

REMEMBRANCES OF EARLY DAYS: ANCHORS FOR MY TRANSACTIONAL TEACHING

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ABSTRACT

This essay discusses teaching transactional skills as part of traditional non-clinical, substantive law classes. It offers a very personal perspective gleaned from the author's 40 years of combined experience as a San Francisco transactional law practitioner and law professor. Of necessity, due to length constraints, the author offers only a few selected opinions about what she thinks works in teaching transactional skills in substantive law classes. Despite this limited focus, the author weighs in, at least a bit, on a myriad of subjects, including the current push for law graduates to be more "practice ready," the importance of skin-in-the-game type mentoring both pre- and post- law school graduation, the different challenges in training transactional lawyers versus litigators, the merits of multifaceted large drafting projects versus more discrete problems, course advising needs, the teacher as recruiter, balancing desires for breath versus depth of exposure, and using what the author calls factual "side-bars" as accommodation of traditional casebooks to the transactional perspective. The author hopes these offerings of her matured discernment from longevity in the field of transactional law skills training, in the various iterations she notes in the essay, provide some helpful insights to current teachers of transactional law skills, both clinical and non-clinical.

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INTRODUCTION

When asked to do a short, informal essay on transactional teaching for this edition, I worried about how I could keep my thoughts on this big subject small enough for the assignment. Then I reflected that how I teach transactional law is still shaped by the earliest beginnings of each phase of my transactional law career – first as a law student who unexpectedly fell in love with business law classes, then as a sometimes blundering young law firm associate committed to learning transactional law, and finally, years later, as a not-so-young, but new, law professor frustrated at how ill-fitting the case-law method was to teaching transactional law. Moreover, I believe teaching that is anchored by my early experiences helps me prepare students for their most immediate needs upon graduation, in addition to matters of longer-term. Accordingly, I anchor and contain my comments for this essay to those of my pedagogical approaches most drawn from remembrances of what went right and what went wrong in the “early days” of each period. Some of these recountings also incidentally offer interesting historical reminders about still relatively recent times. Admittedly, this essay presents a personal, sometimes very opinionated perspective. But, since my views about teaching transactional law are seasoned by nearly forty years of experience – fourteen years of practice and almost twenty-six years of teaching, I hope they will be of some relatable value.

I am especially pleased to contribute these selective thoughts to this particular edition of the UC Davis Business Law Journal because it honors the

work of Professor Ronald J. Gilson.¹ Professor Gilson was one of my first transactional law teachers and mentors. I doubt Ron (as I know him and will sometimes refer to him in this piece²) realizes the full impact he had on me. It is an unfortunate truth that many of one's mentors and teachers never know their eventual moment. It is nice to have the opportunity to rectify that on occasion. Thus, I am happy to start this essay by letting Ron know, by reflecting on his mentoring as the first of four remembrances anchoring this essay. Mentoring is a key assumption and posture that affects how I teach.

I. MENTORING

A. *Remembrance #1: A Very Early-Days Mentor*

That I can even recall the recruiting interview of over forty years past is telling about Professor Gilson's deftness as a recruiter, even more so because he's the only interviewer I do remember, despite my having a number of interviews. First, a little background helps to add understanding of why Ron Gilson made a distinct impression.

I was a 2L seeking a summer internship during OCI.³ I recall descending steep basement steps in high heels and a green knit dress bought with the last of my very meager resources and carefully selected by me to hopefully convey a "professional-with-tasteful-style" persona, i.e., not so safe as to be boring and unimaginative and not so stylish as to convey frivolity. Though who knew what was appropriate for women lawyers in 1974?⁴ Once you got beyond the "uniform" – the basic black skirt-suit (no pants, heaven forbid!) and white button-front shirt, with low-heeled sensible black shoes⁵ – you were considered to be taking risks. I was so very naïve and uninitiated I didn't even know this at the time. I did know, however, that as a Black woman law student, even one at the prestigious Harvard Law School (HLS), I was already viewed as a risky

¹ See generally Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L. J. 239 (1984).

² I mean no disrespect by dropping "Professor," from the appellation, or not at least using Ronald Gilson's full name in each instance. It is just that, as I hope you will see from the telling, it would be too artificial to refer to him other than as Ron, particularly since I met him years before he was a law professor.

³ I have no recollection of whether the on campus interview (OCI) system at Harvard Law School was called OCI at the time, but I adopt the initials here given the current-day understanding of the term.

⁴ I am assuming the interview took place in the fall (versus spring) of my 2L year of 1973-1974, as is the predominant timing for on campus interviews. But it might have been early in the spring semester. I simply do not remember, so I will use the assumption and warn of a possible few months' disparity.

⁵ This safe outfit, along with its navy blue counterpart, was such a staple for women lawyers for many of my early years that we referred to it as the "uniform."

proposition by law firms. The mid-1970s were still very, very early days for both women and Blacks in law firm ranks.⁶ Law firms were simply unfamiliar with either commodity.⁷ Even if law partners were willing to take the risks, they worried that their male-dominated client-base would not be receptive. So as a double-minority law student, I approached every interview with additional concerns not shared by most of my fellow law students.⁸

The stairs led down to a narrow, short hallway with one wall consisting of concrete cinderblocks and the other side with three or four closed wooden-door entrances to small interview rooms. I timidly knocked on the door number listed on my OCI slip. It opened, and a then twenty-eight-year-old Ronald J. Gilson greeted me warmly.⁹

Gilson's smile was quick, easy, full and infectious. His handshake was firm and, aided by a concurrent pat with his other hand on my upper-arm, felt inclusive. This was already different from the typically guarded greeting of other recruiters I'd met.¹⁰ Despite the unwelcoming drab setting and the stress, I immediately relaxed. Regardless of whether I'd get a job offer, I felt I'd at least enjoy talking to this guy. My instinct proved correct.

Although I don't recall any specific questions or exchanges, I do remember two things – the tenor of the interview and our discussion of business law. As to the former, in actuality, we¹¹ had more of a conversation than an interview. Instead of a suspicious let's-see-if-you're-up-to-snuff inquisition, Ron

⁶ At least this was true of the almost exclusively white male law firms that participated in Harvard's on campus interview program at the time.

⁷ Women and other minorities were made to feel like "commodities" in the sense of firms using us as "tokens" (as we referred to the practice during those times) to show they were progressive or at least were not prejudiced.

⁸ My fellow women and minority colleagues and I still recount our student war stories of prejudice during those times whenever we gather for reunions or informal retreats together. Though being a double-minority meant that a firm could land a "twofer" by landing one of my kind (i.e., get the benefit of reporting it had both a woman and a minority in its ranks), that fact did not allay our hiring apprehensions and even more pointed retention concerns. There were no acknowledged "threefers" in those days because being an openly gay person was virtually taboo in the mid-1970s and, more so even, gender-identification diversity was essentially unheard of.

⁹ I am amazed that it is only now at this writing that I realize Ron was just 4 years older than I at the time of our recruitment interview. He seemed so mature and experienced that I was sure more years separated us. This is a reflection of a combination of the relative learning curve of practical experience to law study, the perspective of every beginner to anyone more seasoned, and Gilson's unique intelligence, talent and gifts.

¹⁰ My friends and I had compared notes on the interviewers. Our perception was that if you were not at the top of the class, minority or not, you were often viewed as someone the firm had to see in order to retain OCI privileges at HLS under its rules designed to avoid excessive cherry-picking of interviewees. Weak handshakes, unfamiliarity with one's resume, long-silences and not-so-subtle glances at watches unmasked the perfunctory interview.

¹¹ The firm had sent two men to Harvard's OCI, so Ron was not the only person with whom I spoke. But he was the primary interviewer.

Gilson engaged me in discussion. He conveyed enthusiasm about learning about me and what I thought. He made me eager to know more about the firm,¹² whether it was peopled by more folk like him, and what he liked about the firm. Moreover, we talked about the practice of what was then called simply “business” law, i.e., transactional law in today’s parlance.¹³ Ron Gilson was the first and only recruiter I spoke with who was a transactional lawyer rather than a litigator. Amazingly to me, I had recently fallen in love with business law and I was hungry to know more about transactional practice. My resume stated this interest and I think Ron was excited to speak with a student who had the transactional bug since most law students wanted to litigate (possibly because the case-law method and television dramas encourage this bent). I remember Ron and I discussing the inherent opportunity transactional law provided to be creative – to problem-solve prospectively.

I did get that summer job offer at Ron’s firm. Things went well, and I received a permanent offer and started at the firm in 1975. I practiced transactional law at the firm for almost fifteen years before becoming a law professor in 1989. I was fortunate that my tenure at the firm overlapped that of Ron Gilson for four years (plus the summer months of 1974) until he left to teach at Stanford in 1979. During that overlap Ron and his lovely wife, Nina, helped to welcome me to the San Francisco Bay Area (where I knew not a soul when I arrived) by inviting me to home-cooked meals and other events. And at the law firm, Ron and the other lawyers in the business law division took on the long, tedious, hard work of shaping me into a transactional lawyer. Ron was my supervisor for a number of my initial projects, and I learned much from just observing him with clients as well as the mark-ups (sometimes painful, but necessary) he did of my draft documents. No matter what the context, I remember Ron as always calm and kind, despite how aggravating a client (or new associate) could sometimes be.¹⁴ Among the many things Ron taught me was how to be an advisor to clients, with a “we’ll figure it out attitude” rather than a

¹² The name of the firm was Steinhart, Goldberg, Feigenbaum and Ladar. The name changed several times over the years to finally become Steinhart & Falconer, LLP before the firm eventually merged with the multi-branch national firm, Piper Rudnick, in 2003, with the merged firm operating under the Piper Rudnick name. See the merger announcement at <http://www.businesswire.com/news/home/20031229005200/en/Piper-Rudnick-Steinhart-Falconer-Announce-Merger#.VLxAXWDws2o>.

¹³ Even Professor Gilson’s 1984 article that this journal edition pays tribute to consistently uses this reference rather than the one of “transactional law.” See generally Gilson, *supra* note 1. In my early days, lawyers referred to themselves as either a business lawyer or a litigator, despite the fact that litigators often litigated business matters. The term “transactional lawyer” came into vogue much later. I am not sure when, and I will leave that history to someone else to investigate.

¹⁴ I have not spent any extended time with Ron for decades, so he (like most of us) may have grown more irascible with increasing years. Should that be the unlikely case, then I am happy that I do my early mentor another service as witness to his consistently kind and calm youth.

naysayer about what the law allowed or didn't. He, and other business law members of the firm, taught me that a transactional lawyer's focus is to try to achieve a client's goals (i.e., save the deal when at all possible) by getting around hurdles through creative (though absolutely always legal and ethical) drafting or structuring solutions. To wit, all the value added by transactional lawyers described by Ron in his 1984 article¹⁵ so clearly, definitively and artfully.

Equally salient, Ron was one of the first people to teach me the importance of mentoring, in many contexts, but especially in shaping a transactional lawyer. Mentoring is more than training. It is training coupled with a belief in, and if necessary, a championing of, the trainee which is expressly and/or implicitly conveyed to the trainee. Mentoring involves time and emotional costs and risks to the mentor different from mere training. My remembrance of this kind of skin-in-the-game mentoring undergirds my teaching of transactional law. After serving as a recruiter myself numerous times in both law practice and legal academia, I came to understand that my very hiring as a summer associate and Ron's mentoring of me at the firm involved some risk to his own credibility if I hadn't succeeded.

I didn't realize until I came to work in the summer of 1974, after I met my fellow summer associates who were all in the very, very top of their law school classes, that my academic record, though commendable, wasn't the firm's standard fare. Ron must have had to go on gut and instinct to recommend hiring me as a summer associate. And as I fumbled at times as a young associate (which everyone does, but in the mid-1970s fumbles by a minority were typically viewed as proof of inferiority, rather than an "oops," do-better-next-time learning opportunity), Ron, and other mentors at the firm, continued to convey belief in me. Sure, I know I exhibited some talents and skills that warranted this. But believe me when I say I had a lot to learn as a then very unsophisticated black girl from the South who had been educated and raised in a totally segregated community until entering college and who had never known another lawyer until she went to law school. College and law school had provided some advances in my maturity and savvy, but not much. I truly needed skin-in-the-game mentors.

After Ron left the firm to teach law, I eventually became the first woman (despite a number of other female hires who preceded me at the firm) partner at that law firm, and, the first black partner of a majority-owned firm in San Francisco ("SF") hired at entry level.¹⁶ And I am proud I did it as a

¹⁵ Gilson, *supra* note 1.

¹⁶ I add the "entry-level" qualifier because that is how the Black lawyers association of the day phrased it. The association kept track of those things and let me know. I was the second Black SF partner. I knew the first Black SF partner reasonably well since I helped counsel him when he was advised to contact me (as the senior Black lawyer in town who knew about practice in SF) after receiving an offer as a lateral hire out of federal government practice. I encouraged him and he took the offer from the offering firm just one year before I was up for partnership. I used to joke

*transactional lawyer. I don't note this to brag, but rather to reflect on how my legal career might have been quite different had Ron not recruited me to that particular, very excellent firm and, along with others there, mentored me until I gained my own firm footing as a transactional lawyer. Mentoring was definitely one of the things that worked in my early days. It absolutely mattered. Mentoring didn't just make the difference between my being a good versus better¹⁷ transactional lawyer. Given the difficult learning curve of transactional law described *infra*,¹⁸ I know it definitely made the difference in my remaining a transactional lawyer, and maybe even possibly, given unknown domino-consequences of unsuccessful efforts, of remaining any type of lawyer.*

B. Mentoring vis-à-vis Current "Practice-Ready" Urgings

The recounted memories about one particular mentor (among many I've been blessed to have) is why I choose to begin this essay with, and devote most of my substantive comments about teaching transactional law to, the subject of mentoring. Specifically, mentoring is an inherent foundational perspective from which I teach my transactional law "skills" classes. As previously stated, it undergirds everything I do in these classes about what skills to teach and how much to cover. First, I teach from a *necessary assumption* that law graduates interested in transactional law absolutely must and will receive real skin-in-the-game mentoring from transactional law practitioners. Second, but of equal import, the very posture of how I teach transactional law is as though I am mentoring students who have definitely chosen transactional law as a career path. I take this posture despite knowing that a number of the enrollees in my classes have not made this commitment and believe they have no intention of doing so.

1. The Importance of the Practitioner as Mentor

To be sure, anyone will benefit from good mentoring, no matter what the career focus. But I am of very firm belief that it's virtually impossible to become a competent transactional lawyer without very good mentoring, indeed, by practitioners. That's why I teach from the assumption that this *will* be the case. To my mind, it simply must be. Currently, law schools are being urged and strongly prodded by the Bar (as represented by myriad study commissions, report

with him that had I dissuaded him from coming to SF I would have had the distinction of adding another "first" to my record. Believe me, both of us would have preferred fewer "firsts" like that.

¹⁷ I like to think (as some have flattered me by saying) that I eventually achieved a level of at least "very good," admittedly aided by significant patience on the part of my mentors. But I do not believe such evaluation is within one's own jurisdiction to warrant. It is ultimately a matter upon which only my former partners and clients can opine.

¹⁸ See *infra* Part I.B.1.

committees and groups) to apply their resources in a way to make law graduates more “practice-ready,” to use the sound-bite parlance of the day.¹⁹ Indeed, calls to action in this regard have become more frequent, focused and, even sometimes, strident.²⁰ I do believe law schools can and should do more in this area, particularly for those students interested in transactional law. Otherwise I would not be teaching transactional law skills classes. However, I do not believe any amount of law school classes or clinical training in the two years of elective course-load can significantly truncate the elbow-to-elbow learning that comes from a mentoring apprenticeship with an experienced practitioner, particularly as far as transactional law skills are concerned.

A mentor evokes loyalty from a mentee unlike a mere trainer/trainee relationship. To be sure, both roles involve time commitment and opportunity costs, but the emotional costs and reputational risks are unique to mentors. New lawyers “get” this distinction in treatment. Ego and job retention motives play a significant role in learning. But I believe loyalty is what fuels a real fire to learn despite long hours and hard material needing to be mastered. There can be no parallel in law school to the ownership of responsibility a mentee assumes in practice because her mentor (versus mere trainer) is *counting* on her to brief him on something essential before a meeting or appearance or to expedite the drafting of a large number of documents needing to be done, and to be done well, in too little time. I realize that many things are different today that make the more practice-ready graduate a necessity. But to my mind, no amount of class simulations, visits by or to the offices of practitioners, mock projects, guest lecturers, supervised clinical work and other techniques used in various skills classes can supplant the searing of learning that comes from job accountability founded in loyalty rather than performance for a grade.

I will go farther and say that becoming a minimally competent transactional lawyer is harder than becoming a minimally competent litigator.²¹ Becoming *more* than minimally competent at either transactional law or litigation may involve the same overall time. However, I believe the initial learning curve

¹⁹ See generally Carl J. Circo, *Teaching Transactional Skills in Partnership with the Bar*, 9 BERKELEY BUS. L.J. 187 (2012) (providing extensive discussion and citations to original Bar studies and reports as well as other law review articles). See also Michael A. Woronoff, *What Law Schools Should Teach Future Transactional Lawyers* (UCLA Sch. of Law, Law-Econ Research Paper No.09-17, 2009, available at <http://ssrn.com/abstract=1430087>; William E. Foster and Emily Grant, *Memorializing the Meal: An Analogical Exercise for Transactional Drafting*, 36 U. HAW. L.REV. 403, 403-04 (2014).

²⁰ See Circo, *supra* note 19, at 189, 217; Woronoff, *supra* note 19, at 2.

²¹ Many of my transactional law colleagues at other firms made this comment to me when I was in practice. I have shared this comment with many lawyers, and no one has ever disagreed with me. See also Karl S. Okamoto, *Teaching Transactional Lawyering*, 1 DREXEL L. REV. 69, 121-22 (2009) (implying a point similar to my assertion in discussing the differences in training business lawyers versus litigators, but for slightly different reasons).

to achieve the level of a minimally competent²² transactional lawyer is longer and more daunting than that for a minimally competent litigator.²³ Litigators typically deal with a mostly fixed set of circumstances or factual package while transactional lawyers must create the package.²⁴ The sheer variety of the packaging in which transactions can present, as discussed in more detail later,²⁵ is the prime reason I believe becoming at least minimally competent at transactional law is harder than achieving the same level for litigators. This can be extremely discouraging to a new transactional lawyer when his counterpart in litigation starts to exhibit assurance and confidence about at least some of what she's doing when the transactional newbie feels like he's still drowning in confusion.²⁶ Moreover, this already difficult learning curve for transactional lawyers is even more taxing when, as is often true for new law graduates, they had virtually no exposure to business or business law before law school.

For the above reasons, mentoring, versus mere training, is particularly necessary to the successful molding of a new transactional lawyer. Without someone who conveys a belief in them through true mentoring, new enlistees to transactional law may find the long and daunting learning curve too overwhelming. This may cause them to waiver in the very selection of the field and to strategically shift to another area of focus, or even a non-law path, too soon. Significant mentoring by practitioners is necessary to get transactional lawyers to the initial comfort zone of minimally competent where they can begin to move from minimal competence to expertise with more self-teaching and self-assurance.

Transactional law practitioners simply forget how long it took them to figure some pretty fundamental transactional matters out.²⁷ Every time a student is confused about whether the company or the owners should sign the guaranty in a commercial loan transaction project I sometimes assign in my classes, I am reminded of the reason why I structure the assignment the way I do. Who should sign a given document is as basic a matter as it gets in transactional law. But for

²² By "minimally competent" I mean someone who can provide the client who has a basic transaction (i.e., one involving very standardized documents) with a respectable level of service that may not involve much creativity but neither does it implicate possible malpractice.

²³ The boundary between transactional lawyers and litigators is not always clear. Is a labor lawyer who advises about regulatory compliance to avoid employers having to use his litigation skills transactional or adversarial?

²⁴ See Okamoto, *supra* note 21, at 121-22 (making the same point with more elaboration of the difference).

²⁵ See *infra* Part III.

²⁶ I confronted this reality myself when talking to the litigators who had joined my firm at the same time I did. The self-doubt it generated was another hurdle sometimes experienced by transactional lawyers.

²⁷ See, e.g., *infra* at Part III. A. My anecdotal experience described in my third remembrance offers one example.

the new transactional lawyer the inter-relationship of parties and documents, even in simple transactions, or even just learning about the form signature block for entities, might be confusing if they have never confronted it before. If I teach party-to-document-relationship for one type of transaction, it may not transfer exactly to another type of transaction. Even if it does, knowing who should sign what documents hardly makes a new graduate practice-ready. To make a student truly practice-ready for transactional work is virtually impossible given the limited number of credit hours available to us,²⁸ so choices have to be made. As discussed in Part III, I occasionally opt for exposure over depth of coverage because of the frequent limited transferability of a given substantive coverage to another transactional setting.

For all the above reasons, I teach transactional law on what I believe is a necessary assumption that new transactional lawyers will receive heavy-duty mentoring from experienced practitioners. If I didn't make this assumption, I would never teach transactional law because my efforts would be fruitless in my given 2-year horizon. I wouldn't know where to start or what to cover. In practice, client needs determine the timing and nature of the training received by new transactional lawyers. In teaching, I must decide these matters. Knowing there will be post-graduate mentoring allows me to select what skills I will focus upon and what to cover based on some of the likely transactional constructs that one might need or encounter. Often, time limitations mean that even this "usual suspects" approach can only provide a slivered acquaintance.²⁹ In this regard, the complexities of transactional law are such that I believe law schools can only reasonably achieve three objectives with the teaching of transactional skills classes, given time and context constraints, to wit:

1) Sufficiently expose and excite law students about transactional law so more law students select it as their career path upfront, before possible unanticipated enlistment after graduation;

2) Motivate the committed transactional law graduate to endure what will be a difficult learning curve for transactional law; and

3) Increase the absorption capacity of new graduates for the learning they will get from practitioner mentors.

Any law school should be very, very satisfied if it achieves these goals, particularly the third, with respect to its teaching of transactional law skills. Practitioners aren't asking that law schools graduate transactional lawyers who are ready-to-solo on basic deals. They are asking that law graduates be more practice-ready. I agree with the *more* part. For me, more practice-ready is

²⁸ See also Waronoff, *supra* note 19, at 9-13 (discussing all the very real practical limitations that thwart the ability of any amount of transactional skills classes to achieve practice-ready transactional lawyers).

²⁹ *Id.*, at 11-13.

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captured by achievement of the second and third objectives above, particularly the third - stated differently, getting learning receptors tuned and acclimated to absorb transactional matters faster.

That said, I turn to discussing the second reason noted for why I start with, and focus so much of this essay on, the importance of mentoring - the perspective of the teacher as mentor of transactional law.

2. A Special Mentor Posture for the Transactional Law Teacher

To my mind mentoring transactional law students is part of my teaching role as a transactional law professor. To varying degrees, all law teachers mentor law students. But for me the mentoring perspective has a unique angle relative to transactional skills classes. The very posture of how I teach transactional law is as a robust, affirmative *recruiter* of students to the transactional law career path and as a mentor with concern for *retention* of transactional lawyers in the fold after they graduate despite the difficulties of the transactional law path.

Many students who take “extra” (*i.e.*, not just courses tested on the Bar) business law classes do so because they intend to be business law litigators. Some who take my skills classes are not even considering a business law path; they are merely seeking to fulfill a generalized skills class or writing requirement or are satisfying another type of schedule-filler. I am always hopeful that I will convert some of these students to the transactional law path. More students need to be mentored to consider transactional law as a career focus *ex ante*. This early steerage is of prime importance because many students will, in fact, end up actually doing transactional work, despite assumptions to the contrary, particularly if they work in small firms. Such guidance is also necessary because transactional law is an exciting, creative and rewarding practice area that students get little exposure to because of our mostly litigation-centered course-books. As to the latter point, I want to awaken that “I-had-no-idea” flutter of excitement about transactional law for the student who had no clue about the field. I want to be that person. So I teach from that perspective. Moreover, for the relatively few already-converted students who take my classes knowing they want to be transactional lawyers, I want to ratchet their level of interest to one of high excitement by repeatedly highlighting the creativity offered by a transactional law career. Transactional lawyers use legal tools and laws as lego-like pieces to create and implement. They are positive actors in the legal world. More students need to be made aware of this fact *ex ante*.

But you may ask, how is this the skin-in-the-game type of training that I refer to as mentoring?³⁰ The training warrants the descriptor because of the sacrifices that non-clinical skills teachers must make for virtually no concomitant

³⁰ See *supra* notes 16-19.

return on benefit. First, the very teaching of skills in standard non-clinical classes has historically required sacrifices of *perception* regarding worthiness of the classes, and thus the teachers of the classes, in the hallowed Langdellian-case-law-method dominated corridors. Until relatively recently, the value of teaching skills in non-clinical classes was significantly under-appreciated by law school administrators and fellow colleagues. Doubters questioned whether such skills classes could spawn sufficient or the “right kind” of ideas for prolific and necessary scholarship publication by non-clinical professors.³¹ Also, the smaller class sizes needed for non-clinical skills classes were viewed by most either as under-utilization of one’s course load allotment or under-enrollment by students because of lesser teaching talents, rather than the deliberate size-caps that they represented. Thus, the decision to even want to teach, and then the advocating and maneuvering required to actually get to teach, a non-clinical skills class has historically been difficult. It required a unique passion to the cause. This is particularly true about the teaching of transactional skills as opposed to other skills.³²

Areas like trial practice skills, clinics for landlord/tenant issues, immigration problems, prisoner rights or other matters generally associated with the poor and marginalized, and more recently, negotiation skills, have been recognized as important for a significantly longer period than transactional skills. With the exception of the attention provided by academic pioneers like Ronald Gilson, the notion of teaching transactional skills in clinical as well as non-clinical classes has lagged behind the general skills movement, if not languished at many law schools. Interest in skills training for business lawyers did not even begin to gain any traction until the 1990s.³³ “Organized conferences to exchange ideas and explore skills-oriented techniques for transactional work have gained credibility just within the last ten years.”³⁴ Fortunately, the relatively recent skills and practice-ready emphasis by the Bar has significantly reduced the negative impressions about all skills classes, including transactional law skills classes, and so there is growth in their number.³⁵

³¹ Fortunately, as the publication of this very journal edition proves, these concerns are unwarranted.

³² Remember that the training, and the higher art of mentoring, of new lawyers by experienced practitioners is essentially self-serving – firms need high-quality output from the new lawyers. But for non-clinical law teachers, there is no similar return on significant extra time investment needed to teach skills classes and certainly nothing as direct in causation. This is why I consider skills teaching in substantive law school classes as a skin-in-the-game form of mentoring.

³³ Circo, *supra* note 19, at 218 nn. 183-86 (citing Professor Tina Stark, a pioneer in advocating transactional training).

³⁴ *Id.* at 218.

³⁵ *Id.*; see also Okamoto, *supra* note 21, at note 71-72, 79. However, I note that it is my anecdotal, unverified observation (as are all of the above comments) that the growth in transactional skills classes has and is taking place mostly via the use of clinics rather than as an

Even with a decline in the negative perceptions attendant to the teaching of non-clinical skills classes, the significant time-commitment required for teaching these classes hasn't changed and is unlikely to do so. Multiple projects and papers are necessary for the honing of the targeted skills and those projects/papers must be graded and discussed with students, preferably one-on-one. As any law teacher knows, grading is a real skin-in-the-game aspect of law teaching. Any course load voluntarily assumed that increases one's grading responsibility is either motivated by stupidity or passion. Fortunately, it is passion that motivates transactional law teachers. To my mind, non-clinic teachers of skills classes mentor by taking on this time-sacrifice to provide learning that students just would not receive otherwise when law schools do not have the appropriate clinical classes or programs or enough of them. Transactional law clinics have historically been the last to be added and even they are still relatively few.

I believe that's "enough said" about mentoring. A second remembrance of my early days informs my view of course advising for transactional law, which I also see as a part of the teaching role, particularly for transactional law students.

A. II. Course Advising, Transactional Side-bars, and Mitigating the Exposure Shortfall
Remembrance #2: Early Student Days of Business Law Exposure

As a somewhat overly serious thirteen-year-old in 1963, inspired by Dr. King's "I Have a Dream" speech of that year, I was determined to be useful in the world. So, hugely influenced by the Civil Rights Movement taking place on my behalf, and much of it on my hometown doorstep in Raleigh, North Carolina during some of my most impressionable and developmental years, I decided to become a civil rights lawyer. I had observed civil rights lawyers on the television news, and I wanted to do what they did. The matter was settled. From the age of thirteen until my 2L year in law school, when asked what I was going to be I replied, "a civil rights lawyer." Being so sensible (and likely obnoxiously so) at a young age, I of course had my back-up plans should law school elude me for some reason. Fortunately, it didn't. When I started Harvard Law School in the fall of 1972, I thought I was within just a few years of achieving my long stated goal. The first inklings that my interests might lie elsewhere came when I took to contracts and property first year much more than civil procedure, criminal law or

increase in non-clinical classes. Clinics are likely the more appropriate venue, when available. Regrettably, currently many schools cannot afford to hire additional skilled clinicians in the transactional area. Until that can happen, I am hopeful that non-clinical substantive business law professors will fill the void at their schools. And even when a school has a vibrant transactional clinic, I believe there remains benefit to having at least a few non-clinical transactional skills classes.

torts. But I chalked this up to teaching styles. The second inkling came when I clerked for a highly prestigious civil rights law firm the summer after my 1L year. I found it difficult to emotionally distance myself from the throes of the political trials of young Black men who were being prosecuted on criminal ruses in retaliation for their civil rights activity.

I remember well when the real shift occurred. Being virtually without background or guidance as to what classes to take second year, other than the planned civil rights class, I played it safe and followed the lead of others and took what was tested on the Bar. This included Corporations and Federal Income Tax first semester second year. Falling ill at the start of the semester, I got a bit behind on my reading for these classes, and thus my comprehension of the class lectures. When I recovered I set aside a long Saturday to catch-up in these two classes. I arrived at the law library early in the morning, commandeered my favorite cushioned reading chair and foot ottoman and started reading. Simply put, I became engrossed. I felt like I was reading a well-written book of short stories. The transactional facts engaged me. Maybe it was the confluence of subjects, or the continuity garnered from reading a lot at one time, or the fact that I was unhurried in the reading so I read the cases like mini-stories rather than litigation. All I know is that I got that flutter of excitement that I try to ignite in my students today, and I knew that I wanted to do more tax and business law. It was difficult emotionally to give up on being a civil rights lawyer, but I came to realize that my talents and disposition were more suited to transactional law.

B. Course Advising

By sheer happenstance, I took the basic business and tax classes sufficiently early to satisfy the pre-requisites for advanced business law and tax classes. Most notably, I was able to take Professor David Herwitz's Pioneering Business Planning class³⁶ (wow, what an experience!) and Corporate Tax and a tax workshop that emphasized skills assignments before graduating. Had I delayed taking Corporations or Federal Income Tax (Tax) I might have discovered my love of business law too late to take advanced business classes.

My experience of shifting my long-set aspirations influences my thinking on course advising and business law specialization in law school today. Better course advising is an absolutely crucial first step to preparing future business lawyers.³⁷ In this regard, I completely believe three things about course selection

³⁶ See DAVID R. HERWITZ, BUSINESS PLANNING: MATERIALS ON THE PLANNING OF CORPORATE TRANSACTIONS (1966); see also Gilson *supra* note 1 at 305, n. 182 (citing Herwitz's as one of only two significant innovations in business law education in the 30 years preceding publication of Gilson's 1984 article).

³⁷ See Woronoff, *supra* note 19, at 9, 18-19 (agreeing with this point); see also Circo, *supra* note 19, at 210 n. 158.

in law school. First, all law students should take Business Associations (BA) (the modern title for the Corporations course)³⁸ and Tax as early as possible, preferably in the first semester of the 2L year. Second, students who come to law school committed to practicing transactional law still should be encouraged to take some non-business law classes to allow for the possible discovery of excitement about a previously un contemplated and unexplored legal area. Third, and finally, I believe students interested in transactional law should give precedence to specialized substantive business law classes over the transactional skills classes I love to teach.

Frankly, if I were Czar, I'd make BA and Tax required courses. Regardless of whether a student is interested in transactional law, I view BA and Tax as essential courses. Every law student should have an understanding of all the legal actors in our society that BA provides and Tax is a "life" class because it impacts everything and everyone. Moreover, they are key pre-requisites to so many other business law and tax classes. If a student delays taking BA and Tax and finds herself interested in more of these types of classes, it is often too late to pursue advanced level classes in business or tax. When course advising, I emphatically make the point that BA and Tax should be taken as soon as possible regardless of a student's pre-disposition for business law. When I taught first-year Property, I always emphasized this to my 1Ls. Now, on the first day of my teaching my large Trusts, Wills, and Estates (TWE) lecture class,³⁹ I urge that anyone who has not taken or is not currently enrolled in BA or Tax should drop my TWE class to make space in their schedule to take these classes if still possible.⁴⁰ Every year I have several students who never intended to take these classes or who planned to wait to take them because they thought they would hate BA and/or Tax tell me they are so glad they took my advice. I am always hopeful that the transactional law shift that happened to me will happen to another student.

But I also want to leave open the possibility for the reverse – that a student who thinks he wants to become a transactional lawyer might find his higher fondness, if there is one. That is why I encourage at least some exploration even by the student who believes adamantly that he wants to pursue transactional law. How could anyone really know until they have taken the classes? Therefore,

³⁸ Unincorporated entities were so little thought of that they were given short shrift in the Corporations casebooks of the day. Eventually they took on sufficient significance to warrant changing the title of the basic business law course at most law schools to Business Associations.

³⁹ This is typically a very large class and (regrettably) is the only non-skills class I teach.

⁴⁰ I love teaching TWE and absolutely wish I had taken it in law school. But fortunately my business law classes made learning the TWE material on my own in practice quite doable. TWE, Tax and BA are all three typically Bar review courses, but BA and Tax are much more difficult to learn on one's own. And Trusts, Wills, and Estates is not as much of a gateway pre-requisite class, except for estate planning or estate tax classes.

despite the limited time constraints of law school and numerous business law classes that could consume that time, I still encourage some non-business variation in the elective course-load diet.

With that said, I emphatically urge students to take as many as possible specialized substantive business law classes - such as securities regulation, mergers and acquisitions, bankruptcy, corporate governance, corporate and/or partnership tax, international business transactions, and the like - and to emphasize these over more transactional skills oriented classes. I am quite clear that I view the skills-oriented classes as highly valuable and stress that I believe at least one of these classes should be taken by someone interested in transactional law. Still, since transactional skills can only be applied in the context of particular substantive law foundations, those foundations are best learned independently to limit the floundering that comes with on-the-job application. Simply put, law school is the best place to learn the law.⁴¹ Capping that off with some skills exposure is wonderful and necessary. But my anecdotal experience is that the students in my transactional skills classes who've had more substantive business law classes (regardless of the areas of focus) just perform better on the skills projects even when the substantive area of a project has little correlation to the specialized business law classes they have taken. Their minds are just more acclimated to the business contexts in which the skills must be applied.

C. Transactional Side-Bars As Both A Recruiting Tool and A Coverage Exposure Tool

Even when students take business law classes, the litigation posture of most case-law textbooks means a lot of independently interesting transactional facts are de-emphasized by the court, if not actually excised by the casebook author, to focus on the issue being litigated. To compensate, I frequently exhume the buried transactional facts. Whether I am teaching Property, BA, Business Planning, and even Non-Profit Organizations, if I have a case-law text, I inform students that I will have occasional "transactional side-bars" to delve into the details of the transactional structure for its own sake, disengaged from the litigation issue. Students are initially confused when I do this because they are so accustomed to anchoring facts to litigation arguments. I must explain to them that I am highlighting the details of the transactional facts through side-bar commentary and discussion as an end in itself for the sake of familiarizing them with the structure of different transactions. Over the years I have had many students tell me this helped to ignite their interest in pursuing a focus in business law, even though they had initially taken the applicable class for other reasons.

⁴¹ See Waronoff, *supra* note 19, at 5-9, 13-17.

Again, this is one of my primary goals - to enlist more students to transactional practice.

These transactional side-bars also serve a different purpose – broadened exposure to the myriad types of transactions a transactional lawyer will confront. There is just not sufficient time in law school to address the numerous different transactional forms. So highlighting the transactional exemplars already in the texts we use mitigates the exposure problem somewhat. Repetitive contact with transactional structures is necessary to gain sufficient familiarity with transactions to achieve minimal competency. But as previously stated⁴² the forms are so varied that this repetitive exposure may elude the new transactional lawyer for some time. As I expand upon later,⁴³ this is the primary reason why I believe it's harder to become minimally competent as a transactional lawyer than for a litigator. Use of the transactional side-bars I've discussed is one small way to increase repetitive exposure.

III. DECIDING WHAT SKILL(S) TO TEACH

A. *Remembrances #s 3 and 4: "Fine, Now Solve It." - Revelatory Early Days*

I recall two very specific incidents in my very early practice days that were revelatory and hugely accelerative in my development as a transactional lawyer.

The first occurred at the end of my summer internship in 1974. I was asked to actually draft a document, as opposed to writing a memo on what needed to be drafted or reviewing an existing document for analysis and comment. There is no less humiliating way to characterize what happened - I drew a complete and utter blank. I was totally lost. I had absolutely no skill set upon which to draw. I had never seen "it" done. Until then, my summer internship, like most, involved researching and writing memos on various issues. There was no form book (or at least no one pointed me to any) telling me how to even start drafting any document, let alone the one I was assigned. Nothing in my legal writing and research class had even hinted at such a task. I did not recall having even ever really seen, let alone read, a document in law school.⁴⁴ And I had not yet seen drafting done by any supervisor at the law firm. I just did not know what to do. To be fair to my then not yet twenty-four-years-old or 3L self, the assigning partner gave absolutely no guidance, forgetting how unseasoned I

⁴² See *supra* note 19.

⁴³ See *infra* Part III.C.2.b.

⁴⁴ I now realize that if my Corporations casebook was like the BA texts of today, then there were at least some basic corporation formation documents in the appendix to the book. But I do not recall my professor referencing them.

was. Also, remember this was long before online forms or the existence of many business practice form books. Still I felt humiliated. I assumed that the assigning partner would not have requested it of me unless it was something I was supposed to know how to do. Therefore I reasoned that I would be viewed as a failure and not get an offer from the firm. After bumbling around with the assignment with nothing to really show for it for far too much time, I produced something I was sure was virtually worthless and mustered enough courage to tell the partner that I was clueless. I do not remember the words I used or even the type of document I was assigned to draft. All I remember was gut-wrenching embarrassment because this had never happened to me before. I had always been able to rely on my intellect to figure something out, to learn what needed to be learned. But in this instance I did not even know the resources to use to self-teach myself what was needed. To my huge relief, the assigning partner realized that he had forgotten that I'd likely not been exposed to drafting. Just as he had not been exposed during law school – a fact he had forgotten about his own transactional skills learning.

The second significant formative incident to my development as a transactional lawyer occurred some months after I joined the firm after graduation. I had been assigned to prepare a memo on various matters relative to a proposed purchase of a closely-held entity. I discovered a significant, and not easily observed, problem and approached the supervising partner to let him know. I was pleased with myself and expected to receive some nod of approval from the partner for catching the matter. Instead, when I reported the problem, the partner said “Ok,” gave a contemplative look, and then calmly stated, “Now solve it.” What a big shift in perspective those three words caused. I had never been asked to be the one to do that before. Law school had taught me how to research and issue spot and to argue for a position before a judge or other decider. But I had never been asked to be the decider – to take full responsibility for finding a definitive solution to a real-life (as opposed to a hypothetical) problem that would actually be implemented. That day I realized I needed to take responsibility for finding solutions, rather than just spotting problems.

B. Confining the Teaching Parameters

Ultimately, the solution found in the second incident above was a restructuring of the deal. This was captured in the document drafting for the deal – the typical way solutions are *implemented* in transactional law. This is why the two recounted incidents are connected in my mind. More to the point, this is why I focus my *teaching* of transactional law on document drafting skills.

“Transactional law” is a big term for a big field. For me, it refers to *any* matter relating to either: 1) the planning of business (including purely financial) affairs of legal actors (individual or entity), or 2) the effectuation of the plan. This

definition cuts a large swath. It embraces any private ordering, including what to most students may seem like unilateral actions, like the making of a will or the purchase of a product like life insurance.⁴⁵ True, under my definition the scope of what is transactional is limited by the “business” adjective, in apposition to purely consumptive needs,⁴⁶ and limited further by matters susceptible to initiation or alteration by planning (reactive or proactive). Still, the definitional scope is vast, having no real workable parameters. Accordingly, a key first task of transactional teachers is to limit what transactional matters will be taught in a given class.

Fortunately, since legal academics are charged with teaching law, we can legitimately constrain our focus to *legal* matters. But then, what to do about the fact that the boundary between non-legal versus legal business advice and action is blurred, to say the least? In fact, clients often expect non-legal business advice from their lawyers. Non-legal business goals and concerns are the very motivation for any transaction; the non-legal provides the contextual anchoring for the legal. So some basic business acumen and comprehension of business finance is highly prudential for the transactional lawyer. My answer? Encourage law students to take basic finance and accounting classes in addition to their business law and transactional classes. However, given course load limitations, student naiveté and the benefits of diversification of study, transactional law teachers must anticipate the need to provide necessary business context if students do not take these classes and do not have the business background to discern it on their own.⁴⁷ So I provide this context in my podium lectures. But I do it as preface and back-drop, giving it that kind of emphasis. This is not to say that I do not spend significant time on this back-drop, if need be. It is my posture about the material that is different.⁴⁸ I convey it as being *contextual* rather than *effectual*. I justify this emphasis as appropriate because in actual law practice there are other non-legal business experts, *e.g.*, accountants, investment advisers and bankers, valuation specialists for various types of businesses and assets, economic forecasters, actuaries, business brokers, marketing professionals, et cetera, et cetera, et cetera who can and do service the non-legal business matters quite expertly. And clients often either have the necessary business acumen themselves or retain, or should be encouraged to retain, such experts for their

⁴⁵ Students often fail to see that these documents in fact are actually bi-lateral transactions because they involve a contract with a state (that will honor a will) and an insurance company (that will pay a particular benefit to a particular party in return for premium payments), respectively.

⁴⁶ I acknowledge that things are rarely purely consumptive. But you know what I mean.

⁴⁷ In fact, the basic Business Associations class typically includes some non-legal business information, such as balance sheet analysis and peripheral discussion in the cases of business motivations or outcomes.

⁴⁸ Students may not be able to discern the difference but it is important to me in how I allocate class time and how I position the material.

non-legal business advice, as and to the extent the business transaction involves increasing strategic complexity.

A good transactional lawyer needs a number of skills in her tool chest, e.g., counseling skills, strategic thinking skills, assimilation skills, negotiation skills, document drafting skills and judgment. Some skills, like judgment, are hard to teach and generally can only be honed from experience. Thankfully, most skills can be at least propelled by teaching. Of course, clinical classes that have real-life clients advance all these skills, though transactional document drafting is most likely not involved except in transactional or entrepreneurial law clinics, which are of relatively recent construct and existence. Fortunately, many non-clinical business law classes also offer skills training through the use of assimilations, demonstrations and hypotheticals designed to engage multiple issues and skills. For example, counseling and assimilation skills are taught in classes like Business Planning that present problems implicating overlapping legal issues (formation, governance, tax, securities, etc.), negotiating strategies are taught in classes like Trial Practice and Negotiation, and transactional document preparation can be taught in a stand-alone Contract Drafting type class or any business law class that adds a significant drafting component. The latter is what I do.

When I started as a law professor, I found that although almost fifteen years had passed since my law school graduation transactional law practicums in law school were limited, if not non-existent. So as soon as I could arrange it, I first started teaching transactional skills by incorporating skills training in the regular business law classes I taught.

C. Teaching Transactional Document Drafting

Until I could align my class schedule to teach classes specifically focused on drafting, I used the transactional side-bars described in Part II in my substantive business law classes as a way of teaching what I consider structural document drafting information – i.e., identifying the various documents involved in different transactions and their inter-relationship. Structural drafting knowledge is very important. It is absolutely essential that a good transactional lawyer know which type of documents are used in various transactions.

Beginning in 1996, I began teaching my first classes with focused document drafting components – Business Planning and Drafting and Nonprofit Organizations and Drafting. I specifically added the “and Drafting” to these business law classes to allow for teaching not only structural drafting but also internal drafting, i.e., composition of specific documents. For internal drafting,

one typically starts with document A as a form,⁴⁹ and must delete, add and re-organize document A to become document B, with document B being a document specifically tailored and customized for needs of a specific transaction. This sounds simple, but it is typically anything but, particularly for law students.

1. Methodology Considerations

When given a set of facts, 2L and 3L students usually do a decent job of articulating in a memorandum what document B needs to do or say. But actually putting that thought into legally binding, unambiguous, and hopefully also artful language often proves quite difficult for students. The students are frequently stuck by the form by giving it too much sanctity. Yet without the form they are even more lost, having no comprehension of where to begin. One good way for the novice to get unstuck and feel the freedom to deviate from a form is to read a lot of different versions of the same kind of form to see how varied they can be. In this regard, some professors favor document drafting assignments that only address one provision at a time of a larger document. This methodology has distinct merits, particularly for honing phrasing and clarity. However, I worry it does not adequately reflect what new transactional lawyers must master. Actual transactional document drafting is synergistic; drafting isolated contract provisions doesn't reflect that reality. This is why I use drafting assignments that immerse students in large problems. But large immersion problems are time-consuming and come at the expense of students getting less exposure to different types of transactional documents. My task is to find the appropriate balance between providing students with immersion experiences versus exposure opportunities.

2. Balancing Document Submersion Experiences with Document Variety Exposure

a. Simulating the Synergistic Experience

Transactional lawyers use document drafting to address and implement a variety of frequently very complex deals. Typically this means drafting extensive documents with a lot of moving parts, requiring a synergistic approach. This is why I believe in drafting assignments involving in-depth immersion in a problem, for example, assigning preparation of an entire operating agreement forming a

⁴⁹ When I first began in practice, the typical process was to begin with the last closest document the firm had done like it, based on the recollection of the drafter of the last document. Beginning in the early 1990s, practice guide publications for the business lawyer, with annotated transactional form documents, started to appear. Today online transactional documents and business law practice guides are ubiquitous and easily accessed.

new limited liability company (LLC) based on hypothetical facts presenting issues that are not cookie-cutter. These are admittedly hard assignments that even the best of students find difficult to do well. But the “wallowing” – as I refer to it in class – that students need to do to get a handle on a large problem is exactly the submersion experience they’ll likely encounter in their own early days of transactional law practice. This is why I try to simulate it. My hope is that the wallowing of the new practitioner will be shorter and less panicky than would otherwise be the case because he’s been through such an experience during law school. Moreover, I hope it adds to his knowledge base for future transactions.

Students prefer to just be told which version of a form or of form-language to use, rather than having to figure that part out, because they assume they will be given this direction in practice. That assumption isn’t always true; clients often don’t present their needs in a straightforward way. Also it is the very exploration of what form or form-language might be needed that ultimately shortens one’s total learning curve as a transactional lawyer. Much of the research and form-language encountered on a problem may not be relevant or useable for one of my assignments. However the exploration itself is a learning experience about a host of other documents that the law graduate may encounter later. Submersion is inefficient in the short-term but in the long-term it has a compounding impact; knowledge is acquired beyond the parameters of a specific project’s needs that will be more at-the-ready for a future project than would otherwise be the case. In addition, submersion helps achieve another, related teaching goal –exposing students to a variety of transactional documents.

b. Exposing Students to a Variety of Documents

A transactional lawyer will typically have to know how to draft a large number of very different types of documents. This is why, as previously opined,⁵⁰ I believe the litigator’s path to minimal competency is less daunting and shorter than that of the new transactional lawyer. Certain basic procedural forms help to cabin the scope of litigation matters – complaint, answer, motion, points and authorities, counter-claim, hearing, trial, appeal, settlement, almost exhausts the list. Thus, the repetitive procedural posture of litigation matters allows earlier repetitive familiarity from which potentially new subject matter can be explored. Transactional law is quite different.

The sheer number of vastly differing legal structures and forms that transactions may take or present may mean a transactional lawyer doesn’t get the familiarity gained from repetitive exposure to a particular transaction or document for a long time. A lease is different from a loan, which differs from a real estate purchase, which is different from a stock purchase, which differs from

⁵⁰ See *supra* notes 21-26.

an asset purchase, which is different from an LLC's operating agreement, which differs from a corporation's bylaws, which is different from preferential stock rights, which differs from a shareholder agreement, which is different from an offering memorandum, different still from a licensing agreement, et cetera, et cetera, et cetera. And even within a category of forms, the differences can be marked. For example, a stand-alone lease is quite different from an office lease in a high-rise building and that lease is quite different from a shopping center lease, which is different from a ground lease, and a net lease is different from a percentage lease, etc. – you get the point. Procedural postures for the litigator, even a business law litigator are just simply more limited.

And a transactional lawyer does not necessarily avoid the need to know how to draft a variety of documents by confining her area of specialty. For example, a high-end real estate purchase deal might first involve forming the special purpose legal entities that will eventually acquire the real estate, to which the capital from sophisticated investors will be invested in a qualified limited offering under the securities laws, along with loan funds received in the form of a possibly convertible loan, and all of that is in addition to the real estate purchase agreement and mortgage and the concomitant due diligence and legal opinion that standardly is required. The “real estate lawyer” will likely be expected to prepare all of the documents relating to all these matters because the core deal is a real estate purchase matter.

It is impossible for law school transactional document drafting classes to acquaint students with all the types of documents they might have to draft as transactional lawyers, even superficially. However, in addition to complex wallowing assignments, I do also assign several small problems, with standard cookie-cutter parameters, as a means of assuring that students at least read through some of the most common documents encountered in transactional practice, like a promissory note or long-form bylaws. I believe it is important for students to get this exposure, even if limited.

CONCLUSION

Teaching transactional law first starts with enthusiastic mentoring and assertive course advising to get and keep more students enrolled in business law and transactional law classes. Transactional law teachers must operate on the necessary assumption that continued significant mentoring (not just training) of the new transactional law graduates by experienced practitioners will occur and transactional law practitioners must expect to have to continue to do this, despite calls for more practice-ready law graduates, because of the complexity of the field. However law schools can do more to increase the number of law graduates interested in transactional law and to provide more transactional skills training to those students.

Actual transactional law classes must necessarily be confined to particular skills. The skill I focus on in my classes is transactional document drafting via drafting components added onto substantive business law classes. I hope sharing some of my methodology in this essay is helpful.