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### Research Instruction and Resources in the Transactional Skills Classroom: Approaches to Incorporating Research Instruction into Transactional Skills Courses

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# RESEARCH INSTRUCTION AND RESOURCES IN THE 'TRANSACTIONAL SKILLS CLASSROOM

## *APPROACHES TO INCORPORATING RESEARCH INSTRUCTION INTO TRANSACTIONAL SKILLS COURSES*

Lori Johnson<sup>1</sup>, Jeanne Frazier Price<sup>2</sup> & Eric H. Franklin<sup>3</sup>

### **Lori Johnson:**

To answer the important question of whether students really need us to teach them research in the transactional context, the three of us from UNLV, myself Lori Johnson, my colleagues Eric Franklin, and Jeanne Price are going to talk about designing and creating research assignments. Students can use various electronic legal research tools to complete these assignments. I want to start by giving a little introduction to the topic, and outlining what we're each going to address. Then, we'll each explain how we approach the pedagogy of teaching research, and walk through the creation, assignment, and assessment of research in the transactional drafting course.

I'm going to provide background and then discuss common law research in the transactional context. Eric is going to talk about local, state, and federal statutory research, which is what he focuses on in his clinic, and then Jeanne is going to talk about administrative and regulatory research which is what she focuses on in her drafting and research classes.

I will say by way of framework that at UNLV we're lucky to have a nine-credit, three-semester writing program, where we teach six credits in the first year, Lawyering Process I and Lawyering Process II. These courses consist of objective and persuasive legal writing and research. I teach in that program, and we also teach a third semester where students can choose from a menu of three-credit seminar style courses on any number of topics. These include: judicial writing, law office drafting, advanced advocacy, and transactional drafting, which I teach. Jeanne teaches a specialized transactional drafting course in the securities area, which is also part of that program.

So we get students who come to us with at least two semesters of basic legal writing and research skills. However, I don't think students can ever get enough research instruction during law school. So I have made research a part of my transactional drafting course. Part of my pedagogy requires them to research at least one transactional issue during the semester, usually at least one type of contract provision.

I'd like to give a little bit of background and then talk about how I accomplish this goal in my transactional drafting course. Now, I want to start by talking about the textbook resources available for transactional research instruction, and then discuss how I define my pedagogical goals for

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transactional research assignments. Then I'd like to talk about how you can create this sort of assignment. That's what my handout shows. It's a sample of one of the assignments I give midway through my three-credit transactional drafting seminar.

This problem with designing research assignments started for me because when I first began teaching transactional research. I used Tina Stark's book<sup>4</sup> like many of us do. Or perhaps we use Sue Payne's amazing book,<sup>5</sup> or Richard Neumann's book on transactional skills.<sup>6</sup> However, very few of these books have any sort of meaty instruction on how to do research in the transactional context. So we assume that students have a background in research so they know how to research, and we don't need to teach them that in an upper level course. However, there are differences and nuances to researching in the transactional context that are not visible to the students from the face of our typical drafting textbooks.

I think it's hard because in Lawyering Process I and II, and in litigation writing, it's very easy to give a prepackaged research assignment to a student. There are CALI lessons, and there are prepackaged research assignments in many of the textbooks. There is also Amy Sloan's research textbook and the related workbook.<sup>7</sup> There are many different resources to provide students with nice, prepackaged research assignments when they're first starting out. Then through the course of the semester in a litigation writing class, the research flows from the writing assignments we provide. We give them a memo, we give them a motion, we give them a brief, and they have to research the law that underpins that particular piece of writing.

It's not as obvious to the students how or why they might need to research something from the transactional perspective. They think, well, I just need to put these clauses in the contract and make sure they're in plain English. I need to make sure they're not ambiguous. They wonder what it is that really requires research. It doesn't just pop out on the face of the contract drafting assignment. Maybe Eric is a little luckier in the clinical context when a client raises a question.

In reality, that is where transactional research problems come from; a question raised by a client or a particular clause that a client wants you to include in a contract. The client wants a clause to be broad, or they want that clause to be narrow, and then you start to think about how to make a clause

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<sup>4</sup> TINA L. STARK, *DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO* (Wolters Kluwer Law & Bus. 2d ed. 2014).

<sup>5</sup> SUE PAYNE, *BASIC CONTRACT DRAFTING ASSIGNMENTS: A NARRATIVE APPROACH* (Wolters Kluwer Law & Bus. 2011).

<sup>6</sup> RICHARD K. NEUMANN, *TRANSACTIONAL LAWYERING SKILLS: CLIENT INTERVIEWING, COUNSELING, AND NEGOTIATION* (Wolters Kluwer Law & Bus. 2013).

<sup>7</sup> AMY E. SLOAN, *BASIC LEGAL RESEARCH TOOLS & STRATEGIES* (Wolters Kluwer Law & Bus. 5th ed. 2012).

broader or narrower, and what that clause should look like. It's hard in a simulation class, where there is no live client, to have that research problem pop up organically the way it does in a typical transactional deal process.

In my general transactional drafting course I have a pretty broad base to start with, so I choose my research assignments based on the type of contract I'm teaching that semester. I'll choose one type of clause that I want to have the students research, and I set up the facts so that during a simulated negotiation session the students come up against this idea that a client wants a specific clause drafted in a specific way. The students realize that they need to think about that and figure out what that clause might look like.

I'll provide a bit more detail on the logistics in a moment, but that's the background of what I try to simulate. But, of course, the students always want to have reading about any skills we expect of them. They want to read something about what they're supposed to research and how to do so. Students think that if we're going to assign them transactional research, they need a book titled "Transactional Research," or a handout, or some instructor-prepared materials. Students want something that tells them exactly where to go, exactly what to look at, and the process to take.

When I teach litigation writing, I assign Mark Osbeck's research textbook<sup>8</sup> which I absolutely love. It is a research process book. It's not necessarily a technical how-to, rather it lays out the processes of litigation research and it's really helpful. I've not found another book like that for use in the transactional context, but I will review for you the options in some of the textbooks that are out there, which provide guidance about transactional research. However, most don't provide that clear "how-to" that the students are really looking for, so I tend to use in-class instruction and assignments to capture that.

For example, Sue Payne's book does a really good job of talking about how to find a precedent contract, and how to use a precedent contract.<sup>9</sup> Ross Guberman's book, *Deal Struck*, also does a really good job with that issue.<sup>10</sup> It discusses finding precedent and adapting precedent to your client's particular needs.<sup>11</sup> Further, Richard Neumann's book does a wonderful job of breaking down the creative process of coming up with the contract into six steps.<sup>12</sup> One of the steps that he identifies is the preparation stage, which requires gathering

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<sup>8</sup> MARK K. OSBECK, IMPECCABLE RESEARCH: A CONCISE GUIDE TO MASTERING LEGAL RESEARCH SKILLS (Thomson/West 2010).

<sup>9</sup> PAYNE, *supra* note 2, at 69-74.

<sup>10</sup> ROSS GUBERMAN & GARY KARL, *DEAL STRUCK: THE WORLD'S BEST DRAFTING TIPS* 76-77 (2014).

<sup>11</sup> *Id.*

<sup>12</sup> NEUMANN, *supra* note 6, at 17-18.

and evaluating information and raw materials such as the relevant law and facts.<sup>13</sup>

So now we know students need to gather relevant law and facts in order to prepare a contract for the client. But they still don't have that "how to." The best and closest thing I've ever been able to find is a book that is marketed to paralegals, called *Contract Law for Legal Professionals* by Andrea Yelin.<sup>14</sup> That is another book you can consider assigning as background for students. It's geared towards paralegals and it tells them, you need to research the substantive law related to this type of provision to figure out what might make it enforceable.<sup>15</sup>

The Yelin book also discusses the use of forms, but notes that you would need to find and edit the form.<sup>16</sup> So this book gives students the three-step process that they want.<sup>17</sup> I'd be curious at the end of the presentation to hear what, if any, other sources anyone uses to teach transactional research skills. I have a bibliography of all the sources I've talked about that we'll put up at the end.

Then, my next step in designing a transactional research assignment, after identifying possible background reading, is to define my pedagogical goals for the assignment. I want the students to understand the basis of enforceable contract law provisions. I want them to understand that you can't simply create a provision of a contract and just hope that it's going to be enforceable. Rather, you have to do some homework to know what the law of your jurisdiction says about those types of clauses and when and if they will be enforceable.

So I have a two-fold approach to achieving that pedagogical goal. I want the students to review the law of their jurisdiction to determine the highlights or hallmarks of an enforceable provision. Then, as a secondary pedagogical goal I also want them to be able to find and edit a form of that provision using some of the electronic tools available.

So how do I accomplish those pedagogical goals? As I mentioned earlier, I set up my course so a client question requiring research comes up during a mock negotiation session. The very next class I teach transactional research, and we go through the electronic tools available to the students, covering all of the different resources the students can turn to for researching basic case law and statutes. The students know how to do that, but I also give them more guidance on how to find form contracts, how to find sample provisions, how to use the guidance that's given in some of the online deal-

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<sup>13</sup> *Id.*

<sup>14</sup> ANDREA B. YELIN, *CONTRACT LAW FOR LEGAL PROFESSIONALS* (Prentice Hall 2011).

<sup>15</sup> *Id.* at 232-34.

<sup>16</sup> *Id.* at 230-32.

<sup>17</sup> *Id.* at 230-34.

maker tools. We also discuss how to look at a treatise, and other relevant secondary sources.

I lead students through these basic research skills using a different type of provision than the one I've assigned to them. I pick a different type of provision, and model the research skills using that provision. So if I've assigned a covenant not to compete provision to the class, I might choose to model research of arbitration provisions for my example. I then walk them through how we figure out in our jurisdiction what makes an enforceable arbitration provision and how to find sample arbitration provisions.

I hand out a worksheet to them after our research class (the same one that I handed out to you as a sample), and I tell the students it's their turn to go out and research this particular provision for our client. To create this assignment I think about it during the planning phases of the semester. I use a different type of contract almost every semester. I've use employment contracts, sale of goods, asset purchases, and others, mostly based on contracts I've prepared in practice. I'm considering using a lease assignment in the future, and I also think that would work quite well.

Depending on which type of contract I'm having the students work on, I think about an aspect of the contract that could be negotiable, and which could be the basis for having the students research enforceability. Boilerplate is usually a pretty good place to start. That serves two pedagogical purposes. First, it forces the students to do some research; second, it forces them to recognize that boilerplate is not just boilerplate. Rather, these are "general provisions" as Tina Stark calls them<sup>18</sup>, and we need to be attentive to them and we need to research them. Therefore, using arbitration provisions, for example, is a really good way to find a standardized provision, a provision that you can make either broad or narrow, and require students to research how to tailor that for a client.

I prepare by researching the controlling law in my jurisdiction if I'm not already familiar. Thankfully, I practiced in Nevada for almost four years before I started teaching at UNLV. I also practiced in Illinois, so I typically will either use Illinois or Nevada law because I know it well enough to give an informed discussion of it, and well enough to know what's going to work. I like to pick a topic that's relatively narrow. Eric probably doesn't have that kind of ability in a clinical setting but in a simulation setting, I like to pick something that's got a nice body of law, enough for the students to work with, but not too much for them to be overwhelmed. I'll sometimes have one of my TA's give the assignment a run-through, to make sure that it's not overwhelming. Then I'll design the research assignment as part of the overall contract I'm using that semester.

I typically assign one contract, but I'll divide the class into two sides. The students prepare a draft for their side, meet to negotiate, and during the

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<sup>18</sup> STARK, *supra* note 4, at 217.

negotiation session the issue will come up that they'll need to research. Then, as mentioned, I teach research skills in the next session, and hand out the research worksheet. The worksheet serves two purposes, it confirms that the students are all on the same page as to what exactly they need to research, and it gives me the ability to provide assessment.

Next, the students will turn the worksheet back in, listing the sources they found, and where they found them. Reviewing the worksheets gives me a sense of their research process. I can determine whether the students are all stuck on one particular research engine, if they are not broadening their horizons to look at Bloomberg, to look at Lexis, to look at PLI, to look other places. Then we can go over the outcomes in class.

You can prepare this sort of assignment in any number of ways. I usually come up with my own assignments based on my practice. But if you use Tina Stark's book or Sue Payne's book and you have a prepackaged contract assignment, it is quite easy to add something like this in. You can simply add an additional provision to the prepackaged contract you're having students work on.

More importantly, this takes less than two classes worth of time, which for us is about 2 hours, and that's including a portion of the negotiation session. I'll spend an hour and a half class session teaching them about the research and then a little portion of the negotiation day is geared towards this research assignment, so it's less than two classes out of the 24 class sessions. I've found this amount of time sufficient to make it substantive for the students, and compatible with assessment.

As you saw from the assignment that I handed out, recently I had students research a covenant not to compete in Nevada. They had to examine at Nevada law on this topic. The best students would've found a Nevada statute stating that non-compete agreements have to be reasonable in scope and duration. They would've then realized that "scope" and "duration" are terms that require definition, leading them to look at the case law and the regulations.

Hopefully the students would've found at least two Nevada Supreme Court cases providing parameters around what's reasonable for geographic scope and time duration. Those cases provide that two years is the outside limit on time duration, and that the geographical territory has to be somewhere the employer created customer contacts and good will, or is taking concrete steps to set up operations. For this example, the best students would've used Practical Law through WestlawNext, which has a really great treatise about covenants not to compete. Hopefully, the lesson about broadening their research sources would stick, and students would remember these resources when out in practice.

The next step for the students would be to locate a sample provision. For purposes of this mid-semester research assignment, I simply have the students provide me an unedited sample. The editing becomes part of their final contract assignment, where they would drop in the provision, and edit it to

match their client's goals. But for purposes of this interim assignment, the students could come back with something they find on Bloomberg Law DealMaker, for example.

Here, my students were able to find a Nevada form provision from a contract by Las Vegas Sands Company provided on Bloomberg. If you're familiar with Las Vegas, the Las Vegas Sands Company owns the Venetian. In the Las Vegas Sands Company restrictive covenant the students located, the employer only put a one-year time limitation, so the students then knew that from their research we could probably push that to two years.

The Las Vegas Sands Company sample provision also followed the geographic restriction from the case law because it listed all the jurisdictions where Las Vegas Sands Company has casino operations: Nevada, the Macau Special Administrative Region of China, Pennsylvania, Japan, Caribbean, etc. So the students would see how that limitation works in practice, and later edit it to match with wherever the simulated employer in my assignment had businesses or goodwill, for the final contract.

Creating this type of assignment can be a really easy thing to do, so don't be intimidated by putting a research assignment somewhere into your contract drafting course. Even in a broad, general contract drafting class, it's really doable and you can create it based on your own experience in practice. If you've have had transactional experience, pick a provision that you struggled with or that you worked on and let the students run with it.

On the screen now is the student outcome from a sample final contract. This is what the best student would come up with. My problem that semester was an employment contract for a snowboard company competing in the X Games. The students would provide a two-year duration, covering anywhere where snowboarding training is regularly hosted, so it would give that geographic scope. I don't know if this one would really be enforceable it's so broad, but they were supposed to try to push it to the outer limits so this is what I was happy with.

So I'll turn it over to Eric to talk about statutory research in his clinical class.

**Eric Franklin:**

Thank you. I run a small business and nonprofit legal clinic, and one of the client matters we often have to deal with is forming a nonprofit in anticipation of obtaining tax-exempt status.

As a clinician, I'm a devotee of the nondirective teaching method and so my instinct is to say to the student, "Here's your client and this is what they need. What are you going to do?" The student then goes off for a week and when they come back, they have some answers. Usually, they've figured out that they need to look at federal and state law. But they almost never think about local law. And although I say "almost never," in my experience, they've



never, ever looked at local law. But this is okay because this is a teaching moment and we can sit down one-on-one and I say, “Good work identifying the federal and state interests. Who else might have an interest in this entity? Who else might be worried about what they’re doing?” Eventually, the students realize that they need to think about municipalities, cities, and counties.

But this approach doesn’t work in my current clinic. The problem is that I moved from a one-year clinic to a semester-long clinic. Thus, we have to get to the substance of the matter much more quickly and the nondirective model doesn’t lend itself to a very efficient teaching. So I’ve put together a more directive simulation that provides a roadmap through the formation process. That’s what I’m going to present to you now to show you how I get students to go from federal to state to local laws, not only looking at statutes but also looking at kind of quasi-legal resources that practitioners know to look for but the students don’t often think about.

The simulation requires students to form a nonprofit entity that plans to apply for tax-exempt status. I have the following learning outcomes that I hope to get out of this simulation:

- Gain comfort with accessing federal, state, and local statutes
- Appreciate the interaction among federal, state, and local statutory law
- Ability to apply facts to statutory requirements
- Learn to evaluate state-provided forms
- Recognize difficulty of lay person trying to form an entity

With those learning outcomes in mind,

Your client, *Engineering a Better Tomorrow*, would like to form a nonprofit organization and apply for tax-exempt status. The mission of *Engineering a Better Tomorrow* is to provide programs for homeless youth, including providing shelter and food, educational courses to help the youth go back to school, information sessions regarding resources for homeless youth, and help obtaining legal benefits. The organization will be located at 2250 Las Vegas Boulevard North, North Las Vegas, NV 89030, and its board of directors will be comprised of the two founders, Melissa Smith and Yesenia Rodriguez, and three homeless youth to be determined.

Finally, I provide the following roadmap and resources:

- Nevada Revised Statutes 76.020; 82.006-82.041; 82.081-82.116; 82.193-82.201; 82.211; 82.231; 82.382-82.392

- The Nonprofit Corporation formation packet provided by the Nevada Secretary of State office<sup>19</sup>
- The Southern Nevada Regional Business License Jurisdiction Locator<sup>20</sup>
- IRS's Public Charity Sample Organizing Documents<sup>21</sup>
- North Las Vegas Municipal Code Chapters 5.02.001; 5.02.020
- City of North Las Vegas Community Development & Compliance FAQs<sup>22</sup>

If this were more nondirective, I might have said, "Where are you going to look? How are you going to figure this out?" But as I said, the one-semester timeline means that students need to meet with their clients right away, and so I need to get them going as soon as possible. This is why I provide this roadmap and these resources.

The first step on the roadmap points the students to the applicable state statutes. Most students would've found the state statutes without my help. They know that states make laws and they're ready to look for that, but I provide them the ones that they actually need to read and as we go through the fact pattern, you'll see that it gives them little wins along the way to keep them encouraged. I also provide a nonprofit corporation formation packet that the Nevada Secretary of State provides. This form appears to promise that if you fill this out successfully you become a nonprofit. I also provide the Southern Nevada Regional Business License Jurisdiction Locator, which is something most students would never think to look for. The issue is that there are number of municipalities in the Las Vegas area. Indeed, Southern Nevada provides a nice educational template, because we have a billion different municipalities all vying for the same general geographic area. At any given moment, you don't know if you're in Clark County, Las Vegas, North Las Vegas, Henderson, etc. It's probably a lot simpler where you are, but I'm sure you still have multiple municipalities that you deal with.

I also provide the IRS sample document that provides some of the provisions that they'd the IRS requires for tax-exempt status. Although providing the Municipal Code of North Las Vegas kind of tips my hand as to which municipality's laws apply, but again, this is a very directive simulation.

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<sup>19</sup> NONPROFIT CORPORATION PACKET, <http://nvsos.gov/sos/home/showdocument?id=884>.

<sup>20</sup> THE SOUTHERN NEVADA REGIONAL BUSINESS LICENSE LAUNCH PAGE, <http://gisgate.co.clark.nv.us/gismo/apps/jurisdiction/app/index.html>.

<sup>21</sup> SAMPLE ORGANIZING DOCUMENTS, PUBLIC CHARITY, <https://www.irs.gov/charities-non-profits/charitable-organizations/sample-organizing-documents-public-charity>.

<sup>22</sup> COMMUNITY DEVELOPMENT & COMPLIANCE COMMON QUESTIONS, [https://www.cityofnorthlasvegas.com/departments/community\\_development\\_and\\_compliance/business\\_license/BLFAQ.aspx](https://www.cityofnorthlasvegas.com/departments/community_development_and_compliance/business_license/BLFAQ.aspx).

And finally, I point the students to an FAQ page put together by the City of North Las Vegas.

Before they start this simulation, they've read Publication 557,<sup>23</sup> which gives an overview of tax-exempt entities as well as the chapter in Alicia Alvarez and Paul Tremblay's book, *Intro to Transactional Practice*,<sup>24</sup> which gives an overview of the formation process in broad terms. So they have a general idea of what they're supposed to do.

Learning Outcome Number 2 is appreciating the interaction of these sources, and I will point out the interactions as we go through the facts because they interact rather poorly, and it's good for the students to appreciate that.

Next, the students must apply the facts. The very first thing on the list or the roadmap is an exemption for the state business license. Like many state statutes, it is not written well, but if the students read closely and carefully they'll learn that they have good news for their client. The first thing they learn is that the client doesn't need to get a state business license. That should make the student feel good.

The next thing the students encounter is also a very encouraging statute. It says that in order to form, articles of incorporation must have certain specific provisions and cannot have certain words in them. This is a very straightforward statute, and it helps encourage the students. Again, I like to pepper my simulations with little victories for the students to buoy them before they get to the more complex stuff.

Next, they encounter the Charitable Solicitation and Registration Requirement. Because this is referenced in the Alvarez and Tremblay book, the students should still feel pretty good about themselves right now. The next statute describes board member qualifications. This is also a fairly straightforward statute.

The next step is for the students to visit the Business Jurisdiction License Locator. I provide the URL, which sends the students to a webpage that looks like nothing that they're probably used to seeing. They're asked to enter the client's address to find out what jurisdiction governs. And this is the first step where I think the students might feel a little uncomfortable. They're likely thinking, what am I doing on this webpage? It doesn't even have a .gov website. Why am I here? What is going on?

Hopefully they see the connection when the simulations asks them to look at the municipal code. When they get there, they learn that the local definition of "business" does not explicitly exclude nonprofit activity. It says "business" means any commercial activity ... for the purpose of gain, benefit, or advantage either direct or indirect with the principal objective of livelihood

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<sup>23</sup> TAX-EXEMPT STATUS FOR YOUR ORGANIZATION, <https://www.irs.gov/pub/irs-pdf/p557.pdf>.

<sup>24</sup> ALICIA ALVAREZ & PAUL R. TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE (2013).

or profit through repetitive means.” On its face, I think we could all make a pretty argument that the definition of “business” does not include nonprofit organizations. It sounds like we don’t need a business license in North Las Vegas. But when the students go to the last bullet point on the roadmap, they find an FAQ page that says that while nonprofits do not need business licenses, they must register with the City of North Las Vegas. At this point the students have left the statutory world and they’re being led down this wacky path through the North Las Vegas municipal code. Further, the FAQ says that you need to have 501(c)(3) status in order to register, and if you don’t register, you will be treated as a for-profit business for licensing purposes. So this, after all the good news of the first couple steps of the roadmap, is all of a sudden some bad news for the client. And hopefully the students put this together as they apply the facts.

Learning Outcome Number 4 is the evaluation of state-provided forms. If you go to the Secretary of State’s website to form a nonprofit, you’ll find what appears to be a very simple, very user-friendly process. You click on a button, a fillable form pops up, and it’s very exciting. The website says if you submit this form with 50 bucks, you’ll get your nonprofit organization. All of that is true, but the form is lacking. It doesn’t, for example, require or leave any room for any of the IRS-required provisions. It also doesn’t permit any reference to any attachments. And so this creates a bit of a conundrum for the students. What looks like a fairly definitive form to every reasonable person (other than a lawyer), one that you should be able to rely upon, will actually lead you astray.

What I’d really like the students to appreciate is how difficult this is for clients. Not just the misleading form, but also some of the problems with the statutory provisions. First, the client cannot use their chosen name because “engineer” is one of the prohibited words for a nonprofit corporation. Further, they may not be able to use their desired “homeless youth” board members because directors must be at least 18 in Nevada and must also provide an address. These are all difficult issues that the students run up against as they go through this assignment. After the students draft the formation documents, they are asked to prepare for a client counseling simulation where they are going to deliver the good and bad news to their clients.

This simulation has proven very successful. I measure success by the fact that when the students are required to form organizations for their clients, such as LLCs or corporations, the students always remember to consult the applicable local codes. I must admit that it still kind of hurts me to provide such a directive roadmap, but the simulation is effective. If we have time I’d love to hear how other folks in the room teach, especially how to research local codes, but I’ve already run up against my time and I’ll hand it over to Jeanne.

**Jeanne Price:**

Good afternoon. I'll begin with an anecdote. In my youth, I practiced corporate and securities law, and, as many of you know, the mother of all Securities and Exchange Commission regulations is rule 10b-5. It is a regulation that has been around since the 1930s and it is sweet, simple, short, and very effective. Rule 10b-5 has been put to good use in nearly all of the big anti-fraud securities cases and has found many illustrious victims from Martha Stewart and Bernie Madoff to the Enron scoundrels.

Imagine my surprise when, quite a few years ago – at a time when books were still used to do research – a smart, third year law review student approached me with Title 15 of the U.S. Code in his hand. Title 15 includes the securities laws. The student was frustrated and annoyed and claimed that there was something wrong with his copy of Title 15 – rule 10b-5 had somehow been omitted.

That remark always seemed to me to crystalize much of what I think about law students and administrative law authorities. Students struggle to understand the most basic and important of those authorities – the regulation. They have few occasions in law school to interact with regulations and, even when they do, the focus is on the substance and not on the nature or use of the authority.

So, on the one hand, there's far too little understanding of the nature of even the most basic of administrative authorities – the regulation. And, on the other hand, there are far too many types of other administrative authorities that students never interact with in law school. As we know, in addition to regulations, every administrative agency – be it federal or state – issues a panoply of orders and rulings and notices – documents of all ilk and of very different usefulness and strength.

I teach an upper level course on advanced drafting and research in business contexts that tries to address the problem of too little and too much. My goal is, first, to give students a strong foundation in understanding regulations – what they do, how they come into being, how they relate to statutes and other types of authorities. That understanding of the regulation as an authority could and should translate to other domains – be they environmental, banking, labor & employment, etc. Second, I hope to introduce students to a variety of other administrative authorities – apart from regulations – and help them develop expectations about the types of authorities that exist in some business contexts. Although these other types of administrative authorities are more agency specific than the regulation, there are some generalizations that apply across domains.

If our problem is that there's too little understanding and too much authority, then our perspective is that all of these authorities can be useful in structuring a transaction or advising a client. In a transactional practice, we're often asked not to answer a specific question or find a particular authority, but,

rather our job as attorneys is to structure a transaction – usually through researching the law and then drafting documents in such a way that our clients realize benefits and other consequences that they expect. In a transactional setting, we are planning for the future and trying to reduce uncertainty.

These many administrative authorities serve as the bricks and mortar that we use to create and maintain a structure that meets our clients' expectations. So, students need, first, to understand the relative weight of administrative authorities. They need to know what authorities must be followed and what authorities are useful as guidance. They need to know that just because an authority has no precedential value does not mean it is not useful. They need to understand how to balance different types of administrative authorities and how to reconcile contradictions among authorities.

Students also need to know how to read and understand both statutes and administrative authorities. They need to develop expectations about the framework of a statutory and regulatory scheme – how there's often a general rule, definitions of terms used in the rule, exemptions from the rule, and provisions on the consequences of compliance and non-compliance – and students need to understand what parts of the regulatory scheme are important in different contexts.

My approach is to focus on three areas of law – corporate, securities, and tax – in that order – in the context of two real companies and a fictitious one. The trick is to find a public company and an about-to-go-public company that have some appeal, that have interesting businesses, and that have been in the media. I want to find companies that are well funded, well managed, and well represented. Both the newly public company and the about-to-go-public company will have a wealth of documents that are required to be filed with the Securities and Exchange Commission. Those filings illustrate securities regulations in action, and, as an added bonus, the required appendices to those filings include a company's articles of incorporation and bylaws, as well as material agreements – like employment contracts – entered into by the company. These often offer examples of excellent –and, perhaps, sometimes not so excellent – drafting and compliance, as well creative and effective lawyering. The public companies are fun to watch as well from a business perspective – what happens after a company goes public? Does the stock go up or down? Do the insiders cash out after a decent amount of time? Are there subsequent offerings?

The about-to-go public company can illustrate the registration process – once an initial filing is made in a securities context, the SEC engages and corresponds with the company, requiring it to amend its filings and offering documents. All of that correspondence and those amendments are available on the SEC's website and often not available on commercial services, and they offer examples of the kinds of documents transactional lawyers draft.

The fictitious company is one that I usually find on a crowdfunding site like Kickstarter or SeedInvest, embellished with a history and characters that I invent. We use this company as the client throughout the semester. Students draft corporate, securities, and tax documents that will help accomplish that client's business goal.

The other figure I keep in my back pocket throughout the semester is Steve Cohen. For those of you who don't know him, Mr. Cohen is a hedge fund manager billionaire who has engaged in some especially problematic securities practices. He also buys and sells a lot of art, which becomes interesting in the tax part of the course. While Mr. Cohen has never been indicted, many who work for him have not only been indicted but convicted. There are documentary films and ongoing stories in the media about these individuals—whether they're going to prison, getting out of prison, or rebuilding their lives after prison. It's a modern day morality tale—one that's interesting and entertaining and that illustrates what can happen when either greedy or negligent lawyers and business people fail to follow the rules.

I expect students to read mainstream business media throughout the semester. They are required, first, to make one post on a discussion board each month that relates to something they read in popular business media and, second, to comment on someone else's post. I hope that the students will relate their posts to something we've discussed in class and identify the authority that applies to whatever is at issue.

Each student is also required to make a five to ten-minute presentation to the class on a research resource. I provide a list of resources to the class that includes both expensive online commercial resources and publicly available resources. Presentations are timed throughout the semester to correspond to either the corporate law, securities, or tax portions of the course.

My plan in the class is to lead students through research and writing exercises that build upon each other so that by the final assignment students have some facility in identifying, reading, and writing about statutes, regulations, and a range of other administrative authorities. These exercises take place in the context of structuring a transaction in such a way that the client realizes the benefits she expects and avoids potential pitfalls. In each case, students are drafting documents for our fictitious company.

The first assignment requires careful reading of a corporate governance statute and then careful drafting of part of a corporate governance document. Students get used to being precise in their language and reading a statute very closely and carefully.

The second assignment follows several classes on both administrative practice and procedure—the authority of the agency in adopting regulations and how regulations are promulgated and published—and on the substance of securities laws—their policies and approach and the process triggered when a company decides to offer its shares of stock for sale. The second assignment requires students to wade through the morass of regulation governing a public

offering. In the research component of the assignment students determine what rule applies to a particular fact situation and determine what must be disclosed and described in an offering document. In the writing component they draft the paragraphs that disclose the facts in compliance with applicable regulations. By the time the second assignment is submitted, students will have looked at many SEC filings and seen both good and bad examples of the kinds of disclosures made.

In each of these first two assignments, the style of writing and approach is quite different. The first assignment involves drafting a governance provision—it's very similar to drafting legislation. The second assignment focuses on describing a transaction in a way that satisfies the regulators and informs the public.

There is no text for my course. And, while I find things like securities, tax, and corporate law fascinating and intriguing, I have discovered that not all of my students do. I try very hard to assign a variety of readings, exercises, and other tasks outside of class that will somehow keep students engaged and motivated. Those readings include a combination of popular media, secondary authorities on substantive law, and actual documents prepared by usually sophisticated and skilled attorneys, but sometimes, by way of example, documents filed by the inexperienced or even negligent practitioner. The trick here is to find filings that are interesting – whether because of the topic, the company, or the styles of writing – and that show lawyers at either their best . . . or their worst.

The last part of the class focuses on research and writing in tax contexts. By the time students start on their last assignment, they will have looked at many of the different types of authorities issued by the IRS and arrived at some general conclusions about the relative weight and usefulness of those authorities. Students will have reviewed letters submitted by attorneys requesting rulings or advice from the IRS and seen the IRS responses; they will have found IRS procedural and substantive rulings and guidance. I would like to think that the final assignment builds on everything students have learned over the semester, not only in identifying applicable authorities, but putting them to good and appropriate use in the context of a client's issue.

For the last assignment, students are told that their client wants to engage in a particular type of business that might or might not trigger a particular type of state tax—usually sales tax since there's often a wealth of state authority on sales tax and everyone understands sales tax. The students are required to draft a letter—in the form required by state regulations—to a state taxing authority that requests a ruling that the proposed transaction—as described in the letter—is not taxable in the state. In drafting the letter students have some leeway in structuring and then describing the transaction in such a way that it does not trigger the state tax. I try to find a problem on which a number of different types of authority—the state statute, regulations implementing that statute, and other state administrative authority like letter



rulings and agency counsel opinions—could be brought to bear. This last assignment—in contrast to the first two—is an advocacy document. Students are making their case to a regulator. They are integrating a variety of authorities and balancing them against one another to reach what they hope is an outcome acceptable to both their client and the agency.

What I hope students take away from the class is, first, an understanding of the nature of administrative agency authorities. I don't expect them to remember the difference between an IRS revenue ruling, a revenue procedure and a letter ruling, nor do I expect them to remember in exactly what circumstances the SEC will issue a no-action letter and what effect the issuance of that letter has. What I hope that students will take away from the class are some general notions about the strength and utility of administrative authorities. I hope that students remember that the wider the audience of an administrative authority, the stronger it usually is, that the more formal the process by which an administrative authority is issued, the stronger it is, that the more formal the publication of the authority, the stronger it is, and that the higher the level of the issuer of the authority within the agency, the stronger it is. And these are lessons that are not limited to tax, securities, or corporate contexts and that should serve students across domains. Finally, I hope students gain an appreciation of how administrative and other authorities can be used—through research and writing—to build a legal structure that meets the client's expectations and provides the client with as much certainty as is possible in an uncertain world.

Thank you!