

# Session 1: Goals for Clinical Programs

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AALS New Clinical Teacher's Conference  
June 27, 2004

To: New Clinical Colleagues  
From: Sue & Elliott  
Date: June 23, 2004  
Re: Setting Goals for Clinical Programs

We have attached as handouts for you 4 different versions of goal statements.

- a list from a report done in the early 90's by a clinical teachers as part of the AALS Section on Clinical Education and published in the *Journal of Legal Education*;
- a list from the Best Practices Project of the Clinical legal Education Association, a document that is still a work in progress;
- an article by Elliott in which he succinctly lays out and explains the goals for clinical education and
- a list of goals and evaluation criteria from Sue.

We hope these will be useful to you as you shape the goals for your own program or refine ones that are already in place.

We thought it would also be useful to you to make our planning for the session visible to you and explain some of the choices we made. We have attached as well a description of the various choices that could be made in designing a session or class. First we started with a real case - the beginnings of a case study - so that the group would have a shared factual scenario. By starting the conversation on tasks related to doing a case, we started at a place that we imagined was closer to your experiences as lawyers and beginning teachers.

We used a mini-write to get everyone involved in the process early in the session and allow even the slower morning thinkers to have time to join the conversation. We took the risk that starting at a low energy level early in the session would not deaden the conversation to follow. We intended to create lists off of the mini-writes and so the fact that people might be committed in the discussion to what they had written would not be a problem, as we did not expect growth and change of ideas but rather collection.

We moved from the particular of "topics to raise with the students" to a more general conversation about goals. We started the goals conversation in small groups to allow participants to get feedback and clarify ideas before moving to the large group. Because we were looking for evaluation and synthesis, we thought "two heads would be better than one" for this thinking, Thus we asked you to think in the small group as opposed to alone with the mini-write.

We used facilitated discussion to collect the ideas of the group. We planned for greater facilitation in the second group combined with mini-lecture to connect the thoughts of the group to what we knew from reading clinical literature. We used reflection your prior experiences as lawyers and teachers to develop the ideas in discussion rather than a presentation from us about what we think are goals for clinical education. We guessed that you would not feel the need for experts and that there was a lot of untapped expertise in the room. We attach a list of the kinds of questions that helped facilitate the conversation.

We have also attached a partial list of teaching/learning strategies to identify some of the ways that you can create learning opportunities in the classroom.

Good Luck and let us know if we can be of help as you develop your programs and skills.

## **AALS Committee on the Future of the In-House Clinic<sup>1</sup>**

The AALS Committee on the Future of the In-House Clinic<sup>2</sup> identified nine goals of clinical education which flow from its mission:

1. Developing modes of planning and analysis for dealing with unstructured situations as opposed to the "pre-digested world of the appellate case;"
2. Providing professional skills instruction in such necessary areas as interviewing, counseling, and fact investigation;
3. Teaching means of learning from experience;
4. Instructing students in professional responsibility by giving them firsthand exposure to the actual mores of the profession;
5. Exposing students to the demands and methods of acting in the role of attorney;
6. Providing opportunities for collaborative learning;
7. Imparting the obligation for service to clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people
8. Providing the opportunity for examining the impact of doctrine in real life and providing a laboratory in which students and faculty study particular areas of the law; and
9. Critiquing the capacities and limitations of lawyers and the legal system.

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<sup>1</sup> *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511 (1992)

## **Best Practices Project of the Clinical Legal Education Association<sup>3</sup>**

The Best Practices Project articulates the following goals as best practices for a school:

The school articulates clear and specific educational objectives, and those objectives focus on what students will be able to do after graduating and how they will do it in addition to what they will know.

- a. Graduates are knowledgeable about established and evolving principles of law, legal processes and systems, lawyering skills, and the history, goals, structure, duties, values, and responsibilities of the legal profession and its members and the application of this knowledge to legal services.
- b. Graduates demonstrate the lawyering skills necessary for them to practice law effectively and professionally.
  - 1) Graduates demonstrate interpersonal and communication skills that result in effective information exchange and teaming with clients and other professionals.
  - 2) Graduates provide client services that are compassionate, appropriate, and effective for the resolution of legal problems and the promotion of justice.
  - 3) Graduates investigate and evaluate their own legal services, appraise and assimilate developments in the legal profession, and improve their legal services.
  - 4) Graduates are aware of and responsive to the larger contexts and systems of the legal profession and society and call effectively on system resources to provide services that are of optimal value.
- c. Graduates understand and are committed to the values of the legal profession, as manifested through a commitment to carrying out professional responsibilities, adherence to ethical principles, and sensitivity to a diverse client population.

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<sup>3</sup> Best Practices is a project of the Clinical Legal Education Association. The project has created a document that is still very much a work in progress. It has articulated these goals for legal education generally. The document can be found at <http://professionalism.law.sc.edu/downloads/text.doc>

## **Elliott's List of Goals For Clinical Programs**

The most important goals of our in-house clinic are to teach the following:

- Client-centered lawyering
- Theory-driven preparation and advocacy
- Professionally responsible legal work
- Fact investigation and development
- Persuasive advocacy
- Strategic planning and problem-solving
- Critical analysis of the justice system/skills need for social justice lawyering

These are described more fully in the following article.

**Papers from the La Pietra Conference of International Legal Educators**

**\*375 CLINICAL LEGAL EDUCATION IN THE UNITED STATES: IN-HOUSE CLINICS,  
EXTERNSHIPS, AND SIMULATIONS**

Elliott S. Milstein [\[FN1\]](#)

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The core idea of clinical legal education is that teaching students while they are in professional roles is an essential component of professional education. [\[FN1\]](#) Modern clinical education grew out of the progressive reform movement of the 1960s and 1970s and responded to students' desire to learn how to use law as an instrument of social change and to be involved in the legal representation of poor people. [\[FN2\]](#) It has evolved into a distinctive academic field that includes sophisticated models of pedagogy [\[FN3\]](#) and experience-based scholarship about teaching, [\[FN4\]](#) lawyering, [\[FN5\]](#) law, [\[FN6\]](#) and legal institutions. [\[FN7\]](#)

**\*376** There are three different branches of clinical education in the United States: in-house live-client clinics, externship programs, and simulation courses. In-house live-client clinics are built around an actual law office, usually located in the law school, that exists for the purpose of providing students with a faculty-supervised setting within which to practice law and learn from the experience. [\[FN8\]](#) Students learning in externship programs are placed in professional settings external to the law school, including law offices within governmental agencies and nongovernmental organizations. [\[FN9\]](#) Law schools use the students' experience in those offices as the basis for teaching and learning. [\[FN10\]](#) Simulation is a teaching method in which students are put into simulated lawyer roles to perform some aspect of the lawyering process in a controlled setting. [\[FN11\]](#) Each of these uses the students' experiences as the subject matter for analysis, both within and outside the classroom.

Most references to clinical legal education in the U.S. are to the in-house model. The advantage of this model is that the primary purpose of the law office in which students work is education. In these clinics, students' first professional experiences are undertaken under the supervision of faculty. The pedagogy is designed to engender appropriate professional values while also teaching students the theory and practice of lawyering.

Students in clinics are given complete responsibility for handling an actual legal matter for a real client. [\[FN12\]](#) This is possible because every state has a "student practice rule" permitting students who are supervised by law school faculty to practice law. Students' work includes the trial of cases in court, negotiations with opposing counsel, client interviewing and counseling, writing opinion letters, and all of the other tasks associated with legal representation. While most clinics represent clients in litigation or other contested proceedings, there are now many clinics in which students represent individuals and groups in transactional and other business matters. [\[FN13\]](#) Schools have chosen a variety of ways to organize the legal work of their clinics, and so there are clinics that specialize in such areas as criminal law, family law, domestic violence, international human rights, community economic development, and tax; others are set up as general practice clinics handling a variety of civil **\*377** cases. Another way that clinics are organized is to target a particular clientele, such as juveniles, women, the elderly, prisoners, or AIDS patients. [\[FN14\]](#)

Clinical teachers use a number of learning modes, both to be certain that students competently handle the matters entrusted to them and to ensure that students learn from their experiences. The most intensive mode is supervision--meetings between teacher and student teams (many clinics require students to work in collaborative teams of two [\[FN15\]](#)) to discuss preparation or to analyze critically work that has been done. These meetings are frequent and include, among other things, review of the students' written work, strategic choices, and reflections on what has been learned. The best supervision deals with the particular problems in the pending case and also uses that case or student experience as a metaphor for larger recurring issues that the students will face in their careers. Helping students extract theory from experience, apply theory to solve real-world problems, and revise theory in light of experience is the supervisory ideal.

Another learning mode in clinical programs is case rounds. These are conducted in a seminar format and

focus on the students' experience in their cases. Students are called on either to present a case in preparation for group input on the decision-making necessary to the next actions in the case or to report on an event that has occurred in the case. The group process is used sometimes to look forward, by helping a team make a strategic decision, and sometimes to look back, analyzing the relationship between a result and the actions the legal team took to produce the result. The empirical data collected by each student is shared with the group so the students can begin to develop a more general and theoretically sound approach to lawyering. Among the topics that are discussed are professional values, legal ethics, strategy, tactics, and the process of reflection.

The third learning mode is a seminar using readings, simulations, and classroom discussion to teach the lawyering process. The widespread use of simulation in legal education began from the pioneering use of it in the seminar component of clinical programs. The syllabus for the seminar typically includes client interviewing, client counseling, case theory, strategic planning, fact investigation, negotiation, persuasion, and trial skills such as direct and cross-examination and closing arguments. [\[FN16\]](#) In the clinic in which I teach, for example, the seminar is built around a simulated case; for each of the topics we teach a theory class, then give students the opportunity to apply the theory in a simulated exercise that is videotaped and critiqued. Some of [\\*378](#) the classes are built around edited videotapes of the students conducting the simulated exercise.

The most important goals of our in-house clinic are to teach the following:

- . client-centered lawyering
- . theory-driven preparation and advocacy
- . professionally responsible legal work
- . fact investigation and development
- . persuasive advocacy
- . strategic planning and problem-solving
- . critical analysis of the justice system
- . reflective practice

Client-centered lawyering, perhaps the ideological core of clinical education, is the idea that lawyers represent clients and must do it in a way that ensures the autonomy of the client as the primary decision-maker over the life of a case. It assumes that all important decisions involved in solving a legal problem involve value choices and that a primary job of a lawyer is to help a client make those decisions in a way that is consistent with the client's values. [\[FN17\]](#) Teaching legal interviewing, problem-solving, and legal counseling is, therefore, fundamental in nearly all clinical programs. In addition, as is the case with all of the parts of the lawyering process, one of the scholarly projects of clinical teachers has been to develop theories or models of how each of these lawyering tasks might best be carried out and theories of what pedagogy would best teach them.

Theory-driven preparation and advocacy refer to the idea that all of the lawyer's strategic decisions in a case need to be organized around a theory of how the client's case may be won. This "case theory" is a way of telling the client's story that emphasizes favorable facts and explains unfavorable facts in the context of the legal elements necessary to prove the client's cause. [\[FN18\]](#) Decisions, for example, about what facts to investigate, what evidence to present, and what arguments to make are determined by their relationship to this case theory. Students in clinics are taught how to develop a case theory early in their presentation of a case, how to revise it as necessary as situations change, and how to organize their work on the case in ways that are consistent with the theory.

Teaching students to engage in professionally responsible legal work is one of the most basic duties of a clinical teacher; that this is done in a clinic is one of the fundamental justifications for locating the clinic within the academy. Ethical and moral dilemmas occur daily when one works in the real world, and clinic students are responsible for resolving them, usually for the first time in their lives. Students engaged in practice must decide (for example) what to do [\\*379](#) when a client proposes to tell a lie or wants to advance a position the student finds morally repugnant; how to deal with a conflict of interest; whether to file a complaint against an incompetent or unethical cocounsel or opposing counsel. In addition to questions involving compliance with the formal rules of professional conduct, clinical teachers engage students in an exploration of their role in creating a just society. [\[FN19\]](#)

In most of the rest of the American law curriculum, facts are given. In the study of appellate court decisions, facts are distilled into a few short paragraphs and students do not develop an understanding of where these facts come from. In the clinic students learn the facts through a client interview (often across

language and cultural barriers), through research and investigation, and through formal and informal discovery procedures. In learning fact investigation and development, students are taught what facts to look for, how to distinguish relevant from irrelevant facts, methods for searching for facts, the importance of legally sufficient evidence to support factual propositions, and how to organize the evidence to tell the story that is consistent with the case theory. [\[FN20\]](#)

Persuasive advocacy is important to lawyers in both litigation and transactional settings. Persuasiveness depends upon both the quality of the case theory and the skills necessary to carry it out. Clinics teach students theories of advocacy, including, for example, the relationship of learning theory to conducting a direct examination, and the relationship of rhetorical reasoning to conducting a cross-examination. [\[FN21\]](#)

Strategic planning involves recognizing the maximum number of choice moments in the life of a legal matter and making decisions about taking action or withholding action in order to maximize the likelihood of achieving the goals. Learning how to make decisions that predict how people and institutions will behave in response to particular actions, including analyzing both legal and nonlegal factors, is basic to legal problem-solving. The real-world setting of the clinic forces students to engage in the complexity of analysis that is inherent when the multiple actors who affect outcomes are identified. Clinical teachers work closely with students both to teach them a sound process for decision-making and to ensure that the decisions they make in the cases they are handling are analytically sound. [\[FN22\]](#)

Clinics are also uniquely positioned to provide a vantage point from which students can engage in critical analysis of the justice system. Because they typically represent the poor and the disenfranchised, students see the legal system through the eyes of clients who are indigents, women, convicts, or members of **\*380** racial or sexual minority groups. They witness, for example, the way in which status often disadvantages their client, sometimes as a result of legal doctrine or other times because of the prejudices of judges or other actors in the system. Clinical teachers work with students to help them understand the sources of injustice and to explore their ideas for reform. [\[FN23\]](#)

Ultimately clinical pedagogy is intended to teach students to be reflective practitioners, [\[FN24\]](#) lifelong learners who know how to learn from experience. Throughout students' time in a clinic, they are asked to evaluate themselves, analyze their experiences, and articulate what they have learned about themselves, about their abilities, about the validity of the assumptions underlying their strategic predictions, about the lawyering process, and about the justice system. [\[FN25\]](#) In this way, we try to build their abilities both to gather useful empirical information and to develop that information into generalizable conclusions.

As I've said, simulation is often used in the seminar portion of clinical programs. And a number of the skills that are taught in clinics are also taught in simulation programs. For example, many law schools have simulation courses in interviewing and counseling, negotiation, legal writing, alternative dispute resolution, and trial and appellate practice. Simulation is also used to teach substantive law courses--either the entire course or, more commonly, a portion of the syllabus.

Externship programs place students in various kinds of legal jobs in the nonprofit and government sectors where they perform legal work under the supervision of a lawyer in the agency. Many schools try to create a three-way relationship between professor, student, and supervisor so that the faculty member can monitor the student's work and the supervisor's evaluation of it. Other schools rely on the student's reflections upon the work in the externship as fodder for learning. In most externship programs, students write reflective journals, have tutorial meetings with faculty, and participate in seminar discussions. Learning goals of externships include providing students with a milieu within which to learn a substantive area in depth while developing a critical perspective on the organization of legal work. Externship teachers often explore the ethical dimensions of the student's experiences and observations, as well as explore the justice issues that are inherent in most of the settings in which students practice.

Although there are more than 1,000 law teachers in the United States who identify themselves as clinicians, only a few schools are able to serve all of their students with a clinical experience. Even though nearly every American law **\*381** school has some form of clinical program and the number of students served grows each year, the expensive faculty-student ratio that this form of teaching requires (1:8 is the informal standard for in-house programs) inhibits schools from making clinical education universally available. Our challenge now is to accept that as a goal and to assemble the resources necessary to make it a reality.

[\[FNa1\]](#). **Elliott S. Milstein** is a professor at the Washington College of Law, American University.

I want to acknowledge and thank my research assistant, Amy Pugliano, for her able work on an extensive set of footnotes to this article, most of which have been omitted at the editors' request. I will be happy to send the original article, fully footnoted, to any interested reader.

[\[FN1\]](#). See William Pincus, *Clinical Legal Education for Law Students* (New York, 1980). Pincus was president of the Council on Legal Education for Professional Responsibility, which sought to combine hands-on experience for law students with the increasing need for legal representation for all people. Funded by the Ford Foundation in 1968, CLEPR supported experiments in clinical legal education by giving grants and guidance to law schools that established quality clinical programs.

[\[FN2\]](#). See Richard A. Boswell, [Keeping the Practice in Clinical Legal Education and Scholarship](#), 43 *Hastings L.J.* 1187 (1992); Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* at 215-16 (Chapel Hill, 1983); Alan A. Stone, [Legal Education on the Couch](#), 85 *Harv. L. Rev.* 392 (1971).

[\[FN3\]](#). See Mark Spiegel, [Theory and Practice in Legal Education: An Essay on Clinical Education](#), 34 *UCLA L. Rev.* 577 (1987); Joseph D. Harbaugh, *Simulation and Gaming: A Teaching/Learning Strategy for Clinical Legal Education*, in *Clinical Legal Education: Report of the Association of American Law Schools--American Bar Association Committee on Guidelines for Clinical Legal Education* 191 (Chicago, 1980).

[\[FN4\]](#). See, e.g., Ann Shalleck, [Clinical Contexts: Theory and Practice in Law and Supervision](#), 21 *N.Y.U. Rev. L. & Soc. Change* 109 (1993-1994).

[\[FN5\]](#). See, e.g., Binny Miller, [Give Them Back Their Lives: Recognizing Client Narrative in Case Theory](#), 93 *Mich. L. Rev.* 485 (1994); Robert D. Dinerstein, [Client-Centered Counseling: Reappraisal and Refinement](#), 32 *Ariz. L. Rev.* 501 (1990).

[\[FN6\]](#). See Boswell, *supra* note 2; Susan D. Bennett, ["No Relief But Upon the Terms of Coming into the House": Controlled Spaces, Invisible Disentitlements, and Homelessness in an Urban Shelter System](#), 104 *Yale L.J.* 2157 (1995).

[\[FN7\]](#). See Richard J. Wilson, *Prosecuting Pinochet: International Crimes in Spanish Domestic Law*, 21 *Hum. Rts. Q.* 927 (1999).

[\[FN8\]](#). See [Report of the Committee on the Future of the In-House Clinic](#), 42 *J. Legal Educ.* 511 (1992).

[\[FN9\]](#). See J. P. Ogilvy, [Introduction to the Symposium on Developments in Legal Externship Pedagogy](#), 5 *Clinical L. Rev.* 337 (1999); J. P. Ogilvy et al., *Learning from Practice: A Professional Development Text for Legal Externs* (Eagan, 1998).

[\[FN10\]](#). See Peter Jaszi et al., [Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University](#), 5 *Clinical L. Rev.* 403 (1999).

[\[FN11\]](#). See Harbaugh, *supra* note 3.

[\[FN12\]](#). See David F. Chavkin, [Am I My Client's Lawyer? Role Definition and the Clinical Supervisor](#), 51

[SMU L. Rev. 1507 \(1998\)](#).

[FN13]. For additional information regarding transactional clinics and community economic development clinic programs, see Peter Pitegoff, [Law School Initiatives in Housing and Community Development](#), 4 *B.U. Pub. Int. L.J.* 275 (1995); Susan R. Jones, [Small Businesses and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice](#), 4 *Clinical L. Rev.* 195 (1997).

[FN14]. A searchable compilation of the varied clinics and clinicians that exist in law schools nationwide is maintained on the Internet by David Chavkin. See *Clinical Legal Education: A Directory of Clinical Legal Educators*, available at <<http://www2.wcl.american.edu/clinic>>.

[FN15]. See David F. Chavkin, [Matchmaker, Matchmaker: Student Collaboration in Clinical Programs](#), 1 *Clinical L. Rev.* 199 (1994).

[FN16]. See Gary Bellow & Bea Moulton, *The Lawyering Process: Materials for Clinical Instruction in Advocacy* (Mineola, 1978). This book, along with its criminal and civil simulation supplements, has, perhaps more than any other, influenced the agenda and methodology of clinical seminars. It remains the only comprehensive attempt to define a theory for the field of lawyering and to provide the materials necessary to teach it.

[FN17]. Two useful and widely adopted texts for teaching client-centered lawyering are David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* (St. Paul, 1991) and Robert M. Bastress & Joseph D. Harbaugh, *Interviewing, Counseling, and Negotiation: Skills for Effective Representation* (Boston, 1990).

[FN18]. See, e.g., Paul Bergman, *Trial Advocacy in a Nutshell* (St. Paul, 1997).

[FN19]. This role that clinicians play in teaching students about the moral and ethical responsibilities of lawyers was, of course, central to the original vision of clinical education. See Pincus, *supra* note 1.

[FN20]. See David A. Binder & Paul Bergman, *Fact Investigation from Hypothesis to Proof* (St. Paul, 1984).

[FN21]. See Bergman, *supra* note 18.

[FN22]. See Shalleck, *supra* note 4, at 146. (At footnote 42 Shalleck discusses strategic planning using a concept explicated by Anthony Amsterdam called "end-means thinking.")

[FN23]. See Jane Harris Aiken, [Striving to Teach "Justice, Fairness, and Morality,"](#) 4 *Clinical L. Rev.* 1 (1997); Leslie G. Espinoza, [Legal Narratives, Therapeutic Narratives: The Invisibility and Omnipresence of Race and Gender](#), 95 *Mich. L. Rev.* 901 (1997); Ann Shalleck, [Theory and Experience in Constructing the Relationship Between Lawyer and Client: Representing Women Who Have Been Abused](#), 64 *Tenn. L. Rev.* 1019 (1997).

[FN24]. See Donald Schon, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (San Francisco, 1987).

[FN25]. See Susan L. Brustin & David F. Chavkin, [Testing the Grades: Evaluating Grading Models in](#)

[Clinical Legal Education, 3 Clinical L. Rev. 299 \(1997\).](#)

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## Sue's List of Overall Goals and Learning Goals for Particular Clinic

1. Graduates can develop modes of planning and analysis for dealing with unstructured situations as opposed to the "pre-digested world of the appellate case;"

Facts investigation, development and analysis

Strategic Planning

Theory Driven Advocacy

2. Graduates can work effectively with clients/client groups

- demonstrate interpersonal and communication skills that result in information exchange, trust building and teaming with clients
- client-centered
- competent interviewers and counselors

3. Graduates have developed self-learning models including learning from experience.

4. Graduates have an ability to recognize ethical issues as they arise in practice and have incorporated the values of the profession including values that promote equality, justice and service.

5. Graduates can work collaboratively with colleagues and other professionals; have increased capacity to work cross-culturally, cross-ling ally.

6. Graduates develop the capacity to advocate positions whether in transactional lawyering or courtroom practice.

7. Graduates have developed problem-solving skills that enable them to see client's problems from a broader perspective and develop micro and macro approaches to improve the client's situation.

8. Graduates have the capacity to critique the capacities and limitations of lawyers and the legal system, knowledge concerning the impact of law on the poor and other disadvantaged groups as well as the skills and strategies designed to promote social justice.

9. Graduates see the relationship between theory and practice including lawyering theory, jurisprudence, and doctrinal knowledge.

10. Graduates develop case management strategies that enable them to provide zealous, ethical representation.

**CUNY School of Law  
Battered Women's Rights Clinic  
Educational Goals and Evaluation Criteria**

Grades will be given after careful consideration of the student's level of competency in each of the listed competency areas. All work done by a student throughout the semester is evaluated for grading purposes. This includes work done to prepare for class, class participation, work submitted for simulations and work done on cases.

A student who performs at a very high level of competency in each of the competency areas can expect to achieve an honors grade (B+, A-, A). To earn an honors grade, a student does not have to perform at an exceptional level in every category within each competency area. However, an honors grade is given only to those students who have done exceptional work in Professional Responsibility & Professional Relationships. Effort, commitment to high quality representation and a willingness to collaborate with your clinic colleagues count heavily in our assessment of your professional responsibility competency.

Students who perform at a high level should expect to receive a grade which reflects this level of performance (B-, B). All students should be functioning at this level or above because no client deserves a "C" lawyer. Students who work hard, learn from feedback and perform competent work for clients will receive a B- or better for their semester work.

Occasionally, even a student who tries very hard is unprepared to do competent work and therefore receives a grade of "C" or below. A grade in the C range reflects a minimum level of acceptable performance in professional responsibility and professional relationships, as well as most of the other competencies.

A student who misses class, turns in sloppy client work, fails to meet professional obligations in a timely fashion can expect a D or below.

We will work with each of you to make sure that you are the very best lawyer you can be. Our clients deserve your very best effort and at the very least competent representation from each of us.

<b>Professional Responsibility &amp; Professional Relationships</b>
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Works in a way that ensures high quality representation:

- Follows procedures which are necessary for high quality representation. (E.g., thorough record keeping and use of tickler);
- Produces work on timetable for court, supervisors and as agreed to with clients or seeks postponement;
- Attends class, follows intake and interview procedures;
- Produces professional looking work product e.g.. proper grammar, correct spelling, no typos, proper form; and,
- Seeks supervision when appropriate.

Participates in running an office which promotes the public as well as the private good:

- Recognizes the choices involved in intake and other office practices and how those choices impact clients;
- Thinks of/works on projects which effect the public good; and,
- Recognizes a lawyer's professional responsibility to insure access to legal services.

Operates in a way that provides expertise without domination of clients:

- Recognizes how choices about the organization of the office influence relationships with clients;
- Understands and accepts counseling role;
- Sees connections between the way clients are interviewed and counseled and the impact on relationships between clients and lawyers; and,
- Develops enhanced understanding of clients, their differences from the lawyer and how these difference may impact representation.

Recognizes the professional responsibility issues raised by zealous representation of clients:

- Maintains clients' confidences;
- Researches, develops theories and investigates facts in a conscientious manner; and,
- Interacts with Court, opposing counsel and court personnel appropriately.

Works well with colleagues for the benefit of clients and the office:

- Produces work in a timely fashion so that others can give feedback on and contribute to joint work product;
- Shares individual work product and research with colleagues when appropriate;
- Contributes to the educational environment by sharing information,
- Contributes to the overall service goals of the office by helping others with intake, client cases.

### **Clinical Judgment**

Generates a variety of options for solving clients' problems:

- Identifies client's concerns;
- Identifies legal and non-legal alternatives for addressing client's problems; and,
- Identifies strengths and weaknesses of various options.

Develops effective strategies for litigating:

- Identifies known facts, investigates and discovers unknown facts; and
- Generates multiple theories of the case and evaluates them.

Anticipates potential problems and raises them with the client.

Learns from experience:

- Uses feedback from teachers and colleagues to improve performance; and
- Reflects on experiences.

Refers appropriate cases to other professionals.

## **Legal Reasoning**

Develops a working knowledge of the Family Court Act, the Domestic Relations Law, and the Immigration Law affecting battered women.

Frames issues for research.

Understands and applies legal research to client's problems.

Develops theories of the case consistent with the applicable law and client's goals.

Creative use of the law to accomplish client's goals

## **Theoretical Perspective**

Understands the value and limitations of developing a definition of the role of the lawyer.

- Understand the choices in defining the lawyer's role in helping clients and the implicit assumptions in these choices.

Develops a critique on how law enforces family norms.

Develops critical perspectives on how law is practiced.

Recognizes that individual case analysis occurs within a context:

- Understands battered women's syndrome and other theories about battering;
- Applies other theoretical frameworks for analyzing a client's situation including sexism, racism, poverty, and heterosexism; and
- Integrates an understanding of family violence in designing theories of the case.

Develops strategies for working on clients' problems that go beyond individual casework.

## **Communication**

Drafting:

- Drafts pleadings and motions that are clear, carefully written and persuasive;

Interviewing and counseling:

- Questions framed in a manner to elicit information;
- Listens effectively;
- Recognizes personal biases which effect listening and communicating; and,
- Communicates information effectively.

Other professional communications:

- Effective letter writing; and
- Respectful communication with colleagues, courts and clients.

Courtroom advocacy:

- Questions effectively to obtain relevant information and listens to responses; and,
- Presents arguments in clear effective manner.
- Effectively communicates client's story

### **Management of Effort**

Works cooperatively with colleagues.

Seeks appropriate supervision in the development of case work.

Attends all classes, training sessions and clinic office meetings.

Plans work effectively to meet demands of studying, exams, free time, and court/clinic work.

Meet deadlines imposed/agreed to by courts, clients, colleagues, supervisors, and opponents.

Keeps time sheets and submits time sheets on time.

Maintains files in a manner that promotes efficiency.

# LEARNING STRATEGIES For Use in Classroom

## Mini-writes

### Description:

Students are asked to answer a question, draw a picture, chart an idea using a 1 - 5 minute silent time period. The teacher can identify a subject that may require a bit of silent thought or collection of ideas before progressing. The teacher frames a question that can be answered (not vague, too complex for the time allotted) and gives the time for answering. The mini-write can be followed by small or large group discussion or incorporated into a lecture. The mini write can also be a place for open-ended, student-driven writing such as reactions to materials or ideas.

### Benefits:

1. More participation from more students results because all have time to collect their thoughts not just the quick. When small or large group discussions occur, those who respond quickly can dominate them. Those who require some time to think before talking are given the time to be equal participants in the discussion. Writing may result in a different kind of ownership and connection to an idea that may result in greater interest in participation.
2. Writing often clarifies thinking. Creating even a minute of quiet in the classroom for thinking can create this clarity. It can get thinkers warmed up for more sophisticated thinking. This clarity will aid the later conversation.
3. Good technique for gathering lists of reactions.
4. Increases active learning. Almost everyone will write something and focus their attention on the question.

### Challenges:

1. Takes time.
2. May focus the conversation at the moment of writing and not allow a building of ideas because people feel they must "stick" with what they have written down.

# Small Peer Feedback and Discussion Groups

## **Description:**

Teacher forms or asks participants to form small groups of 2, 3, or 4. These groups are given defined tasks that can include role-play, feedback, and/or discussion of mini-writes or of other topics. Like the mini-writes, teachers should be specific and clear about what they want the participants to do in the group. You do not want to waste time with participants asking questions or arguing about what the group is suppose to be doing. Where members of the group are asked to observe, they can be given highly detailed checklists or asked for general reactions. The size of the group is dictated by the number of roles, the likelihood that more or better ideas will be increased by size of group and the amount of time given to the discussion group.

## **Benefits:**

1. Allows others to share in teaching function. Respects the expertise of participants which adult learning theorists tell us is important.
2. Allows more feedback. The trainer cannot do feedback of 20 simultaneous role plays with feedback.
3. Promotes Active Learning.
4. Promotes Focused Learning. For some people especially those with attention issues, the chance to talk to someone and the chance to listen to someone within conversation range helps focus learning.
5. Provides Application Time. Small groups can be forums for application and feedback.

## **Challenges:**

1. Control of learning resides with participants. The feedback given may not be accurate. Participants may be hesitant to give honest feedback.
2. The participants may not respect their small group members. These participants may believe strongly in expert knowledge and have greater interest in learning from the expert.
3. Takes Time.

# Case Studies

## **Description:**

Case studies are narrative stories that detail all of the relevant facts and processes. They are used to create a rich and textured context for learning. The narrative can be presented via movies, videos or written text.

## **Benefits:**

1. Examples reinforce learning. For many learners, detailed and concrete learning is the way they learn. They are comfortable moving from the specific to the general and may not understand the general without the concrete.
2. Detailed examples demonstrate importance of facts and direct participants to examine results in light of details.
3. Give a common particular reference point. Teaching with concrete situations gives the students a shared reference point and allow conversations to surface differences and develop shared meaning.
4. Allows participants to learn transferable lessons. Many participants need examples to learn the lessons and some need very concrete and detailed learning for the lesson to translate.

## **Challenges:**

1. Takes time to develop and time to introduce in training.
2. Real world texture and context are hard to capture.
3. Lessons from particular to concrete may not be the lessons that the teacher wants the student to learn.

# Simulation & Role Plays

## Definitions:

A Simulation is a creation of experiential learning that maintains maximum fidelity to the real world context where experiences and players' reactions to them imitate real life to the maximum extent possible. In contrast, role-plays, which also ask participants to play themselves or others, allow the players insight into reality but are not necessarily designed to replicate reality in the way that simulations are.

Both involve creating experiences that put the participants in role and ask them to play that role while doing tasks that are defined for them. The role instructions can be detailed or not depending on what the learning objective is. Often role plays allow great flexibility and dictate a few key details. Simulations often require many more details to maintain fidelity to the real world.

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Both simulations and role-plays involve feedback and processing of the experience. The feedback can be detailed and personal where the students play a role in an event that is videoed and an expert gives feedback or facilitates a group feedback and discussion of the performance. Alternatively, the group can do multiple, simultaneous role plays in a large group setting with the students giving each other feedback and where participants reunite to discuss results and process experience or can be limited to lecturer asking for show of hands to collect impressions of the experience and commenting on the role play.

## Benefits:

1. Experiencing in role gives us another's point of view. Simulations and role plays often have the participant playing roles other than lawyers. These experiences will allow the participant to get a "taste" or a glimpse of what it is like to experience the situation from another's role.
2. Increased empathy or understanding of another. Because the learner experiences the situation differently, they may understand someone else's reaction to a situation better.
3. Change of viewpoint often gives one creative or new ideas. When we use a different frame of reference, we may see things differently. Our everyday role can inhibit the choices we see.
4. Allows practice without danger. If the new task we are asking the lawyer to perform takes practice to do well, the practice can occur in the safety of the training. .

5. Planned introduction to complex tasks. If the new task is complex, we can introduce the task in incremental steps.
6. Recall is enhanced. Some learning theorists argue persuasively that role-play and simulation allow sophisticated application of the material being presented. Adult learning theorists tell us that application is essential if learning is to occur.
7. Some participants find role playing to be fun.

**Challenges:**

1. Fidelity to the real world is impossible. Role players can never truly replicate the people they are playing.
2. Generalizations based on simulated experiences may be wrong. Because we may be getting only a "taste" it might be the wrong taste.
3. Simulations and role-plays can often be time consuming. Good ones need time to play as well as process. Without significant processing, the learner may draw limited or wrong generalizations from the experience.
4. Some participants think role-plays are silly; others focus on the acting to the detriment of the learning or problem solving.

# Facilitated Discussion

## **Description:**

Teacher leads discussion that may use any of the other listed strategies as preliminary work to contribute to the discussion and improve the learning. Teacher uses questions to promote discussion, to keep the group on topic, to clarify ideas and to ensure that important ideas get raised. (A list of these questions follows. ) Facilitated discussions may also be led by students.

## **Benefits:**

1. Allows others to share in the teaching function.
2. Gives teacher feedback as to where students are in their learning.
3. Promotes active learning on topic.
4. Allows students to synthesize ideas and to compare ideas with a broader group.
5. Allows teacher to ensure that certain ideas are discussed and that students see connections between topics.

## **Challenges:**

1. Control of learning resides with teacher. Teacher may end up reframing in the process of facilitation and change students ideas.
2. May end up too teacher centered with students focused on interacting with the teacher rather than other students ideas. Discussion can end up as a collection of ideas with little interaction of students with each other's ideas. Without care, students may not be talking to each other

## Questions <sup>4</sup>

### Questions that ask for more evidence

- Examples
  - How do you know that?
  - What in your experience leads you there?

### Questions asking for clarification

- Examples
  - Explain, put another way?
  - Do you have an example?
  - Do you have a different illustration

### Open Questions

- Begin with How or Why? Or other invitations for a variety of responses.
- Fullest use of discussion potential
- Give participants the broadest choice about what to answer
  - Why are these the priorities?
  - How would you structure the meeting with the student?

### Linking or Extending Questions

- New insights emerge from prior contributions
- Build on others responses
- Examples:
  - Is there a connection between comments?
  - How does your comment relate to earlier one?
  - Does your idea challenge or support what the group is saying?

### Hypothetical Questions

- Change the circumstances, would it be the same or different with you supply
- Can promote creativity also transfer
- Example:
  - If the student had written x or y, how might you reorganize your priorities?

### Cause Effect Questions

- Get participants to see the connection between ideas
- Examples:
  - What is relationship between discussing interviewing in class and in supervision?
  - What is relationship between your prior experience as a lawyer and your decision to prioritize one goal over another for your clinical program?

### Summary and Synthesis Questions

- Identify important ideas or themes
- Examples:
  - How can we capture these ideas into a goal of the program?
  - What concepts best captures our lists and allow us to articulate them as a goal.

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<sup>4</sup> This list comes from *Discussion as a Way of Teaching*, Stephen Brookfield and Stephen Preskill, Jossey-Bass, San Francisco, 1999. The book follows the discussion of questions with sub-heading called the Case Against Questions in which the authors point out how teachers' questions can get in the way of a discussion as well.

# Lecture

## **Definition:**

Lecture is a one-way presentation in which speaker addresses audience. The lecture may be enhanced with graphics and illustrations and may follow other learning strategies that focus and motivate the listener. The lecture may also be interspersed in the middle of other learning strategies.

## **Benefits:**

1. Large number of people can be given information at the same time.
2. Can be an efficient way to learn new information.

## **Challenges:**

1. Not individualized, hard to design lecture to audiences of diverse experiences.
2. Does not provide feedback to the learner.
3. Does not provide feedback to the teacher.
4. Active learning is totally up to the learner.

