

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

INFORMATION SHARED DURING SESSION

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

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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.

Stage 2: What will successful learning look like?

Stage 2 Ideas from Panelists:

Evidence of Success:

1. Student initiates discussion/reflection with supervisor about justice issues in cases s/he is working on in clinic.
2. Student includes larger reform issues in analysis of her/his work to be done in clinic work.
3. Student finds creative ways to address public justice issues in case work, e.g. writes memo and attends meeting of unemployment lawyers' task force that lays out changes needed in the statute or rules governing that system.
4. Student identifies barriers to access and responds creatively to them. For example, convinces court to change misleading information on website that discourages tenants from asserting their rights; writes a packet for pro se litigants in Conciliation Court.
5. In supervision, student raises issues of injustice/unfairness in her new cases without prompting (new cases could be her own, simulated cases or other student's case).
6. In supervision or in class discussions, student identifies law's inability to deal effectively with clients' problems.
7. In supervision or class discussion student is able to identify legal and non-legal referrals and lack of services.
8. In supervision and class discussions, student raises questions of reform of law (through litigation or legislative or administrative advocacy) necessary to effectively deal with client's problems.
9. In supervision or class discussions, student proposes making arguments that expand the limits of the law in order to provide justice for the client.
10. In supervision or class discussions, student expresses concern with making arguments on behalf of her client that would be unjust to the opposing party or third parties.
11. In class discussion, student articulates concrete ways that she can personally contribute to advancing justice and fairness of the legal system.
12. Student identifies issues of unfairness or injustice in pre and post class "test."
13. In journals, student raises issues of injustice/unfairness, is troubled by them, and proposes some ways to resolve them (either systemically or personally).
14. In supervision or class discussions, student raises concerns that procedures have substantive impact on case.

Measuring the Evidence

15. During reflection on justice issues in casework, student demonstrates understanding of some responsibility dealing with injustice, whether by acknowledging it, finding a way to begin to address it, or planning a way to integrate an understanding of injustice into the lawyer client relationship
16. Student's analysis and plan for addressing client's problem or issue includes specific actions designed to address the public aspect of the problem or issue.

17. Begin the semester with “knowledge probe” to establish baseline. This could include awareness of limitations of existing procedures, “work arounds” to address poverty law practice constraints, larger reform projects in pipeline in community, etc. Re-administer at end of semester. “Knowledge probe” could involve true/false questions, multiple choice, etc. based on hypo fact pattern [e.g., in family law practice, what ADR vehicles are available for indigent client].
18. As discrete project is completed, ask student to prepare “alternative scenario” one-page action plan.
19. Review “alternatives” with area poverty law practitioners for feedback [or traditional professor assessment].

Stage 2 Ideas from Conference Participants

Evidence/Measure of Success

1. Use of a simulation problem where you have intentionally built in ethical dilemmas:

Start with one at beginning of semester—baseline

At end of semester expect more sophisticated understanding.

Example: show video of The Practice and ask if they see anything that is bothersome, without reference to the rules.

2. Pre and Post Semester Exercise:

- a. Exercise: Have a series of 10 hypos where present short paragraphs and ask students to identify issues of fairness or unfairness.

At end of semester give them the same 10 and see if they can see more nuances, more of the issues.

- b. Measure: for student to be able to articulate who is helped and who is not helped in this scenario and why. And come up with a solution for it.

3. Evaluate Students’ Ability to Recognize and Identify Issues

- a. Recognize and identify in performance of other players;
- b. Impact of their performance on other players, whether it increases or denies it;
- c. Does this recognition without prompting;
- d. Recognition of language barriers as example of thing making access difficult;
- e. What information did student elected to present to client.

4. In class or discussions, student raises needs for reform of law

- a. Query: how assess everyone fairly based on whether they raise it in class. What about all those who recognize it but don’t speak up?;
- b. Ask students to put ideas in writing;

- c. Example: if you have seen something that would lend itself to the production of a brochure, incorporate into a writing requirement, etc.

Stage 3: Learning Activities:

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

Faulty Initiated Activities:

- a. Set of Questions to ask the student if they are unable to identify issues of injustice or initiate discussion of these issues.
 - i. Could be used in supervision, class or student rounds
- b. Lectures
 - i. Could have outside speakers help frame the issues (e.g.: Bill Quigley experience).
- c. Faculty Modeling
 - i. The supervisor could model for the student how to identify and explore these issues if the student seems to be having a hard time identifying or addressing the topic.

Student Observation Memos and Journals:

- d. Observations with Guided or Unguided Reflection
 - i. Designed to put students in a position to observe some injustice. Could be a court observation, an observation of community groups or client groups
 - ii. Could be guided or unguided observations
 - 1. Guided: would include specific questions for the students to consider, e.g., how did the judge treat indigent clients or pro se parties; who were the tenants in court; how did race or socioeconomic factors play into what you observed?
 - 2. Unguided: simply ask students for their thoughts about the fairness or unfairness of a particular observation without guiding them to specific topics

- e. Journal (Guided or Unguided)
 - i. Ask students to keep a journal throughout the semester and ask that they include thoughts about the justice or injustice that they observe over the semester.
 - ii. Again, it could be guided in that you ask them on specific weeks to address specific topics related to justice in the legal system.

- f. Past Journal Entries for Discussion
 - i. Use anonymous journal entries from past clinical students (with their permission) to raise issues about justice in class.
 - ii. Pass out entries that raise topics related to justice or injustice in the legal system and create a class discussion.

Role Play Exercises

- g. Student Out of Class Role Play Exercise – ask student to assume the role of the client for a day (or more)
 - i. Ask students to assume they are a pro se indigent client who is being evicted or seeking a restraining order (or whatever topic you are dealing with in your clinic).
 - ii. Ask them to walk through the process – go down to court figure out how to file an answer etc. and as they go through the process have them identify the justice issues or unfairness they see in the system.
 - iii. They could write memos and bring them back for discussion in supervision or a larger classroom discussion.

- h. Student Role Play as Opposing Party
 - i. Put student in role as the opposing party and use a guided reflection or a memo assignment that asks the student to think about the impact that his/her arguments would have on the overall justice system or race relations or some specific issue you are seeking to address.

- i. Faculty In Class Role Play Exercise
 - i. Could have the faculty role play a scenario and then have the students in a fish bowl identifying issues and then have a discussion about the issues raised.

- j. Class Role Play and Simulation Exercise
 - i. Could have students in class or supervision get in various roles and play out a scenario which would highlight issues of injustice and then unpack them together.

Other Exercises

- k. Brainstorming Activity (designed to get students to think broadly)
 - i. Pose a problem to the students: e.g.: police are harassing our clients on the corner when they are looking for work
 - ii. Ask students to withhold judgment and brainstorm all possible options
 - iii. Think broadly about the role of the lawyer in the larger system of justice.

 - l. Ongoing Journal Check-In
 - i. Ask each student during the semester to keep a journal of any instances of injustice (or justice) that they observe..
 - ii. At the end of each week (or month) you can ask for anonymous submissions from each student that identify some issue related to the justice or lack thereof in the system they are interfacing with.
 - iii. These submissions could then be used as a basis for in class discussion.
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