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

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Abstract
What can law schools do to address the criticisms in the Carnegie Foundation’s January 2007 report on legal education? That report found that law schools are not teaching students how to be competent lawyers. One particularly promising answer is cross-disciplinary training with MBAs, which leading law schools such as NYU, Stanford, the University of Pennsylvania, and Harvard have embraced in recent years. In this article, I explore the value of such courses, and discuss a cross-disciplinary course that I successfully debuted in the Fall of 2006 at NYU entitled, “Negotiating Complex Transactions with Executives and Lawyers.” More generally, I argue that cross-disciplinary courses offer special advantages for students, schools, universities, and employers, and deserve much more emphasis in professional training and higher education.

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I am grateful to Prof. Margaret Shaw of NYU Law School, Kathy Hanna, and Cary Barker, each of whom gave me valuable comments on a draft of this article.
I. The Need To Better Train Law Students for Practice—And One Innovative Solution

A. The Rising Tide of Criticism

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

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

This emerging consensus found clear expression in January 2007 in a report by the Carnegie Foundation for the Advancement of Teaching (The Carnegie Report). The result of visits to sixteen law schools in the United States and Canada, the report found that:

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

Although the Carnegie Report shed new light on the problem, leading practitioners were already well aware that the problem exists. Business lawyers have been particular dissatisfied. Charles M. Fox, a former senior partner at Skadden, Arps, Slate, Meagher & Flom LLP, wrote about the lack of transactional training years earlier, noting that while most junior associates know how to handle a litigation assignment, they have little, if any, idea how to work with a contract. Christopher E. Austin, a corporate partner at Cleary Gottlieb Steen & Hamilton LLP, says that many law school graduates are not well-prepared for a transactional practice and that, among other things, they frequently lack the transactional skills they need. “Many people come with virtually none of those skills—drafting and negotiating a complex contract, conducting due diligence. . . . We find we have to start on a

3 Id. at 6.
4 CHARLES M. FOX, WORKING WITH CONTRACTS: WHAT LAW SCHOOL DOESN’T TEACH YOU (2002). See Andrew Cohen, How Not to Fix Law School: Legal Analyst Andrew Cohen Says Schools Still Aren't Preparing Lawyers for the Real World, CBS NEWS COURT WATCH, Nov. 10, 2006, http://www.cbsnews.com/stories/2006/11/10/opinion/courtwatch/main2170558.shtml (“The dirty truth is that very little of what law schools teach baby lawyers prepares them for their first true test—passing the bar exam. And very little of what new lawyers have to study and master to succeed at the bar exam prepares them for the practice of law. That's why, in spite of the six-figure salaries first-year associates can pull down in New York and Los Angeles and other hot spots, rookie attorneys aren't worth spit (or, more precisely, don't know spit about how to successfully practice law).”).
very basic level.” To deepen my understanding, I spoke about transactional training with several other partners at leading transactional law firms in New York and Chicago. Each one said something very similar.

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

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

I have long felt that law school can do a much better job training students how to practice law. My interest in the issue grew in the Fall of 2005 as I began to develop a cross-disciplinary negotiation course for NYU law students and business students. The more I learned, the more I discovered the extent of the problem, and the ways such a course could help solve it. As I discuss below, I also came to feel that cross-disciplinary courses offer special advantages for students, schools, universities, and employers, and so deserve much more emphasis in professional training and higher education generally.

B. The Need for Cross-Disciplinary Transactional Courses

I was first inspired to create the course when business students in my negotiation course asked me to offer it. What prompted them to ask? Each semester, my law school colleagues and I offer our students a joint litigation settlement simulation. The event is usually one of the highlights of the term. In the Fall of 2005, a few of my business students told me they so

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5 Telephone Interview with Christopher E. Austin, partner, Cleary Gottlieb Steen & Hamilton LLP, in New York, N.Y. (Mar. 7, 2007).
6 Telephone Interview with David A. Katz, Partner, Wachtel, Lipton, Rosen & Katz, in New York, N.Y. (Mar. 13, 2007) (Noting that law schools are generally not preparing law students well for transactional practice. “They’re doing better, but they still leave something to be desired. It depends on the school and the student, but I’d say that not enough practical courses are taught.”); see also Telephone Interview with Ross Altman, partner, DLA Piper, in Chi., Ill. (Mar. 13, 2007) (“I don’t think they’re particularly well prepared. There’s not much emphasis placed on how to do things right the first time in a commercial context.”); see also Telephone Interview with Igor Kirman, Partner, Wachtel, Lipton, Rosen & Katz, in New York, N.Y. (Mar. 14, 2007) (“I’m a firm believer that law students need to be better trained. After all, law school is a training ground for the profession... What’s needed [for a transactional practice] is familiarity with drafting, negotiating, and putting a deal together. Without that, I may be smart but if I’ve never seen a complex contract, I will be much more disoriented, so I’ll be spending my first year learning things I should have learned in law school.”).
8 More precisely, a ‘jointly registered course.’ As I learned, registrars use very precise terms of art when a course involves students from two schools. At NYU, a ‘jointly registered’ course is a course at one school (say, school X), which students from another (say, school Y) may take, and which appears on their transcripts as a school X course. A ‘joint course’ means a course, which students from schools X and Y may take, and which appears on their respective transcripts as any other course would from their own school. To avoid confusion, I will use the term, ‘cross-disciplinary course,’ which covers both scenarios.
enjoyed the event that they wanted an entire advanced negotiation course with law students. Intrigued, I circulated an anonymous survey, and found my students gave the idea an average rating of 9.5 on a scale of one to ten; more than one gave the idea an eleven. Almost every business school colleague I mentioned the idea to expressed similar enthusiasm. When I asked law students, law professors, and law school registrars about the idea of a joint negotiation course, all of them expressed strong enthusiasm for the idea, just as my business students and business school colleagues had. Their interest closely echoed Fleischer’s point that law students crave deal experience.

Besides helping to meet the need for transactional skills training, the course would have other advantages too. It would teach students in two close professions to work well together on important transactions. In the process, students would overcome their natural feelings of professional culture shock. The course would also teach students about the interplay of law and business at the heart of most major corporate negotiations, such as financings, litigation settlements, bankruptcies, and joint ventures. In each of these ways, the course would nicely address concerns the Carnegie Report would later focus on.

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

I was encouraged to learn that several law schools and business schools have offered cross-disciplinary negotiation courses in recent years. Among them are Columbia, the University of Pennsylvania, and Vanderbilt. Harvard began offering a joint negotiation course for law students and business students in the Spring of 2007. The popularity of these courses at leading schools strengthened the case that the course I had in mind could work well.

At the same time, I sensed there was good reason not to rely on the prevailing economic theory these courses use. Although the course vary in scope, most of them emphasize Transactions Costs Economics (TCE). TCE considers specific kinds of trust problems, and specific ways to solve them using wise incentives. As a lawyer with a background in economics, I appreciate the value of TCE. However, business and academic colleagues who were quite familiar with TCE told me they find that it is only vaguely useful in practice. A

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


different emphasis, I sensed, might be more practical. I describe my approach in detail below. I also sensed that while other schools were pioneering joint negotiation courses, the idea was still new enough that there was room to experiment.

II. The Trend Toward Transactional Skills Training—and the Disturbing Resistance To It

As I developed the course, I also learned that cross-disciplinary negotiation courses are part of a growing trend in law schools to teach students transactional skills, such as contract negotiation, drafting, and business law counseling. Many law schools now offer their students a variety of transactional skills courses, from contract drafting electives to business law clinics. In recent years, conferences have explored ways to integrate transactional skills training into substantive law courses, and some schools have championed the idea that law students need much better transactional training to prepare them for their work as business lawyers. This hopeful trend would seem to rebut the Carnegie Report’s finding. Yet, the story is more complicated than that.

Despite the strong case for teaching transactional skills, law schools often oppose it. Richard Neumann, a professor at Hofstra University who has served on an ABA committee on law school accreditation, notes that while there is a trend toward offering skills courses, law schools have not emphasized them: “There’s a big difference between requiring that skills are the standard and schools actually doing a great deal about it.” As a result, most law students still graduate with little or no transactional skills training. In part, this resistance may occur because many law professors have little experience practicing transactional law. Also, many law school professors feel that it is not the place of a law school to teach transactional skills, that transactional skills cannot be taught, and that law students can best

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also Telephone Interview with Igor Kirman, supra note 6 (“Sure, it’s useful to think about. I took Gilson’s course [on TCE] at Columbia. But it’s not enough. . . . It’s not the expertise law schools need to focus on.”). Later, as the course idea took shape, and I was able to win approval for a six-session course, I also realized TCE would be too much to cover; it would be difficult to introduce such a complex theory well enough so that students could actually learn to apply it. Yet, even though I might spend some time on TCE in a full semester course, my experience teaching the course suggests it is not imperative.

See Jarosz, supra note 10, at 36 (“Of 127 schools surveyed, the number offering transactional clinics rose 400 percent from five schools in 1992 to 25 in 2002. There was also a 93.3 percent rise in schools that offer at least one upper-level course in contract drafting. Of 136 schools, 58 offered such courses in 2002, compared with 30 in 1992.”).


See Jarosz, supra note 10, at 36 (noting “[f]rom Yale to UCLA, professors are stepping outside of law schools’ traditional theoretical boundaries and allowing students to get concrete experience with transactional law.”).

Id. at 39.

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

Klee, supra note 7, at 5 (presenting a survey of law schools, which found that in most cases, only 25% of professors at the top fifteen law schools had practiced law for more than three years). Jarosz, supra note 7, at 40 (“[M]any schools don’t have enough faculty members who are equipped to teach business law through a practical approach.”). See also Jonathan C. Lipson, Doing Deals in School: A Prof Talks About Teaching Transactional Law, BUS. L. TODAY, Sept.–Oct. 2005, at 51, available at http://www.abanet.org/buslaw/blt/2005-09-10/lipson.shtml (“[I]f anecdote is accurate, legal academics themselves rarely practiced transactional law.”).
acquire these skills on the job at law firms. Also, it can be more expensive to teach skills than to teach a large course on legal doctrine.

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

It is certainly true that experience can be the most compelling teacher, and that Continuing Legal Education and well-designed in-house training programs can be valuable. I do training myself, and know it can make a difference. Nevertheless, I frankly find the attitude against skills training troubling and deeply flawed. My own earlier experience as a corporate lawyer, like others, suggests that law firm partners often do not have much time to mentor their young associates. Though firms have tried in recent years to encourage mentoring, others have noted that it is a dying aspect of life in large law firms. One reason is that senior lawyers feel an ever-growing pressure to bill hours, and feel that taking on a protégé is simply not a good use of their time. Like others, I have had the experience of graduating from a top law school only to discover that the education offered little preparation for the actual work of corporate law. The disconnection between training and practice may well contribute to the high levels of depression among young lawyers. Despite the MacCrate

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

20 SULLIVAN ET AL., supra note 2, at 10.

21 Jarosz, supra note 7, at 40.


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

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


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

Id.

26 See, e.g., Jarosz, supra note 10, at 35 (During Columbia Law School Dean David Schizer’s first week as a tax lawyer at the New York law firm Davis Polk and Wardwell, he got his first assignment to mark up a stock purchase agreement: “I said, ‘I’d be happy to do it, but I have two questions: what’s a stock purchase agreement, and when you say mark it up, what do you mean?’ . . . ‘Aside from that, I was perfectly prepared for the assignment.’”). This despite the fact that Schizer had “graduated in 1993 from Yale Law School . . . had served as executive editor of his school’s law journal [and] clerked for Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit and U.S. Supreme Court Justice Ruth Bader Ginsburg.” Schizer went on to found Columbia Law School’s excellent deals program, which offers a variety of courses that develop law students’ understanding of transactions and the skills they need to do them. See Columbia Law Sch., Transactional Studies Program, http://www.law.columbia.edu/center_program/deals (last visited Mar. 16, 2007); see also Fleischer, supra note 7 (description of the program); Susan Irion, The New Classroom: Learning How to Draft Contracts in the Real World, BUS. L. TODAY, Sept.–Oct. 2006, at 49, 49 (“As a business lawyer, I learned not in law school but on the job how to draft and negotiate a contract—but it shouldn’t be that way.”).

27 HILLARY MANTIS, ALTERNATIVE CAREERS FOR LAWYERS 3 (2000) (“Perhaps the most comprehensive study of lawyer dissatisfaction was conducted by the American Bar Association Young Lawyer’s Division in 1990. The 3,000-plus ‘young lawyers’ (defined as under age 36 or less than three years in practice) interviewed cited three major problems causing job
Report’s assertion in 1992 that there is no real gap between law school and legal practice—just a long, arduous path toward competence—the reality is that law students often have little idea what skills they will need to succeed in a transactional practice. While firms have in effect been forced to do remedial transactional skills training, it is not clear that lawyers feel they should be doing so much of this work. Austin notes, “we find we need to. [But] we’d prefer [law schools] to do some of it and they probably could do it better.” He adds that clients sometimes question the value of junior associates, and that better law school training would help firms’ relationships with their clients: “To the extent [law school graduates] have better transactional skills, that would be attractive to a client.” Noting that private practice can be too faced paced for deep learning, Kirman says that, “law firm training is a supplement, not a substitute.”

Law school graduates echo the point. Former students who have taken transactional skills courses tell their professors that the experience gave them a significant advantage in the workplace. As Klee notes, reviewing, drafting, and negotiating a number of different kinds of contracts in law school “not only gives [my graduates] a marginal advantage in getting a job offer, but also working on more challenging problems once inside their firms. Once the partners learn that these students know about a lock up agreement, X clause, and roof rights, they give them work that would normally be given to more experienced, senior associates.”

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

III. The Promise of Cross-Disciplinary Training Generally, and the Growing Trend Toward It

A. Basic Advantages of Cross-Disciplinary Training

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

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

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

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

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

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

The problem is that legal education has traditionally involved teaching one skill (thinking like a lawyer), and doing so for three years. The second and third year


34 Id.

curriculum is thus best described as ‘more of the same.’ Yet, more of the same is not enough. . . . [S]tudents can have a much richer, more varied educational experience in which they also get opportunities to study across disciplines, [and] to work in teams with students from law and other disciplines . . . .

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

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

The site also quotes the school’s dean, Michael Fitts: “Virtually every fundamental issue facing our country is illuminated through the critical thinking developed in traditional and cross-disciplinary legal training.”

One measure of student interest can be found in the fact that 32% of students took classes outside of the Law School in the Spring of 2006. Another mark of the importance of the program is the commentary of BCG Attorney Search, a firm that publishes a ranking of law schools. The firm notes in its latest guide to class rankings that the program is Penn’s “most important innovation.”

Partners in leading corporate law firms say transactional training in general, and cross-disciplinary negotiations training in particular— is an attractive addition to the law school curriculum. Austin says that a joint negotiation course “ought to be a considerable benefit, because it would allow a new associate to operate at a higher level of competence; it could possibly give a several month advantage.” Igor Kirman, a partner at Wachtel, Lipton, Rosen & Katz, concurs. “I think that’s a great idea. If more and more classes could be offered on that basis, it would be great.” He adds, “learning to speak each other’s language is very useful in the global scheme of things. I find that the distinguishing characteristic of good lawyers and bankers is that they understand each other’s language.” He also notes, if you’ve had at least one negotiation experience in the classroom and made mistakes there without paying the price for it in front of a partner, that experience is extremely valuable—the confidence level you’ll have in your first transaction will be extremely high and the role you’ll have in them will be much greater. It’s not clear if these

36 Id.
39 Penn Law, Cross Disciplinary Study, Taking Courses in Other Departments, http://www.law.upenn.edu/crossdisc/study/otherdepts.html (last visited Mar. 14, 2007) (reporting that 64% of these students took courses at Wharton such as Behavioral Economics, Venture Capital, and Finance Innovation, 19% in medical and nursing courses such as Bioethics & Forensics, 9% at the Fels Institute of Government such as Dealing with the Media, and 8% in other departments such as International Studies, Business & Public Policy, Management, Real Estate).
41 Telephone interview with Christopher E. Austin, supra note 5.
advantages stop in first few years...I just think you may enjoy the practice much more, you’ll be a better value producer, and you’ll be rated better by colleagues.\footnote{Telephone Interview with Igor Kirman, supra note 6.}

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

To see other advantages to cross-disciplinary training, consider medical school education. Many medical schools now require their students to treat ‘simulated patients’—actors who play the parts of patients with particular symptoms.\footnote{See Wikipedia, Simulated Patient, http://en.wikipedia.org/wiki/Simulated_patient (last visited Mar. 14, 2007) (“Simulated patients [a/k/a ‘standardized patients] are extensively used in medical education to allow medical students to practice and improve their clinical and conversational skills for an actual patient encounter. [They] are also used extensively in testing of clinical skills of medical students, usually as a part of an Objective Structured Clinical Examination.”). \textit{See also} Tory Harris & Eryn Jelesiewicz, Getting Ready for the Real Thing: Medical and Health Science Programs Are Increasingly Using Simulation to Prepare Students for Patient Encounters, TEMP. TIMES, Sep. 23, 2004, http://www.temple.edu/temple_times/9-23-04/simulation.html (“Medical schools have been using standardized patients [i.e., actors] to conduct training and assess clinical skills for at least 30 years, while nursing and other health professions schools started using standardized patients within the past year or so.”).}

Among them are Harvard, Stanford, Temple, and the University of Nevada.\footnote{Harris & Jelesiewicz, supra note 43. \textit{See} Nicole Martin, \textit{Student Scene: Recasting the Actor-Patient}, WEB WEEKLY, Feb. 6, 2006, http://webweekly.hms.harvard.edu/archive/2006/0206/student_scene.html. \textit{See also} Stanford Schools of Medicine, Office of Student Affairs, Standardized Patient Program, http://ome.stanford.edu/spp.html (last visited Mar. 14, 2007); University of Nevada School of Medicine, Office of Medical Education, The UNSOM Standardized Patient Program, http://www.unr.edu/med/dept/OME/spp.asp (last visited Mar. 14, 2007).} The method is so widespread, in fact, that at least one placement firm has made a business of hiring actors for these sorts of assignments.\footnote{Clinical Competency Center of New York, Standardized Patients, http://c3ny.org/wksp-sp5.html (last visited Mar. 14, 2007) (noting that it “maintains a diverse cadre of intelligent, well trained professionals (standardized patients - SPs) who can portray anything from a 16 year old runaway, to a 45 year old man with adult onset diabetes, to a 77 year old with Alzheimer’s”).} As part of their training, these schools’ medical students must interview a simulated patient, give a diagnosis, prescribe a treatment, and give medical advice. The training gives the students valuable experience in a controlled and simulated setting, letting them make mistakes without hurting anyone, get feedback, and gain confidence before they treat real patients.\footnote{NYU Law School’s first year program includes a mediation component that also employs actors. Telephone Interview with Margaret Shaw, Adjunct Professor of Law, New York Univ. Law Sch., in New York, N.Y. (Mar. 15, 2007).} Similarly, a cross-disciplinary course lets professional students safely simulate realistic encounters with future clients and advisors.

Yet, in several ways, a cross-disciplinary course can offer superior experience. First, students in such a course experience real culture shock, because they deal with students from another field, who think and act very differently.\footnote{As a law student, I did a simulated counseling session with an actress who played the part of a client. The experience was memorable because I was very aware that my client was an actress, which made the simulation feel a bit contrived. From what I have learned since, I gather that well-trained actors can create a very compelling experience for a student, which suggests that the success of actor-based training depends in part on the quality of the actors. Since each MBA student in a cross-disciplinary course is, or soon will be, an actual businessperson, his encounter with a law student involves a real clash of perspectives. While it can take a few minutes for a student to fully embrace his simulation role, I find that students usually become quite engrossed in the experience, and live it out intensely.} Further, because the students work with each other for several weeks, and not just a single encounter, they have the time to actually learn each other’s ways. Thrown together and kept there, they can start to learn to empathize and communicate with each other as characters do in a buddy movie, and as professionals do in the real world. To achieve a similar benefit, a simulated patient course would need to have actors return for several follow-up visits, or simulate different illnesses with ‘patients’ each week for several consecutive weeks. Also, unlike the actors in a medical school simulation, the ‘actors’ in a cross-disciplinary course—the MBAs—also learn valuable lessons in a safe
setting, so the course benefits many more students. (This last point raises financial advantages, as I note below.)

Another way to discover benefits from cross-disciplinary training is to compare it to clinical education. Clinical programs offer excellent training to law students, medical students, and, to a lesser extent, business students. Clinics are now a firmly established part of the curriculum at most law schools.48 These programs give students realistic experience as they work with actual clients on real life problems. The range of possible areas of specialty for a clinical program is almost limitless, and students often find the experience rewarding. Among its recommendations for improving legal education, the Carnegie Report included a strong endorsement for clinical education, especially in the second and third years.49

Yet, clinical education also has its limits. First, clinical programs can be costly to run, in part because they require considerable space, staff, and equipment, and in part because they often let only a small number of students work with a given instructor. Some clinical programs do their own fund raising for this reason.50 Second, real life clients’ problems may not lend themselves to resolution within a semester, which means students may never see the final results of their work. Third, because clinics offer services at little or no charge to clients and patients, the caseload may only partly reflect what students will do when they graduate. A business law clinic, for example, may let law students work on a simple commercial lease, but it may not let them work on a complex financing.

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

Perhaps for these reasons, many medical schools also use cross-disciplinary courses, or as they call them, interprofessional education (IPE).51 IPE began in the 1960s and is particularly widespread in British, Canadian, and European medical schools.52 At least one

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49 Sullivan et al., supra note 2, at 9 (recommending law schools reinvigorate the third year by letting students engage in advanced clinical training, among other things).
51 See Wikipedia, Interprofessional Education, http://en.wikipedia.org/wiki/Interprofessional_education (last visited Mar. 14, 2007) (“[There is] debate about the effectiveness of interprofessional education in enabling collaborative practice. Research and systematic review continue to identify some evidence of effectiveness in changing attitudes. But more empirical evidence of longer-term impact is needed, particularly in respect of effects on service quality and service users’ and patients’ experience. Nevertheless, more evaluations of IPE have been conducted than for many other commonly accepted educational approaches.”).
journal, *Journal of Interprofessional Care*, is devoted to the idea, stating that its goal is to foster “collaboration in education, practice and research between medicine, nursing, veterinary science, allied health, public health, social care and related professions to improve health status and quality of care for individuals, families and communities.”\(^{53}\)

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

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

A cross-disciplinary course can also create financial benefits for the university. Unlike a simulated patient course, the university receives tuition from the ‘actors’ (e.g., the business students who play the roles of clients in simulations), and needs no special clinical facilities. This point does not mean that schools should cut funding to clinical programs or simulated patient courses—only that a university can offer students valuable additional training in a financially attractive way.\(^{54}\) This benefit may be particularly useful for law schools in light of the Carnegie Report’s recommendation that schools do more clinical training. For those who are looking to follow the Carnegie Report’s recommendations without taking on the cost of an additional clinical program,\(^{55}\) cross-disciplinary education may be an attractive solution.

Like the university as a whole, each of the schools can also benefit from the course. The school that does not physically host the course can free up valuable space for other courses, while the host school may be able to earn an extra fee for its role as a host. Meanwhile, the two schools can, if they wish, share the cost of the instructor. Depending on the enrollment, the number of instructors, and the compensation, this arrangement can reduce each school’s overall instructor costs. (I discuss in the Appendix the pros and cons of using a single instructor.) Thus, the old saying about newlyweds may apply here too: Two can live as cheaply as one.

A cross-disciplinary course does create some extra expenses. Mostly, these come from the extra attention the two schools’ registrars must give the course on subjects such as enrollment, grades, credit hours, and timely joint recording and reporting. Yet, most registrars are quite familiar with joint courses, and can handle the details without difficulty. Other costs may arise if the school needs to overcome logistical hurdles such as those I discuss in the Appendix. Yet all told, these costs are probably far lower than the gains a cross-disciplinary course can offer.

A cross-disciplinary course can also help the university and its schools boost their ratings. As I noted earlier, BCG Attorney Search notes that Penn’s commitment to such courses is its “most important innovation.” The innovation may have contributed to Penn’s rise in the law school rankings from twelfth to seventh during the period between 2000 and 2005.\(^{56}\)

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\(^{54}\) See Jarosz, supra note 10, at 39–40 (“Because of the small student-faculty ratio in these types of programs—many have fewer than 20 students—they’re simply more expensive than larger lecture classes.”).

\(^{55}\) Sullivan et al., supra note 2, at 9.

\(^{56}\) Prelaw Handbook—A Guide to Law School Ranking (Section 14), http://www.prelawhandbook.com/law_school_ranking_usn_history (last visited Mar. 17, 2007) (presenting list of U.S. News & World Reports selected historic rankings of top 20 law schools. The cite notes that the big winners over the past 20 years have been Stanford, NYU, and the
Cross-disciplinary courses can also help as a recruiting tool. Penn, NYU, and Yale now highlight their cross-disciplinary programs on their websites, which suggests that such courses can be a valuable selling point.\textsuperscript{57} My own experience supports the point. Over the years, I have found that my students are usually very excited to do joint projects with students in other programs. When they hear about these projects, student enrollment in my courses often rises noticeably.\textsuperscript{58} Joint courses can send a strong, attractive signal to prospective students that the university offers a stimulating, innovative, practical, and creative education. Such courses also help show that students really can explore the universe of ideas a university promises by virtue of its name.

In this way, cross-disciplinary courses can deepen a university’s ability to be a true meeting place, rather than a collection of cloistered schools that operate in separate worlds. By lowering the boundaries between specialties, cross-disciplinary courses can help us respond well to C.P. Snow, Michael Cohen, James March, and other critics of the modern university, who have found a disturbing disconnection there among the different academic worlds.\textsuperscript{59} By encouraging different students to encounter each other in the classroom, the university can help realize the vision of a truly educated student who can engage well with different worlds. It can also enrich the culture of academic life generally.

I had several of these reasons in mind when I sought and won permission from both schools to offer the course in the Fall of 2006.

**D. The Limits of Cross-Disciplinary Training**

None of the previous points means that cross-disciplinary training is a panacea. If we push the argument for it too far, we could wind up with a university where each student is mainly taking courses outside her school, until it’s no longer clear what it means to be a student of that school. To begin to understand her field, a student in a program of higher education must learn a set of core insights and skills, as well as advanced specialized training. Involving other, unqualified students in this work might needlessly slow it down or even derail it. Further, too much emphasis on cross-disciplinary education could dilute or destroy the sense of school community. Often it’s the unplanned, casual meetings between students in a program that most nourish their understanding of the material, the culture of the field, and their future roles in it. Taken too far, cross-disciplinary education could turn a school

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\textsuperscript{57}See supra notes 33–37; see also Yale Law Sch., The Campaign for Yale Law Sch., A Message from the Dean, http://www.law.yale.edu/givetoyls/campaignmessagefromdean.htm (last visited Mar. 16, 2007) (noting “we are expanding our cross-disciplinary offerings”).

\textsuperscript{58}I have already mentioned one-time joint law and business simulations, which usually stimulate strong student interest. I also frequently run simulations between my students in New York and my students in Bordeaux, France. I have also occasionally run simulations between my students at Columbia and my students at NYU. Students typically rate these events as among the highlights of the semester.

into a mere base of operations, until it began to resemble a commuter school. These problems could undermine a school’s ability to instill any coherent vision or principles. Pushed too far, cross-disciplinary education might also needlessly alienate a school’s faculty, especially if they came to feel they were being forced to drastically change the pedagogy, or take on a great deal of new work, or deal with students they are not comfortable teaching. Further, such an extreme arrangement might run afoul of accreditation standards.

Yet, although these concerns are real, it would be a serious mistake to let them kill a serious commitment to cross-disciplinary education. The challenge is to strike a balance so that a school is neither atomized and incoherent on the one hand, nor ossified and cloistered on the other; to give students the many excellent benefits of working with students in related fields, and still cultivate a clear school identity and community. As I’ve noted above, top law schools and business schools are already working hard to cultivate that balance in bold and creative ways, just as medical schools around the world have succeeded in doing for many years. Handled wisely, cross-disciplinary education can advance a given school’s sense of unifying purpose.60

IV. Overall Goals and Specific Objectives of the Course

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

(1) communicate effectively with their lawyer or client,
(2) coordinate, strategize, and set wise roles together for an upcoming negotiation,
(3) work well together on complex issues that touch both legal and business concerns,
(4) apply their basic negotiation training to complex situations with agents and principals,
(5) make wise decisions about when to sue and when to settle,
(6) work effectively with term sheets,
(7) work effectively with draft contracts,
(8) understand the basics of any deal using a simple but powerful set of theoretical and practical tools, and
(9) recognize when they had reached a wise outcome using specific measures of success.

I designed the course so every student would have to grapple with some big questions. For example, do lawyers offer their clients anything valuable, or do they merely mess up good deals? Most business students are skeptical about the value of lawyers; they see them as little more than functionaries who get in the way.61 Is there good reason for that opinion? Also, who is responsible for spotting and solving complex issues where business and law are both involved? Most law students and most business students have little idea how their work overlaps in complex deals. Further, what exactly does a client gain from having a legal right to sue, and is there anything more a lawyer should be thinking about? Most law students

60 See SULLIVAN ET AL., supra note 2, at 10 (noting that “[a] focus on the formation of professionals would give renewed prominence to the ideals and commitments that have historically defined the legal profession in America”).
think their central task is to make sure their client will win a lawsuit. It is? We’d tackle these questions and more.

V. Special Challenges to Offering a New Cross-Disciplinary Mini-Course—Coverage, Mix, and Enrollment

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

It was also clear that things would not go well if law students enrolled and business students didn’t, or vice versa. Since the course was new, I figured I’d need to promote the course particularly well, so I gave a guest lecture at the Law School, made announcements in my own classes, and gave the Law School registrar a flier to post about the course. Yet, just a few days before the course began, it looked as if we would have only a handful of law students to join a lot of business students. Why? I believe it was because the course, its physical location, and I were all new to law students, and because the course needed more publicity. Business students, who presumably knew my reputation and knew we’d hold the course in the Business School, had, months earlier, filled every seat available to them.

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

VI. Pedagogy, Format, and Underlying Principles

A. Key Features

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

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

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63 The guest lecturers were Geoff Smith and Lawrence Atinsky. Geoff is a partner and Lawrence is general counsel for Ascent Biomedical Partners, a New York venture capital firm that specializes in investing in biotechnology ventures. Geoff and Lawrence presented the Columbia Venture Partners—MedTech Inc. demonstration, which, they told me, they have
partner in a Park Avenue law firm would watch the students negotiate and then, in the
debriefing, comment on the task of negotiating contract language. I would augment these
features with a number of lectures.

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

B. Three Key Principles, Three Key Questions

At the heart of the course, I placed three key principles, which I stated as three questions.

“What does my client (or what do I, the client) want and why?” I used this first question to
emphasize the central importance of understanding the interests.64 Interests lie at the heart of
the work of lawyers and business people; pointless litigation and unsatisfying agreements are
the fate of those who ignore them. For example, if a client has been poisoned by a hospital,
and her lawyer overlooks her need for cash to pay for urgent medical treatment, he may be
failing her if his main response is to pursue lengthy litigation. Conversely, a lawyer who
deply understands her client’s needs may be able to quickly win the help she needs through
skillful negotiation and legal maneuvering. How, then, can a lawyer learn the interests?
How can a client clearly convey them? How do they each make sure an agreement satisfies
those interests? The more complex a transaction becomes, I emphasized, the more important
it is for a client and her lawyer to keep the client’s interests in mind so the complexity does
not cause them to lose their perspective.

Negotiation instructors will recognize that interests are important in most negotiations, but I
emphasized them here for additional reasons: a law student may naively believe his sole job
is to make sure his client will win a lawsuit. Yet, this task is only one means to a deeper end,
and it is quite possible to draft a legally airtight contract that serves the client’s interests
terribly. Meanwhile, business clients can get so focused on satisfying their immediate
business interests that they will agree to legal terms that let the other side cheat, manipulate,
or strategize with impunity. Getting the lawyer and the client to think and talk about the
interests can help them avoid these traps.

“How do I know?” I used this second question to emphasize the need to make sure that the
other side will keep its promises, and that the agreement really will give the client the legal
and business benefits it seems to give.65 Lawyers and clients rightly think about this question

64 The importance of the question finds support from several sources. See Robert H. Mnookin et al., Beyond Winning: Negotiating to Create Value in Deals and Disputes (2000) (arguing for an interest-based approach to lawyering); see also Schwarz, supra note 12, at 14–16 (finding that lawyers and clients responding to surveys overwhelmingly emphasized the importance of lawyers and clients understanding the interests behind the terms of the agreement, among other things).

65 The importance of the question finds support in part from TCE, which explores a number of specific kinds of trust problems clients face, and offers a set of ways—mostly involving incentives—for dealing with them, thereby in effect helping to answer the question: How do I know? For a detailed introduction to the subject, see Paul Milgrom & John Roberts, Economics, Organization & Management (1992). Since the range of possible trust problems—and solutions—can be wider than TCE suggests, a broader look at the trust problem and the many ways to solve it can enhance
from different perspectives, but they can miss a lot if they stop there and ignore the larger picture. For example, how do they know that an investor really will keep his promise to let the entrepreneur control the business? Since the answer depends on business terms and legal terms, only in collaboration can the entrepreneur and her lawyer really discover how well the agreement backs the promise. Further, as the students would discover early in the course, a client may have no real protection if all she can do in the face of a breach is sue, since litigation may be too costly, bothersome, and slow to help her. For these reasons, good lawyers help their clients find more ways to be sure the other side performs.

There are many solutions to this problem of trust, and we would explore them in some detail, using an article I’ve written entitled, “Can We Work Together? The Problem of Trust and the Elements of Agreement.”66 As I note in that article, we can organize most of these solutions into four simple categories. Knowing these categories can make it easier for practitioners to spot creative ways to make sure a party doesn’t break its promises. These are the categories:

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

(2) **Incentives & Penalties**—carrots and sticks that encourage cooperation, such as bonuses, mutually assured destruction, interest-based bargains, threats of litigation, and collateral;

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

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

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

“**What if?**” I used this third question to teach students to practice looking ahead to the consequences of their agreements.67 No one should worry about every contingency, but good lawyers and executives watch for serious time bombs in their deals, playing out realistic scenarios to find out whether certain terms will help them or hurt them badly later on. To help teach this idea, I planned to run one simulation where the students would be ruined if they agreed to a deal. In their debriefing, students would discover several important business and legal problems that would later destroy them—issues they could discover in advance by working together and asking a number of realistic ‘what if?’ questions.68
There is much more to transactional work than these three principles, and so the course covered a number of other ideas too, as I note below. My hope, though, was that by emphasizing a few simple questions throughout the course, I could give students a clear, effective, and memorable way to organize their thinking about complex problems.

VII. Experience Teaching the Course

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

In the first joint session, we ran a straightforward simulation of a partnership agreement negotiation. This simulation gave the students their first experience dealing with each other. In the first thirty-five minutes, the lawyers interviewed and advised their clients, and prepared with them for the upcoming talks. Then, for the next forty minutes, each of these teams negotiated with another team. They then posted their outcomes on the classroom board. They each also completed surveys about their satisfaction with the results and each other’s work, and posted their responses.

We began the debriefing by looking at the survey results. Clients who were satisfied reported that their lawyers had done an excellent job discussing the matter with them and helping them to craft deals that served their interests; unsatisfied clients reported their lawyers took a more myopic and adversarial approach. What about interests the lawyers spotted that the clients unwisely undervalued, such as the ability to protect against breach? Satisfied clients said they appreciated it when the lawyer clearly explained why these clauses were important to them.

Yet under the gleaming surface, there were problems at Enron, problems that got only worse over time. Mark, the executive in charge of that division of Enron, who at first ran and reran numbers to make sure her deals made economic sense, became sloppy. Important details fell through the cracks. ‘We are in the business of doing deals…this deal mentality is central to what we do,’ Mark told an interviewer for a Harvard Business School case study. A second problem: the assumptions Enron made to justify its deals assumed that nothing would ever go wrong. Things went wrong all the time. People who worked for Mark say she trusted her gut far more than any spreadsheet, as she would tell anyone who tried to say no to her by citing a project’s questionable numbers. Today, the plant at Dabhol in India, in which Enron invested some $900 million, sits silent, a gigantic, waste marvel of modern technology.


As the Law School’s vice dean asked, I also held a session for law students only just before the course began. There I discussed a term project they alone would write in order to earn an extra half credit. I also used this session to prepare them for their upcoming work with clients by looking at good and bad examples of lawyering. In the first case, a lawyer pursued litigation for years while his client was dying of AIDS; in the second, a lawyer found a way to help his struggling business client win valuable concessions from a landlord, saving the business in the process. The latter story appears in the introduction to Mookin et al., supra note 64, a text I assigned. I used these cases to illustrate the critical importance of understanding the client’s needs, and the danger of being overly focused on litigation. To develop the idea more deeply, I told the students that I had just agreed to buy a car I found on the Internet. What contract language would I need? The students haltingly suggested a few clauses, though they had little recall of ideas like representations and warranties, covenants, and conditions precedent until I prompted them. Then I told them that I had signed the contract but that the car had later turned out to have been badly damaged, and that the seller had misrepresented its condition. What could I do now? “Sue,” said the students. Then we played out what it would take to do that, and discovered it would take years and cost more than the car was worth. In the discussion that followed, we explored the idea that a legally enforceable contract, though useful, is, in essence, the business equivalent of a costly and unreliable insurance policy, in the sense that it may cost a lot to create and may deliver only partial protection. In another sense, a legally enforceable contract is like a nuclear weapon—it may be able to deter the other side, but its great cost to both sides may make it hard to use in practice, except as a last resort. The discussion led students to an important implication: to serve the client, a lawyer must be able to give her more, not less, than just a legally enforceable agreement. What should the lawyer give her? That is what the course is designed to help them answer. From my later work with the students, I saw that this idea—that creating a legally enforceable agreement is only part of the lawyer’s task—is novel enough that law students need to discover it more than once before it becomes real to them. For this reason, it was helpful to introduce the idea again through later simulation work.
protections mattered, and usually wound up agreeing to what their lawyers proposed. Dissatisfied clients said their lawyers merely focused on these concerns without discussing them, and ignored the clients’ other business needs. We then talked about the experience generally, and looked at the results themselves, focusing on whether they satisfied the clients’ interests.

From the debriefing, students saw that clients’ interests may not be obvious, so clients need to make sure their lawyers ‘get’ these interests, and lawyers need to make sure their clients discuss them. They also saw that they needed to be a lot clearer with each other about facts—dissatisfied teams typically found they had gotten confused talking about them with each other. The students learned too that roles matter. Satisfied groups generally spent time working out how lawyers and clients would act at the bargaining table; dissatisfied groups teams generally didn’t. The discussion also revealed that lawyers can help clients in a number of ways to design a satisfying agreement, if they have prepared well, and if they understand their duties and the key dynamics. Lawyers who satisfied their clients generally did these things; lawyers in dissatisfied teams generally didn’t. The central lesson of the event was that it’s critical for a lawyer and her client to understand the client’s interests, by asking “what do I (or what does my client) want and why?” and discussing the deal in these terms.

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

First, though, to explore litigation more deeply, we played a simple game, called, “Sue or Settle,” which is available from Harvard’s Program on Negotiation Clearinghouse. The game asks students to imagine they are involved in a lawsuit where one million dollars are at stake. Using a simple game of cards to simulate the process, students play out the decisions they face at each stage of a litigation. Within a few minutes, students discover a number of troubling aspects to the game, and litigation. First, the clients must pay tens of thousands of dollars. Second, their lawyers face an inherent conflict of interest, since they profit as the game continues. Third, the client must continually weigh the risks and benefits of continuing the suit. That isn’t easy, since the client can only rely on his lawyer’s advice to assess the

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71 See Freeman et al., supra note 62.
strength of his case. Further, appeals and the pressure to hire high-powered legal help can inflate the cost considerably. Law students and business students alike find that the game gives them their first experience dealing with the strategic choices, costs, and stresses of litigation. To deepen the experience, we played the game twice, with law students acting as clients in the second game, and business students as lawyers.

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

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

In the third class, students learned several more principles for handling complex transactions, including the importance of asking a third question: What if? To learn them, they negotiated a highly complex investment deal in the Bountiful Table simulation. Bountiful Table is a unique simulation in two ways. First, it lets the instructor negotiate a sophisticated, detailed agreement with every one in a class of forty students (or more) in about 75 minutes. Second, agreeing to the instructor’s final offer turns out to be a bad mistake. Only if the students are well prepared and well-coordinated can they spot the problems, resist the temptation to ‘do a deal,’ and walk away—a critical skill for any serious negotiator.

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

72 See Freeman, supra note 65 and accompanying text.
73 Seth Freeman, Bountiful Table (2006) (unpublished simulation, on file with the author). I have successfully used Bountiful Table many times. Students typically rate it one of their favorite simulations. If you would like a copy, please contact me.
About twenty percent of the class took my offer and eighty percent wisely declined it, choosing instead to go with one of several alternatives the materials described. Successful teams discovered that my final offer was terrible: it didn’t satisfy their interests nearly as well as their best alternatives did. Also, there weren’t enough Trust Substitutes to protect them later when my corporation used the deal to take control.

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

Bountiful Table teaches the key lesson that ‘getting to yes’ is not the goal of negotiation: the goal is to get to wise yes or wise no. That lesson is especially important for eager deal-makers to learn because media coverage of deals often makes agreement look like success itself. Yet, studies and cases often teach another story. As I noted earlier, Enron became a media darling for its ability to do deals, but few if any of its later deals made money, and most proved to be disasters. Similarly, studies routinely find that well over half of all mergers fail.

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

Finally, the follow-up exercise reveals a central insight of the course: lawyers and clients must think through some of the main foreseeable consequences of their deals by asking the

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74 McLEAN & ELKIND, supra note 68.
75 See FRITZ KROGER & MAX M. HABECK, AFTER THE MERGER: SEVEN RULES FOR SUCCESSFUL POST-MERGER INTEGRATION 1 (2000) (“A global survey of 115 transactions, conducted by A.T. Kearney in 1998/1999, revealed that 58 percent of mergers failed to reach the value goals set by top management.”). See also Why Do So Many Mergers Fail? KNOWLEDGE@WHARTON, Mar. 30, 2005, http://knowledge.wharton.upenn.edu/createdoc.cfm?articleid=1137&CFTOKEN=4140813&CFID=19505299 (“‘Studies indicate that several companies fail to show positive results when it comes to mergers,’ says Wharton accounting professor Robert Holthausen, who teaches courses on M&A strategy. Noting that there have been ‘hundreds of studies’ conducted on the long-term results of mergers, Holthausen says that researchers estimate the range for failure is between 50% and 80%.”). See also GAVIN KENNEDY, FIELD GUIDE TO NEGOTIATION: A GLOSSARY OF ESSENTIAL TOOLS AND CONCEPTS FOR TODAY’S MANAGER 68, 86 (1994) (“Deadlock. We negotiate because we face the dread of disagreement. [However,] [u]nblocking deadlock could be a victory for good sense, or a triumph of bad judgment. It depends on what we concede to get agreement. Many companies go bust because they negotiate unprofitable agreements as go bust because they cannot find enough customers . . . Fear of Deadlock. Extremely common among negotiators. Partly to do with the ‘success culture’ of open societies. Deadlock implies ‘failure’ . . .”).
76 Business people need to learn and re-learn these lessons. Inc. Magazine’s March 2007 issue focuses on deal making and discusses, inter alia, eight private equity pitfalls and ways for entrepreneurs to avoid them—many of which were present in the Bountiful Table simulation. Most of the article’s advice amounts to similar lessons (e.g., know what you want, know your alternatives, watch out for deal euphoria, beware of ceding control, do due diligence, know your weaknesses, find good advisors, and do your homework). Alison Stein Wellner, The Investors Have Come Calling, Seducing You with Multimillion-Dollar Deals, Inc. Mag., Mar. 2007, at 110, available at http://www.inc.com/magazine/20070301/features-deal-the-seducers.html.
key question, ‘what if?’ Lawyers can ask, ‘what if?’ from a legal perspective, and executives can ask from a business perspective, but often the consequences are unclear unless the two talk through different scenarios together. For example, what if sales are low, the firm needs more money to survive, and the corporate investor has a strong right of first refusal clause that effectively gives it exclusive power to put more money in? That common scenario might let the investor take control of the firm. It’s a serious but easily overlooked problem with business and legal dimensions. While experience can make it easier to spot problems like this one, young clients and lawyers can be precocious if they learn to ask, ‘what if?’

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

In the last three classes, students studied several very complex transactions. In the fourth class, we were joined by Geoff Smith, a partner at Ascent Biomedical Ventures, a local venture capital firm, and Lawrence Atinsky, who serves there as general counsel. Both men have law degrees, and both have worked on a lot of venture capital deals. Geoff and Lawrence demonstrated scenes from an investment negotiation, with one playing the venture capitalist, the other the entrepreneur. Between scenes, the two made comments about the deal and fielded students’ questions. Their demonstration dramatically showed the interplay of law and business in a major deal. It also highlighted the need to deeply understand the interests, the legal terms, the business terms, and their implications. It also dramatized the need for extra protections beyond legal enforceability, and the tendency of each profession to become myopic if it ignores the other’s perspective.

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

I gave the lawyers a choice of form contracts, as they might have in a law firm, and a partial list of drafting issues to help guide them. I gave the clients specific information about their interests, and instructed each lawyer-client team to work together closely. I told them that a part of their class participation grades would depend on their timely completion of the assignment.

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

I reviewed the students’ draft contracts before the final talks occurred, and gave light comments, without a grade, to each team after the simulation was over. The draft contracts generally showed real promise and insight. They also revealed that the law students did not understand some basic ideas about contracts in general and secured loans in particular. For
example, virtually none of the contracts contained a clause that let the lender seize the collateral on default.

There was one big surprise: one pair of clients reported that their lawyer had essentially abandoned them. I hadn’t expected serious professional responsibility issues to come up. But that surprise suggested some useful teaching possibilities for the future, which I note below. We made the best of a troubling situation, and the clients were reasonably content in the end.

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

To add realism, I had the lawyers keep careful track of the time they spent on the assignment, and had them submit formal written bills to their clients at the end of the exercise at the rate of $400/‘hour.’ Since the exercise would be an abbreviated simulation of the actual experience, I told them to count every ten minutes of work as an ‘hour’ of their time. Their bills turned out to be low. The average came to $8,000 (i.e., twenty ‘hours’ of work, or three and a third hours of actual student legal work in and out of class). Joe said an actual bill would probably be about $20,000. When I asked the clients whether they felt they got their money’s worth, a lively debated ensued.

This exercise marked the first time that any of the law students had ever drafted a contract. Since I never drafted a contract in law school either, I wasn’t completely surprised the students had no experience at it. I still find it remarkable, though, that law schools graduate students without insisting that they learn to draft contracts, especially since so many law students plan to practice business law.

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

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

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

80 Email from Richard K. Neumann Jr., Professor of Law, Hofstra University School of Law, to Seth Freeman (Jan. 26, 2007, 17:09:22 EST) (on file with author) (“Contract drafting is an elective that 20 to 70 students in each graduating class might have taken.”); see also supra notes 16–22 and accompanying text.
In the final session, we simulated a bankruptcy workout, and explored the special dynamics that arise in that rarified situation where law and business deeply intersect and the complexities of many issues, many parties, and intense time pressure require excellent team work.

I ended the course with two observations. First, as a former corporate lawyer who knows the special pressures and challenges of private practice, I felt a duty to warn the law students about the psychological and spiritual toll the profession can take. I gave them several cautionary articles, 81 and a list of books on ways to cope, thrive, and find their way. 82

For the class as a whole, I also reviewed the life cycle of transactions we’d explored—from a company’s birth and initial financing, to its struggles in litigation, its ongoing work with bankers, and its death and rebirth from bankruptcy, highlighting how key themes—especially the three key questions of the course—had applied in each case. I challenged them to put their training to full use, and to tell their future employers that they had trained to work well with other professionals on a wide array of complex business deals—which is something recruiters seek in both professions. 83

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82 I offered the following titles—which I identified but have not read—in the hope they may contain some valuable insights:

- Amiram Elwork, Stress Management For Lawyers: How To Increase Personal & Professional Satisfaction In The Law (3d ed. 2007);
- Steven Keeva, Finding Joy and Satisfaction in the Legal Life (2002);
- George Kaufman, The Lawyer’s Guide to Balancing Life and Work: Taking the Stress Out of Success (1999);
- Larry Schreiter, The Happy Lawyer: How to Gain More Satisfaction, Suffer Less Stress, and Enjoy Higher Earnings In Your Law Practice (1999);
- Ron Hogan, View from the Top: Law Firm Leaders Unlock the Secrets of a Successful Legal Career (2005);
- The Corporate Lawyer—Industry Insiders on the Successful Practice of Business Law (Georgia Mullen ed., 2003);
- Mark Merrmann, The Curmudgeon's Guide to Practicing Law (2006);
- Gerald A. Riskin, The Successful Lawyer: Powerful Strategies for Transforming Your Practice (2006); and

On important skills and topics law students may not have learned law school:

- Charles H. Meyer, Accounting And Finance For Lawyers in a Nutshell (2006);
- Charles M. Fox, Working With Contracts: What Law School Doesn’t Teach You (2002); and

83 See Telephone Interview with Igor Kirman, supra note 6 (Observing that the course can also help law students’ find jobs outside of the law. Since more and more law school graduates are taking jobs as consultants, investment bankers, and hedge fund managers, it would be useful to take the course as preparation for those positions.).
VIII. Students’ Responses

Student reaction to the course was overwhelmingly positive. The course earned an adjusted overall rating of 6.5 out of 7.0, making it one of the top rated courses for the semester. The course earned even higher ratings for its relevance to the students’ education (6.7). Students’ written comments too were very enthusiastic. A sampling:

“Fantastic class, highly recommend.”

“I would definitely recommend this class to other students and I think NYU should continue to sponsor this and other joint MBA/Law classes.”

“Great class! I recommend that you continue teaching this class. It was very valuable and very enjoyable to meet the law students. Keep up the good work.”

“Great class. Thanks. Was incredibly valuable to integrate business and law students. Brought a fresh perspective to the cases.”

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

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

IX. Lessons for the Future—Ideas for Future Improvements, and Other Courses

A. General Lessons

What is there to learn from the success of the first run of the course? First, a cross-disciplinary negotiation course can work well for law students and business students. Second, a single instructor can teach a cross-disciplinary course like this one. While the logistics and the subject matter can be challenging at times, and while it may help a lot for the instructor to know a good amount about both fields, they are manageable. Third, professional schools can and will support a course like this one once they see the strong case for it. Fourth, guest lecturers strongly enhance a course like this one, as some of the students’ written and verbal comments suggest. Fifth, a mix of active learning and lecturing works well, though I can’t say I know if there is one right balance.

84 NYU Stern Information Technology, Stern: Fall 2006 Evaluations, Graduate (Means), https://ais.stern.nyu.edu/cfe/grad/cfe06f/Means.html (restricted webpage, on file with author). Of the 220 courses NYU offered at the Business School in the Fall 2006, only seventeen courses received higher ratings (i.e., 6.6 or better out of 7.0); of these courses, eleven had at least ten students. Thus, students rated the course as among the top 10%; excluding well-rated small seminars, students rated it among the top 5%. I do not have access to comparable data from the Law School.

85 I received excellent support from Vice Dean Barry Adler of NYU Law School, Vice Dean Kim Corfman of the Business School, my management department chair Professor Joe Porac, and curriculum committee chair Professor Theresa Lant. Professors Joe Allen and Jerry Rosenfeld also gave me valuable counsel and direction.

86 I have found over the years that excellent professionals will enthusiastically participate as guest speakers if they receive an invitation a few weeks (or even a few days) in advance.
Sixth, economic theory doesn’t have to be the foundation for such a course. While I found it was helpful to touch on relevant economic ideas like TCE, the course can and does work well with another theoretical framework, as I’d suspected. I included some references to TCE in the readings and discussion, but emphasized the three questions of the course, and the Trust Substitutes framework. Other instructors may find it useful to emphasize TCE or other theories, or to dispense with theory altogether. Seventh, and perhaps most importantly for law schools, a cross-disciplinary transactional course may be able to improve law students’ readiness for practice in several ways, and so help meet the Carnegie Report’s challenge.

B. A Full Semester Version of the Course?

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

Other topics might include simulations of board decisions, merger talks, intellectual property deals, international joint ventures and other cross-border transactions, and more guest lectures by investment bankers, movie producers, bankruptcy and entertainment lawyers, judges, junior associates, small business owners, and reporters who covered the Enron story. In some of these visits, we could have students review actual transactions the speakers negotiated and let the students ask them questions. We might add a video exercise so students can see themselves working with clients and lawyers. I would particularly like to have students trade roles in a full-blow simulation so they could fully experience what it is like to be in the other’s situation. They did trade roles in the game “Sue or Settle,” but a full blown role reversal would be that much more powerful. We might include clips from movies such as Startup.com and A Civil Action. We could ‘reverse engineer’ a famous legal case or business case to see what legal and business choices happened in the early stages that led to the outcome. We could also include exciting issues of professional responsibility and ethics. One possibility: a simulation where the board wants one thing, the CEO, who has hired the law firm, wants something else, and the associate has instructions from a partner to handle the matter.

C. Finding Simulations

One of the biggest surprises—and challenges—was the shortage of good joint simulations for law students and business students. Though I scoured the Internet, checked the leading simulation publishers, and called colleagues around the country, I was only able to find a handful of simulations that fit our needs. TCE courses do use several noteworthy simulations and exercises, but although I understood them well, I found they did not fit our needs for one reason or another. Eventually, I mainly used my own simulations, along with one or two from Harvard, and one from another publisher. I invite readers to write to me and recommend others I overlooked. The apparent shortage of good joint simulations seems to

87 See supra notes 10, 11.
be the most serious limiting factor in creating a full semester course that does not follow the TCE framework. Though frustrating, this shortage need not stop us. There are many other colorful and memorable ways to teach them, such as games, demonstrations, guest lectures, and drafting assignments.

X. Other Possible Cross-Disciplinary Courses

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

Legal education must adapt. How can a lawyer truly comprehend and grapple with a complex intellectual property dispute without understanding anything about the technology at issue? What counselor can effectively advise a client about investing in China or India without understanding their particular legal structures, to say nothing of their different cultural expectations and norms? . . . The idea is to utilize the rest of the university to create a more three-dimensional legal education.88

Here are a few of the many possibilities. I offer them as a brainstorming exercise to show what is possible:

- Cross-disciplinary law-business courses on:
  - Entertainment;
  - Third World Development;
  - Intellectual Property;
  - Mergers & Acquisitions;
  - Doing business in China, India, or other Countries;
  - Other specific subjects;

- Cross-disciplinary clinical course where law and business students advise real clients in the above fields;

- Cross-disciplinary courses on complex current topics such as:
  - Global climate change (e.g., treaty negotiation and verification, in light of political science, physical science, technology, business, and law);
  - Globalization (e.g., private trade, law, and public policy);
  - Terrorism (e.g., its prosecution, prevention, and transcendence);

- Cross-disciplinary courses between:
  - Law Schools and Public Policy Schools (e.g., legislation, treaties, mass tort litigation, intellectual property policy, private and public international law, human rights, and the rule of law);

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88 Press Release, Stanford Law School. *supra* note 35 (“For example, in a course on expert witnesses, law students and students from the natural sciences work together through simulated exercises to prepare a witness to testify in a patent infringement case. New negotiation classes unite students from law, business, and engineering in exercises with “clients” as well as “opponents.” A new clinical course has law students working with medical students to address the full range of interrelated legal and medical needs of incoming patients.”).
- Theology Departments and Natural Science Departments (e.g., re ethical issues, global warming, epistemology, the nature of consciousness, and the history of science and religion);
- Business and Public Policy Schools (e.g., re social entrepreneurship, fund raising, globalization, trade policy, global warming, development, and sustainable development);
- Film, Art, Law, and Business Schools (e.g., a cross-disciplinary Entertainment commerce course)\(^89\);
- Engineering, Law, and Business Schools (e.g., a cross-disciplinary technology course)\(^90\);
- Medicine, Law, and Business Schools (e.g., a cross-disciplinary health care course)\(^91\);
- Medical, Nursing, and Pharmaceutical Schools;\(^92\)
- Art Schools and Science Schools (e.g., re beauty in nature and the nature of beauty, the psychology of art, art and medicine, literature and neurology of speech, physiological responses to art).

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

The potential for cross-pollination is so great that it might even be worthwhile for a university to explicitly encourage it. One way might be to assign an officer to bring different schools together to develop joint courses. Another might be to offer incentives to departments and instructors to develop joint courses themselves. Still another might be regular statements of support by the President or the Provost. Yet, as my own experience suggests, the idea for a joint course can begin with a single instructor.\(^93\)

\(^89\) This could include simulations and cases about developing medical products and hospitals to handling class action suits.
\(^90\) This could include film distribution deals and artists deals, to intellectual property disputes.
\(^91\) Could include simulations and cases about developing high technology ventures to intellectual property issues.
\(^92\) See R.J. Green et al., *Interprofessional Clinical Education of Medical and Pharmacy Students*, 30 MED. EDUC. 129 (1996) (finding that the course has worked well for three years).
\(^93\) Here is one piece of political advice for tenure-track instructors who wish to begin a cross-disciplinary course. As a professor of negotiation and conflict management, I’m familiar with something called the ‘going native’ problem, where a group decides one of its members has abandoned it because he spends too much time with another group. ‘Oh, that Bob,’ colleagues might say half-kiddingly, ‘he’s not really a law professor, he’s just a frustrated business professor.’ To pre-empt the going native problem before it arises, it may be helpful to stay in good communication with colleagues back home by fully and actively participating in school matters. It may also help a lot to win their support, in part by asking them to contribute to the course’s design and delivery. Another way to defuse the going native problem may be to win and keep strong support for a joint course from deans and other administrators. One way to do that may be to use points I’ve raised in this article. It may also help to show what the school loses if it doesn’t offer such a course, and to show how contact with other schools directly helps the interests of the school (e.g., increased student interest and engagement, a reputation for valuable innovation, better alumni support, and a re-invigorated research agenda). Given the enthusiastic support that top schools and practitioners have shown for cross-disciplinary courses in recent years, the case is a strong one, as I’ve tried to show. With some attention to the going native problem, it should be possible to do excellent things with other schools and maintain or even enhance one’s academic reputation back home.
Conclusion: Implication for Legal and Business Education, and Higher Education
Generally

The popularity and early success of Negotiating Complex Transactions with Executives & Lawyers suggests that the course and other like it have a bright future. More generally, cross-disciplinary courses can help our schools fulfill their missions to equip students with educations that matter. They can help universities enhance their work, often without the cost and expense that other active learning approaches can involve. They can also deepen the sense of true academic community and ferment that are implicit in the word, ‘university.’ There is an almost endless number of ways to bring different groups of students together in the classroom. In this article, I’ve discussed a way to do that for students of the two professions I know best. I offer it as one example of what is possible.

As I’ve also tried to show, a cross-disciplinary course can be a particularly meaningful, realistic way to help students acquire skills. This is important news for law schools as they seek better ways to prepare students for private practice, and so meet the Carnegie Report’s challenge. I’ve focused here on transactional skills training, in part because it remains a crying need in most law school programs.

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

94 See LAW SCHOOL SURVEY, supra note 32.
95 See supra notes 6, 32, 41, 83 and accompanying text for observations about the advantage such training gives law school graduates in the workplace.
I. How Many Instructors?
Can one instructor teach a cross-disciplinary course? It might be argued that a cross-disciplinary law and business course requires a team of instructors—one with a legal background, and the other with a business background—to competently teach the two groups. Certainly a team approach can work well, especially if the instructors talk through the course well in advance, plan each session together, and complement each other’s method in the classroom. Vanderbilt University notes that several of its cross-disciplinary courses in its well-established Law & Business curriculum are co-taught by faculty from the Law School and the Owen Graduate School of Management. I have co-taught joint events with a number of law professors over the years, and found that the students and we have all enjoyed it a lot. Yet, while it can demand more of an instructor, it is quite possible to successfully teach a cross-disciplinary course alone, as other instructors and I have found. One advantage of doing so is that it makes the logistics of the course that much easier in some ways, since the instructor does not need to coordinate the class with another instructor. Also, the single instructor can come to symbolize the idea that the two perspectives of the course can be integrated. Perhaps the most compelling reason for a university is that hiring a single instructor may save the university save money, even if it pays the instructor somewhat more to compensate her for the extra demands of the course. It is probably best to have an instructor who has excellent experience working with both fields. That said, an instructor who has less experience than that may still be able to lead a good cross-disciplinary course if she occasionally brings in well-chosen expert guest speakers to fill in the gaps, and facilitates the discussion well. She will, though, at the very least, need a working vocabulary of each field, and a basic understanding of the overall subject matter.

II. Where & When? Choosing a Site, and the Problem of Distance
Two other threshold questions face a university that wishes to offer a cross-disciplinary course: where should the course meet, and when? In my case, the decision was simple—everyone agreed we would hold the course one evening a week at the Business School, which is four blocks away from the Law School. Both the location and the time slot were convenient to students at both schools. At other universities, though, the schools may face logistical challenges. What can a university do if the schools are long distances apart, or if the schedule of one school conflicts with that of another? To deal with the problem of timing, Stanford Law School has taken the radical step of shifting over to a quarterly system, like that of the rest of the University, to make it easier for law students to work with students
in other schools.\textsuperscript{99} Certainly, this step dramatically illustrates the value Stanford sees in cross-disciplinary education. I don’t believe, however, that it is necessary for a university to go to such lengths to get the benefit of cross-disciplinary education.

While schedules may conflict during the day, evenings may be easier, as we found. Student interest may even be strong enough to justify offering a course at unusual times, such as Saturday morning, or during an intensive period. Another possibility is to schedule the course so that one school sees it listed, say, from 9–12 and the other from 10–1, and then hold the course from 10–12. This approach might be particularly useful if students from one school will need time to travel to the other school. If schools are far apart, another possibility is to hold the class at a site midway between them, or to have the class meet half the time in one site and half in the other. Special transportation arrangements might help too, such as shuttle services or discounts on subway and bus fare.\textsuperscript{100} Another way to overcome logistical hurdles might be to use distance learning, as at least one university has done successfully.\textsuperscript{101} These last ideas would, though, increase the cost of such a course.

\textsuperscript{99} See Press Release, Stanford Law School, \textit{supra} note 35.

\textsuperscript{100} For the idea of a subway discount, I have to thank Chris Bellerjeau, the director of Columbia Business School’s Information Technology Group.