

## **LEGAL EDUCATION AT THE CROSSROADS v. 3.0: A CONFERENCE ON ASSESSMENT**

Show & Tell Session 2: Formative Assessment  
Saturday, September 12, 2009, 11:25-12:10 p.m.

### **Formative Assessment of Ethical Judgment: Clinical Course Models from the Past, Directions for the Future**

Presenters: Alicia Alvarez, Cathy Burnett, Christine Cimini, Ann Juergens, Donna Lee, Gemma Solimene. All are members of the Clinical Skills Committee of the ABA Section of Legal Education and Admissions to the Bar.

#### **Overview of Session:**

As the ABA moves toward an outcome measure model of assessing the work of law schools, we need to develop new assessment models and tools for the goals we seek to achieve. This interactive session will consider how one goal of many clinical programs - taking responsibility for justice in the legal system - might be assessed. We will examine evaluation models that seek to measure the students' understanding of the impact of law on the poor and a lawyer's responsibility for ensuring a just legal system. We will share some examples with the group and will briefly analyze their effectiveness. What are their strengths and weaknesses? Are their attempts to measure professional judgment and/or understanding of justice valid and reliable? We will then work together to develop a new assessment tool focused on this same aspect of ethical judgment that incorporates the work of educational theorist and assessment expert, Grant Wiggins.

#### **Our Plan for Group Work during the Session:**

After a brief introduction, we will spend time with the group developing new assessment tools for "our" clinical course. Because time is short, we will focus our efforts on just one sub-part of ethical judgment, that dealing with lawyers' responsibility for ensuring a just legal system.

We approach our revision of clinics' assessment tools by applying concepts from *Understanding by Design* by Grant Wiggins and Jay McTighe. We have begun that work with the Mission, Essential Question and Stage 1 statements laid out below. During the session we will work through Stage 2, i.e., what will be evidence of success at reaching our mission goal and how will we measure it?

---

---

**Direction for the Future:  
Formative Assessment of one Aspect of Ethical Judgment: Taking  
Responsibility for Ensuring a Just Legal System.**

**Mission:** One of the goals of the Clinic is to train lawyers who embrace the responsibility lawyers share for ensuring a just legal system.

**Essential Question:** What responsibility does the good lawyer take for the legal system and the substantive justice and injustice it delivers?

**Stage 1: What do you want students to learn? (our desired results -- what students should be like, be able to do, know, have accomplished.):**

Students should be able to:

1. Recognize substantive injustice and unfairness in the course of representation.
2. Understand and engage with the public issues inherent in the practice of law.
3. Identify the political and social context in which the legal system enforces norms in order to undertake effective analysis in their cases or projects.
4. Identify concrete ways to increase access to the legal system.

**State 2: What will successful learning look like?**

What will be evidence of success?

What performances and products will reveal evidence of meaning-making and transfer?

How are we going to measure the evidence?

**Stage 3: Learning Activities:**

What activities, experiences and lessons will lead to achievement of the desired results and success at assessment?

### **Clinical Course Models from the Past:**

Below are samples of assessment criteria from four different law schools. Please keep in mind that these are excerpts from more complete documents. We edited to focus on the goal of training clinic students to “embrace the responsibility lawyers share for ensuring a just legal system.”

#### **SAMPLE A (16 credits/2 semesters)**

<b>Professional Responsibility &amp; Professional Relationships</b>
---

Works in a way that ensures high quality representation:

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 that 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; and
- Develops an enhanced understanding of clients, their differences from the lawyer and how these differences may impact representation

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

<b>Theoretical Perspective</b>
--------------------------------

Understands the assumptions embedded in one's own definition of the role of the lawyer:

- Thinks critically about the lawyer's role in helping clients and in effecting social change;
- Examines one's own insights, biases and reactions concerning issues that arise in the course of client representation; and
- Recognizes the value and limitations of legal solutions to problems that entail diverse social, psychological and economic factors

Recognizes that individual case analysis occurs within a context:

- Develops an awareness of and sensitivity to the client's point of reference and interface with the legal system;

- Applies other theoretical frameworks for analyzing a client's situation including sexism, racism, heterosexism, poverty and classism;
- Develops an understanding of how a client's culture and language may affect legal representation;
- Develops a critical perspective on how law enforces family norms and how law is practiced; and
- Develops strategies for working on clients' problems that go beyond individual casework

### **SAMPLE B** (6 credits/2 semesters)

#### Evaluation Criteria

The substantive criteria we use for evaluation fall into four major categories -- Strategic Planning and Decision-making; Skills Development; Professional Responsibility; and Educational Responsibility.

#### Professional Responsibility

Professional Ethics: Were you alert to ethical issues as they arose in cases? . . . Were appropriate relationships maintained with clients and officials?

Effort: Did you show initiative or only minimal effort to get the case done?

### **SAMPLE C** (3 credits, 1 semester)

**Primary Goal**: The . . . Clinics combine the experience of representing real clients in need with the opportunity for careful reflection. . . . The work exposes them to professional responsibility issues and to the effects of legal institutions on the poor. This helps students develop their ideas of what it means to be a lawyer and lays a foundation for the continual honing of the skills and habits of mind necessary to be a competent attorney.

Self evaluation. Critical observation of yourself and others is a key tool for learning and skill development. Most of a lawyer's learning takes place after leaving law school. You need to develop both the habit and the ability to observe yourself and other attorneys in a reflective and critical manner.

Integration. We intend that you begin to integrate your law school and life experiences into a conception of what it means to be a lawyer and to gain a deeper understanding of lawyers' roles in our democracy.

**SAMPLE D** (5 credits, 1 semester)

***Professional Responsibility***

To develop and engage in a thoughtful and thorough analysis of consequences of ethical concerns that may arise; . . . to identify and address possible conflicts with the Code, including conflicts with other ethical, ideological, or personal considerations bearing on a project; . . . and to devote an appropriate amount of time to fieldwork, considering the needs and demands of your project.

***Theoretical Perspective***

To develop the ability to analyze the purposes and functions of the law and public policy; and to discern underlying premises and implicit assumptions of the law, legal systems, public policy and politics.

***Self-Reflection***

[T]o gain insights about your future role as an attorney and as a professional; . . . to understand how the legal and political system enforce norms; to appreciate the value and limitations of lawyers in our legal system; to be aware of the political and social contexts in which our work takes place; and to gain insights into your future identity as an attorney.