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Hello and thank you to Toni for having me here. I have to begin by pointing out to one of my panelists, Dean Rappaport, that she is not the only non-international lawyer on the panel. I am a commercial litigator and a legal writing professor. But I believe it is precisely the fact that I am by experience oriented toward *domestic practice*, not *international legal education*, that makes my course so valuable to the LL.M. students at Case Western Reserve. In a way, I am a foreigner among all these international educators. Nevertheless, as a foreigner (in this peculiar way), I bring a new perspective on the matters we are addressing today. So I do want to focus on something very much on the minds of all the panelists today—the difficulties posed by cross-cultural barriers—but I think that you might be surprised by the barriers I identify and the conclusions I draw from doing so.

I teach a course called American Contract Law exclusively to the foreign lawyer LL.M.s at Case who are non-common law lawyers, which is the vast majority of our foreign lawyer LL.M.s.[1] In the course, I use Contracts to teach the students both American contract doctrine and all of the things about US legal systems that law students need but nevertheless do not address in depth anywhere in law school except in their first year legal writing programs. To do so, we follow a relatively traditional path through contracts cases, but we do so at a much slower pace and with much greater depth with respect to each case. In particular, we spend a lot of time and discussion on the lawyering involved in the cases.

The focus on lawyering includes attention to both the transactional matters involved in the case and to the litigation

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1. In 2000, approximately 43 of 45 new LL.M.'s were enrolled in my course. In 2001, it is approximately 55 out of 56.

issues. Thus, for example, we will look carefully at the specific transaction at issue in the case, what the lawyers and parties might have been thinking in getting involved in the transaction and documenting it the way they did, and what we might have done differently for the different parties had we been involved as lawyers. Then we turn to the litigation elements of the case, starting with strategic issues such as forum shopping and continuing with a thorough examination of the various arguments on both procedural and substantive matters.

My focus on the transactional side of matters raises my first point regarding "culture." Often in gatherings devoted to international legal education we speak about culture in connection with cross-cultural barriers and the ways of overcoming those barriers. One of the interesting things I've discovered in teaching LL.M.s and J.D. students is that there are ways I share a culture with our LL.M. students that I do *not* share with the J.D. students. That culture is one common to lawyers—an international commercial culture. While some of the LL.M.s have only undergraduate law degrees, many of them are practicing lawyers in their countries. As practicing lawyers they have very sophisticated views of commercial life—the expectations and realities of commercial transactions—that are not shared by the majority of J.D. students, most of whom are twenty-three year-olds just out of college. As a result, I have a real opportunity to explore transactional lawyering decisions with the LL.M. students at a depth that is difficult to attain with first year J.D. students, with whom I must spend much more time explaining the basic realities of commercial life. For example, as a generalization, my LL.M. students find it much easier than most J.D. students to accept that business people regularly transact business without any formal written documentation and that it is neither desirable nor feasible to expect much of that behavior to change.

In addition to an emphasis on the transactional lawyering issues raised in each case, we pay a lot of attention to litigation strategy and procedure. The foreign-trained graduate students do not take Civil Procedure and they do not take any legal writing course. Thus, there is no other course they take that devotes any substantial attention to procedure. Again, much of my focus is on the *lawyers'* decisions and arguments rather than on what the courts have written. We look at how the cases come about and how lawyers get involved, how the cases themselves end up where they end up and in the posture in which they end, and what the lawyers argued or might have argued. So, as part and parcel of a discussion

of the substantive law, we have to carefully examine matters such as the sources of the applicable law, questions of jurisdiction, matters pertaining to federalism—in short, we try to bring into play in an integrated way the whole universe of procedural, substantive, and human matters that too often are broken apart in other courses. We do so by focusing on the lawyers—how do all these things work and what are the rhetorical moves the lawyers use in the cases and how do they employ all these sources of law?

That is a very brief and excessively abstract summary of what we do. While my approach seems to be an obvious one to me, it seems less obvious the more I learn about what is being done in other law schools, and I have spent more than a little time wondering why. I think the biggest reason is precisely what I referred to earlier—my background not as a doctrinal professor or internationalist but as a commercial litigator and legal skills and legal writing professor.[2] One of the peculiarities I have noticed over the last few years is the noticeably large number of legal writing professors involved in international legal education. Just off the top of my head, right here in the audience and up here next to me, I see Craig Smith of Vanderbilt, Diane Edelman of Villanova, Mark Wojcik of John Marshall, and Toni Fine of Cardozo. Each either has an extensive background in legal writing or is, like me, actively involved to this day in the field. On the face of it, the correlation between legal writing and international legal education may not make a lot of sense. My only foreign languages are Latin and Ancient Greek, though I am feeling duly chastised here today and know clearly that my deficiency in this respect is something I should remedy now that I'm in my forties. But there must be a reason all these legal writing professors, even those like me without any apparent link to international legal education, are in this room.

The reasons, though, are not the ones that might seem obvious when one looks at legal writing programs. The focus of these programs is on the type of analysis and writing that goes into the production of US litigation documents. The foreign lawyer LL.M.s I teach are not likely to spend much of their careers drafting US litigation documents. It is not very likely even that any US clients would want these students, who have no common law background and for whom English is a second language, to write any briefs on their behalf. Finally, the resources devoted to legal writing

2. At Case Western Reserve, in the 2000-2001 academic year I taught, in addition to American Contract Law, a section of the first year Research, Analysis & Writing class and an upper level, full-year course in Litigation Practice.

programs for J.D. students in US law schools are by and large stretched far too thin for most schools, including Case Western Reserve, to even consider offering anything resembling the standard first-year legal writing program to foreign lawyer LL.M. students.

Then why is it that my course has resonated so well with students and colleagues and that other legal writing professors are so vital a part of this group of international educators? I believe that it is because in the culture of US law schools, it is legal writing that has developed the kind of in-depth, practice-oriented examination of doctrine, procedure and lawyering skills that ties the rest of the curriculum together for *all* students. In other words, there is one more "foreign" culture that nobody has talked about today—a culture that remains foreign to me to this day. I have twelve years of legal practice and only five years in this culture—the culture of law school. It is a culture that is foreign to everybody except the cream of law review people and the law professors. For me, the means to making sense of this culture was through practice and the examination of practice, which is what legal writing courses do more and better than any other courses in the law school curriculum. That is why there are all these legal writing people in here among you in this otherwise very cosmopolitan room.

Moreover, the professors in your legal writing programs are a resource that all of you involved in this field ought to be drawing a lot more on and in more creative ways than you currently may be doing. The default ways of doing so—through brief orientation programs or through student instructors—simply cannot work any better for LL.M. students than they once did for J.D. students. Understanding, a *lawyer's* understanding, takes going back again and again and again. That's what my course is about. That's what I am doing here.