEW FROM THE TOP: LAW FIRM LEADERS UNLOCK THE SECRETS OF A SUCCESSFUL LEGAL CAREER (2005); GEORGE KAUFMAN, THE LAWYER'S GUIDE TO BALANCING LIFE AND WORK: TAKING THE STRESS OUT OF SUCCESS (1999); STEVEN KEEVA, FINDING JOY AND SATISFACTION IN THE LEGAL LIFE (2002); WILLIAM KOSTER, THE BUSINESS OF THE PRACTICE OF LAW: WHAT EVERY ASSOCIATE SHOULD KNOW ABOUT LAW FIRM LIFE (2004); MARK MERRMANN, THE CURMUDGEON'S GUIDE TO PRACTICING LAW (2006); GERALD A. RISKIN, THE SUCCESSFUL LAWYER: POWERFUL STRATEGIES FOR TRANSFORMING YOUR PRACTICE (2006); JOHN R. SAPP, MAKING PARTNER: A GUIDE FOR LAW FIRM ASSOCIATES (3d ed. 2007); LARRY SCHREITER, THE HAPPY LAWYER: HOW TO GAIN MORE SATISFACTION, SUFFER LESS STRESS, AND ENJOY HIGHER EARNINGS IN YOUR LAW PRACTICE (1999); and HARVARD BUSINESS REVIEW, WORK AND LIFE BALANCE (2000). Also, on important skills and topics law students may not have learned in law school: CHARLES M. FOX, WORKING WITH CONTRACTS: WHAT LAW SCHOOL DOESN'T TEACH YOU (2002); CHARLES JOHNSON & ANDY THIBAUT, THE 12-MINUTE MBA FOR LAWYERS (2002); and CHARLES H. MEYER, ACCOUNTING AND FINANCE FOR LAWYERS IN A NUTSHELL (2006).

90. See Kirman, *supra* note 6 (observing that the course can also help law students' find jobs outside of the law). Since more and more law school graduates are taking jobs as consultants, investment bankers, and hedge fund managers, it would be useful to take the course as preparation for those positions. *Id.*

91. NYU Stern Info. Tech., Stern: Fall 2006 Evaluations, Graduate (Means), <https://ais.stern.nyu.edu/cfe/grad/cfe06f/Means.html> (restricted webpage, on file with author). Of the 220 courses NYU offered at the Business School in the Fall 2006, only seventeen courses received higher ratings (i.e., 6.6 or better out of 7.0). *Id.* Of these seventeen courses, eleven had at least ten students. *Id.* Thus, students rated the course

higher ratings for its relevance to the students' education—6.7. Students were also very enthusiastic in their written comments.⁹²

Unfortunately, the official University feedback system did not let us distinguish between law students' comments and business students' comments. However, I also asked the students to submit informal anonymous feedback forms that noted what school they were in, and their answers confirmed that students from each school enjoyed the course a lot.

Some students noted in the formal feedback that they would recommend making it a full three credit course. One noted that he felt the course was more specifically geared to law students. Students gave the course a 6.3 when asked if the course was appropriately demanding of their time, a very good rating, but one which might have been slightly depressed by the inevitable glitches that arise with the first run of a course.

IX. LESSONS FOR THE FUTURE—IDEAS FOR FUTURE IMPROVEMENTS, AND OTHER COURSES

A. General Lessons

What is there to learn from the success of the first run of the course? First, a cross-disciplinary negotiation course can work well for law students and business students. Second, a single instructor can teach a cross-disciplinary course like this one. While the logistics and the subject matter can be challenging at times, and while it might help for the instructor to be knowledgeable about both fields, the course is still manageable. Third, professional schools can and will support a course like this one once they see the benefits.⁹³ Fourth, guest lecturers

as among the top 10% offered at the Business School; excluding well-rated small seminars, students rated it among the top 5%. *Id.* I do not have access to comparable data from the Law School.

92. Comments include: "Fantastic class, highly recommend."; "I would definitely recommend this class to other students and I think NYU should continue to sponsor this and other joint MBA/Law classes."; "Great class! I recommend that you continue teaching this class. It was very valuable and very enjoyable to meet the law students. Keep up the good work."; and "Great class. Thanks. Was incredibly valuable to integrate business and law students. Brought a fresh perspective to the cases."

93. I received excellent support from Vice Dean Barry Adler of NYU Law School, Vice Dean Kim Corfman of the Business School, my management department chair Professor Joe Porac, and curriculum committee chair Professor Theresa Lant.

strongly enhance a course like this one, as some of the students' written and verbal comments suggest.⁹⁴ Fifth, a mix of active learning and lecturing works well, though I cannot say I know if there is one right balance. Sixth, economic theory does not have to be the foundation for such a course. While I found it was helpful to touch on relevant economic ideas like TCE, the course can and does work well with another theoretical framework, namely the three questions of the course and the Trust Substitutes model. Seventh, and perhaps most importantly for law schools, a cross-disciplinary transactional course may be able to improve law students' readiness for practice in several ways and so help meet the Carnegie Report's challenge.

B. A Full Semester Version of the Course?

Does the course work better as a mini-course or a full semester course? Ours ran for six weeks, and though it won high marks, two or three students recommended a full-semester version, saying they felt that each course topic deserved fuller exploration. Most of the joint deals courses I noted above are full semester courses,⁹⁵ and the subject is certainly rich enough for a full semester. We might spend part of the time digging even more deeply into the original topics, perhaps by looking at case studies of failed and successful transactions, conducting a full-blown litigation settlement negotiation, or more fully investigating the Trust Substitutes or TCE framework.

Other topics might include simulations of board decisions, merger talks, intellectual property deals, international joint ventures and other cross-border transactions, and more guest lectures by investment bankers, movie producers, bankruptcy and entertainment lawyers, judges, junior associates, small business owners, and reporters who covered the Enron story. In some of these visits, we could have students review actual transactions the speakers negotiated and let the students ask them questions. We might add a video exercise so students can see themselves working with clients and lawyers. I would particularly like to have students trade roles in a full-blown simulation so they could fully experience what it is like to be in the other's situation. They did

Professors Joe Allen and Jerry Rosenfeld also gave me valuable counsel and direction.

94. I have found over the years that excellent professionals will enthusiastically participate as guest speakers if they receive an invitation a few weeks (or even a few days) in advance.

95. See *supra* notes 10, 11.

trade roles in the game “Sue or Settle,” but a complete role reversal would be that much more powerful. We might include clips from movies such as *Startup.com* and *A Civil Action*. We could ‘reverse engineer’ a famous legal case or business case to see what legal and business choices happened in the early stages that led to the outcome. We could also include exciting issues of professional responsibility and ethics, such as a simulation where the board wants one thing, the CEO, who has hired the law firm, wants something else, and the associate has instructions from a partner to handle the matter.

C. Finding Simulations

One of the biggest surprises—and challenges—was the shortage of good joint simulations for law students and business students. Though I scoured the Internet, checked the leading simulation publishers, and called colleagues around the country, I was only able to find a handful of simulations that fit our needs. TCE courses do use several noteworthy simulations and exercises, but although I understood them well, I found they did not fit our needs for one reason or another. Eventually, I mainly used my own simulations, along with one or two from Harvard, and one from another publisher. I invite readers to write to me and recommend others I overlooked. The apparent shortage of good joint simulations seems to be the most serious limiting factor in creating a full semester course that does not follow the TCE framework. Though frustrating, this shortage need not stop us. There are many other colorful and memorable ways to teach them, such as games, demonstrations, guest lectures, and drafting assignments.

X. OTHER POSSIBLE CROSS-DISCIPLINARY COURSES

The course’s early success raises a larger question: what other cross-disciplinary courses would be good to offer? There is a rich array of possibilities for business schools, law schools, and many other schools as well. Since I have not surveyed the field, I am unsure how many of these courses already exist. Kramer makes a strong case that law schools need to start offering a lot more cross-disciplinary courses:

Legal education must adapt. How can a lawyer truly comprehend and grapple with a complex intellectual property dispute without understanding anything about the technology at issue? What counselor can effectively advise a client about investing in China or

India without understanding their particular legal structures, to say nothing of their different cultural expectations and norms? . . . The idea is to utilize the rest of the university to create a more three-dimensional legal education.⁹⁶

Here are a few of the many possibilities, which I offer as a brainstorming exercise:

- Cross-disciplinary law-business courses on:
 - Entertainment;
 - Third World Development;
 - Intellectual Property;
 - Mergers & Acquisitions;
 - Doing business in China, India, or other countries;
 - Other specific subjects.
- Cross-disciplinary clinical course where law and business students advise real clients in the above fields.
- Cross-disciplinary courses on complex current topics such as:
 - Global climate change (regarding treaty negotiation and verification, in light of political science, physical science, technology, business, and law);
 - Globalization (regarding private trade, law, and public policy);
 - Terrorism (regarding its prosecution, prevention, and transcendence).
- Cross-disciplinary courses between:
 - Law Schools and Public Policy Schools (regarding legislation, treaties, mass tort litigation, intellectual property policy, private and public international

96. Stanford Law Sch. News Ctr., *supra* note 36.

For example, in a course on expert witnesses, law students and students from the natural sciences work together through simulated exercises to prepare a witness to testify in a patent infringement case. New negotiation classes unite students from law, business, and engineering in exercises with 'clients' as well as 'opponents.' A new clinical course has law students working with medical students to address the full range of interrelated legal and medical needs of incoming patients.

Id.

- law, human rights, and the rule of law);
- Theology Departments and Natural Science Departments (regarding ethical issues, global warming, epistemology, the nature of consciousness, and the history of science and religion);
 - Business and Public Policy Schools (regarding social entrepreneurship, fund raising, globalization, trade policy, global warming, development, and sustainable development);
 - Film, Art, Law, and Business Schools (e.g., a cross-disciplinary entertainment commerce course);⁹⁷
 - Engineering, Law, and Business Schools (e.g., a cross-disciplinary technology course);⁹⁸
 - Medicine, Law, and Business Schools (e.g., a cross-disciplinary health care course);⁹⁹
 - Medical, Nursing, and Pharmaceutical Schools;¹⁰⁰
 - Art Schools and Science Schools (regarding beauty in nature and the nature of beauty, the psychology of art, art and medicine, literature and neurology of speech, physiological responses to art).

Educators can discover other exciting possibilities by imagining other combinations of schools or departments. Try it as a game, if you like—think of two departments and then ask: What common interest, problem task, or controversy are both concerned about? Or try the reverse—think of a big problem, and then ask: What are two departments that care deeply about it? To take it one step further, repeat the game and specifically include your subject area. The answers you develop could include an exciting new idea for a course.

97. This could include simulations and cases ranging from developing hospital and medical products to handling class action suits.

98. This could include film distribution deals, artists' deals and intellectual property disputes.

99. The course could include simulations and cases about developing high technology ventures and intellectual property issues.

100. See R.J. Green et al., *Interprofessional Clinical Education of Medical and Pharmacy Students*, 30 MED. EDUC. 129, 133 (1996) (finding that the course has worked well for three years).

The potential for cross-pollination is so great that it might even be worthwhile for a university to explicitly encourage it. One way might be to assign an officer to bring different schools together to develop joint courses. Another might be to offer incentives to departments and instructors to develop joint courses themselves. Still another might be regular statements of support by the President or the Provost. Yet, as my own experience suggests, the idea for a joint course can begin with a single instructor.¹⁰¹

XI. CONCLUSION—IMPLICATION FOR LEGAL AND BUSINESS EDUCATION, AND HIGHER EDUCATION GENERALLY

The popularity and early success of *Negotiating Complex Transactions with Executives & Lawyers* suggests that the course and others like it have a bright future. More generally, cross-disciplinary courses can help our schools fulfill their missions to equip students with educations that matter. They can help universities enhance their work, often without the cost and expense that other active learning approaches can involve, and can deepen the sense of true academic community. An almost endless number of ways exist to bring different groups of students together in the classroom; I offer the course I describe in this Essay as one example of what is possible.

As I have also tried to show, a cross-disciplinary course can be a particularly meaningful, realistic way to help students acquire skills.

101. Here is one item of political advice for tenure-track instructors who wish to begin a cross-disciplinary course. As a professor of negotiation and conflict management, I'm familiar with something called the "going native" problem, where a group decides one of its members has abandoned it because he spends too much time with another group. "Oh, that Bob," colleagues might say half-kidding, "he's not really a law professor, he's just a frustrated business professor." To pre-empt the going native problem before it arises, it might be helpful to stay in communication with colleagues back home by fully and actively participating in school matters. It might also help to win their support, in part by asking them to contribute to the course's design and delivery. Another way to defuse the going native problem is to win support from deans and other administrators for a joint course, perhaps using suggestions raised in this Essay. It may also help to illustrate what the school may lose if it doesn't offer such a course, as well as the gain from contact with other schools (e.g., increased student interest and engagement, a reputation for valuable innovation, better alumni support, and a re-invigorated research agenda), given the enthusiastic support that top schools and practitioners have shown for cross-disciplinary courses in recent years. With some attention to the going native problem, it should be possible to do excellent things with other schools and maintain or even enhance one's academic reputation back home.

This is important news for law schools as they seek better ways to prepare students for private practice, and so meet the Carnegie Report's challenge. I have focused here on transactional skills training, in part because it remains a crying need in most law school programs.

Some have suggested that the demand for transactional skills training in law school is more claimed than real.¹⁰² Yet, the experience of young professionals confirms what leading schools and top corporate lawyers have found: law students need a lot more transactional skills training, especially training that will help them better understand their future clients. The value of this training makes intuitive sense. Imagine you and I have to choose between two very good job candidates: one who has only taken traditional, theory-based courses, and the other who has also taken rigorous, cross-disciplinary skills training. Other things being equal, which of them would we choose?¹⁰³

102. See LAW SCHOOL SURVEY, *supra* note 33.

103. See *supra* notes 6, 33, 42, 90 and accompanying text for observations about the advantage such training gives law school graduates in the workplace.

APPENDIX—POSSIBLE ANSWERS TO TWO LOGISTICAL QUESTIONS: HOW MANY INSTRUCTORS, AND WHEN & WHERE?

A. How Many Instructors?

Can one instructor teach a cross-disciplinary course? It might be argued that a cross-disciplinary law and business course requires a team of instructors—one with a legal background, and the other with a business background—to competently teach the two groups. Certainly a team approach can work well, especially if the instructors talk through the course far in advance, plan each session together, and complement each other's method in the classroom.¹⁰⁴ Vanderbilt University notes that several of its cross-disciplinary courses in its well-established Law & Business curriculum are co-taught by faculty from the Law School and the Owen Graduate School of Management.¹⁰⁵ I have successfully taught joint events with a number of law professors over the years. On the other hand, while it can demand more of an instructor, I and others have found it is quite possible to successfully teach a cross-disciplinary course alone. One logistical advantage is the avoidance of coordinating the class with another instructor. Also, the lone instructor can symbolize the integration of two perspectives. Perhaps most compellingly for a university, hiring a single instructor might save money, even if university pays the instructor more for the extra demands of the course.¹⁰⁶ While an instructor with excellent experience working in both

104. If the university uses a team approach and employs part-time instructors, then the university and the instructors may need to work out fair compensation that doesn't downplay the considerable work that each instructor must devote to the course, especially if both attend each session. Finding a fair arrangement should not be difficult for instructors, especially ones who teach negotiation, and even if the overall cost is considerably higher than a single instructor course, the cross-disciplinary course can still be less expensive than clinical and actor-based courses. That is especially true because a cross-disciplinary course can work with a larger number of students. We had thirty-nine, which is more than most actor-based courses and clinical courses typically allow.

105. Vanderbilt Univ. Law Sch., Law & Business Curriculum, <http://law.vanderbilt.edu/academics/academic-programs/law--business-program/law--business-curriculum/index.aspx> (last visited Mar. 14, 2007).

106. See LISA LATTUCA, CREATING INTERDISCIPLINARITY: INTERDISCIPLINARY RESEARCH AND TEACHING AMONG COLLEGE AND UNIVERSITY FACULTY 122 (2001) (noting that her interviews with faculty who taught interdisciplinary courses suggested that "interdisciplinary research and teaching demanded that they do more reading and

fields would be ideal, a less-experienced instructor can still lead a good cross-disciplinary course if well-chosen guest speakers supplement the curriculum and facilitate discussion. At a minimum, however, the instructor needs a working vocabulary of each field and a basic understanding of the overall subject matter.

B. Where & When? Choosing a Site, and the Problem of Distance

Two other basic questions face a university that wishes to offer a cross-disciplinary course: where should the course meet, and when? In my case, the decision was simple—everyone agreed we would hold the course one evening a week at the Business School, which is four blocks away from the Law School. Both the location and the time slot were convenient to students at both schools. At other universities, though, the schools may face logistical challenges. What can a university do if the schools are long distances apart, or if the schedule of one school conflicts with that of another? To deal with the problem of timing, Stanford Law School has taken the radical step of shifting over to a quarterly system, like that of the rest of the University, to make it easier for law students to work with students in other schools.¹⁰⁷ Certainly, this step dramatically illustrates the value Stanford sees in cross-disciplinary education. I do not believe, however, that it is necessary for a university to go to such lengths to reap the benefits of cross-disciplinary education.

While schedules might conflict during the day, evenings might be easier, as we found. Student interest might even be strong enough to justify offering a course at unusual times, such as Saturday morning, or during an intensive period. Another possibility is to schedule the course so that one school sees it listed, say, from 9–12 and the other from 10–1, and then hold the course from 10–12. This approach might be particularly useful if students from one school will need time to travel to the other school. If schools are far apart, another possibility is to hold the class at a site midway between them, or to have the class meet half the time in one site and half in the other. Special transportation arrangements might also help, such as shuttle services or discounts on subway and bus fare.¹⁰⁸ Another way to overcome logistical hurdles

thinking than disciplinary scholarship did”). My background in economics, law and business probably helped me teach the cross-disciplinary course.

107. See Stanford Law Sch. News Ctr., *supra* note 36.

108. I thank Chris Bellerjeau, the director of Columbia Business School’s

might be to use distance learning, as at least one university has done successfully.¹⁰⁹ These last ideas would, though, increase the cost of such a course.

Information Technology Group, for suggesting a subway discount.

109. Paula E. Berg, *Using Distance Learning to Enhance Cross-Listed Interdisciplinary Law School Courses*, 29 RUTGERS COMPUTER & TECH. L. J. 33, 36 (2003), available at <http://www.allbusiness.com/technology/507996-1.html>.