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Keynote: Encouraging This Particular Form of (Very Fun) Madness - Roles for Deans & Faculty Members

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Keynote: Encouraging This Particular Form of (Very Fun) Madness - Roles for Deans & Faculty Members

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KEYNOTE: ENCOURAGING THIS PARTICULAR FORM OF (VERY FUN) MADNESS – ROLES FOR DEANS & FACULTY MEMBERS

Martin J. Katz¹ & Phoenix Cai²

Moderator

I want to introduce our keynote speakers. We are happy to have Marty, or Martin J. Katz, and Phoenix Cai. For those who do not know, I have permission to reveal that they are married to each other.

The name of their talk is “Encouraging This Particular Form of Very Fun Madness: Roles for Deans and Faculty.”

Dean Katz is a nationally-recognized scholar and a leader in experiential education. He led the University of Denver Sturm College of Law (“Denver Law”) and its development and implementation of a major strategic plan, including initiatives in specialization and experiential learning. Dean Katz is a founding board member of Educating Tomorrow’s Lawyers, which is a national consortium of law schools that serve as leaders in the experiential education movement.

Professor Phoenix Cai is the Founding Director of the Roche International Business LLM Program at Denver Law. This program is an intensive and experiential graduate program geared towards training both U.S. and foreign lawyers in private, transactional law and business. Professor Cai was awarded the University of Denver’s Distinguished Teaching Award in 2014. She teaches a variety of courses including property, international law, international trade, international sales, drafting, and negotiation in an international business context.

So, thank you for being here Professor Cai and Dean Katz.

Martin J. Katz

Welcome. Thanks for having us.

First of all, I loved the exercise last night at dinner, which posed the question: “What Bit of Advice Would You Give to Your Students?” My favorite advice of the night was to be succinct. I will try to do that because we are very interested in getting to the Q&A portion. Also, if I’m not succinct, Phoenix has instructions to kick me in the shin under the table.

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Our broader goal is to encourage experiential learning in the transactions curriculum. I know that all of you are here and do not need convincing. So my goal for this session is to try and provide some persuasive tools to help you convince people at your schools about both the value and the possibility of this type of teaching and learning.

The first category of individuals that might need persuading about the importance of experiential learning in the transactions curriculum includes deans and administrators. However, it is a bit difficult for me to think about this as an exercise because it is hard to imagine not being interested in this type of teaching as a dean.

Over the last five years, applications to law school have been down over 40%. Most businesses cannot survive that kind of downturn in demand. Although people may talk about how things are improving, that really only means that the decline in applications has slowed. There is really no indication of applications rising significantly anytime soon. This means that basically every dean in the country is in a position where she or he needs to compete for students to keep the doors open. It is that important. It is an existential crisis for law schools now.

If you think about the ways you can compete as a law school, there are some schools that compete on the basis of prestige. That strategy is not available to most deans and, frankly, even schools at the very top of the *U.S. News* food chain recognize the importance of competing within their range. Look at what Georgetown and Stanford have accomplished in experiential learning. Neither of these schools have stopped competing or relied solely only on their prestige.

You can also try to compete on price. Most schools try to avoid that because it is not a winning strategy for them.

What is really left for most law school deans is to compete on the value of the education their schools provide to students. Students are very focused on getting jobs, which means that value is driven by what employers want from students coming out of law school. And employers overwhelmingly indicate that they place great value on experiential learning.

At Educating Tomorrow's Lawyers, we have just completed a study called the Foundations Study, which is funded by the Hewlett Foundation. The study got responses from about 24,000 legal employers, who we asked what they are looking for in prospective employees and, overwhelmingly, these employers indicate that they are looking for students with more of a background in experiential education while they are in law school. Students, being sophisticated, have picked up on this—ironically, with some aid from *U.S. News* telling students that they should seek more experiential education.

At Denver Law, we have highlighted the value of experiential education throughout our curriculum. And it seems to be working. When we

asked our 1L students why they chose our school, 75% of them responded that one of the primary reasons was the focus on experiential learning.

So what type of dean does not want students who want to come to their school? Experiential learning is a great way to provide that kind of value.

Also, from a dean's point of view, the fact that employers are looking for these types of skills means that if you lean into experiential learning, it will help with employment outcomes. In fact, the importance of that for a dean cannot be overstated. Students that go on to get good jobs are much happier and go on to make better donors later on down the road. Additionally, if you look at the *U.S. News* rankings over the last five years, employment outcomes have driven almost all of the recent variation. Interestingly, if you are a dean and one of your goals is to push the needle on the *U.S. News* rankings, changing your employment outcomes is a lot less costly than other ways of moving up in the rankings, such as by trying to buy students with higher LSAT scores and GPA using expensive scholarships.

So why wouldn't a dean want to engage in more experiential learning? There are four objections that you are likely to hear from your administration. The first objection is that somehow there is a dichotomy between teaching and scholarship—particularly this type of teaching and scholarship. The idea is that experiential teaching takes a lot of time away from your scholarship. My view is that, as an empirical matter, this dichotomy is largely false. Being kind of a numbers geek, I have actually studied this at our school. At Denver Law, there is an 80 percent overlap between our best teachers and our best scholars. Obviously, I am biased in this particular example, but Phoenix is Exhibit A. She is at the top of the charts both as a teacher and as a scholar. The dichotomy is also false at almost every other school I've studied. Put simply, experiential teaching does not appear to interfere with scholarship; to the contrary, it seems to correlate with excellence in scholarship.

The next objection you might hear is that if you embrace experiential learning, your school will be labeled as a trade school rather than an academic school, and that this will lower your prestige. In the past, this may have been the case. Before the crisis in legal education around 2010, there was, for the most part, a narrow set of measures for prestige in schools. Law schools occupied a very homogenous world. However, one of the bright spots since the crisis started is that now there are many different niches that schools can fill. In fact, it is a mistake for schools not to try to find their own niche.

One of the bets that we made in 2009 at Denver Law was that we believed, in addition to scholarly activity, there would be a good niche for schools that embrace experiential learning. That bet has paid off. Since 2009, we have moved up 20 spots in *U.S. News* rankings. The idea that you can't embrace experiential education and still be respected academically is just wrong these days.

The third objection is that experiential education is expensive. It is costly. In fact, I recently wrote a piece on this in the *Journal of Experiential*

Education. There are indeed some forms of experiential education that are quite costly, though I would say that even those forms are generally worth the price. However, if your administration is concerned about the cost of experiential education, the key is innovation. Many of you in this room are innovating now—finding forms of education that are both valuable to your students and cost effective. There is so much room for innovation in this area.

Some examples include: the externship model, which is essentially a partnership between the school and practitioners to educate students; taking on pro bono matters with students; simulations, including those leveraged with tech platforms; and add-on experiential labs in 1L courses as a way of giving students hands-on experience early in their academic career.

Many of these types of innovations are less expensive per student credit hour—the important measure—than more traditional types of education.

The final objection that you are likely to hear from deans is that your faculty might rebel if you try to push experiential learning too hard. However, that is not necessarily the case. There are at least four ways that a dean can both address the concern about faculty discontent and also encourage faculty members to want to engage in more of this type of teaching.

The first way to address the concerns of faculty is to make sure that your faculty understand the reason for this type of learning. One of the things that was key in our push toward experiential learning at Denver Law was that the faculty were engaged in the planning process when we did our strategic plan in 2009. The faculty were involved in talking to employers—the people who are going to be employing our students. They were also talking to students and potential students. Through that experience, the faculty understood the demands of employers and students for more experiential learning. Instead of a mandate from the dean, the people most likely to affect the future of our school—the end-users of the product we produce—encouraged this shift. Having the faculty listen to the end-users at the outset made this more of a team effort rather than just the dean pushing folks to do something.

The second way to address concerns about faculty buy-in is to not make this type of teaching mandatory. I can't emphasize this enough. Make it fun. Had we tried at Denver Law to adopt a regime where I was in the business of trying to tell faculty members what they had to do, it would not have worked out well.

On the other hand, when you have some faculty who utilize this type of teaching and then present to other faculty on it, it becomes apparent that it is a fun way of teaching. In that way, experiential methods spread on the grassroots level.

The third key is to find ways to provide support for this type of teaching and learning. I mean that at a few different levels. At one level, think about incentives. What makes a faculty member more likely to engage in a particular type of activity. I like to joke sometimes that most incentives involve

time, money, and love. This includes providing faculty with more time to engage in this type of teaching by providing some course-load relief; money in the form of stipends and raises; and love in the form of respect both from the administration and in opportunities to present to other colleagues and garner their respect.

The other way to provide support is to share expertise. If someone is using a particular type of approach in their classroom, that wheel may not need reinventing. Make sure that we are providing mentoring and sharing of expertise, both within schools and across schools. Conferences like this are a fantastic way to avoid having to reinvent very well-designed wheels. In addition, Educating Tomorrow's Lawyers and Michelle Pistone's LegalED videos are great ways of sharing expertise across schools.

Additionally in terms of support, if you want your faculty to engage in this type of learning, you need to provide opportunities to fail. This type of teaching is a form of innovation just like anything else. In schools, we are so focused on having everything just perfect before we do it, and that paralyzes us. It is important to be able to go out, potentially fail, and learn from it. As a dean, you need to provide a big of a safety net for failure.

At Denver Law, if someone tries a new course innovation and their student evaluations come back less than great, I do not count those evaluations for a year. If you can't get it right after the second year, we'll have a different kind of conversation. But I want to make sure that the roll out provides a safe space in which to experiment, possibly fail, and learn. I also suggest that faculty who are innovating in this way bring the students into the experimental mindset, making sure that the students know what the faculty member is trying to accomplish.

The fourth way to encourage is to be enthusiastic. People will come if you create a culture in which people get excited about ideas. What if we taught this? What if we tried that? Create a culture of "yes." Yeah, you can try that. Again, that echoes to the safety net idea. It is okay if things do not go perfectly and you learn from it. That way you create a culture, not just of experiential teaching, but a culture of innovation.

Now I will turn it over to Phoenix, who can talk about what it looks like from a faculty perspective.

Phoenix Cai

Thank you so much for having us. It is really an honor to be speaking to this group, a group that has been at the forefront of this type of education for many years. It is very humbling for me to be up here.

I'm supposed to provide the faculty perspective, which I am thrilled to do. Before doing so, I wanted to share with you just another aspect of my perspective. I am not a native English speaker. English is my third language, and I teach a program that is about 60% international students from all over

the world. One of my core teaching goals has always been to focus on cross-cultural communication and interdisciplinary communication and skills. When I talk, I want you to realize that much of what I'm saying is geared towards integrating our international students and enabling them to enjoy the value of this skills-based learning as well.

What I would like to do is talk about how Denver Law has institutionally provided support for experiential teaching. Then, I will tell you just a little bit about the classes that I have taught. I want to talk very briefly about two classes because they embody two very different models, then I will finish with sharing some ideas about what you can ask your deans and to help you avoid some terrible mistakes that I've made to hopefully make your lives easier.

At Denver Law we created a project, and we did not know if it would be successful. We had a Chair of Experiential Learning, Roberto Corrada, who has been teaching a live-simulation course in an administrative law setting for many, many years. He really wanted to incentivize other people to do this as well. Denver Law has always had a very strong clinical program, but we were looking for that sweet spot between real-life client-based courses and simulation-based courses.

The methodology was to create essentially a summer stipend. This was a call to all faculty to apply for a modern learning stipend. You had to have a full course proposal. You didn't have to have a syllabus in place, but you received support to develop the course and the syllabus at the beginning of the summer. Importantly, you got some course relief for undertaking the new preparation, and in recognition of the fact that this type of teaching is much more work-intensive. This was a one credit-hour teaching equivalent at the time when we tried this and there was also a little bit of money, just \$1,500. The idea was to spend a portion of the summer either taking an existing course and changing it to make it skills-based—even if it's not fully skills-based, integrating skills into that course as a number of modules or creating a new course using Carnegie methods.

I put in a proposal, and during the first year there were only two applicants. It was not a big deal that my proposal was chosen. Now this is the fifth year of this program, and we have eight or nine applicants every single year. Many of these proposals are to take first-year courses like Contracts and make them skills-based.

Of course now—and I will lodge an official complaint with my dean—you get two credit-hours of teaching relief and \$5,000. So I would just like to say that I was robbed.

The first course that I taught in this way was Drafting and Negotiations in an international business context. It is a complex international Mergers and Acquisitions (“M&A”) course with a simulated live-client. It involves craft beer because we're in Colorado, home of craft beer and marijuana, and because I don't know anything about marijuana.

The course involved a purchase of a Singaporean beer company by one of our Denver-based beer companies -- Molson Coors, which works out very well because, as it turns out, Molson Coors is now essentially a cross-border M&A company. Their primary growth model has not been to focus on the U.S. market, which has really been taken over by small craft breweries, but rather on emerging markets. Molson Coors has been doing tons of transactions in India, Africa, Eastern Europe, and Asia. This is a perfect sort of simulation because it's a very real transaction.

As you would expect, Molson Coors has been thrilled that I do the simulation course. They have been hiring our students directly into summer externships, summer jobs, and then directly into their general counsel's office. So there's a really nice sort of ladder for the job development of our students.

Back to this grant, the only requirement in getting the summer modern-learning grant at our school was that you had to present to the faculty at a luncheon, describe what you did, and talk about how you either modified a course or created a new course.

It was very important that we did this in exactly the same format that we do all of our faculty development luncheons because the signal of love and respect is hugely important. As you know, faculty follow and are very sensitive to cues about status and importance, so it has to be in your normal faculty development lounge. It has to be a nice catered lunch. It has to be videoed. You have to invite your alumni, hopefully a few trustees. Your administration needs to be there. This sends the message that our school values this, and that we want other faculty members to take on these types of projects.

As you can imagine, there were many skeptics. People asked, "How do you make this sustainable?" and commented on the amount of work involved. I will admit that it is a lot of work, but it is work that is incredibly fun and rewarding. You get to know your students on a much deeper level. You get to be engaged with their learning at a much deeper level, and you get to define what sort of an attorney they are going to be in a way that you simply do not get unless you are working with them on drafting and redrafting and guiding the negotiations and counseling them in their client counseling. It is an amazing type of teaching. When you communicate that enthusiasm to your colleagues, it is impossible for it not to catch on. I think that has really succeeded at Denver Law.

The last thing I want to talk about is the two ways that I have brought this into my teaching. I teach property as my first-year course, and I teach it in a mostly traditional way. I have not taken the leap and made that a skills-based course. I have a few drafting exercises—a real estate contract for a sale of a house and a draft of an easement—but those are really minor things.

Instead, I really save my experiential teaching for the upper-level courses. The two methods I have chosen are collaboration with an adjunct and the semester-long beer transaction simulation. I want to talk about both of them and consider the advantages and disadvantages of each.

I teach international sales with an adjunct who is also the coach for our moot court competition. It's a course that focuses just on the United Nations Convention on Contracts for the International Sale of Goods ("CISG"), so it is really a comparative law course, an advanced contracts course. We taught sales through a series of simulated problems and arbitrations. We had an overarching business model, and this particular business, a coffee importer, had lots of different issues involving importing and selling coffee all over the world. Every week, we would have a different problem, and the students would write an arbitral submission. They would argue the case in front of the class with students as arbitrators and one of us as arbitrators.

That was a great way of rolling this out because my partner really wanted to teach in this way, but he didn't feel comfortable to doing this by himself, and I don't have the arbitration experience. I was really excited about the idea of weekly arbitral simulations because this is an important part of how transactional law is practiced these days, and I wanted our students to have exposure. It was a perfect marriage of interest and confidence.

Overall, it was a huge success. I did the course with him for two years. Then, I just handed the course over to him permanently. That's a great way of doing it. You introduce a course that administration can feel very good about because you've had a regular faculty member involved. Also, you have learned a whole new substantive skill set, as well as real skills, and the students get a lot out of it.

The second model is the live-client simulation, which I'm not really going to talk about in great detail because I think it is very similar to what all of you do.

However, I do want to share just a few thoughts.

The one thing that I try to impart to my students about transactional skills is that there is not one correct way to draft something. That is a very difficult thing to convey to your students because they want to please you. They want to know how you draft the document and the best way to do so. Well, there isn't one. There is a myriad of possibilities, and, just like in being a well-developed professional, you need to find your own footing, your own voice, and your own personality. That too is tremendously important in drafting. So I spend a lot of time working with my students—both international and domestic—in finding their proper voice in drafting. And that involves scrutinizing your own foibles, your own weaknesses, including your cultural weaknesses.

I will share one little vignette—two ideas that I have on teaching that I have found very useful, particularly in terms of teaching collaborative skills with international students in my classroom.

I send my students, three or four at a time, to the whiteboards and have them draft provisions on the board simultaneously. Then we all sit back and revise. We redline. We circle. We move. We do this with everyone's

drafts. That is an amazing way of learning together because they see how all four of these, more or less, accomplish the goal that we want, yet they are all different. They all have different approaches, and here's how we change them. Then, we talk about how we improve on them to make them more succinct and more elegant, more clear. It takes a lot of time, but it is always time well spent. That is one of my favorite ways to teach.

The other thing that I encourage my students to do is to update and keep a list of mistakes that you make. I always kept a list when I was in practice for six years. It is always an idiosyncratic, strange list, one that hopefully changes over time. It is very humbling to always put down the twenty drafting mistakes that you are personally liable to make.

I have stayed on my list for twenty-two years. One of the phrases in English that has just never made sense to me is "fill in the blank." I have no idea how to finish sentences like that. That construction simply does not occur in Chinese, so I do not know what to do with that.

The other thing that has always been on my list is that I confuse "popsicle" and "obstacle." I will write sentences that say it is important to overcome this popsicle. Who else in the world makes that mistake? Only me.

I will finish with that because we really do want to take as many of your questions as possible. I'm happy to tell you more about the classes. Marty is happy to tell you about how he cares about the bottom line, although he's not saying that.

Audience

Thanks to you both for sharing your insights. This first question is for Martin. It is great having the dean's perspective. Our dean at Texas A&M, Andrew Morriss, has been very supportive. Because of what happened in 2008, transactional law has taken more of an emphasis. Going back to some of the suggestions that you made, what would be an effective way to approach our dean? Say we would like to have the lunches and to get other faculty invested in these ideas. From a dean's perspective, what would be an effective way to be approached about these things?

Martin J. Katz

In a way, I think you answer your own question because one thing that every dean loves is someone who comes to them with solutions rather than problems, and someone who comes to them willing to put in some of the work toward the solution.

So I would suggest telling the dean that you would like to start with something modest. You could conceivably start the conversation by telling your dean about big plans, such as you want Texas A&M to be the next CUNY

in terms of experiential learning. But that is probably a harder sell, unless you have a plan for it.

On the other hand, you could present one or two smaller ideas. First, you could indicate that you would like to provide some small grants for people to teach a particular type of course, and you could offer to help administer them. Second, you could indicate that you'd like to put on a lunch, or something like that, where those professors can come talk to the rest of the faculty about what they are doing. When you come in with a solution or little projects like that and you're willing to put in some of the work, it is hard to imagine that you are going to get a lot of resistance to that.

Also, start with what the end goal is. This is where we would like to be in one year, or three years, or five years. As long as you are on the same page and the school has an interest in creating this type of curriculum, I wouldn't expect you to find much resistance there. I would not expect resistance from your dean. If any of you do find resistance there, then you might have to actually do a little bit of research on schools that have successfully implemented this type of strategy. And it will not be difficult to get research showing positive effects of this type of curriculum at other schools and how the curriculum was implemented. Denver Law is far from the only school that surveys our 1Ls and asks them why they chose us.

Phoenix Cai

I would only add that it is very helpful to build on something that your school is already doing. So find either an academic program, a certificate, a student organization, or a journal that is going to throw their support behind what you're doing. It is always very helpful to say there is already an audience and already a demand for this. Then you can personally say that you will take on additional steps to implement this idea, and I will commit to doing it for a certain number of years if I get this type of institutional support. That has been very successful at Denver Law because we have various academic programs—like employment law and corporate and commercial law. And we can layer live-client experiences, additional externships, and even a moot court competition on top of those existing programs.

That Sales course I described earlier was very much focused on the fact that our students were starting to do really well on those competitions, which was unexpected by other people. We really wanted to capitalize on that. So saying this feeds into an existing endeavor is a very helpful way to convince your school to undertake it.

Martin J. Katz

And that kind of alignment is useful. And also, what Phoenix said, you can try showing up in the dean's office with a group of students. At least for me, if I have students who are interested in something and telling me that it is something that they would want out of their education, wow, then it becomes much harder to say no.

Audience

Howard Katz from (Duquesne). At a previous Emory conference, I gave a talk on why negotiation should be a required course in law school and how to do it in a cost-effective manner, which sort of dovetails with the things that you said. But, one of the arguments that was made in that presentation, was that in skills courses, transactional or others, some students who are not great at "traditional law school" come to the fore and perform well. We also made the argument that students, once they see the relevance of what they are doing, may be motivated to do better in their traditional classes as well. I was wondering if any of you have any experiences with those observations?

Phoenix Cai

I completely agree with that. The focus in law school education on having mostly litigation-focused experiences is extremely alienating for a lot of our students, and we are leaving many of them behind. The negotiations and client counseling arbitrations are a tremendous confidence-building opportunity for many of our students because they find out that they have a certain skill set, which they did not know to value but, lo and behold, it is tremendously useful. And, anecdotally, I have seen that light come on for our students, and I think it is really amazing.

The other thing I would say is that you are probably all at schools that have international students, and my guess is that they are not particularly well integrated into the life of the law school. And it is extremely unfortunate because many of these students come to the United States for the Socratic Method, for the involvement, and for the experiential learning opportunities. For many of the international students, doing these transactional, small-format skills gives them a chance to shine, but I think it is also very validating for them given the investment that they are making in coming here.

Martin J. Katz

At the anecdotal level, I have students in my office all the time and alumni, particularly recent alumni, who say this type of course changed their

trajectory in law school. They got away from feeling alienated—like a fish out of water—or feeling like law school was too abstract. And, of course, you know your students all have very different ways of learning. So, for a number of them, this is the way that works, and it behooves all of us to teach in ways that speak to different learners.

At the data level, there are two data points that speak to me. One of them Phoenix alluded to already and has hit me a lot. So much of our law school curriculum is driven by an assumption that most of our students are going to go into litigation. I was a litigator—full disclosure. But it is kind of a blindside for us. Until you step back and look at it, you don't realize how much of the law school curriculum is focused around that. For me, the data point that helped me get there was in student surveys, when we asked our students what they wanted to do. Roughly 50% of them said that they had little to no interest in litigating. They wanted to go into a transaction-based practice. This survey was part of our first strategic plan in 2009. We realized we had this deep gap between what our students were hoping for out of their law school careers and their careers following law school and what we provided.

The other thing about what you are saying can actually be a bit of a pitfall trying to push this type of course, and it has to do with grade inflation. You note, correctly, that some students get better grades in experiential courses. This may be more about grade redistribution than about grade inflation, since some students who might not do well at traditional courses can do well at these courses. Of course, if students shop for courses based on where they do best, we might see some grade inflation from this phenomenon. But the broader concern I have heard is that experiential courses may inflate grades for all students who take those courses. This concern is based on the fact that experiential courses tend to be graded a little bit differently than more traditional courses. This is because experiential courses may be perceived as being fundamentally competency-based courses, and you either achieve competency or you don't. Yet, we have a hard time equating competency with a grade of B or C. So the criticism may be that these types of courses cause grade inflation.

Even if these courses do cause grade inflation, you might ask who does it really harm? The response to this has to do primarily with bar passage. This is because law school grades tend to be the best predictor whether students will pass the bar. So if, through grade inflation, we lose the ability to identify students who may struggle on the bar, we might be giving up an important tool in the quest for bar passage. I would respond by saying that our school is particularly sensitive to bar passage risk. We have come from a place not that

long ago, where our passage rate was about 65% in a state with an average of about 75%. Now we are up closer to 90%, so we have come through tough times and take this very seriously. And at least so far, we have found no reason to believe that experiential courses have interfered with our improved bar passage, either through grade inflation or through the substance of the courses. Though we continue to monitor.

One of the things that we have been studying is, because we allow all of our students to take up to a year of skills-based courses, whether that affects the bar passage rate. The answer so far is that it does not. We have a fair amount of data. And when you control for all of the other factors—LSAT, GPA, all the things that make that comparison meaningful—it actually turns out that there does not appear to be an effect on bar passage. But that is an argument that you might have to contend with.

Phoenix Cai

Just one little thought. To me the best argument for making negotiations and drafting a required course—and, by the way, we require it for my IBT program, and we also require it for our Corporate and Commercial Law certificate—is that it is actually the best way to develop the soft skills that we as transactional lawyers need. These are the collaborative skills, like working with accountants, business people, and finance people. Students also gain the self-assessment skills to critically examine their own work to identify mistakes, which is critical in building grit. And those skills are best developed in a transactional context.

Jay Finkelstein

Marty and Phoenix, thank you. I'm Jay Finkelstein. And, Phoenix, you alluded to something which I want to explore a little further. In expanding experiential and skills-based courses, we all know that certain faculty are uncomfortable moving in that direction. And you mentioned partnering with a practitioner. Obviously, I'm a big fan of that being primarily a practitioner who transitioned to the classroom. So I wanted to see if you could comment on whether that type of partnership has worked in other situations where you've taken or encouraged a faculty member to explore the experiential component by involving a practitioner. If so, how have you identified those practitioners who can serve that purpose?

Phoenix Cai

I think we'll both have an answer to that. My model was really to identify where my skill set intersected with my partner's skill set in terms of our

expertise. He really is an arbitration lawyer and I was an international M&A lawyer, and that was a really good natural fit.

Other faculty at our school, even in the litigation context, have done this based on the fact that they were two halves of a clamshell or based on their overlapping skillsets. Perhaps one had not been doing this sort of practice for ten years and one was very current, or perhaps it was the other way around. You had a very junior attorney and a very senior faculty member who wanted to keep a hand in practice. So sometimes that is a good way to identify that natural fit.

Mostly, the pool is our pool of existing adjuncts. Because we are an urban school, we have access to and are very fortunate to have a great pool of qualified, diverse adjuncts who are hungry to be more involved. So I think that our experience has been that if a faculty member approaches an adjunct and says “let’s collaborate to create something in this deeper way”, the answer is always going to be “yes!” You always think our adjuncts don’t have enough time, but busy people just seem to make more time, and I think most people are hungry to do it.

Martin J. Katz

I tend to echo that. We have had a lot of success with this model, and, for us, it has come from three different directions and all of them have worked for us.

Sometimes we’ll have a full-time faculty member who wants to teach something new. That faculty member feels that they either lack the recent practice experience or the expertise. They will come and indicate that they know somebody or will ask us if we know of a potential partner.

Sometimes it has been an adjunct, or even a potential adjunct, who indicates that they would really like to teach in this area. But that adjunct has expertise as a practitioner and not as a teacher. They feel more comfortable being partnered with someone who is an expert teacher.

And sometimes our associate dean notices that we have a gap in the curriculum and wants to know how to get it filled and the best way to fill it turns out to be that type of partnership. Of course, when a proposed partnership originates in any of those places, the key is going to be personalities, and everyone has to be on the same page in terms of getting this done.

As a dean you can encourage partnerships by not dividing the credit for the class. I try to do this for collaborations even between full-time faculty.

It's such a small, small cost. Just pay the adjunct the full amount. Give the full-time faculty member full credit for the class. I encourage our faculty to negotiate that. But, now that I'm stepping down as dean I will come clean: I've never said no, and, in fact, when they haven't asked, I've offered full credit because it's just such a small thing to encourage something that has been so successful for us.

Audience

I wanted to pass along one thought. Over the years a lot of professors have asked me why students should take drafting if they are going to litigate. And the answer is that they're going to litigate business transactions. That doesn't work very well with somebody who's going to litigate death penalty cases, but it does help. And I think it's helped both with faculty and students.

One of the nicest compliments I ever received was meeting one of my former students, a partner in a major firm that went on to become a litigator, who told me that the drafting course was the most important course he took in law school because all he did every day was litigate business matters and contracts. He said that the ability to take apart the contract and understand the motivations behind it made him a much better litigator. So that is another argument you can use to persuade faculty and students.

Martin J. Katz

That argument is extremely persuasive to me as a former litigator and employment lawyer. Professor Rachel Arnow-Richman teaches a very cool course on employment law. This has typically been thought of as a litigation-based course, but she teaches it as transactional, and she writes very persuasively at the intersection of transaction and litigation. And for so many of us even as litigators, so much of the work that we do involves drafting settlement agreements and litigating agreements that have gone wrong. The overlap between the transactions and litigations is so rich.

The other thing I tell my students is that you never know what you're going to want to do in life. Part of the reason you're in law school is to figure out what you may want to do in life. But, even if you think you know what it is, that might change.

I give them the example of the judge that I clerked for who litigated for 22 years. One day, he woke up and decided to be a transactional lawyer. So I would just simply expand on your argument. It's definitely worth doing it even if you are sure – or think you are sure – that you want nothing more than to be a death penalty lawyer.

Audience

I'm Praveen Kosuri, and I'm a clinical professor. I'm curious. What has been the impact of these courses on the clinical program? What has been the reaction of your clinical faculty to these courses? Have you seen any cannibalization of the clinics with courses like this?

Martin J. Katz

The short answer to your question is that, at least at Denver Law, our clinicians led the charge into the transactional space. We started what is now by far our most popular clinical offering, a community economic development clinic, which is a transactions-based clinic, and is consistent with this idea that 50% of our students are looking to go into the transactional area. I can only say I wish we could afford to expand that particular clinic. We're actually in the process of doing that with this interdisciplinary project we have between law, business, and engineering as a way of providing more live-client, clinic-based transactional experience.

But your question goes beyond that. The innovations that I've talked about—that are critical to expanding our repertoire without breaking the bank—may be seen as threatening to clinicians, particularly if your clinic is tenure-line based. There are a couple of reasons for this. One is because of where most tenure line clinics have come from historically. They've needed to fight to prove their own expertise—to prove the value that they offer to students. So it might be very threatening to clinicians if we were to take some adjunct off the street to do what they do. If we could do that, then maybe what they are offering isn't quite so special.

So, if you are doing this as an administrator, it is really important to try and foster an attitude of “we're all in this together” rather than an “I have my turf” kind of approach to this.

For example, we put together a committee of faculty called the Modern Learning Committee, which is designed to put on educational programming about this type of teaching. And we do put on this kind of programming. We regularly look to our clinicians who are truly experts at putting on simulations, both in the litigation and the transactional field.

But I would say, the thing that has actually been most important in getting our clinic's support for these types of innovations is demonstration of support for the clinical enterprise, both material and in terms of respect. On the material side, I have made clear that I have no intention whatsoever of cutting the size of the clinic. In other words, making it clear that this is not a

zero sum game. If anything, if I could I would grow the clinic. And I think our clinicians know that. On the respect side, a dean needs to ensure that clinicians know she or he sees clinicians' role as tremendously valuable. At Denver Law, we often refer to clinics as the "gold standard" of the education that we provide. The threat is if folks in the clinic start to believe that they might become somehow unnecessary to the enterprise. And I never see that happening at Denver Law. But the sensitivity that you raise is tremendously important, particularly because the end goal is to create this culture around the school where everyone is involved. We do not see ourselves either as outsourcing this type of education to the clinic as a silo or saying that we do not do this type of education outside the clinic. We are all in this together. Addressing those sensitivities is extremely important.

Moderator

Thank you so much to Professor Cai and Dean Katz, soon to be Professor Katz again. Congratulations.