

Failed Student Collaborations: Repairing the Irreparable

Jill I. Gross, Associate Professor of Law, Pace University School of Law
Co-Director, Pace Law School Securities Arbitration Clinic

PREMISE: Clinicians should teach and implement the skills and values of lawyer collaboration in clinical courses because it benefits clients and students.

PROBLEM: What should a clinician do when a student collaboration fails?

1) What are the reasons student collaborations fail?

- Different procedural styles (communication; approach to deadlines; location of work; work schedule)
- Disagree on substantive approach to case (strategic; decision-making)
- Disparate learning capabilities (issue-spotting; analysis; subtle hierarchies)
- Abusive relationship/prejudice (gender; sexual; age; race; ethnicity; intellectual; socio-economic; free-riding)
- Personality conflicts (emotional; chemistry; ethical)
- Different attitudes toward law school and learning (anxious vs. lax)
- Students following different collaboration models (collaborative vs. parallel vs. input)

2) What factors should a clinician consider when repairing a failing or failed student collaboration?

- Client-centered representation – client’s best interests
- Student-centered educational objectives – student’s learning
- Human factors – student’s emotional well-being
- Teaching interests – supervisor’s ability to teach
- Type of experiential learning course (clinic; externship or simulation)

3) How should a clinician balance these competing interests when attempting to repair the failed collaboration?

- break up collaboration if conflict impeding representation
- impose input model to reduce conflict and maximize supervisor’s control
- impose parallel model to reduce conflict and increase supervisor’s control
- provide students choice to maintain or break up collaboration
- force continued collaboration to maximize learning and increase supervision to protect client, unless client impact is irrevocable

Introduction:

I've been a pessimist my whole life and typically see the glass half empty.

So it is not surprising that I have spent a lot of time focusing on my teaching failures, rather than my successes.

I wholeheartedly endorse the values of collaboration and try to teach those skills to my students in all learning environments.

In the ten years that I have been teaching skills courses, I have used the Sue Bryant's collaboration model for student work in almost every course I teach.

And, I have been fortunate enough to teach live-client clinics, externships and simulation courses.

For live-client clinics, I heed David Chavkin's warning that any supervisory intervention is my failure.

For externships, I encourage externs to collaborate with their field attorneys.

For simulations, I mediate students' collaboration disputes.

But, despite all my efforts, sometimes a student collaboration fails to the point of no repair.

What should a clinician do?

I have spent a lot of time thinking about this problem in the last five years.

Let me give you a few examples:

1) Early years of teaching at Cardozo

Appellate briefs with 2-person teams. Required by centralized program. Describe problems with male-female team; free-riding problem; attitudes; intellectual snobbery, etc.

Because it is a discrete, one-time assignment, unless conflict is severe, I encourage them to continue and work it out.

Still follow that model for writing class I teach now -- But wonder why.

2) PCLS

Describe course.

I assign the 8 students into 4 separate 2-lawyer firms.

One “firm” consisted of a second career male student, who was a former opera singer; divorced with custody of his children, living about an hour from school. The other lawyer in the firm was a second career female student, who lived near her co-counsel, and was single. They shared Italian ethnicity, and both had strong personalities. The male student excelled in school; the female was an average student academically.

Not long into the collaboration, problems starting arising, primarily with scheduling of group work. It seemed that their schedules were vastly different, and that the male student, as a single parent, had child care limitations. He did not spend a lot of time on campus other than to attend classes; the other student spent more time on campus. Before long, their conflict deteriorated to the point where they were exchanging inappropriate and unprofessional e-mails with each other containing accusations and allegations that shocked me, frankly. I learned about the e-mails because they would forward them to me to tell on the other and then expect me to relieve them of their “burden.”

I then called these two “adults” into my office and used Sue Bryant’s methods to mediate their dispute. Nothing worked; they had dug

their heels in and each stubbornly refused to compromise, admit fault in any way, or acknowledge that their differing work styles, schedules and attitudes about school led to their problems.

After struggling through the educational consequences to them and to other students in the class, but realizing that there were no real clients whose interests were at stake, I decided to allow them to divide up the work (which was easy based on the two-issue summary judgment motion they had to draft) pursue a strict parallel work model with virtually no cross-contact and file separate motion papers for each issue.

This experience left me bruised and battered as a simulation supervisor. It also left me thinking about these issues some more.

3) Securities Arbitration Clinic.

Explain nature of clinic and why 2-student teams.

While the majority of student teams have functioned well, there are occasionally problems.

Day-evening; importance of client work; analytical ability

Factors to consider very different

Go through outline