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Equipping the Garage Guys in Law

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Abstract

The twin structural changes of the last few decades – globalization and the emergence of a web-based platform for economic activity – have transformed the economic demand for law. The market for law, however, has struggled to keep up with these changes, showing few signs of the kind of innovation that we see in many other sectors of the new economy. Even our most sophisticated and innovative corporations report difficulty in finding lawyers with the kinds of risk-attuned and creative problem-solving skills that they need (Hadfield 2011). Some large corporate clients have gone so far as to refuse to hire new law firm associates, finding the value they deliver too far below the hourly rate they are charged for their services. There are many causes of the growing mismatch between what clients want from law and what law delivers, and no silver bullet to solve the growing discontent in the market. But the stagnant nature of legal education clearly plays a role. In this paper, I discuss my experiences with problem-based teaching methods in a mainstay of the traditional law school curriculum: first year and upper year contract law. These experiences demonstrate how much we need to do to bring legal education into the 21st century, and suggest some concrete changes we can make in how we teach to nurture the development of a new generation of innovators in law.

EQUIPPING THE GARAGE GUYS IN LAW

GILLIAN K. HADFIELD*

"Somewhere there's a 26-year-old out trying to destroy your business."[1]

I. A CLASSROOM EXPERIMENT

Recently, I conducted an experiment. Prompted by a student who had established a new joint law school-business school student group at the University of Southern California, I ran an extracurricular case study session in which J.D. and M.B.A. students worked together to find a solution for a real company facing a very real business challenge. The case involved a startup in Toronto called Innovation Exchange[2] ("IX"), an online open innovation platform connecting sponsor companies posting innovation challenges (for example, a new type of yogurt container or a new banking product) with a community of innovators.[3] Innovation Exchange was encountering the following problem: In a significant number of cases, getting potential sponsor companies to sign up was slowed down or even halted by the complexity and legalese of their contract. As CEO Stephen Benson put the challenge, "It would be great if we could get this thing down to a page or two of easily readable content that the nonlawyer Chief Innovation Officer of a potential sponsor company could easily understand and communicate internally."

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* Many thanks to my J.D. students in Advanced Contracts at USC and to the students from both the Gould School of Law and the Marshall School of Business who participated in the IX simulation exercise in the Spring of 2010. Special thanks to Philip Castro and Paul Del Piero for their initiative in putting the exercise together. I am also grateful to Stephen Benson, Mike Roster, and Ed Kleinbard for their contributions to the exercise and to the participants in *University of Maryland School of Law's Conference on the Profession and the Academy: Addressing Major Changes in Law Practice* for comments. Financial assistance from the Ewing Marion Kauffman Foundation through their funding of the Southern California Innovation Project and from the USC Law School is gratefully acknowledged.

1. Webcast: Future Ed Conference: New Business Models for U.S. and Global Legal Education, Panel 1, held by New York Law School and Harvard Law School, at 12:53–13:00 (Apr. 9, 2010), http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed (follow "For Video of the Conference" hyperlink; then select "Future Ed Conference – Panel 1" hyperlink) (remarks of Paul Lippe, Founder and CEO of Legal OnRamp) (attributing the quote to Bill Joy, cofounder of Sun Microsystems).

2. INNOVATION EXCHANGE, www.innovationexchange.com (last visited Dec. 21, 2010).

3. I am on the Board of Advisors for the company, and my brother was one of the founding partners.

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Law students divided into teams of four or five as "law firms," and M.B.A. students acted as IX's executive creative management team to take on this challenge. We conducted two sessions that followed the model I use in my advanced contracts class in which law student teams alternate between the roles of attorneys and clients in eight case studies. In the first session, the twenty-two participants met around a table to brainstorm about the problem and the potential for converting the dense document into a short, easily readable one.

The first session was pretty exciting to watch. (I was essentially just an observer—in fact, I was on a videoconference screen.) The M.B.A. students jumped comfortably into the role of the IX executive creative management team, pressing the law students about the risks of liability and forcing them to explain what the document said in plain English. They did a great job of educating the law students about what would and would not make business sense. (For example, the law students floated the idea of a "Frequently Asked Questions" ("FAQ") sheet, but the M.B.A. students were skeptical of the idea that they could hand the Chief Information Officer of a Fortune 1000 company a FAQ sheet to sell an expensive business service.) The law students showed great potential for creativity, recognizing that the contract was not just a legal document but also a marketing tool. Two possible strategies emerged. The students could radically shorten and simplify the document, or they could create a separate, brief summary of the contract to be used for marketing purposes and leave the contract as originally written. At the end of the first session, the "clients" asked some of the "law firms" to work on the first strategy and other "law firms" to work on the second. They would meet a week later to review the proposals and choose a team to hire. This was a very promising start.

As the week progressed, though, I started to worry about where the efforts would end. I began to sense that the law students—even those who had taken on the task of shortening the contract rather than focusing on a separate document to be used for marketing purposes—were restricting their ideas to a very narrow range of adjustments to the existing contract. And indeed at the second session the following week, all three proposals were relatively marginal variations on the original document. As the law students tried to explain to the somewhat deflated M.B.A. students (and to IX's CEO who had flown down to participate), there simply was no way to eliminate all of the legalese: representations and warranties, indemnity clauses, pages of clauses numbered 4.2.1.3, and so on. The law students certainly made some improvements, such as adding better section headings, moving

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the set of definitions from the beginning to the end of the document, and changing confusing typos and contradictions. As one student explained later, she had just finished taking a contract drafting course in which she had learned that any well-drafted contract *had* to have this kind of structure.

Without any other exposure to the "real world" of contracting, it was difficult for the students to think outside the box: How were they to assess the risks? The law students conceived of their job as explaining the standard-looking contract to the M.B.A. students, understood that their role as legal counsel was to protect the company against the risks of liability, and thought that it would be too dangerous to eliminate any of the complex provisions. As one law student explained, the clauses might be unintelligible to a layperson but were nonetheless necessary. The students were not able to explain in a concrete way, however, the risks and liability. The law students came up short when the M.B.A students asked several times, "How big a risk is that?" This is no surprise—we educators have not taught them how to think through questions like this.

At the end of the session, one of the observers, Mike Roster, a former General Counsel at Stanford University and managing partner at Morrison & Foerster and now chair of the Association of Corporate Counsel's Value Challenge,[4] shared with the law students that he thought the contract could be reduced to two pages. He even thought the contract could be written as an easily readable letter agreement—perhaps with some attachments to keep the in-house lawyers at the prospect company happy—that would strike the right balance between ensuring legal protection and promoting a productive business relationship. Later, Mike and I worked with student volunteers to produce a short letter agreement, and IX agreed to try it out.

II. LESSONS LEARNED

A. *The Disconnect Between the Classroom and Clients*

The experiment—to test how a class might be conducted so that law and business students could learn to work better together—was in many ways a success. Ironically, this success was in part *because* the law students found it very difficult to deliver the kind of creative thinking the client was looking for and *because* the business students were unable to extract that sort of thinking from their lawyers. This enabled

4. For more on the Association of Corporate Counsel Value Challenge, see ACC VALUE CHALLENGE, http://www.acc.com/valuechallenge/ (last visited Dec. 21, 2010).

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me to learn a great deal about what we, as law professors, need to teach and about the challenges of doing so.

I also saw firsthand what Mike Roster describes from a long career in legal practice at the highest levels and what he sees as the central challenge to the entire legal profession. As Mike observed, what happened in the classroom is effectively happening in attorney-client business relationships on a daily basis across corporate America.[5] The disconnect between attorneys and their clients explains why there is a revolt led by the biggest clients with the most innovative general counsel. It also highlights why the traditional law model—that we are schooling our young lawyers to emulate—is broken.[6]

Think about it. My students are some of the smartest young people heading into the profession. They live in the innovation soup that is California. Across the USC campus, young engineers are collaborating with cinema students on new video games and devices. M.B.A. students are pitching business ideas to seed capital funds. The computer scientists are dreaming up new ideas for social networking. The biology students are jumping on new biotech opportunities. Where, I have often wondered, are our own "garage guys"—the ones who challenge the orthodoxy and invent the new world in law?[7] We are simply not giving law students the tools they need. Instead, we are increasingly giving them tools that their prospective clients do not want.

B. Why This Disconnect Exists

The changes in the legal profession we are witnessing are deeply rooted in the growing mismatch between what the world needs from

5. A 2007 study by BTI Consulting Group reported that a large number of Fortune 1000 companies expressed dissatisfaction with law firms for failing to demonstrate a commitment to their clients and an understanding of their clients' businesses. Katheryn Hayes Tucker, *Companies Dissatisfied with Their Law Firms, Survey Shows*, LAW.COM (Nov. 29, 2007), http://www.law.com/jsp/article.jsp?id=900005496984 (reporting on the BTI Consulting Group, Inc. *Survey of Client Service Performance for Law Firms*).

6. Similarly, the "traditional" law firm experience is largely based on the long-dominant Cravath system, in which law firms identify promising students and train them on the job rather than hiring practice-ready associates who can provide immediate value to clients. *See* Clark D. Cunningham, *Should American Law Schools Continue to Graduate Lawyers Whom Clients Consider Worthless?*, 70 MD. L. REV. 499 (2011). As a result of economic pressures, however, law firm hiring and on-the-job training practices changed dramatically in 2009 and 2010. *Id.*

7. Gillian K. Hadfield, *Legal Barriers to Innovation: The Growing Economic Cost of Professional Control over Corporate Legal Markets*, 60 STAN. L. REV. 1689, 1720 (2008) ("Innovators have long been imagined as disaffected or isolated iconoclasts tinkering away in the garage, on the periphery of the markets that their inventions might transform. Where are the 'garage guys' in law?").

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law and what we, as lawyers, actually provide. We urgently need innovative approaches to law that grapple with the fundamental transformation that we are experiencing in the nature of how business gets done and how economies operate. The economic demand for law has been fundamentally transformed by the tectonic shifts of globalization and the creation of web-based platforms for economic activity.[8] This means there is an urgent need for innovators. We need to equip our students to be those innovators, and I do not believe we are doing so.

We all know the story of Apple and Google, which were catapulted to success by Harvard and Stanford students who scraped by on pizza and Kraft dinners in the garages of parents and friends to produce radically new products and to challenge the IBMs and librarians[9] of the world. How do we breed such people in law? It clearly means equipping more of our students with the tools to venture out alone, in smaller settings where their successes depend on their problem solving skills and their ability to satisfy client needs rather than on their ability to keep BigLaw partners happy.

Not only can size be an obstacle to innovation—as organizations become larger, they tend to become more dependent on bureaucratic routines than on collaborative idea generation[10]—so can the conventional wisdom that is ingrained in the successful firm. After all, these large, established firms became successful because they were good at what they did; under pressure, they are likely to do more of what has worked for them in the past. They will adapt incrementally. But, the truly revolutionary change often comes from the sidewinder, the unexpected, the small, the annoying, and the unconventional. In law, we need to figure out how to nurture those upstarts.

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8. *See generally* Gillian K. Hadfield, Law for a Flat World: Legal Infrastructure and the New Economy 10–13 (Feb. 2010) (unpublished manuscript) (on file with the Maryland Law Review), *available at* http://works.bepress.com/ghadfield (exploring the transformation from the old to the new economy and suggesting that the new economy has changed the economic demand for law in ways that fundamentally challenge our existing legal infrastructure).

9. It is now hard to remember that before Google the thought was that we would have an army of librarians to catalogue and keyword Internet content so people could find it. *See, e.g.*, Norman Oder, *Cataloging the Net: Can We Do It?*, LIBR. J., Oct. 1, 1998, at 47, 51 (quoting one librarian as asking, "'How do we apply what we've learned in the last 100 years to this very new, very slippery information resource? I think we're a long way from hitting it.'").

10. In response to increasing competition from a young competitor—Facebook—Google announced in January 2011 that long-time CEO Eric Schmidt would be replaced by cofounder Larry Page, with the "primary goal[ ]" of getting "Google to be a big company that has the nimbleness and soul and passion and speed of a start-up." Claire Cain Miller & Miguel Helft, *Google Shake-Up Is Effort to Revive Start-Up Spark*, N.Y. TIMES, Jan. 20, 2011, at A1 (quoting Larry Page) (internal quotation marks omitted).

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There are already enormous constraints on this innovative process in law.[11] Anyone who wants to be a provider in the legal market—to meet the demand for better solutions—must go to our law schools and earn our law degrees. If young lawyers decide to venture into something new, they are financially on their own—they cannot pitch their creativity to angel investors or seed capital funds or even count on their friends or family to see them through the garage days.[12] This puts enormous responsibility on law schools to do a better job of equipping our students to weather the challenges of being innovators.

C. *Educating Our Students for Innovation*

What can we do to increase the chances that our students can be the innovators in law that we so urgently need? We can start by seeking out students who want to be lawyers because they understand risk and are good at problem solving, and not because they have mastered the risk-averse strategies that produce high LSAT scores.[13] But, making such a change is just a start. The real challenge for educators is to give up the conventions with which we have grown so comfortable: (1) the first-year curriculum of torts, property, contracts, criminal law, constitutional law, and civil procedure—all taught through Socratic discussion of appellate decisions collected in casebooks and tested only by final exams graded on an anonymous curve; and (2) the construction of an upper-year curriculum that basically reproduces the first-year curriculum except for the topics—corporations, criminal procedure, and evidence—and is taught using the same methods and evaluation techniques. I think we also need to give up the vain belief that we are doing a good job teaching students how to "think like lawyers"—patching up the problems of practical application with students' participation in clinics and externships and by preparing our students to address the needs of a globalizing and more complex society with only theoretical courses in law and economics, international law, and the theory of the regulatory state.

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11. For a lengthy discussion of these constraints, see Hadfield, *supra* note 7. R

12. Financing legal innovation can be problematic due to the difficulty in spreading risks, limited access to cash flow, and rules discouraging legal collaborations with nonlawyers. For a more detailed explanation of this point, see *id.* at 1726–27.

13. Marjorie Shultz and Sheldon Zedeck have launched a major effort to shift to admissions criteria that better reflect the demands of creative and effective legal practice. *See generally* Marjorie M. Shultz & Sheldon Zedeck, Final Report: Identification, Development, and Validation of Predictors for Successful Lawyering (Sept. 2008) (unpublished manuscript) (on file with the Maryland Law Review), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1353554.

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Indeed, I think that many of the curricular reforms tried at many law schools in the past two decades have made some things worse. We have increased the gap between what our students understand the job of being a lawyer to be and what that job really is (becoming). I have taught upper-level students at excellent law schools who are well versed in theories of bilateral monopoly and the international conventions on arbitration, but the same students do not know where to begin when asked to use the parol evidence rule to advise a client about the likely content of his contractual obligations. These students know a phenomenal amount of information; they just do not have much of a sense of what to do with their knowledge or how to add value to a client's problem. This is why corporate clients increasingly refuse to pay for new associates.[14] As a result, conventional large firms are scrambling to reinvent their business models to convert these young associates into lawyers who are able to perform valuable services for which their clients will pay.

It is up to professors to assume responsibility for producing graduates who are capable of performing valuable legal work after graduation from day one. I fully believe we can succeed in this. My faith in this belief comes largely from my own experiences and from what I have been able to produce using problem solving and team-based teaching methods. In the next section, I describe my core classes and how they focus on delivering students with a skill set that is closer to what they actually need.

III. PROBLEM-BASED TEACHING METHODS

A. *First-Year Contracts: Identifying Issues and Developing Judgment and Group Problem Solving*

I teach first-year contracts. Beginning with the first time I taught this course in 1991, I have used problem solving and team based assignments to supplement the usual diet of appellate cases and teacher-facilitated discussion of legal reasoning. Through much trial and error, and in spite of bad patches with respect to student evaluations, I

14. *See* Ashby Jones, *Who Should Foot the Bill for the "Worthless" Young Associates?*, WALL ST. J. L. BLOG (Apr. 13, 2010, 11:03 AM), http://blogs.wsj.com/law/2010/04/13/who-should-foot-the-bill-for-the-worthless-young-associates/ ("[N]obody wants to foot the bill for training young law-firm associates. Law schools don't train people to practice law. General counsels are increasingly insisting that young associates don't get staffed on cases and deals—because they really don't know what they're doing. So the financial and practical onus is falling to the law firms.").

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have devised a model[15] that produces first-year students who are able to identify issues, organize them structurally, exercise judgment about what is most central to achieving a client's goals, marshal facts and authorities to craft arguments and counterarguments, and predict dispute outcomes. It may seem that the conventional method does this well already, but teaching in this way has taught me that it does not.

Here is what I do. Students organize themselves into four person teams. (I teach a class of about seventy-two students and have done this with up to ninety.) Over the course of the semester these teams complete four assignments, all of which have the same basic structure, which is familiar from our long-standing final exams. The students are given a three-page fact scenario and are asked to advise their client on a particular legal situation. They are to produce an outline of the legal issues they see, organized into as many subissues as are appropriate (for example: whether the December 8th letter is admissible under the parol evidence rule, which raises the subissue of whether the document signed on January 18th is fully integrated). They do not analyze these issues; they just put in enough factual detail and citations to legal authority to demonstrate why the identified issues are *issues*. I take off points if the students propose as an issue a claim that one side could never argue (for example: that there is an issue of consideration if the problem involves the sale of a widget). Then, the students are asked to choose *one* issue from those they have identified that, in their *judgment*, is important to the advice they must give to their client. I grade them on their choice—a group receives few points, for example, if they chose to focus on misrepresentation as an issue when their client would do better enforcing a contract than avoiding it. They next analyze the chosen issue in detail. I grade them on the logic and factual richness of their arguments, their attention to equally fact-rich counterarguments, their use of legal authority, and their ultimate assessment of how the particular issue would likely be resolved. For each assignment, one team member is designated as the "point person" responsible for the final product. Each assignment is graded out of fifteen points—the point person receives the full score out of fifteen, and the team members receive pro rata points out of five for each of the three assignments. Together with ten "professional points," which I award at the end of the semester (informed by confidential peer and self-assessment forms the students

15. Examples of my teaching materials for this class are available at http://works.bepress.com/ghadfield.

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submit to me after each assignment is completed), these assignments constitute forty percent of the final grade.

Because there are sixteen to eighteen memos handed in for each assignment, I am able to grade them with fairly extensive written commentary.[16] I then devote one or two classes to discussion of the problem. The groups are required to post their memos on the course website and to read memos from the other groups. I also post my commented versions (the grade itself is private), so students can see how other strategies and solutions fared and can read the detailed comments on what I identify to be the most successful answers. Together with our class discussions—in which, for example, students articulate why they chose issue *X* as important and learn why other groups chose issue *Y*—these assignments teach the students an enormous amount about how law actually works. They learn about the very different lenses through which a problem can be viewed, how facts they suspected might be important were deployed by others to bolster a theory they did not consider, and so on.

The final exam has exactly the same structure as the in-class assignments (minus the teams, which, despite their initial skepticism and negativity the first week of class, they now miss terribly!), and it shows me just where the class has been effective and where it has not been effective. After much early semester anxiety and somewhat chaotic approaches to choosing an important issue, I can report that usually about eighty percent of the students are able to identify and focus on a problem that is of first-order importance on the exam. Most are articulating *legal* issues, which is not an obvious skill when they start. Initially, many students struggle to distinguish between an analytical or factual question (such as: (1) Does it matter that the letter never arrived?, or (2) Did the letter arrive?) and a legal issue (such as: Can the offer reasonably be interpreted to invite acceptance by return mail?). Except when I have failed to convey how difficult some claims are to win, most students are also able to identify real issues as op-

16. Getting feedback from professors enables students to become self-directed learners. *See* ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 92 (2007) ("Prompt feedback allows students to take control over their own learning by obtaining necessary remediation for identified deficiencies in their understanding and to adjust their approaches to future learning endeavors."). In its 2009 annual survey, the Law School Survey of Student Engagement, however, found that only about half of all students frequently receive such feedback from professors. LAW SCH. SURVEY OF STUDENT ENGAGEMENT, IND. UNIV. CTR. FOR POSTSECONDARY RESEARCH, STUDENT ENGAGEMENT IN LAW SCHOOL: ENHANCING STUDENT LEARNING, 2009 ANNUAL SURVEY RESULTS 9 (2009), *available at* http://lssse.iub.edu/pdf/LSSSE_Annual_Report_2009_forWeb.pdf. Further, "[f]ourteen percent of [law] students report *never* receiving prompt feedback from faculty members about their academic performance." *Id.* at 8.

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posed to nonissues. Eventually, many students can clearly organize these issues into subissues, and many are able to arrange the overall analysis into coherent alternative theories. Additionally, a great number of students show wonderful facility in using facts and rhetoric to explore strong arguments and equally strong counterarguments. Finally, they mostly understand that a counterargument is not just any argument the other side could raise, but one that directly engages the other side's particular use of facts, cases, logic, and reasoning. (Most students find this a very subtle idea, and they work hard to recognize the difference with each assignment. Our conventional final exam does not reveal this difference, and I think many law professors will be surprised to learn this is a hard distinction for students to understand.)

B. Advanced Contracts: Strategic Analysis and Advising Clients

The accomplishments of my first-year contracts students are often brought home to me in my upper-level advanced contracts course on strategic analysis and advice. In this course, students organize themselves into course-long groups of four. The course materials consist of eight case studies, many of which I originally put together in 1997 with some extraordinary assistance from a leading law firm in Toronto, McCarthy Tétrault.[17] (I mention this to emphasize that case studies can have a long life and hence a good return on investment!) Each case study consists of a short narrative—usually no more than ten pages—and documents, such as proposed contract drafts, letters of intent, correspondence, and e-mails. Many of the narratives were drafted originally by the McCarthy Tétrault lawyers who edited, redacted, and disguised their actual cases. The narratives give the reader a role (for example: Assume you are Roch de Terre, in-house counsel for a junior mining company) and generally a time-sensitive context (for example: The CEO Pierre Gravel has asked you to put together whatever you think he needs to protect the company's interests while allowing negotiations with a strategic partner next week to go forward).[18] The students are asked to prepare a memo of no more than 2,000 words that advises the client on a course of action.

17. Examples of my teaching materials are available at http://works.bepress.com/ghadfield, and they can be used freely with proper attribution.

18. In my early versions of this course, I tried to cover a wide range of contractual settings, including government contracts and family contracts. I soon realized I needed to triage and focus on a smaller set of issues to avoid being spread too thin. The course is now avowedly commercial in orientation.

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The students must decide how to frame the problem, on what issues to focus, and what research is necessary—in any area of law—to effectively advise their clients. They only have a week and 2,000 words. They have to do a great deal of triage. The work is, of course, incomplete and artificial relative to the real world,[19] but it gives the students the context and the repeated experience of making strategic choices and evaluating alternatives, leveraging and coordinating the resources of a team, and deciding which research trails to pursue and which to abandon. They will help senior attorneys perform these tasks, perhaps as soon as they graduate, and will eventually have to perform these tasks themselves (sooner rather than later if they end up in trial-by-fire situations working in smaller firms or in-house corporate departments).

I usually teach this course with approximately thirty-two students divided into eight groups of four.[20] Each group performs the role of attorney in four of the eight cases and the role of client in the other four. We spend three class periods on each case: An initial brainstorming session in which attorney teams prepare a one-page list of bullet points that is posted on the course webpage for students to read before class and which seeds the class discussion; a discussion session based on memos posted at least twenty-four hours before class; and a debriefing session. Each person in the client group must take a turn acting as the point person responsible for posting comments on the memos a few days after each discussion. Attorney groups are free to organize themselves and prepare their final product as they see fit—some choose to rotate ultimate responsibility while others use the same division of labor for each case.

As with my first-year contracts classes, I extensively comment on the attorney memos and post the commented versions online. Students submit confidential assessment forms after each of the four cases for which they also produced an attorney memo. The two-page form asks them how many hours were spent on the case, what they found easy and difficult about the problem, what they thought their group did well and not so well, and how they would allocate 100 points between group members (no equal allocations allowed to avoid

19. A simulation of a real world experience is in a way more valuable to a student than an actual real world experience; the cost of mistakes is small, and students have more guidance and reflection than they would have as a new associate. *See* Karl S. Okamoto, *Learning and Learning-to-Learn by Doing: Simulating Corporate Practice in Law School*, 45 J. LEGAL EDUC. 498, 502 (1995) (encouraging the use of simulation in law school classes because "the risk-free environment of the simulation prepares the neophyte for the tougher lessons to come").

20. I have also had less than thirty-two and sometimes up to forty students in one class.

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the easy default). The point allocation does not feed directly into a grade—rather it is simply another way for me to build a picture of how groups and individuals are performing. Group members receive the same grade on the memo—twenty points per memo with the lowest grade dropped at the end of the course. At the end of the semester, I award twenty points to the group based on client comments and twenty individual points based on contributions in class, in groups, and for the client comment for which they assumed primary responsibility. Thus, eighty percent of the grade is group-based. (Law school rules usually require me to curve final grades—which I would prefer not to do—but I generally feel pretty comfortable with the resulting spread and with the basis for any distinctions that emerge between group members.)

Perhaps the most remarkable transformations I see in students as the course progresses are the increasing ownership students assume for the problem and their hard work to improve their abilities to analyze, to exercise judgment, to coordinate work efforts, and to produce a great team product. Invariably on the first case study the students work madly to get me to tell them what to do; I refuse to do more than gently guide them: What issue do I *want* them to focus on? Whatever issue they judge to be most important. What should a memo look like? However they decide will effectively communicate their analysis and their recommendation to their client. How much research should they do? The amount they judge to be necessary and feasible in the time allotted and with the limited resources at their disposal. All of these questions are ones they have to practice answering for themselves—in many ways this is the key learning experience for them: To frame the problem of exercising judgment.

For instance, the students always begin thinking the word limit I have set is excessively restrictive. But as I remind them, nobody in practice wants to read something longer than it has to be. The problem *is* its constraints, not its abstract qualities. Once the students understand this, they dig in and work very hard—the strongest groups spend an average of twenty hours per student on each case study. They take the risk of committing to a line of analysis they know is and will always be just one choice among many. What matters is how they execute their work, the quality of what they do, and their choice of better, rather than worse, strategies. (This is also why I can re-use case studies year after year—as the lawyer who originally helped me develop and teach this course told our students: "Give a problem to ten lawyers, and you'll get eleven answers.")

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The class discussions at the beginning of the semester are a bit halting, so I facilitate with questions and point out when students change the subject randomly after someone has posed a question (which they probably were not listening to).[21] Often on the assessment forms for the first few cases, students complain that the discussions are random and unfocused, and they request that I fix this problem. I tell them that this is precisely their job; they should identify when the discussion gets off topic, unfocused, or unproductive and act to change it.[22] A few years ago, I hit on a particularly helpful technique to develop this critical ability. I had each of the attorney and client groups rotate as chair of the discussion for about fifteen minutes. The quality of the discussion and focus on the topic immediately improved. By the time we were about a third of the way into the semester, I rarely spoke during class sessions. Indeed, when I once unexpectedly had to miss an entire discussion, the students held the class—very productively—without me. Their motivation? They knew that to produce a good final work product they needed the fruit of that brainstorming session.

I am very proud of what my students are able to achieve throughout this course, and I am often deeply moved by their motivation, their dedication, and their willingness to expose themselves to the real process of learning how to do serious analysis and add value to a client's decision making. The fact of the matter is that this one class can only do so much to move them closer to being competent advisors and strategists. To be honest, the work the students do at the beginning of the semester is not very good. Indeed, I originally designed this course with very high-minded theoretical goals: to teach students sophisticated tools of economic analysis that they might use to produce deeper and more complex legal analysis of problems related to incomplete contracting, bargaining under asymmetric information, sunk costs in bilateral relationships, and so on. In other words, I origi-

21. One explanation for the difficulty many law students have with participating in meaningful classroom discussion is the traditional issue-spotting exam, which encourages students to pay attention only to material on which they will eventually be tested. Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 528 (2007) (explaining that students listen selectively in class, using the likelihood that a discussion topic will show up on an exam as a measure of its importance).

22. Law students traditionally look to professors to "mediate[ ]" classroom discussions and therefore have little opportunity to develop these skills themselves. *See id.* at 532 ("In a traditional law school classroom, students tend to turn off when others students speak, to look to the professor to validate insights articulated by a peer, and to devalue interactive experiences that depart from the structure of professors conveying information or evaluating student responses.").

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nally intended the case study method to be merely a tool for applying theory. But the first time I used the method, I discovered that the students really did not grasp what the job of a lawyer is—but then how could they? They could not apply what I taught them about using the concept of opportunism to interpret a renewal clause in a franchise contract to constrain the power of a franchisor to increase royalty rates, for instance, because they could neither recognize that the problem was one of interpretation nor could they identify the contractual language that provided the hook for such analysis. The course therefore became one in the basics of practical legal analysis. By the end of the semester, my students' skills in analysis are better, but we all know—the students especially—that there is much room for improvement. This always emphasizes to me how deeply challenging high quality legal work is to perform and to learn. It is clearly not learnable solely by sitting in the classroom, reading cases, and discussing the details of legal reasoning and policy.

I asked my students last semester to write a two-page reflection on what they had learned throughout the course. They were free to write on anything. A few wrote about a substantive lesson they had learned—often the hard way—about a basic element of contract analysis. One group, for example, learned from my not-so-delicate question about why they had "wasted people's time" by including an unconscionability argument in their first memo after they explained to the class in discussion that they really felt it was without merit. As one student from that group wrote, for the remainder of the semester they challenged each other by asking, "Why do you want to waste people's time with that?" This self-questioning allowed them to make more thoughtful and less mechanical decisions about what lines of analysis to include in their work.

Most students, however, focused their reflections on what they had learned about the deeply intellectual process of working toward a solution. One told me, "All throughout first year I never knew why we studied case law, but now I know." He meant that as a first-year student he thought he was being asked to read cases to extract rules; he had not realized until his group had stumbled in using case law—not really focusing on the facts, using random citations for a rule, and not really using the court's reasoning to interpret draft contract language or an e-mail exchange—that this was what he was supposed to have been extracting from all of those cases he read in his other classes. He also said, "Until I took this course I didn't know if I wanted to be a lawyer." Many students—both those who struggled with difficult groups and those who had extraordinary teamwork experiences—

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mentioned how much they learned about working with others. They learned, for instance, how they need to speak up when they recognize their group is headed into an error, how one person's domination of a conversation can derail the contributions from less aggressive teammates, how a variety of different strengths (detail, completion, skepticism, creativity, and excellent writing) are necessary, and how challenging it can be to integrate those strengths.

IV. CONCLUSION

My experiment with the Innovation Exchange case study session that brought law and business students together reminded me of just how much we can teach our students and how very limited our goals in a single course can be. Give me these students for another semester, and then give me another semester with the business school students as clients. Let them flex their new group analysis and strategic thinking muscles in a wider range of classes. Finally, teach them some of the more sophisticated theories that they might by then see how to deploy. If we did these things, then we would be even closer to graduating lawyers capable not only of adding real value from day one to conventional legal work but also students able to change the way we do things. My goal is to have students who both know *what* the conventional contract looks like—with its subdivisions and capitalizations, representations and warranties, indemnities and choice of law clauses—and *why* it looks this way. I want students who can devise eleven different ways to write the same contract and who can cogently work with a client to determine the real risks, tradeoffs, and rewards of the full set of alternatives. Maybe they will even establish their own startups and offer a better product at a lower price that makes more sense for their clients than what we, as a profession, are offering now. I hope we are not so far from graduating our own garage guys who can transform how we do law in the way that Apple and Google have transformed how we find information, connect with one another, and learn.

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