

THE NYU LAWYERING PROGRAM

LEARNING BY USING THE LAW

During the first year of Law School, NYU students work in role as attorneys to integrate sophisticated analysis of facts, careful research, thoughtful interpretation of law, sensitive elaboration of clients' desires, strategic analysis of lawyering interactions, and responsible consideration of the ethical requirements of the lawyer's role. In each of seven exercises, students analyze the components of a professional task, plan to undertake that task, implement their plans and engage in a structured critique of their work. The exercises are designed to deepen students' understanding of how law is created and interpreted, to awaken a critical sense of the lawyer's ethical, professional and social roles, and to instill life-long habits for learning from experience.

Orientation to Using and Interpreting Legal Rules (1 week)

In the first exercise, students work in role as advocates or judges to conduct oral arguments and issue opinions in a series of hypothetical cases. In planning, executing and critiquing these arguments and opinions, students examine the different sources of law (constitutional, legislative, administrative and judicial), work with the basic tools of statutory and common law interpretation, and test the limits of responsible advocacy and interpretation.

Interpreting a Line of Cases from an Advocacy Perspective (4 weeks)

In the second exercise students write an argument in support of, or in opposition to, a motion to dismiss a claim. They are given a case file (including a memo from a supervising attorney, the complaint, and a motion to dismiss) and several relevant cases (after this exercise they are responsible for researching relevant law independently). Students focus on interpreting judicial opinions, and interpreting a line of cases, from the perspective of an advocate. In the process, students grapple with how law evolves and how to reduce arguments to persuasive legal prose. During a critique and revision phase they learn how to engage in productive self- and peer-critique.

An Introduction to Interactive Work and Fact Development (1 week)

In the third exercise students engage in two fact-finding interviews on behalf of a client. The exercise highlights two closely related subjects: 1) the epistemology of fact -- the processes by which observations are recalled, reported, and taken as established, and 2) the effects of interactive choices -- deliberate and inadvertent behaviors -- on the development of facts and ideas.

A Counseling Problem (6 weeks)

In the final exercise of the first semester, students counsel a client seeking advice before taking an action that might result in criminal liability. They conduct a videotaped interview of

the client to establish the client's goals and concerns and to uncover the relevant facts. Next, they research and draft an office memo addressing the legal principles under which the client might be found liable. Finally, they counsel the client about whether or how to take the contemplated action. Each meeting with the client and at least one of two drafts of the office memo are the subjects of group critique.

Negotiation and Transactional Lawyering (4 weeks)

This exercise introduces students to theories of negotiation and transactional lawyering. Students revisit earlier learning experiences (interviewing and counseling clients, developing facts, identifying and interpreting relevant legal authorities, strategic planning, informal oral advocacy, and addressing ethical issues) and integrate these experiences in the context of negotiating a pharmaceutical license agreement.

After meeting with their clients to learn the basic facts of the proposed transaction and the client's goals, students research the relevant law and work with the client to establish goals and a negotiating strategy. Students are encouraged to brainstorm creative options that will address the client's underlying interests and enhance the value of the deal. In the next phase of the exercise, each student conducts a 45 minute videotaped negotiation with a student who represents the other party. After the negotiation, students draft contract provisions that memorialize the outcome of the negotiation. The negotiation videotapes and contract provisions are critiqued in small groups.

Informal Advocacy in the Context of a Mediated Settlement Attempt (4 weeks)

In the second exercise students are asked to consider problem solving and dispute resolution, including the role of facilitative mediation by a third-party neutral. As in the Negotiation and Adjudication exercises, students revisit earlier learning experiences (interviewing and counseling clients, developing facts, identifying and interpreting relevant legal authorities, planning strategy, and addressing ethical issues). Students work in role to learn the facts of the dispute from interviews and documents, research the law, advise the client on mediation strategies, and prepare a pre-mediation memo for the mediator.

A mediation session follows, led by a professional mediator or an attorney experienced in mediation. Each client is represented in the session by a team of students. A supervising faculty member observes the mediation and joins the students and the mediator in an immediate critique.

Adjudication (5 weeks)

In the final exercise of the year students employ statutory and regulatory interpretation, written advocacy and oral advocacy in the context of formal adjudication. Students research and write a full memorandum of law either supporting or opposing a motion for a preliminary injunction. Students subject their briefs to self, peer and faculty critique and, after further revision, submit the briefs to volunteer judges. Students then prepare and moot oral arguments before going to the judge's "chambers" for a one-hour oral argument and critique session. The judges are a distinguished group of volunteers: judges, professors and experienced practitioners.