

**2004 AALS Clinical Conference
Curricular Work in Progress:
Fundamental Lawyering Skills (Fordham Law School)**

Liz Cooper and Beth Schwartz

The Problem: The goal of the course described below is to prepare students to conduct interviewing, counseling and negotiation in the live-client clinical program (and, for that matter, in the world at large). We find that students learn the following: each of these skills is significantly more difficult than they anticipated; it helps to plan client interactions in advance; client-centered counseling and advocacy is an important building block of effective lawyering; being aware of similarities with and differences from one's client is an essential part of professionalism (*see* Bryant and Koh Peters). In reality, though, at the end of the class, most students are not prepared to interview, counsel, or negotiate on behalf of a client without supervision on some of the most basic aspects of these activities.

Our Goals: To engage in a thoughtful critique of our Fundamental Lawyering Skills course. As we have been teaching various versions of this course for almost eight years this is not a traditional curricular work in progress; however, we continue to search for ways to improve a course that gets mixed reviews from both students and clinical faculty.

Course Description: **Fundamental Lawyering Skills** is a simulation-based course in counseling, interviewing and negotiation that is a pre- or co-requisite to participating in our in-house clinical program and is open to all students in their 2nd, 3rd, or 4th year of school. It is offered in both the day and evening sessions. We regularly hire actors to play the role of the client in the simulations.

Class Size: The class meets in large groups (approximately 25-40 students) and in smaller break out groups (approximately 8-12 students); students are assigned to break out groups in which they remain for the full semester.

The Faculty: Full-time Fordham Law School (clinical) faculty teach the large class and either full-time clinical faculty or adjuncts (usually Fordham graduates) teach the small groups.

The Curriculum: Our textbook, **Essential Lawyering Skills**, Second Edition (Krieger and Neumann eds. 2003) is well-liked by both students

and faculty. In years past we complemented the text with a number of law review articles; over time, though, we have reduced the number of outside readings. Our difficulties with them seem to fall in the following (overlapping) categories: students find them too theoretical; they tend to be written primarily to (clinical) law faculty; the students need to focus on the basic skills and the articles tend more to focus on more advanced or subtle concerns. Bottom line: usually, only the most dedicated of students read them. Unfortunately, as a result of omitting most of these articles, it is a bit harder to push the students to recognize the connection between theory and practice; the greater emphasis is on practice, which ultimately may be less useful if not grounded in a strong theoretical foundation.

The Simulations: Students engage in a number of in-class exercises, two Minor Simulations, and two Major Simulations over the course of the semester. The Minor Simulations are focused on building interviewing and counseling skills and are conducted as follows: the students work in teams of two; half of the class counsels their client before class, the session is taped, and the critique occurs in class after viewing the tape; half of the class counsels their client in class, fishbowl style. When actors are in class we often seek their feedback as part of the critique, which is facilitated by the faculty member and in which both students and faculty participate.

The first Major Simulation is a counseling problem which students do individually with a client (actor). These are videotaped and are reviewed by the small group faculty member with the student individually. Prior to the taping, students must submit a plan for the counseling session. Prior to the critique, students must draft both a memo to the client summarizing the meeting and a written self-critique incorporating references to the readings.

The second Major Simulation is a negotiation problem which derives from the counseling problem presented in the first Major Simulation. Students, working in teams of two, negotiate with each other. No actors are used. The session is taped. The critique is conducted by the small group faculty member with each team separately and then all together (time permitting). Prior to the critique, students jointly must draft a memo to the client summarizing the meeting and individually draft a written self-critique incorporating references to the readings.

The Syllabus: Attached are copies of the syllabi used during spring 2004 and fall 2003 and copies of the problems currently used for the first Major Simulation (counseling problem).

Contact

Information:

Jim Cohen jcohen@law.fordham.edu

Liz Cooper ecooper@law.fordham.edu

Elizabeth Mareska emareska@law.fordham.edu

Beth Schwartz bschwartz@law.fordham.edu

Ian Weinstein iweinstein@law.fordham.edu

All of us can be reached at 212-636-6934

Fundamental Lawyering Skills

Course Memo - Spring 2004 - Day - Maresca

Fundamental Lawyering Skills is a four credit, one semester course which teaches the essential lawyering skills used by virtually all practicing lawyers in a wide variety of settings. The faculty are: Prof. Elizabeth Maresca (ext.7952; emaresca@law.fordham.edu) in the clinic; Prof. Polly Crozier (Prof. Kenneth Montgomery (718-638-5210; montgomk_@hotmail.com); Leonard Noisette (212-876-5500; noisette@ndsny.org); Prof. Marti O'Hare (212-686-4049; mog7@erols.com). The course administrator is Moira E. Linnehan, who is located in the Clinic (ext. 6029; mllinnehan@law.fordham.edu).

The three major units of the course focus on interviewing, counseling and negotiation. As we examine each area we will ask how the lawyer's professional role and particular practice context shape his or her lawyering. We will study these areas theoretically, through readings, and experientially, through demonstrations, exercises, simulations and short writing assignments which may be related to the readings or to each simulation. We look forward to a challenging and fun semester.

Experiential learning is learning by doing. It complements theoretical knowledge by providing a context in which theory can be applied. For example, you will read about legal interviewing, and we will discuss a videotaped portion of an interview. Then you will interview a client, critique your interview and watch and critique your classmates interviewing. In that sequence of experiences, you will read about open and closed questions, then you will hear and discuss the use of open and closed questions in the demonstrations and finally you will use and discuss open and closed questions in your own interviews.

Offering a useful and consistent set of experiences to a large group of students is a complex organizational task. We will sometimes meet as a single large group, sometimes as small groups of twelve, and in different combinations of subgroups of the small groups. It is your responsibility to familiarize yourself with the syllabus and class schedule.

This course involves professional obligations beyond those of a traditional law school class and more akin to those of law practice. During the semester you will have responsibilities for a variety of collaborative assignments with your classmates. Some of the assignments require meeting and working with classmates outside of the class meeting times. During weeks 8, 9 and 14, when we will be doing the major simulations, class will not meet, but you will have individually scheduled times to do your simulation and review the videotape with your small group instructor. You also will have at least one additional class meeting during weeks 3 & 4 and 6& 7 of the semester.

In order to make the simulations as realistic and valuable as possible, we hire actors from outside the law school to be our “clients”. Coordinating all of the scheduling is a major undertaking and Ms. Linnehan, the course administrator, will need your cooperation to make it work. **It is of the utmost importance that we have your schedules, phone numbers (all) and e-mail address.** We have distributed blank schedules and ask that you return them at our next class, on January 15, 2004, if you have not done so already. If your schedule is still in flux, you can always give us an update. We expect to distribute a list of student phone numbers to the class. Please let Ms. Linnehan know if you would prefer not to have your phone number on the list.

This is a graded course, with a final examination. The grade will be based on the following factors:

- 10% small group class participation
- 10% large group class participation (**consistent, thoughtful** participation will be rewarded; **non-attendance** will be penalized)
- 20% major simulation I
- 20% major simulation II
- 40% final examination

Class Attendance and Participation

The class participation grade will be based upon the quantity and quality of your participation in class. All classwork (except the two separately graded major simulations and the writing that goes with them), including large and small group discussions, minor simulations, exercises and short writing assignments will be included in those portions of the grade.

We expect you to attend each class. Almost every **large class** session is planned around an event, such as a demonstration or in-class exercise, which cannot be duplicated from a classmate’s notes. Lecture will be the exception, not the rule. Attendance will be taken and considered during the final grading process.

Attendance at every **small class** session is critical to the success of the small class. If you are unable to attend a meeting of your 12 person section (or some subgroup of that section) because of illness or personal emergency, you must notify your small group instructor, or Ms. Linnehan, in advance of the class.

Participation in all phases (planning, execution and critique) of each of the **four simulations** (weeks 3, 4, 6, 7, 8, 9 and 14 of the semester is mandatory. Each simulation will be scheduled in advance and will involve actors hired from outside the law school. In three of the four simulations, you will be teamed with a

classmate/partner. **It is imperative that you make sure you are available at the time scheduled for the simulation. Please make sure to check your schedule thoroughly, and that of your partner, before scheduling your simulations.** You will also need to schedule critique times with your small group professor for the Major simulations.

Major Simulations

Your major simulations will be evaluated on your planning, performance and critique in that order. Although we hope, and expect, that you will perform well in simulation, our primary goal is to launch your careers as reflective practitioners, able to analyze and learn from your experiences. For that reason, we will place the greatest weight on your critique of your simulation. We also believe that good planning is essential to good lawyering and will reward careful and thorough preparation, as evinced in your planning memos and otherwise. Actual execution of the lawyering skill is subject to many variables and although we will reward strong performances, we will not downgrade you if a well planned strategy doesn't work out because the situation develops in a wholly unforeseeable manner.

In order to better enable you to critique your performance, we require that you watch your videotape. You may arrange to view your tape in the Clinic or you may take it home to view. **If you opt to view it at home, you must sign the tape out at the front desk and return it to the desk within 24 hours. You will be required to leave your Fordham ID or driver's license with the front desk.**

Final Examination and Writing Assignments

You will be asked to submit three writings, no longer than three pages each, during the course of the semester. These writings are designed to assist you in integrating the readings with your class discussions and simulations. As such, you must draw from each of these resources when drafting this written product.

The final examination will be a take-home exam which will cover material from throughout the semester. It likely will require essays analyzing a lawyering activity, essays on the planning of lawyering activities, some analysis of professional responsibility issues and discussions of other areas covered in the course. Discussion of the course readings in examination answers is expected. The exam will be blind graded.

* * *

Please let us know if you have any questions or comments. We're looking forward to a terrific semester with you!

Fundamental Lawyering Skills
Spring 2004 - Syllabus
Prof. Maresca

Professors: Elizabeth Maresca ext. 7353
emaresca@law.fordham.edu
Polly Crozier (617) 872-0394
polly_crozier@ava.yale.edu
Marti Granizo-O'Hare (212) 686-4049 mgo7@erols.com
Kenny Montgomery (718) 403-9261
montgomk@hotmail.com

Course

Administrator: Moira Linnehan ext. 6029
mlinnehan@law.fordham.edu

Required Reading: Krieger & Neumann, Essential Lawyering Skills, Second Edition,

Aspen Law & Business, 2003

**Fisher, Ury & Patton, Getting to Yes, Second Edition
Penguin Books, 1991**

Additional Readings

These readings are available on Blackboard. Instruction sheets on how to use this system are being distributed with this syllabus. Please be advised that the readings change from semester to semester.

Week One

1. Mon., 1/12/04 Introduction to Course/Introduction to Lawyering - Large Group

Read: Essential Lawyering Skills
Chapter 1 - What This Book is About
Chapter 2 - Professionalism
Chapter 3 - Lawyering for and with the Client
Chapter 4 - Lawyering as Problem Solving

Introduction to the Course
Videotape: Doctor/Patient

2. Thurs., 1/15/04 Interviewing the Client: Memory, Observation, and Perception -

Large Group

Read: Essential Lawyering Skills
Chapter 5 - Communication Skills
Chapter 6 - Multicultural Lawyering
Chapter 7 - Observation, Memory, Facts, and Evidence

Cohen, Lawyer Role, Agency Law, and the Characterization Officer of The Court, 48 Buffalo L. Rev., pp. 349-61, 380-88, 395-409 (2000)

ABA Model Rules of Professional Conduct - Rule 1.2
(Scope of representation, allocation of decision-making, communication)

ABA Model Rules of Professional Conduct - Rules 1.3 & 1.6
(Diligence, Confidentiality)

ABA Model Code of Professional Responsibility - DR 4-101
(Preservation of Confidence and Secrets of a Client)

In-class video: Excerpts from Philadelphia

Week Two

Mon., 1/19/04 - No Class - University Closed

3. Thurs., 1/22/04 Interviewing: Organizing and Thinking About Facts: Developing a Case Theory: Preparing Next Steps - Large Group

Read: Essential Lawyering Skills
Chapter 8 - Interviewing the Client
Chapter 10 - How We Organize and Think About Facts
Chapter 11 - The Legal Elements Model of Organizing Facts
Chapter 12 - The Chronology Model of Organizing Facts
Chapter 13 - The Story Model of Organizing Facts
Chapter 14 - Selecting a Model for Presentation of the Case

In-class demonstration: Abbott Interview

Week Three

4. Mon., 1/26/04 Interviewing: Depth of Information: Developing & Analyzing Facts - Small Groups

Read: Essential Lawyering Skills
Chapter 9 - Interviewing Witnesses

ABA Model Rules of Professional Conduct - Rule 4.3
(dealing with unrepresented persons)

ABA Model Code of Professional Responsibility - DR 7-104
(communicating with represented and unrepresented persons)

In-class exercises:
Question asking, Kwik Mart

5. Thurs., 1/29/04 Minor Simulation 1 - Interview Simulations/Critiques – Small Groups

Read: Simulation Materials

Essential Lawyering Skills, Teacher's Manual, Appendix:
Critiquing Student Work, pp. 233-248

One additional meeting will be scheduled for Interviewing Simulations/Critiques.

Week Four

6. Mon., 2/2/04 Minor Simulation 1 - Interview Simulations/Critiques – Small Groups

Read: Simulation Materials

7. Thurs., 2/5/04 **Review and Critique of Minor Simulation 1**
Case Planning: Case Theory Development - Large Group

Read: Essential Lawyering Skills
Chapter 15 - Strengthening the Persuasiveness of Your Facts
Chapter 16 - Investigating the Facts
Chapter 17 - Responding to Your Adversary's Facts

Week Five

8. Mon., 2/9/04 **Introduction to Counseling - Large Group**

Read: Essential Lawyering Skills
Chapter 18 - What Happens When a Lawyer Counsels a Client
Chapter 20 - Preparing for Counseling: Structuring the Options
Chapter 21 - The Counseling Meeting with the Client
Chapter 22 - Overcoming Special Problems in Counseling

ABA Model Code of Professional Responsibility - DR 7-102
(representing the client within the bounds of the law)

In-class demonstration: Abbott Counseling

9. Thurs. 2/12/04 **Developing a Model of Counseling: From Traditional to Client-Centered - Large Group**

Simon, Lawyer Advice and Client Autonomy: Mrs. Jones' Case, 50 Md. L. Rev. 213 (1991)

Bastress & Harbaugh, "Interviewing, Counseling and Negotiating," Chapter 12: Conflicts in the Attorney-Client Relationship

In-class videotape and exercise: Who's in Charge?

Week Six

Mon., 2/16/04 - No Class - University Closed

**10. Tues., 2/17/04 Identifying Client Goals/Generating Options/
(Legislative Mon.) Legal and Non-legal Consequences of Options - Small
Groups**

Read: Bryant and Koh Peters, "Five Habits For Cross-Cultural
Lawyering"(2003)

Terry Dresser Counseling Handouts

In Class Counseling Exercise: Terry Dresser

**11. Thurs., 2/19/04 Minor Simulation 2 - Counseling Simulations/Critiques –
Small Groups**

Read: Simulation Materials

**One additional meeting will be scheduled for Counseling
Simulations/Critiques.**

Week Seven

**12. Mon., 2/23/04 Minor Simulation 2 - Counseling Simulations/Critiques -
Small Groups**

Read: Simulation Materials

13. Thurs., 2/26/04 Introduction to Negotiation - Large Group

Read: Essential Lawyering Skills
Chapter 23 - How Negotiation Works
Chapter 24 - Negotiation Preparation: Assessing the Parties
Chapter 25 - Developing a Negotiation Strategy

Week Eight

14. Mon., 3/1/04 Planning/Preparation for Major Simulation 1 - Small Groups

Read: Gilson and Mnookin, Foreword: Business Lawyers and Value Creation for Clients, 74 Or. L. Rev. 1 (1995)

Bastress & Harbaugh, "Interviewing, Counseling and Negotiating," Chapter 11: Helping the Client Reach a Decision

15. Thurs., 3/4/04 Major Simulation I (Interviewing/Counseling)

Read: Simulation Materials

Simulations to be individually scheduled with Ms. Linnehan; critiques to be individually scheduled with small group faculty. No regular classes on 3/4/04, 3/8/04, and 3/11/04.

TAPING: Begins on March 2nd; Ends on March 8th

CRITIQUE: Begins on March 3rd; Ends on March 13th

Week Nine

16. Mon., 3/8/04 Major Simulation I (Interviewing/Counseling)

17. Thurs., 3/11/04 Major Simulation I (Interviewing/Counseling)

Spring Break

Monday 3/15 - Friday 3/19/04

Suggestion for this week: get ahead by reading "Getting to Yes"(entire book).

Week Ten

**18. Mon., 3/22/04 Major Simulation I - Recap
Negotiation/Problem-Solving - Large Group**

Read: Getting to Yes
Introduction
Chapter 1 - Don't Bargain Over Positions
Chapter 2 - Separate the People from the Problem

Problem-Solving Materials

In-class demonstration: Abbott Negotiation

19. Thurs., 3/25/04 Negotiation: Offers, Concessions and Closure - Large Group

Read: Essential Lawyering Skills
Chapter 26 - Styles and Rituals
Chapter 27 - Following Through on Your Plan
Chapter 28 - Negotiation Tactics

Week Eleven

20. Mon. 3/29/04 Negotiation: Interest of the Parties & Inventing Options - Large Group

Read: Getting to Yes
Chapter 3 - Focus on Interests, Not Positions
Chapter 4 - Invent Options for Mutual Gain

Shark Problem Materials

In-class exercise: Shark Problem

21. Thurs., 4/1/04 Negotiation: Trust, Bluffing and Lying - Large Group

Read: Getting to Yes
Chapter 7 - What if They Won't Play?
Chapter 8 - What if They Use Dirty Tricks?

ABA Model Rules of Professional Conduct - Rule 4.1 & 8.4
(Transactions with persons other than clients; misconduct)

ABA Model Code of Professional Responsibility - DR 7-102 (A), 104 (A)(1), 105; DR 1-102 (A) (representing a client within the bounds of the law; misconduct, threatening criminal prosecution)

In-class exercise: Game Theory

Week Twelve

22. Mon., 4/5/04 Class Cancelled

Thurs., 4/8/04 - No Class - University Closed

Week Thirteen

Mon., 4/12/04 - No Class - University Closed

23. Thurs., 4/15/04 Planning/Preparation for Major Simulation II - Small Groups

Read: Simulation Materials

Week Fourteen

24. Mon. 4/19/04 Major Simulation II

Simulations to be individually scheduled with Ms. Linnehan; critiques to be individually scheduled with small group faculty. No regular classes on 4/19/04 and 4/22/04.

TAPING: Begins on April 16th; Ends on April 20th

CRITIQUE: Begins on April 17th; Ends on April 24th

25. Thurs., 4/22/04 Major Simulation II

Week Fifteen

26. Mon., 4/26/04 Negotiation: Developing Objective Criteria/Best Alternative To a Negotiated Agreement (BATNA) - Large Group

Read:

Getting to Yes

Chapter 5 - Insist on Using Objective Criteria

Chapter 6 - What if They are More Powerful?

In-class exercise: Tax Books

27. Thurs., 4/29/04 Debrief Major Simulation II, Course Wrap-up & Discussion of Exam - Large Group

Fundamental Lawyering Skills
Fall 2003 - Syllabus - Evening
Revised: October 2003

Professors: **Elizabeth Cooper** ext. 7067 ecooper@law.fordham.edu
 Richard Gadsby 718/230-8743 gadsbyr@yahoo.com
 Kevin Puvalowski 212/637-2311 kevin.puvalowski@usdoj.gov
 Polly Crozier 212/678-3529 polly_crozier@aya.yale.edu

Course
Administrator: **Moira Linnehan** ext. 6029 mllinnehan@law.fordham.edu

Required Reading: **NEW TEXT: FISHER & URY, GETTING TO YES, SECOND EDITION (1991)** This text is now available in the Bookstore.

Krieger & Neumann, Essential Lawyering Skills, Second Edition, Aspen Law & Business, 2003

Fundamental Lawyering Skills Readings

These readings are available on Blackboard. Instruction sheets on how to use this system are being distributed with this syllabus. Please be advised that the readings change from semester to semester.

As announced in the original syllabus, the last third of the semester, focusing on negotiation, will be somewhat different from what originally was posted. The following is the replacement syllabus for the last third of the course.

Week Eleven

Monday, 11/03/03 Major Simulation I – Recap – Large Group

Introduction to Negotiation – Large Group

Read: Essential Lawyering Skills
 Chapter 23 – How Negotiation Works, only pp. 277-279
 Chapter 24 – Negotiation Preparation: Assessing the Parties

Thursday, 11/06/03 Negotiation II: Strategy - Large Group (later divided into two groups)

Read: Getting to Yes
Chapters 1 - 4

In-Class Exercise: Shark Problem

Week Twelve

Monday, 11/10/03 Negotiation III : Conducting a Negotiation - Large Group (later divided into two groups)

Read: Essential Lawyering Skills

Chapter 25 – Developing a Negotiation Strategy
Chapter 26 – Styles and Rituals
Chapter 27 – Following Through on Your Plan
Chapter 28 – Negotiation Tactics

In-class exercise: Tax Books

Thursday, 11/13/03 Negotiation IV: Trust, Bluffing and Lying- Large Group

Read: Wetlaufer, The Ethics of Lying in Negotiations, 75 IOWA L. REV. 1219 (1990)

ABA Model Rules of Professional Conduct (transactions with persons other than clients; misconduct) - Rule 4.1 & 8.4

ABA Model Code of Professional Responsibility (representing a client within the bounds of the law; misconduct, threatening criminal prosecution) - DR 7-102 (A), 104 (A)(1), 105; DR 1-102 (A)

In-class exercise: Game Theory

Week Thirteen

Monday, 11/17/03 Preparation for Major Simulation II – Small Groups

Read: Simulation Materials

Thursday, 11/20/03 Major Simulation II

**Simulations to be individually scheduled with Ms. Linnehan;
critiques to be individually scheduled with small group faculty. No
regular class during scheduled class time this week.**

Week Fourteen

Monday, 11/24/03 Major Simulation II

**Simulations to be individually scheduled with Ms. Linnehan;
critiques to be individually scheduled with small group faculty.
No regular class during scheduled class time this week.**

Thursday, 11/27/03 No Class - Thanksgiving

Week Fifteen

Monday, 12/1/03 Debrief Major Simulation II; Discussion of Exam – Large Group

Thursday, 12/4/02 Course Wrap-up and Review Session – Large Group

MEMORANDUM

To: Fundamental Lawyering Skills Students

From: Your FLS Large & Small Group Professors

Re: Major Simulation I

Date: February 24, 2004

General Instructions

You will be conducting the interview/counseling session of either Mr./Ms. Leslie Healy or Mr./Ms. Jordan Skoler and your individual critique with your small group Professor between Tuesday, March 2nd and Friday, March 12th. Each of you will do this simulation alone, that is, without a partner. Every simulation will be videotaped and the simulation should end within **45 minutes**. You should call, see, or e-mail Moira Linnehan (mlinnehan@law.fordham.edu) no later than **4 PM on Tuesday, March 2nd** to schedule your taping session. **All taping must be completed no later than 4 PM on Monday, March 8th.** You must schedule your individual critique session with your small group professor. Please leave sufficient time between your taping and your critique for you to review your videotape and complete your writing assignments and to permit your small group professor to view the videotape (at least 3 days). The individual critique sessions will be approximately 45 minutes long. The Fundamental Lawyering Skills class will not meet at the regular class times on March 4th, 8th and 11th.

Documents

The following documents are available on Blackboard:

1. The LLC Agreement for Fort Greene Realty, LLC.
2. The complete set of financials prepared by the LLC's accountant John Smith on December 31, 2003, (6 pages, an Excel document).
3. The planning protocol.
4. The self-critique form.
5. Group Breakdown; listing your client assignment, - ie Healy or Skoler.
6. This instructions memo.

To maintain client confidentiality, your client's legal file will be emailed to you from Moira Linnehan. Please do not share the client materials with your classmates. This simulation will lead to a negotiation session against the lawyers for your client's partner. (Major II Simulation). Keep the client information confidential as you would with a real client, See, Rule 1.6, Model Rules of Professional Conduct.

Please be sure that you have all the necessary documents as you will be expected to have read and reviewed all of the relevant materials.

Before your counseling session:

1. Complete your Planning Protocol
 - a. Prior to being videotaped, you are required to complete a planning protocol for the meeting with your client.
2. Email and/or digital drop box (Blackboard) the planning protocol to your Small Group Professor. (Do NOT hand it to the person running the video tape.)
 - a. This must be delivered before the counseling session begins.
3. Schedule your critique with your Small Group Professor
4. Keep a copy of your planning protocol for yourself and bring it to your critique session with your Small Group Professor.

After your counseling session:

You are required to do the following in the order provided and within the deadlines as listed.

Within 48 hours:

- 1. View your video tape**
 - a. You may take the tape home with you as long as you sign it out at the front desk and leave an ID. When returning the tape, please be sure to hand it to someone at the front desk and make sure that it is signed back in.
 - b. Some students find it useful to watch the tape more than one time.
- 2. Complete the self-critique**
 - a. E-mail (or digital drop box on Blackboard) to your Small Group Professor.
 - b. The suggested self-critique is posted on Blackboard. Please use a computer to complete the self-critique.

Within 72 hours:

- 1. Draft a memo to your client memorializing the counseling session.**
 - a. Note that you should prepare the memo to your client after you watch the video tape. This will reduce your need to take notes during the counseling session; you can take notes for your self-critique and for your memo to the client while you are watching the tape.

Please note these deadlines WILL NOT be extended. All of these tasks must be completed BEFORE your individual critique session with your Small Group Professor.

**FUNDAMENTAL LAWYERING SKILLS - PLANNING PROTOCOL
MAJOR SIMULATION I - INTERVIEWING/COUNSELING
SPRING 2004**

Name: _____

Small Group Professor: _____

Note: Before your Major 1 simulation, fill out this form by computer and e-mail (or digital drop box - Blackboard) to your small group professor. Whatever method of transmission is used, the form must be delivered before you begin taping your the counseling session with your client. DO NOT give this form to the person filming Major 1.

What are your primary goals for this meeting with the client?

What topics do you plan to cover in the information-gathering portion of this meeting?

What topics do you plan to cover in the counseling portion of this meeting?

What decision(s) would you like the client to make before s/he leaves your office?

For each of the topics and decisions identified: (1) outline the options you will identify for the client; and (2) describe how you will develop those options for the client.

How will you facilitate the generation of additional options by the client?

How do you plan to assist the client in evaluating the options?

What advice, if any, do you plan to give to the client concerning the future of the business of other topics?

Other plans for the meetings and additional comments:

Planning protocol. Word

OPERATING AGREEMENT OF FORT GREENE REALTY, LLC

OPERATING AGREEMENT, made this 7th day of August, 1998, among Jordan Skoler with an address at 123 Prospect Avenue, Brooklyn, NY, ("Skoler") and Leslie Healy with an address at 123 Carroll Street, Brooklyn, NY ("Healy") are sometimes hereinafter individually referred to as a "Member" and collectively as the "Members."

WITNESSETH:

WHEREAS, the Members have previously conducted business as members of a general partnership under the name H&S Realty Partnership (the "Partnership") pursuant to the laws of the State of New York;

WHEREAS, the Members now desire to conduct business as members of a limited liability company pursuant to the laws of the State of New York;

WHEREAS, all the Members have approved and executed a Conversion Agreement of this date herewith setting forth the terms and conditions of the conversion of the interests of the Members as partners in the Partnership into membership interests in the limited liability company;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and representations set forth herein the parties hereto agree as follows:

1. Name.

The name of the limited liability company is **Fort Greene Realty, LLC** (the "LLC"). The Members have caused to be filed with the Department of State of New York a Certificate of Conversion, converting the H&S Realty Partnership into the LLC and shall hereafter satisfy all other requirements of the New York Limited Liability Company Law to conduct the business of the LLC in the State of New York.

2. Office.

The principal office of the LLC is 123 Prospect Avenue, Brooklyn, NY, or such other place or places as the Members shall designate.

3. Business.

The business of the LLC shall be to:

(a) own, manage and operate certain real property located at:

(1) 702 Oak Street, in Kings County, City of New York, State of New York (the "702 Oak Property");

(2) 705 Oak Street, in Kings County, City of New York, State of New York (the "705 Oak Property");

(3) 125 Rose Street, in Kings County, City of New York, State of New York (the "125 Rose Property");

(4) 54 Birch Avenue, in Kings County, City of New York, State of New York (the "54 Birch Property");

collectively, "the Property;"

(b) hold, maintain, lease, alter, perform construction with respect to, develop, rehabilitate, subdivide, sell, exchange, dispose of or otherwise take such action as the Members shall determine with respect to the Property;

(c) borrow money and issue evidence of indebtedness in furtherance of any or all of the objectives of its business, and to secure the same by mortgage pledge or other liens;

(d) enter, perform and carry out contracts or take action of any kind necessary to, in connection with, or incidental to, the accomplishment of the foregoing purposes;

(e) engage in any other lawful act or activity as all the Members shall determine; and

(f) from time to time, do any one or more of the things and acts set forth herein.

4. Term.

The term of the LLC shall continue until terminated as hereinafter provided.

5. Capital.

5.1 Each Member has previously contributed to the Partnership such capital as is reflected in the books and records of the LLC. The Members shall contribute such additional capital, on a pro rata basis in proportion to their respective Membership Interests set forth in Section 6 hereof as all Members shall, in good faith, unanimously determine to be required from time to time to accomplish the purposes of the LLC.

5.2 An individual capital account is maintained for each Member. Each Member's capital account shall be increased by (i) such Member's additional contributions to the capital of the LLC and (ii) such Member's share of the net profits of the LLC and decreased by (i) distributions to such Member by the LLC, (ii) such Member's distributive share of net losses of the LLC and (iii) such Member's distributive share of expenditures of the LLC not deductible in computing net profits or losses and not properly treated as capital expenditures.

5.3 No interest shall be paid by the LLC on the capital contributions of the Members and no Member shall, except as otherwise provided herein, have the right to withdraw, or

demand a refund or return of, all or any part of his capital contributions, or receive or demand property other than cash.

6. Fiscal Year; Profits and Losses; Distributions.

6.1 The fiscal year of the LLC shall be the calendar year.

6.2 The Membership interests of the Members are as follows. All net profits, net losses, credits, deductions and all other items of the LLC shall be allocated to, or be borne by, the Members in accordance with the following fractional interests (the "Membership Interests"):

Name	Membership Interest
Leslie Healy	50%
Jordan Skoler	50%

6.3 Distributions of net cash flow of the LLC, if any, less such reasonable reserves as the Members shall determine to be necessary for present operations and/or future contingencies shall be made at such time and in such amounts as the Members, by a vote of a majority in interest, shall determine. For purposes hereof, net cash flow shall be the net profits or losses of the LLC for the fiscal year as determined by the LLC's accountants plus there shall be added back to the net profits or losses the amount deducted during such period for depreciation and there shall be subtracted an amount equal to the total paid during such period for mortgage amortization and capital improvements. Net cash flow shall be distributed to the Members in proportion to each Member's Membership Interest.

6.4 The net cash proceeds (herein referred to as "Distribution Proceeds") resulting from the refinancing of any mortgage, or the sale, condemnation (or similar eminent domain taking), exchange, casualty or other disposition of the Property or from the liquidation of the assets of the LLC following a dissolution thereof, which are not reinvested or retained by the LLC for the continuation of its business, and after deducting all related expenses shall be distributed and applied in the following order of priority:

- (i) to pay any debts or liabilities of the LLC, including, but not limited to, all commissions and other expenses thereof, any loans or advances (together with interest thereon) made to the LLC by any Member and all necessary expenses of liquidation, if applicable;
- (ii) to establish any reserves which the Members deem reasonably necessary to provide for any contingent or unforeseen liabilities or obligations of the LLC, provided, however, that at the expiration of such period of time as the Members deem advisable, the balance of such reserves remaining after the payment of such contingencies shall be distributed to the Members in accordance with paragraphs (iii) and (iv) below;
- (iii) to the Members, in accordance with, and proportionate to their positive capital account balances; and

(iv) to the Members in proportion to each Member's Membership Interest.

7. Management.

7.1 The business and affairs of the LLC shall be managed by the Members by the unanimous affirmative vote of a majority in interest of the Members (unless otherwise provided herein). The Members shall have the authority to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members under the Limited Liability Company Law of New York. Once a decision has been made by the Members, any Member shall have the authority to bind the LLC through his signature or otherwise.

7.2 Notwithstanding the foregoing, the vote of at least two-thirds in interest of the Members shall be required to (i) approve the dissolution of the LLC, (ii) approve the sale, exchange, lease, mortgage, pledge or other transfer of the Property or substantially all of the assets of the LLC, (iii) approve the purchase, mortgage, pledge or other acquisition of other property, and (iv) approve the merger or consolidation of the LLC with or into another LLC or other entity.

8. Books and Records.

8.1 Proper accounting records of all LLC business shall be kept and shall remain open to inspection of any of the Members, or their designees or legal representatives, at all reasonable times. At the end of each calendar year, a complete accounting of the affairs of the LLC shall be furnished to each Member, together with such appropriate information as may be required by each Member for the purpose of preparing his or her income tax return for that year. All matters of accounting for which there is no provision in this Agreement are to be governed by generally accepted principles of accounting applied on a consistent basis.

8.2 The books and records of the LLC shall be kept at the principal place of business of the LLC, or in such other place as designated by the Members.

8.3 In the event of (i) a transfer of any interest in the LLC, or (ii) any other circumstance in which an election under Section 754 of the Internal Revenue Code, as amended, may be appropriate, the transferee shall have the right to cause the LLC to make the election permitted by Section 754 of the Internal Revenue Code, as amended, provided that such election shall be allowable at the time and provided further there is no detriment to the other Members.

9. Transfer of Member's Interest.

9.1 Other than as set forth in Section 9.2 below, no Member shall, without the written consent of the other Members, sell, assign, mortgage or otherwise encumber his or her interest in this LLC or in its capital assets or Properties, or enter into any agreement of any kind that would result in any person, firm or corporation becoming interested with him or her in the LLC, except that a Member may transfer the economic rights to his or her interest in the LLC (i.e. the right to such Member's share of the profits and losses of the LLC and the right to receive distributions from the LLC) to his spouse or to a child or

grandchild and/or a spouse of either a child or grandchild and/or a trust for the benefit (exclusively) of any of the foregoing, upon the condition, however, that the transferor shall remain liable with respect to all obligations created or referred to under the terms of this Agreement.

9.2

(a) Except as otherwise provided in Article 9.1 above, if, at any time, any Member of the LLC (the "Selling Member") desires to make an *inter vivos* disposition of all, or any part, of his interest in this LLC to any third-party individual or entity (the "Offeror"), he shall give written notice of his intention to do so (the "Notice of Intent to Sell") to each of the other Members (the "Offeree Members") and to the LLC, which notice shall specify the name of the Offeror, the interest which the Selling Member proposes to sell (the "Offered Interest"), the price offered therefor and all other material terms and conditions of the proposed transaction. The Offeree Members and the LLC shall then have the option to purchase all, but not less than all, of the Offered Interest on the same terms as are contained in the offer in accordance with Sections 9.2(b) and 9.2(c) below.

(b) Each Offeree Member shall, upon written notice given to each of the Selling Member and the LLC within thirty (30) days after receipt of the Notice of Intent to Sell, be entitled to purchase on a *pro rata* basis that portion of the Offered Interest which bears the same ratio to the Offered Interest as the Membership Interest of such Offeree Member bears to the aggregate of the Membership Interests of all the Offeree Members immediately prior to the issuance of the Notice of Intent to Sell. In the event, however, that any Offeree Member shall elect not to acquire all or any part of his *pro rata* portion of the Offered Shares or fails to give the requisite notice set forth herein (the "Non-Purchasing Member"), then the other Offeree Members shall have the right to purchase, on a *pro rata* basis, all or any part of that portion of the Offered Interest allocated to the Non-Purchasing Member upon written notice given to each of the Selling Member, the Non-Purchasing Member and the LLC no later than forty-five (45) days after receipt of the Notice of Intent to Sell.

(c) The LLC shall be entitled to purchase all of the Offered Interest, if any, not purchased by the Offeree Members pursuant to Section 9.2(b) above upon written notice given to each of the Selling Member and Offeree Members no later than sixty (60) days following receipt of the Notice of Intent to Sell.

(d) The closing for any purchase and sale of the Offered Interest shall take place seventy five (75) days following receipt by the LLC and Offeree Members of the Notice of Intent to Sell.

(e) If the Offeree Members and the LLC shall not have elected to purchase, in the aggregate, all of the Offered Interest in accordance with Sections 9.2(b) or 9.2(c) above, then the Selling Member shall thereupon be free to dispose of all of the Offered Interest to the Offeror in accordance with the terms of the offer, which Offeror shall, as a condition precedent to the purchase of such interest, execute and deliver to the Offeree Members and the LLC, a legally enforceable agreement expressly assuming all of the terms, conditions, covenants and agreements of this Agreement, and such other documentation as the LLC and the Offeree Members may reasonably require. If the Offered Interest shall not be disposed of in accordance with the terms of the *bona fide* offer to the Offeror within a period of one hundred twenty (120) days after the Selling

Member gives the Notice of Intent to Sell, then the Offered Interest may not thereafter be sold without compliance again with the provisions of this Section 9.2

10. Dissolution and Termination.

10.1 Upon the occurrence of the following events, the LLC shall be dissolved:

(a) the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member, or any other occurrence which terminates a Member's membership in the LLC, except where within 180 days after any such event the Members, other than the affected Member, vote unanimously to continue the business of the LLC;

(b) the sale or transfer of the Property or substantially all of the assets of the LLC;

(c) the LLC ceases its business operations;

(d) the Members unanimously vote to dissolve and terminate the LLC; or

(e) the entry of a decree of judicial dissolution.

10.2 Notwithstanding Section 9, upon the occurrence of an event set forth in Section 10.1(a), and in the event the Members vote to continue the business under Section 10.1(a), such vote shall also be deemed to be an authorization for the affected Member's personal representative, executor, administrator or successor in interest to have all of the rights of a Member for the purpose of managing or settling his estate, and to have the right to transfer the Member's interest to the affected Member's spouse, child, grandchild and/or spouse of a child or grandchild and/or a trust for the benefit (exclusively) of any of the foregoing unless all other Members consent to a transfer to other individuals or entities.

10.3 In the event of the dissolution of the LLC, the business and affairs of the LLC shall continue to be governed by this Agreement during the winding up of the LLC's business and affairs.

11. Restrictive Covenant.

No member shall, during the existence of the LLC, either directly or indirectly, engage in the business of owning; renting, developing, managing or operating real property located in Kings County, State of New York, either privately or through any entity other than Fort Greene Realty, LLC without the express written consent of all the members. The covenant shall not prohibit any Member from owning or developing real property which constitutes his or her primary residence.

12. Notices.

Any notice required or given with respect to this Agreement shall be valid and effective when delivered by registered or certified mail or by hand to the address hereinabove set forth. Any notice provided hereunder to be given to or received by a Member shall be given by or to the legal representative of any Member who is deceased. Any party hereto may change such address by notice given to the LLC and the other Members in accordance with this Section 12.

13. Miscellaneous.

13.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Any party that receives an assignment of the interest of a Member in accordance with the terms hereof shall be required to execute and deliver to each other Member a legally enforceable agreement expressly assuming all of the terms, conditions and covenants of this Agreement and such other documents as the Members shall reasonably require prior to such assignment becoming effective.

13.2 This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed wholly in such State.

13.3 This Agreement sets forth the entire agreement and understanding of the parties in respect of the subject matter hereof and supersedes all prior and contemporaneous agreements, arrangements and understandings relating to the subject matter hereof.

13.4 This Agreement may be amended or modified only by a written instrument executed by all of the Members. The failure of a party at any time or times to require performance of any provisions hereof shall in no manner affect the party's right at a later time to enforce the same. No waiver by any party of the breach of any term contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such breach or of the breach of any other term of this Agreement.

13.5 Reference to this Agreement herein shall include any amendment or renewal hereof.

13.6 If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and only to the extent such provision shall be held to be invalid or unenforceable and shall not in any way affect the validity or enforceability of the other provisions hereof, all of which provisions are hereby declared severable, and this Agreement shall be carried out as if such invalid or unenforceable provision or portion thereof was not embodied herein.

13.7 This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement. The headings in this Agreement are solely for the convenience of the parties, and are not intended to and do not limit, construe or modify any of the terms and conditions hereof.

13.8 None of the provisions of this Agreement shall be for the benefit of or be enforceable by any creditors of the LLC.

13.9 Words and phrases used herein in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender unless the context requires otherwise.

13.10 Notwithstanding anything to the contrary stated herein, no Member, nor any permitted successor and assign of any Member, shall be liable, responsible or accountable in damages or otherwise to the other Member for any errors in judgment, for any act, including any act of active negligence, performed by such person or entity, or for any omission or failure to act, if the performance of such act or such omission or failure is done in good faith, is within the scope of the authority conferred upon such person or entity, by this Agreement or by law and does not constitute breach of fiduciary duty, willful misconduct, gross negligence or reckless disregard of duties.

13.11 The LLC shall indemnify and hold harmless all of the Members and their permitted successors and assigns (collectively the "Indemnified Persons") from and against any and all liabilities reasonably incurred by any such Indemnified Persons in connection with the defense or disposition of any proceeding in which any such Indemnified Person may be involved or with which any such Indemnified Person may be threatened, with respect to or arising out of any act, including any act of active negligence, performed by the Indemnified Person or any omission or failure to act if (i) the performance of the act or the omission or failure was done in good faith and within the scope of the authority conferred upon the Indemnified Person by this Agreement or by law, except for acts which constitute breach of fiduciary duty, willful misconduct, gross negligence or reckless disregard of duties or (ii) a court of competent jurisdiction determines upon application that, in view of all of the circumstances, the Indemnified Person is fairly and reasonably entitled to indemnification for such liabilities as such court may deem proper.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

DULY EXECUTED

/s/ Leslie Healy

/s/ Jordan Skoler

MAJOR SIMULATION I - SELF CRITIQUE FORM

Name: _____

Small Group Professor: _____

Note: It is preferable that you fill out this form by computer and e-mail it to your small group professor. Whatever your method of transmission, the form is due at least 48 hours in advance of your individual critique meeting.

What did you do well in the role play?

What do you believe you could have done better? How might you have prepared differently for this meeting?

Which of the goals identified in your planning protocol did you achieve? Which goals did you fail to achieve? For those that you did not achieve, discuss the reasons you believe you did not achieve them.

On what issues did you counsel the client? Were they issues you identified prior to meeting with the client or issues the client raised?

Did you obtain any additional information during the meeting? If not, do you think it would have been helpful to obtain additional information? If so, on what issues?

What, if any, decisions did the client make during this meeting?

Did you explicitly or implicitly express an opinion as to any of those client decisions? Why or why not?

Any Other Comments/Reflections:

Self critique form